Filed 4/13/15

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CANDACE CONTI, Plaintiff and Respondent, v. WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. et al., Defendants and Appellants.	A136641 (Alameda County Super. Ct. No. HG11558324)

In this case we consider the duty owed by a religious organization to one of its members who has been harmed by another member. Candace Conti, formerly a member of the North Fremont Congregation of Jehovah's Witnesses (Fremont Congregation or Congregation) sued the Congregation and Watchtower Bible and Tract Society of New York, Inc. (Watchtower), the Jehovah's Witnesses's headquarters at the time, for damages for her sexual abuse as a child by Jonathan Kendrick (Kendrick), another member of the Congregation. Before Conti was molested, the Congregation and Watchtower (hereafter collectively defendants) elders and officials learned that Kendrick had molested another child. Conti sought to hold defendants liable for failing to warn the Congregation or her parents that Kendrick was a child molester, and for failing to limit and supervise his participation in church activities. A jury found defendants liable for compensatory damages to Conti, and held Watchtower liable for punitive damages.

We hold that defendants had no duty to warn the Congregation or Conti's parents that Kendrick had molested a child, but that defendants *can* be held liable for failing to limit and supervise Kendrick's "field service," a church-sponsored activity where members go door-to-door preaching in the community. Kendrick had unsupervised

access to Conti during field service that he used as opportunities to molest her. Because breach of the alleged duty to warn was the sole basis for imposition of punitive damages on Watchtower, we reverse that portion of the judgment, with directions to enter judgment for Watchtower on the punitive damage claim. The compensatory damage award is affirmed.

I. BACKGROUND

The Jehovah's Witnesses is a religion with about 1.2 million members in 13,400 congregations in the United States. In the 1990's, Watchtower was in charge of the church's policies. Congregations are comprised of elders, ministerial servants, and rank-and-file members called "baptized publishers." All members in good standing are considered "ministers." Elders are the spiritual leaders of their congregations, comparable to clergy in other religions. Ministerial servants do administrative work such as distributing literature to members, and handling microphones at meetings. Watchtower admitted that Fremont Congregation elders Gary Abrahamson and Michael Clarke were Watchtower's agents while acting within the course and scope of their church duties. In addition to Sunday and midweek meetings, Congregation activities include field service, where small groups, usually consisting of two or three people, go door-to-door in neighborhoods to spread the church's spiritual teachings.

Congregations are small and close knit. The average congregation has 75 to 150 members. At different times, the Fremont Congregation had from 100 to 140 members, of whom 6 to 13 were elders. Evelyn Kendrick (Evelyn), who was married to Kendrick during the period when he molested Conti, testified that "we only socialized with people of that congregation. We were kind of—well, not told outright, but that we should only associate with people of that religion and not of any other religion because they could be a bad influence." Congregation members call each other "brother" and "sister."

Conti and Kendrick were Fremont Congregation members in the 1990's, and for a time Kendrick was a ministerial servant. Conti testified that Kendrick began molesting her around the time she turned nine years old in late 1994, and continued until 1996 or

1997, when she was age 10 or 11. Before Kendrick molested Conti, the Congregation elders learned that he had molested his stepdaughter.

In November 1993, elder Clarke received a call from Evelyn or Kendrick asking for a consultation about Kendrick's abuse of Evelyn's daughter. Clarke and Abrahamson went to their home that week and spoke with Kendrick, Evelyn, and her daughter. The elders were told that, four months earlier, Kendrick had touched his stepdaughter's breast around the time of her 14th birthday. The stepdaughter told Evelyn about the molestation minutes after it occurred, but Evelyn testified that she did not immediately report it because she thought it was an isolated incident and she was "trying to deal with it" within the family. The details of what the elders were told about the incident were disputed at trial. Among other things, Evelyn disputed the elders' testimony that she told them to keep the incident private, and that Kendrick said he touched her daughter "inadvertently." Even so, the elders did not believe the touching was accidental.

The elders told Evelyn and her daughter that they were free to report the incident to the police. Abrahamson testified that they neither encouraged nor discouraged Evelyn and her daughter from doing so; "[i]t was up to them." Evelyn reported the incident to the police in February 1994. Kendrick admitted touching his stepdaughter's breast, and was convicted of a misdemeanor. Elders at the Congregation did not learn of Evelyn's report to the police until a couple of years later.

After meeting with the Kendrick family, Clarke wrote a letter to Watchtower to report "a case of child abuse" by Kendrick. Abrahamson testified that the Congregation was required to contact Watchtower for instructions in such a situation.[1] The copy of the

[1] "Q. Why were you reporting this to Watchtower New York? [¶] A. To get direction. [¶] Q. And in all of your work as an elder that involves anything in this type of matter, you would get your direction and instruction from New York. Correct? [¶] A. In a lot of these cases that legal matters are involved, we are always encouraged to call the Legal Department because how could we know all the laws. And the laws change from state to state, but our Legal department could help us through this. [¶] Q. And you used the word 'encouraged' but actually you are required to call New York? [¶] A. You might put it that way. Yes. [¶] Q. I did put it that way. Do you agree? [¶] A. I agree you put it that way. [¶] Q. Do you agree that you were required to call New York? [¶] A. Yes."

letter in evidence is heavily redacted. In the unredacted portion, the letter stated that the Congregation had phoned Watchtower about the Kendrick matter, the "legal department had given us some direction," and Watchtower had asked the Congregation to submit its questions in writing. The letter said the elders planned to tell the Congregation that Kendrick would no longer be acting as a ministerial servant, and asked Watchtower to advise if that was an "incorrect" course of action. Clarke testified that Watchtower responded to his letter, but he did not provide the substance of the response and no written response is in evidence. The testimony was simply: "Q. And Watchtower did respond to the letter and he was removed as a ministerial servant? [¶] A. Correct. And we announced that."

Allen Shuster, a Watchtower official in New York, testified that Watchtower policy allowed a known child molester to continue to perform field service, but not alone or with a child. Defense expert Monica Applewhite, whose testimony is discussed further below, said that Watchtower policies were implemented by letters sent "to all bodies of elders in the United States." However, Shuster was unable to identify any church-wide writing that documented the limitations on field service by known child molesters. He said this policy was implemented by letters to elders on a case-by-case basis.[2]

Abrahamson testified that he told the Fremont Congregation elders what he learned at the Kendrick family meeting, and they agreed that Kendrick was no longer fit

[2] When Shuster was asked whether a person known to be a child molester "can be sent out as a baptized publisher into neighborhoods to spread the word of the gospel?" the following testimony ensued: "A. Yes. But not by themselves or with a child. [¶] Q. "Is there in writing anywhere the caveat that you just gave to us? I haven't seen it in any of the exhibits. [¶] A. I believe we have something in writing, yes. I couldn't put my finger on it right now, but yes. [¶] Q. Is it here with us today? [¶] A. I don't know if it is here. I don't recall. [¶] . . . [¶] "Any reason why, if there was a policy that specifically prohibited baptized publishers who were known to have molested children from going into field service with a child, that that written policy wouldn't be right in front of you right now? [¶] A. That policy is specific to each individual situation. In each situation there are instructions given in the letter to a body of elders where that individual is and that instruction is given in that letter."

to serve as a ministerial servant. They removed Kendrick from the position, and announced his removal to the Congregation without disclosing the reason for it.

Clarke testified that the Fremont Congregation elders were following Watchtower policy in keeping information about the molestation confidential. That policy was set forth in a July 1, 1989 letter from Watchtower to all elders in the United States, and it was a centerpiece of Conti's case against Watchtower.

The letter addressed the elders' "duties that may involve legal issues or questions." Watchtower instructed the elders they "must be careful not to divulge information about personal matters to unauthorized persons. . . . Elders must give special heed to the counsel: 'Do not reveal the confidential talk of another.' (Proverbs 25:9) . . . Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society. [¶] . . . Worldly persons are quick to resort to lawsuits if they feel their 'rights' have been violated. Some who oppose the Kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress. Thus, elders must especially guard the use of the tongue."

The letter continued: "The spirit of the world has sensitized people regarding their legal 'rights' and the legal means by which they can exact punishment if such 'rights' are violated. Hence, a growing number of vindictive or disgruntled ones, as well as opposers, have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the Society. Many of these lawsuits are the result of the misuse of the tongue. . . . [¶] . . . [¶] The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended. Substantial monetary damages could be assessed against the elders or congregation."

The letter went on to discuss "what to do in specific cases," such as "[s]earch warrants and [s]ubpoenas," "[c]rimes and [c]riminal investigations," "[w]hen [l]awsuits are [t]hreatened," and "[c]hild [c]ustody." On the subject of "[c]hild [a]buse," the letter stated: "Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department

immediately. Victims of such abuse need to be protected from further danger." The letter concluded with "points to remember," such as "[b]e extremely careful with written material," and "[a]ppreciate the [i]mportance of [m]aintaining [c]onfidentiality." With respect to confidentiality, the letter stated: "Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out favorably, valuable time and energy that could have been devoted to Kingdom interests will be lost."

Clarke testified that the policy stated in the letter was intended to protect confidential ministerial communications as well as to avoid legal liability. He thought that "confidentiality is important for a minister." He asked, "Why would anybody come to us with their problems if they knew that as soon as they come to us we were going to announce it? Why would anybody confess to a Catholic priest if they knew that after they confessed it was going to be announced at mass next week. It is ludicrous. [¶] So [the policy was] put in place so that the friends would feel comfortable coming to us and we could keep confidence."

Clarke testified that the elders told Kendrick he could not "show affection to children, put children on his lap, work with them out in the door-to-door ministry, work with children in the Kingdom Hall. [¶] And we made it clear to him that we were going to be watching him. And we did, all, the whole body of elders." Elder Lawrence Lamerdin said the Congregation had 10 to 13 elders at the time and they "made sure that [Kendrick] was watched." Abrahamson saw "no need" to inform the Congregation that Kendrick had molested a child because the elders would have warned the parents of any child they saw Kendrick getting close to or isolating.

In an August 1, 1995 policy letter to United States elders on the subject of child abuse, Watchtower stated: "[S]teps should be taken to protect the child, or other children, from further sexual abuse. Obviously, parents would be keenly interested in taking adequate precautions in this regard. . . . Loving elders, too, will want to act in a way that

demonstrates their protective care, since the word 'overseer' carries the thought of one who watches over, a guardian, a shepherd of the flock. . . . [¶] It would be appropriate to talk very frankly to a former child abuser, strongly cautioning him as to the dangers of hugging or holding children on his lap and that he should never be in the presence of a child without another adult being present."

There was testimony that Jehovah's Witnesses conduct no activities such as classes or trips that by their nature separate children from their parents, and Clarke testified that parents in the congregations are regarded as "the first line of defense" in preventing child sexual abuse. Parents were educated about child sexual abuse in *Awake!*, a publication distributed to all congregation members. Child abuse was discussed at length in the January 22, 1985 issue, which covered topics such as "Who Would Do a Thing Like That?" and "You Can Protect Your Child." The subject was also the focus of the October 8, 1993 issue, which addressed the question "How Can We Protect [Our Children]?" The discussion under that heading stated: "Tragically, adult society often unwittingly collaborates with child abusers. How so? By refusing to be aware of this danger, by fostering a hush-hush attitude about it, by believing oft-repeated myths. Ignorance, misinformation, and silence give safe haven to abusers, not their victims." Both issues addressed misconceptions about child sexual abuse, including the belief that such abuse is most commonly perpetrated by strangers to the victims, and the 1985 issue gave as an example a girl who was molested by "a man who was running a church group."

Conti testified that she met Kendrick at the Fremont Congregation's Kingdom Hall, a building for Congregation meetings that seats 220 people. She said that Kendrick insinuated himself into her family, befriended her father Neal at meetings, and then began coming to their house. He molested her several times a month for a couple of years. With one exception, the incidents occurred at Kendrick's home, where he drove Conti after meetings and during field service. On one occasion, Kendrick put his hand up her shirt while they were riding on a train with her father.

Kendrick began getting physical with her by repeatedly hugging her at Kingdom Hall. She always went to Kingdom Hall with at least one parent, but Kendrick made her sit on his lap during meetings. She sometimes went to field service without her parents, and Kendrick sometimes drove her to the group meetings that preceded the door-to door field service, where partners for the activity were assigned. They did field service together many times without either of Conti's parents present. Conti said that the molestations occurred while they were supposed to be performing field service: "Our groups would go out, we would get our territories, and we would go out and service. And we would do door to door. [¶] And then there were times when our groups would separate even further. And we would go to . . . laundry mats . . . and things like that. And sometimes he would take me . . . to go do some of these things and then we would end up at his house." Kendrick drove her to his house, and when he finished molesting her, they would go "[m]aybe to the Kingdom Hall. Maybe to lunch with the rest of the service group."

Conti's father Neal testified that he did not see Kendrick engage in any of the inappropriate behavior described by Conti. Neal said he was always with Conti at meetings and during field service, he did not allow Conti to leave meetings with Kendrick, and did not see Kendrick hug Conti or Conti sit on Kendrick's lap. Conti's mother Kathleen testified that she had mental health problems during the two years before she and Neal separated in July 1996, which prevented her from caring for Conti. As a result, Conti was often on her own during that time. Kendrick was always offering to help Conti and take her places, and Kathleen thought he was just being nice.

Clinical social worker Laura Fraser counseled Conti and her parents from August 1996 to April 1998. Fraser testified that Neal and Kathleen were going through a tumultuous divorce, and Conti had assumed a caretaker role in the family. Neal and Kathleen were not "psychologically well-developed," and it was "like three children, in some respects, living together." Conti's home life was chaotic and unpredictable. There were a "multitude of emotional crises . . . particularly related to her mother," and Neal's work and Congregation activities left him little time for Conti. She was craving for adult

care at the time, and extremely vulnerable to manipulation. Fraser was not surprised that Conti did not disclose her sexual abuse during the counseling. Fraser had told Conti that she would be required to report such abuse, and Conti had "no safety" because she "was still rescuing both parents."

Congregation member Carolyn Martinez testified that she saw Kendrick and Conti together at Kingdom Hall, and that he "was very enamored with her. He just looked at her inappropriately. . . . I remember them holding hands. I remember his arm around her." Martinez said that she never saw Conti come to Kingdom Hall or field service without a parent, but more than once she saw Kendrick and Conti together in field service. Martinez recalled Conti sitting on Kendrick's lap in meetings at her home.

Elders Clarke, Abrahamson, Lamerdin, and three Congregation members testified that at Kingdom Hall they did not see Conti get hugs from Kendrick, sit on his lap, or leave with him as Conti testified. The Congregation members said they never saw Conti do field service with Kendrick.

An expert testified for Conti about Child Sex Abuse Accommodation Syndrome, which describes behaviors often exhibited by victims, including delayed reporting of their abuse. Physician notes in evidence state that Conti reported in August 2002 that she was sexually abused from around age nine to 13. Conti did not recall that doctor visit, but remembered disclosing the molestations to her parents in 2003. She disclosed the molestations to elders, including Clarke and Lamerdin, in 2009.

A psychologist who was counseling Conti at the time of trial testified that she suffered from depression, anxiety, and most severely from post-traumatic stress disorder (PTSD). A psychiatrist treating Conti testified that she was afflicted by PTSD due to the sexual abuse and she would require a lifetime of therapy. A psychiatrist qualified as an expert in child and adolescent psychology testified that Conti reported having been molested hundreds of times, that she had severe, chronic PTSD, and she would require therapy costing $160,000.

Anna Salter, a clinical psychologist and an expert on child sexual abuse testified for Conti that defendants, after learning that Kendrick had molested a child, did not meet

the standard of care for organizations that sponsor or promote activities that bring adults and children together. Salter said that, by 1993, the major religions and secular organizations conducting such activities had "adopted policies of transparency regarding known sex abusers." United Methodist Church policies, for example, were to "[u]phold the rights of children, speak out when abuses occur, and advocate for the strengthening and strict enforcement of these rights." Salter said that "people knew what the risk was when you had a child molester," and that the standard of care "was not to keep it secret and let the person continue in the same activities with the same access to children." The standard of care required "reporting these cases . . . and making people aware . . . if they had a sex offender in their midst."

Monica Applewhite, a clinical social worker and an expert on child sexual abuse, testified for defendants that Watchtower's policy against "disclosing private information . . . very closely mirror[ed]" the codes of ethics of the National Association of Social Workers and the American Counseling Association. Based on her review of the evidence, Applewhite opined that the Congregation never put Kendrick "into a position that required or allowed him to be alone with children, to be in supervision of children, [or] to spend time with children away from their families." Because the church's activities did not separate children from their parents, Appelwhite opined that its best means of protecting children was to educate parents about child sexual abuse, and it exceeded the standard of care for such education in the 1990's. According to Applewhite, the elders met the standard of care in Kendrick's case when they left it up to Evelyn and her daughter whether to tell the police about the abuse he admitted, and "they kept a special watch on him and paid attention to whether or not he had any inappropriate contact with children within the meetings at Kingdom Hall."

Conti sued Watchtower, the Fremont Congregation, and Kendrick for damages for sexual abuse, alleging willful acts by Kendrick and negligence on the part of defendants. The negligence consisted of failing to warn members of the Congregation that Kendrick was a child molester, and failing to restrict and supervise his participation in church activities. Conti executed a covenant not to execute on any judgment against Kendrick,

in exchange for his agreement not to participate in the case, or harass Conti or her witnesses. Conti obtained leave to add a cause of action for "acts of malice" supporting punitive damages against Watchtower, arguing that Watchtower acted despicably and with conscious disregard for the safety of others by maintaining a "secrecy policy" with respect to child sexual abusers despite knowing of their "high recidivism." The "secrecy policy" was set forth in the July 1989 letter we have quoted at length. Awareness of child abuse recidivism was exhibited in church publications such as the January 1, 1997 issue of The Watchtower, which stated that child sex abusers "may well molest other children. True, not every child molester repeats the sin, but many do."

The jury found Kendrick, Watchtower, and the Congregation liable, and apportioned fault 60 percent to Kendrick, 27 percent to Watchtower, and 13 percent to the Congregation. The jury awarded Conti $7,000,000 in compensatory damages, including $130,000 for future counseling and therapy, and $6,870,000 in non-economic damages. The jury awarded $21,000,001 in punitive damages against Watchtower. The court conditionally granted Watchtower's motion for a new trial on punitive damages, subject to Conti's acceptance of an $8,610,000 punitive damage award. Conti accepted the reduced punitive damages, and judgment was entered against Watchtower for $10,464,900, against the Congregation for $893,100, and against Watchtower and the Congregation jointly and severally for $130,000. Watchtower and the Congregation timely appeal.

II. DISCUSSION

A. Introduction

Defendants initially demurred, and have consistently argued throughout the case that they had no duty to prevent Conti from being molested by Kendrick. The trial court overruled their demurrer, and rejected their subsequent arguments that no duty was owed on the facts of this case. The court declined to give defendants' proposed jury instructions that the Congregation had no duty to warn its members that Kendrick had committed an act of child sexual abuse, and that defendants were not liable unless Conti's abuse occurred on church property or during a church-sponsored activity.

Over defendants' objection, the court gave the following "duty" instruction to the jury: "The defendants . . . had a duty to take reasonable protective measures to protect [Conti] from the risk of sexual abuse by . . . Kendrick. In determining whether or not [defendants] took reasonable protective measures, you may consider the following: [¶] 1. The presence or absence of any warning; [¶] 2. Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses from the [Congregation] members for the purposes of sexual abuse education and prevention; [¶] 3. Such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures."

"Duty is a question of law for the court, to be reviewed de novo on appeal." (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770.)

B. Failures to Warn

(1) *Warning the Congregation*

Conti argued that the Fremont Congregation elders had a duty to warn members of the Congregation that Kendrick had molested a child and, as we have said, failure to fulfill that alleged duty was the sole basis for the punitive damage award against Watchtower. Congregation elders were following Watchtower's policy when they kept the molestation Kendrick reported confidential. We disagree with Conti that they had a legal duty to warn the Congregation about Kendrick.

" '[A]s a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct.' " (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1129.) "This rule derives from the common law's distinction between misfeasance and nonfeasance, and its reluctance to impose liability for the latter." (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 435, fn. 5.) "The basic idea is often referred to as the 'no duty to aid' rule, which remains a fundamental and long-standing rule of tort law. . . . 'As a rule, one has no duty to come to the aid of another.' " (*Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727.) For instance, in *Eric J. v. Betty M.*, a convicted child molester sexually abused his girlfriend's minor child, and the molester's family members who did nothing "to facilitate any molestation" were not

liable for failing to warn the girlfriend about the molester's past. (*Id.* at pp.717, 727.) In *Eric J. v. Betty M.*, the court distinguished *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206, where the wife of a child molester who knew of her husband's past was subject to misfeasance liability for telling the parents of girls he sexually abused that the girls could safely swim at her house when she was away because her husband would be there to take care of them. (*Id.* at pp. 209-210; *Eric J. v. Betty M., supra,* 76 Cal.App.4th at p. 729.)

"Where, as here, a 'complaint alleges injuries resulting from the *criminal acts of third persons* . . .'the common law, reluctant to impose liability for nonfeasance, generally does not impose a duty upon a defendant to control the conduct of another [citations], or to warn of such conduct [citations], unless the defendant stands in some *special relationship* either to the person whose conduct needs to be controlled, or to the foreseeable victim of such conduct." ' " (*Roman Catholic Bishop of San Diego v. Superior Court* (1996) 42 Cal.App.4th 1556, 1564 (*Roman Catholic Bishop*), italics in original); see also Rest.2d Torts § 315; *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 293 ["one is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a special relationship of custody or control"].) In *Pamela L. v. Farmer*, the wife of the child molester "assumed that special relationship" with his new victims when she invited them to her home and assured them they could safely play there. (*Pamela L. v. Farmer, supra,* 112 Cal.App.3d at pp. 211–212.)

The alleged duty to warn cannot be justified in this case on the basis of a special relationship. Fremont Congregation elders were required, as Conti's expert put it, to make Congregation members aware that "they had a sex offender in their midst" only if: (1) members of a church have a special relationship with the church solely by virtue of that membership that requires the church to take affirmative steps to safeguard them against harm from other congregation members; or (2) a church has a special relationship with any member it has reason to believe may perpetrate such harm. (See generally, *Roman Catholic Bishop, supra,* 42 Cal.App.4th at p. 1564 [defendant must have a special relationship with the person whose conduct needs to be controlled, or the foreseeable

victims of such conduct].) Conti makes neither assertion, and identifies no authority for any such broad duty on the part of a church to prevent its members from harming each other.

Rather, her arguments for a special relationship focus on the Congregation's custody or control of her and Kendrick. She maintains that the Congregation "exerted custody and control over [her] by assigning her to perform field service with Kendrick," and "took charge of Kendrick when they determined where and with whom he was to perform field service." But these arguments are material to the duty of care in connection with Kendrick's field service—a matter we discuss below—not to a duty to warn the Congregation that he had molested a child.

A number of cases have held that, where the issue is whether the defendant had a duty to protect the plaintiff from harm caused by a third party, the absence of a special relationship is dispositive and there is no reason to conduct the analysis prescribed in *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*), to determine whether a duty nevertheless existed. "Because the traditional weighing process using [the *Rowland* factors] 'has already been done by courts over the centuries in formulating the "no duty to aid" rule,' in the context of liability for nonfeasance, it is not necessary to engage in [that] weighing process" where no special relationship exists. (*Seo v. All-Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1203, quoting *Eric J. v. Betty M., supra,* 76 Cal.App.4th 715, 729-730; see also *Suarez v. Pacific Northstar Mechanical, Inc.* (2009) 180 Cal.App.4th 430, 438; but see *Nally v. Grace Community Church, supra,* 47 Cal.3d at p. 293 [applying both the special relationship doctrine and the *Rowland* factors in analyzing whether church pastors had a duty to prevent a foreseeable suicide].) However, even if we were required to consider the *Rowland* factors, we would not conclude that the elders had a duty to warn the Congregation about Kendrick's past child sexual abuse.

The *Rowland* factors are: "[T]he foreseeability of harm to the plaintiff; the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant

and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Rowland*, *supra*, 69 Cal.2d at p. 113.) "Forseeability and the extent of the burden to the defendant are ordinarily the crucial considerations, but in a given case one or more of the other *Rowland* factors may be determinative of the duty analysis." (*Castaneda v. Osher* (2007) 41 Cal.4th 1205, 1213.)

While it is readily foreseeable that someone who has molested a child may do so again, the burden the duty to warn would create and the adverse social consequences the duty would produce outweigh its imposition. The burden would be considerable because the precedent could require a church to intervene whenever it has reason to believe that a congregation member is capable of doing harm, and the scope of that duty could not be limited with any precision. For example, would the duty to warn be triggered by an accusation, or only an admission, of misconduct? Would one warning be sufficient, or would continuous warnings be required to ensure that new congregation members are alerted to the danger? Child molestation is a particularly heinous evil, but which other potential harms would the church have a duty to avert? Would the duty be limited to crimes and, if so, which ones? Imposition of a duty to warn would also have detrimental social consequences. It would discourage wrongdoers from seeking potentially beneficial intervention, and contravene the public policy against disclosure of penitential communications. No moral blame can be cast on defendants for adhering to that public policy.

The law generally protects the confidentiality of communications with clergy like those of Kendrick to the elders here. Under the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164, et seq.) clergy members such as a minister or similar functionary of a church or recognized denomination must report suspected child sexual abuse to law enforcement or a specified county agency. (Pen. Code, §§ 11165, 11165.6, 11165.7, subd. (a)(32), 11165.9, 11166, subd. (a).) However, this obligation does not arise when the clergy member is informed of the abuse during a "penitential communication," which is defined to mean "a communication, intended to be in confidence, including, but not

limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination or organization, has a duty to keep those communications secret." (Pen. Code, § 11166, subds. (a), (d)(1).)

Similarly, clergy and penitents each have a privilege not to testify about penitential communications. (Evid. Code, §§ 1032, 1033, 1034.) " 'The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return.' " (*Roman Catholic Archbishop of Los Angeles v. Los Angeles Superior Court* (2005) 131 Cal.App.4th 417, 443.) It has been argued that "the humanistic case for this privilege is stronger than the corresponding case for any other privilege. A person's religious beliefs lie at the core of the decisional autonomy needed to develop his or her life plan. In a philosophic sense, the person's chosen religious beliefs are arguably his or her most important life preferences." (Imwinkelried, The New Wigmore, Evidentiary Privileges (2nd.ed. 2010) § 6.2.3.b, p. 529.) The treatise observes that the United States Supreme Court has recognized "a constitutional 'right to believe . . . whatever religious doctrine one desires,' 'according to the dictates of his own conscience,' " and continues: "If the person has a constitutional right to independence in making religious choices, the recognition of an evidentiary privilege is an apt means of protecting that autonomy. If any type of relationship deserves the protection of an enclave shored up with an evidentiary privilege, it is a consultative relationship dealing with this kind of choice." (*Id.* at p. 531.)

Admittedly, neither mandatory reporting to the government nor evidentiary privilege control in this case. The privilege for penitential communications does not apply unless the communication is made "in the presence of no third person so far as the penitent is aware," a condition not satisfied at the Kendrick family meeting with the Congregation elders. (See *Roman Catholic Archbishop of Los Angeles v. Los Angeles Superior Court, supra,* 131 Cal.App.4th at pp. 444–445 [no privilege for communications

in church interventions with troubled priests because participants knew communications would likely be shared with more than one person].) Nor is it clear that Kendrick's communication was "penitential" as it is commonly understood given the elders' testimony that he said he touched his stepdaughter inadvertently. (Webster's Collegiate Dict. (10th Ed. 2001) p. 856 ["penitence" means "sorrow for sins or faults"].)

However, the public policy to protect the confidentiality of penitential communications that underlies the privilege and reporting statutes militates strongly against imposition of the duty claimed here to inform congregations of such communications. When the clergy member privilege was codified in Evidence Code section 1034, the California Law Revision Commission commented: "The extent to which a clergyman should keep secret or reveal penitential communications is not an appropriate subject for legislation; the matter is better left to the discretion of the individual clergyman involved and the discipline of the religious body of which he is a member." (7 Cal. Law Revision Com. (1965) p. 202.) Courts should likewise be wary to intrude in this realm.

Accordingly, we conclude that the elders of the Fremont Congregation had no duty to depart from Watchtower's policy of confidentiality and warn the members of the Congregation that Kendrick had molested a child. Since that "secrecy policy" was the only basis for the punitive damages assessed against Watchtower, the punitive damage award must be reversed.[3]

(2) *Failure to Warn Conti's Parents*

Congregation elders testified that they monitored Kendrick after learning that he had sexually abused a child, and would have disclosed his prior molestation to the parents of any child toward whom his behavior was inappropriate. In jury argument, Conti's

[3] In view of this conclusion, we need not reach Watchtower's arguments that the punitive damage award was not supported by substantial evidence, and was excessive as a matter of law. We also need not reach Watchtower's contention that imposition of a duty to warn the Congregation would unconstitutionally require the jury to assess the propriety of the church's religious beliefs.

counsel asked, "Did they really watch this guy like a hawk?" Conti and Congregation member Martinez testified that, at Kingdom Hall, Kendrick hugged Conti repeatedly, put his arm around her, held hands with her, had her sit on his lap, and "looked at her inappropriately"—the sort of behavior the elders said they were watching for, and if they had seen would have caused them to warn Conti's parents about Kendrick. Thus, if the elders had a duty to watch over Kendrick that included warning the parents of any child his actions might appear to threaten, there was substantial evidence from which to find that they breached the duty in Conti's case. However, we conclude that the elders had no such legal duty.

The reasons for our conclusion are largely the same as those that led us to reject the alleged duty to warn the Congregation about Kendrick. There was no special relationship between the church and all of the children in the Congregation simply because they were members of the church. Nor did the church have a special relationship with Kendrick, for purposes of a duty to monitor his behavior toward children, by virtue of control over his conduct with them. As for the *Rowland* factors, it would place an intolerably great and uncertain burden on a church to require that it continuously monitor a member for inappropriate behavior, and attempt to gauge when that behavior justified a warning about possible harm to another member. Telling individual parents that a member had molested a child would also conflict with the public policy of confidentiality for penitential communications. While such a disclosure would do less immediate damage to that policy than an announcement to the entire congregation, it would be naïve to think that word of the molester's behavior would not spread within the group.[4]

Nonetheless, the Congregation elders voluntarily undertook to watch Kendrick and, if necessary, warn individual parents about him, and the "negligent undertaking" doctrine, like the special relationship doctrine, is an exception to the "no duty to aid" rule. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 248-249.) Under the negligent

[4] Since we conclude that the Congregation had no duty to warn any of its members that Kendrick was a child molester, we need not reach defendants' arguments that such a disclosure would have violated his rights to privacy and due process.

undertaking doctrine, "a volunteer who, having no initial duty to do so, undertakes to provide protective services to another, will be found to have a duty to exercise due care in the performance of that undertaking if one of two conditions is met: either (a) the volunteer's failure to exercise such care increases the risk of harm to the other person, or (b) the other person reasonably relies upon the volunteer's undertaking and suffers injury as a result." (*Id.* at p. 249.) Neither of those conditions for liability is met here. Nine-year-old Conti was not relying on a church undertaking, and any lack of due care by the elders in monitoring Kendrick's interactions with children did not increase the risk of harm to her, it only failed to reduce that risk.

Therefore, defendants cannot be held liable for negligent failure by the elders to notice Kendrick's behavior with Conti and warn her parents that he posed a danger.

C. Failure to Limit and Supervise Kendrick's Field Service

Conti's case demonstrates the obvious threat that child molesters pose to children in a congregation when they perform field service. They are also a threat to children in the community when they engage in that activity. The prospect of children opening their doors to proselytizing child molesters is frightening. To avoid the risks posed by having child molesters in field service, Watchtower's asserted policy was to prohibit them from doing the service alone or with children. Watchtower has not disclaimed a duty to impose those restrictions, and could not plausibly do so since the restrictions were a professed policy it had adopted for very good reasons.[5]

However, the jury could conclude from the testimony of Watchtower official Shuster, quoted above in footnote 2, that Watchtower in fact had no such policy. When Shuster could not identify any documentation of that alleged policy, he abandoned any suggestion that Watchtower had uniform, church-wide rules on field service by child

[5] Watchtower arguably had a duty to altogether preclude field service by known child molesters. Evidence in Conti's case suggested that a determined molester could easily circumvent Watchtower's professed rules. According to her testimony, Kendrick was repeatedly able to isolate her from other congregants in the field. However, Conti has not argued that Watchtower's asserted policy was negligent, and we need not reach that issue.

molesters, and said that the policy was "specific to each individual situation." He said that Watchtower dealt with child molesters on a case-by-case basis, with letters of instruction to the elders of the molester's congregation.

Even if Watchtower had a policy of preventing known child molesters from performing field service alone or with children, there is no evidence that Watchtower did anything to implement that policy in Kendrick's case. Elder Abrahamson testified that Watchtower, not the Congregation, determined how matters such as the one involving Kendrick were handled. (Fn. 1, *supra*.) Shuster said that such matters were addressed by Watchtower through letters of instruction to the elders of individual congregations, but no such letter was produced in this case. Insofar as it appears from the evidence, Watchtower placed no limits whatsoever on Kendrick's field service.

Moreover, if Watchtower policy was to prevent a child molester from performing field service alone or with children, and even if that policy was communicated to the Fremont Congregation elders, substantial evidence was presented that the elders failed to see that the policy was carried out in Kendrick's case. Conti and Congregant Martinez testified that Kendrick and Conti performed field service together on multiple occasions. Conti described how Kendrick would separate her from field service groups, take her to his home, molest her, and then take her back to Kingdom Hall or the service group. The jury could find from this evidence that the elders were negligent in failing to supervise Kendrick's field service.

In this respect, Conti's case is similar to *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377 (*Juarez*). In *Juarez*, the plaintiff was repeatedly molested by a scoutmaster "during officially sanctioned scouting events, such as overnight camping trips. . . ." (*Id.* at p. 385.) Before the molestations occurred, the Boy Scouts had identified child sexual abuse as a serious problem, and had developed "a comprehensive 'Youth Protection Program' " designed to prevent it. (*Id.* at p. 398.) The program included guidelines prohibiting an adult from sleeping in a tent with an unrelated scout, and requiring that two adults be present at any scouting activity. (*Id.* at p. 400.) The offending scoutmaster broke these rules, and the other scoutmaster of the troop said that

he was never informed of them. (*Ibid.*) The plaintiff argued that the Boy Scouts had a duty to take reasonable measures to protect him from the molestations, and that they breached this duty because, among other things, they failed to implement their child protection policies in his case. (*Id.* at pp. 385, 400.) The court reversed a summary judgment for the Boy Scouts, finding that a duty was owed under the special relationship doctrine and the *Rowland* factors, and that there were triable issues of fact as to whether the duty was breached. (*Id.* at pp. 400–413.)

We likewise conclude under the special relationship doctrine and the *Rowland* factors that defendants had a legal duty to exercise due care to prevent Conti from being molested during her church-sponsored field service. They could be found to have breached that duty by failing to implement Watchtower's proclaimed limitations on field service by child molesters like Kendrick.

For purposes of the special relationship doctrine, defendants exerted control over Conti and Kendrick's field service in several ways. Watchtower determined that child molesters like Kendrick remained eligible to perform field service, and thus presumably could have banned him from that activity had it chosen to do so. The testimony showed that the Congregation determined when, where, and with whom field service was to be conducted. The members went to group meetings scheduled by the elders where partners and the areas of service were assigned. Elder Abrahamson testified that he controlled where the members went so that neighborhoods would not be inundated with proselytizing. Abrahamson said that a single male was never assigned to do field service with a single female, and that children were never partnered with adults other than their parents. Elder Clark said that Kendrick was not assigned to do field service with a child, and characterized any such assignment as "suicidal" for the elders. But Conti and Martinez testified that Conti and Kendrick often ended up in field service together. It could be reasonably inferred from this testimony that, even if Conti and Kendrick were never partnered together by the elders, the elders facilitated his access to her by putting them in the same group from which partners were assigned, and sending them out with the group to the same neighborhood. Most importantly, the Congregation had the ability

to control Kendrick's access to children in the field by keeping an adult with him at all times as required by Watchtower's professed policy.

The Fremont Congregation states in its briefs that field service is "a personal ministry, not a required congregation function or activity," and that Conti "presented no evidence that [defendants] had the ability to control when, or even if, a congregation member will decide to engage in their door-to-door ministry. Preaching from door-to-door is an activity that individual Jehovah's Witnesses only engage in when they feel motivated to speak about God." Even if the Congregation could not require field service, the evidence established that, when members wanted to do field service, Watchtower determined whether they were eligible and the Congregation controlled the manner in which the service was performed.

Watchtower writes in its briefing: "[Conti] . . . testified that Kendrick sexually abused her at his home *after* field service activity . . . . During closing argument, [Conti's] counsel incorrectly suggested to the jury that plaintiff was abused by Kendrick *during* field service. . . . The record demonstrates, however, that [Conti] never testified to being molested by Kendrick during field service." (Italics in original.) But, as we have said, Conti testified that Kendrick molested her while they were supposed to be performing field service, which to us means "during" field service. If Watchtower's point is that the molestations occurred at his home, rather than in "the field," the distinction is immaterial. While the Congregation may not have been able to police Kendrick's behavior after scheduled field service was over, it could have controlled his access to Conti during the field service.

For these reasons, the facts here are distinguishable from those in *Roman Catholic Bishop, supra,* 42 Cal.App.4th 1556, on which defendants rely, where summary judgment was affirmed for the church in a suit based on molestation of a minor by a priest. The court rejected the victim's claim that the church " 'entrusted [her]to [the priest's] care.' " (*Id.* at p. 1567.) There were "no specific allegations or facts the church somehow placed [the victim] in [the priest's] actual custody or control. Rather, the various police reports . . . indicated nearly all of the contact [the victim] had with [the priest] occurred

when [the priest] took [her] from her home to various public places and hotels. [The victim] did not attend a church school, where an affirmative duty to protect students may exist." (*Ibid.*) Here, Conti was harmed during a church-sponsored activity, and defendants' control over that activity placed them in special relationships with Kendrick and Conti thus requiring them to take reasonable steps to prevent the harm from occurring.

The *Rowland* factors point to the same conclusion. It is foreseeable that a child molester will reoffend, and the risk is heightened when the molester is put in a position, as Kendrick was here, to be alone with a child. Defendants will not be heavily burdened by a duty to take reasonable care to ensure that molesters are accompanied by another adult, and no children, in the field. Defendants cannot claim that imposition of this duty would be unduly burdensome when it was Watchtower's avowed policy. Moreover, recognition of a duty of reasonable care in the supervision of known child molesters in the field furthers the policy of preventing future harm without affecting the confidentiality of penitential communications.

We therefore conclude that defendants had a duty to use reasonable care to restrict and supervise Kendrick's field service to prevent him from harming children in the community and in the Congregation. Conti's testimony provided substantial evidence that defendants breached this duty.

D. Jury Instructions

(1) *Duty to Protect Conti from Harm*

Over defense objection, the court instructed the jury that it could consider the "absence of any warning" in deciding whether defendants took reasonable measures to protect Conti from being molested by Kendrick. In the context of this trial, in which such heavy emphasis was placed on the failure to give a warning—which we have concluded defendants were under no duty to give—this instruction was misleading to the extent it

could be misunderstood to indicate that liability could be predicated on the failure to warn.[6]

Conti argues that the error was waived. But, we cannot agree. Defendants argued throughout the case that they had no duty to take any action whatsoever to protect Conti from being molested by Kendrick, an argument that subsumed objections to any instruction permitting a finding of liability for either a failure to warn or supervise. Thus, there was no waiver. (See also *Lund v. San Joaquin Valley Railroad* (2003) 31 Cal.4th 1, 7 [no objection at trial required to challenge erroneous instruction on appeal].)

"Instructional error in a civil case is prejudicial 'where it seems probable' that the error 'prejudicially affected the verdict.' " (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580 (*Soule*).) Relevant considerations include: "(1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indication by the jury that it was misled." (*Id.* at pp. 580–581.)

As for the state of the evidence and as we have said, there was substantial evidence to support a finding that the Congregation failed to take reasonable precautions to ensure that Kendrick was accompanied by an adult during field service, and did not end up alone with Conti during that activity. As for the effect of other instructions, the duty instruction did not tell the jury that the absence of any warning was the only relevant factor for its consideration. The instruction stated broadly that the jury could also consider defendants' efforts on sex abuse education and prevention, and "such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures."

As for the effect of counsel's arguments, Conti's jury arguments emphasized the failure to warn Congregation members that Kendrick had molested a child, consistent with what her counsel described as Watchtower's "policy of secrecy which allows for an

[6]This is not to say that whether a warning was given will necessarily be irrelevant in all cases. For example, if the elders had warned the Congregation or Conti's parents that Kendrick had molested a child, they would undoubtedly cite the warning in defense of any claim that they failed to take adequate precautions, even though the law did not require that the warning be given.

identified child sex offender to strike again." In his opening statement, counsel argued: "The governing body, through this policy, had made a determination that its own needs would be placed above protection of children and [showed] an indifference to children like [Conti] who were placed at risk by the presence of known sexual abusers within the congregations and the secrecy that surrounded it. [¶] That is what this case is about." In closing argument, counsel reiterated "we are here" because a "policy that keeps secret known child molesters in the congregations is wrong and needs to be changed."

However, Conti's arguments were not confined to failure to warn. Her counsel argued that field service was where Kendrick "got the best opportunity to abuse her. [¶] Now, that is actually related to the Jehovah's Witnesses because field service is what they do." Counsel argued further that defendants "didn't restrict Mr. Kendrick in any way that was meaningful. [¶] He is still a minister. He is still Brother Kendrick. [¶] He is still a member in good standing of the congregation. [¶] He is still sitting or sleeping in the back row or whatever it was of the Kingdom Hall there with children and adults all present. [¶] He is still a baptized publisher going out in the neighborhoods and collecting and spreading the Jehovah's Witnesses message. [¶] He is doing all of that with children. [¶] Now we heard from Mr. Shuster that there is a policy. 'No, he would never have been allowed to go out into field service with a child. That's our policy.' And when I say, 'Okay, well can I see it?' [¶] No policy produced."

It is apparent from the punitive damage award against Watchtower that the jury was misled by the failure to warn theory to a certain extent. We note also that the jury's allocation of fault—27 percent to Watchtower and only 13 percent to the Congregation—in apportioning Conti's noneconomic damages would be inconsistent with liability associated with field service if the only basis for that liability was failure to supervise Kendrick in the field. Our discussion of field service liability has focused primarily on that failure, and the Congregation, not Watchtower, was responsible for it. However, as we have explained, there were also grounds to hold Watchtower independently and primarily liable for negligence connected with field service. Watchtower, not the Congregation, dictated the conditions under which field service by child molesters was

permissible. The jury could have found that Watchtower falsely claimed to have a policy that prevented child molesters from performing field service alone or with children, or, even if it had that policy, it did not impose the policy on the Congregation or Kendrick.

Therefore, weighing the *Soule* factors, we do not find it reasonably probable that the compensatory damages verdict would have been different if the warning instruction had not been given.

(2) *Allocation of Fault to Non-Parties*

Defendants contend that the court erred in denying their request to have the jury consider assigning some responsibility for Conti's injury to entities and individuals who are not parties to the litigation. We disagree. Defendants argue that, if the Congregation had a duty to warn the members that Kendrick had molested a child, then the police, the child welfare agency, and the district attorney who responded to the report of that molestation also had that duty because they "all had information [about the incident] superior to that possessed by Fremont Congregation elders." But defendants did not have the duty to warn on which this argument is predicated. Defendants contend that Conti's parents could be found at least partially responsible for the harm she suffered because they were negligent in supervising her and entrusting her to Kendrick's care. However, the court properly refused to allow attribution of fault to Conti's parents given the absence of any evidence they had reason to know Kendrick was a threat to her. (See *Chaney v. Superior Court* (1995) 39 Cal.App.4th 152, 156–158 [parent must have actual knowledge of threat of molestation to be liable for negligent supervision of the victim; such knowledge was not established by perpetrator's allegedly "excessive" gift-giving and attention paid to minor].)

III. DISPOSITION

The judgment against defendants on the negligence count is affirmed. The judgment against Watchtower on the cause of action for punitive damages is reversed with directions to enter judgment for Watchtower on punitive damages. The parties are to bear their own costs on appeal.

_____
Siggins, J.

We concur:

_____
Pollak, Acting P. J.

_____
Jenkins, J.

Trial Court:	Alameda County Superior Court
Trial Judge:	Robert D. McGuiness

Counsel:

Watchtower Bible & Tract Society of New York, Mark F. Moreno; Boudreau Williams, Jon R. Williams; Jackson Lewis, Robert J. Schnack, for Defendant and Appellant Watchtower Bible & Tract Society of New York.

The McCabe Law Firm, James M. McCabe for Defendant and Appellant Fremont California Congregation of Jehovah's witnesses, North Unit.

Furtado, Jaspovice, & Simons, Richard J. Simons, Kelly I. Kraetsch for Plaintiff and Respondent, Candace Conti.

Filed 4/13/15

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CANDACE CONTI, Plaintiff and Respondent, v. WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. et al., Defendants and Appellants.	A136641 (Alameda County Super. Ct. No. HG11558324)

In this case we consider the duty owed by a religious organization to one of its members who has been harmed by another member. Candace Conti, formerly a member of the North Fremont Congregation of Jehovah's Witnesses (Fremont Congregation or Congregation) sued the Congregation and Watchtower Bible and Tract Society of New York, Inc. (Watchtower), the Jehovah's Witnesses's headquarters at the time, for damages for her sexual abuse as a child by Jonathan Kendrick (Kendrick), another member of the Congregation. Before Conti was molested, the Congregation and Watchtower (hereafter collectively defendants) elders and officials learned that Kendrick had molested another child. Conti sought to hold defendants liable for failing to warn the Congregation or her parents that Kendrick was a child molester, and for failing to limit and supervise his participation in church activities. A jury found defendants liable for compensatory damages to Conti, and held Watchtower liable for punitive damages.

We hold that defendants had no duty to warn the Congregation or Conti's parents that Kendrick had molested a child, but that defendants *can* be held liable for failing to limit and supervise Kendrick's "field service," a church-sponsored activity where members go door-to-door preaching in the community. Kendrick had unsupervised

access to Conti during field service that he used as opportunities to molest her. Because breach of the alleged duty to warn was the sole basis for imposition of punitive damages on Watchtower, we reverse that portion of the judgment, with directions to enter judgment for Watchtower on the punitive damage claim. The compensatory damage award is affirmed.

I. BACKGROUND

The Jehovah's Witnesses is a religion with about 1.2 million members in 13,400 congregations in the United States. In the 1990's, Watchtower was in charge of the church's policies. Congregations are comprised of elders, ministerial servants, and rank-and-file members called "baptized publishers." All members in good standing are considered "ministers." Elders are the spiritual leaders of their congregations, comparable to clergy in other religions. Ministerial servants do administrative work such as distributing literature to members, and handling microphones at meetings. Watchtower admitted that Fremont Congregation elders Gary Abrahamson and Michael Clarke were Watchtower's agents while acting within the course and scope of their church duties. In addition to Sunday and midweek meetings, Congregation activities include field service, where small groups, usually consisting of two or three people, go door-to-door in neighborhoods to spread the church's spiritual teachings.

Congregations are small and close knit. The average congregation has 75 to 150 members. At different times, the Fremont Congregation had from 100 to 140 members, of whom 6 to 13 were elders. Evelyn Kendrick (Evelyn), who was married to Kendrick during the period when he molested Conti, testified that "we only socialized with people of that congregation. We were kind of—well, not told outright, but that we should only associate with people of that religion and not of any other religion because they could be a bad influence." Congregation members call each other "brother" and "sister."

Conti and Kendrick were Fremont Congregation members in the 1990's, and for a time Kendrick was a ministerial servant. Conti testified that Kendrick began molesting her around the time she turned nine years old in late 1994, and continued until 1996 or

1997, when she was age 10 or 11. Before Kendrick molested Conti, the Congregation elders learned that he had molested his stepdaughter.

In November 1993, elder Clarke received a call from Evelyn or Kendrick asking for a consultation about Kendrick's abuse of Evelyn's daughter. Clarke and Abrahamson went to their home that week and spoke with Kendrick, Evelyn, and her daughter. The elders were told that, four months earlier, Kendrick had touched his stepdaughter's breast around the time of her 14th birthday. The stepdaughter told Evelyn about the molestation minutes after it occurred, but Evelyn testified that she did not immediately report it because she thought it was an isolated incident and she was "trying to deal with it" within the family. The details of what the elders were told about the incident were disputed at trial. Among other things, Evelyn disputed the elders' testimony that she told them to keep the incident private, and that Kendrick said he touched her daughter "inadvertently." Even so, the elders did not believe the touching was accidental.

The elders told Evelyn and her daughter that they were free to report the incident to the police. Abrahamson testified that they neither encouraged nor discouraged Evelyn and her daughter from doing so; "[i]t was up to them." Evelyn reported the incident to the police in February 1994. Kendrick admitted touching his stepdaughter's breast, and was convicted of a misdemeanor. Elders at the Congregation did not learn of Evelyn's report to the police until a couple of years later.

After meeting with the Kendrick family, Clarke wrote a letter to Watchtower to report "a case of child abuse" by Kendrick. Abrahamson testified that the Congregation was required to contact Watchtower for instructions in such a situation.[1] The copy of the

[1] "Q. Why were you reporting this to Watchtower New York? [¶] A. To get direction. [¶] Q. And in all of your work as an elder that involves anything in this type of matter, you would get your direction and instruction from New York. Correct? [¶] A. In a lot of these cases that legal matters are involved, we are always encouraged to call the Legal Department because how could we know all the laws. And the laws change from state to state, but our Legal department could help us through this. [¶] Q. And you used the word 'encouraged' but actually you are required to call New York? [¶] A. You might put it that way. Yes. [¶] Q. I did put it that way. Do you agree? [¶] A. I agree you put it that way. [¶] Q. Do you agree that you were required to call New York? [¶] A. Yes."

letter in evidence is heavily redacted. In the unredacted portion, the letter stated that the Congregation had phoned Watchtower about the Kendrick matter, the "legal department had given us some direction," and Watchtower had asked the Congregation to submit its questions in writing. The letter said the elders planned to tell the Congregation that Kendrick would no longer be acting as a ministerial servant, and asked Watchtower to advise if that was an "incorrect" course of action. Clarke testified that Watchtower responded to his letter, but he did not provide the substance of the response and no written response is in evidence. The testimony was simply: "Q. And Watchtower did respond to the letter and he was removed as a ministerial servant? [¶] A. Correct. And we announced that."

Allen Shuster, a Watchtower official in New York, testified that Watchtower policy allowed a known child molester to continue to perform field service, but not alone or with a child. Defense expert Monica Applewhite, whose testimony is discussed further below, said that Watchtower policies were implemented by letters sent "to all bodies of elders in the United States." However, Shuster was unable to identify any church-wide writing that documented the limitations on field service by known child molesters. He said this policy was implemented by letters to elders on a case-by-case basis.[2]

Abrahamson testified that he told the Fremont Congregation elders what he learned at the Kendrick family meeting, and they agreed that Kendrick was no longer fit

[2] When Shuster was asked whether a person known to be a child molester "can be sent out as a baptized publisher into neighborhoods to spread the word of the gospel?" the following testimony ensued: "A. Yes. But not by themselves or with a child. [¶] Q. "Is there in writing anywhere the caveat that you just gave to us? I haven't seen it in any of the exhibits. [¶] A. I believe we have something in writing, yes. I couldn't put my finger on it right now, but yes. [¶] Q. Is it here with us today? [¶] A. I don't know if it is here. I don't recall. [¶] . . . [¶] "Any reason why, if there was a policy that specifically prohibited baptized publishers who were known to have molested children from going into field service with a child, that that written policy wouldn't be right in front of you right now? [¶] A. That policy is specific to each individual situation. In each situation there are instructions given in the letter to a body of elders where that individual is and that instruction is given in that letter."

to serve as a ministerial servant. They removed Kendrick from the position, and announced his removal to the Congregation without disclosing the reason for it.

Clarke testified that the Fremont Congregation elders were following Watchtower policy in keeping information about the molestation confidential. That policy was set forth in a July 1, 1989 letter from Watchtower to all elders in the United States, and it was a centerpiece of Conti's case against Watchtower.

The letter addressed the elders' "duties that may involve legal issues or questions." Watchtower instructed the elders they "must be careful not to divulge information about personal matters to unauthorized persons. . . . Elders must give special heed to the counsel: 'Do not reveal the confidential talk of another.' (Proverbs 25:9) . . . Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society. [¶] . . . Worldly persons are quick to resort to lawsuits if they feel their 'rights' have been violated. Some who oppose the Kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress. Thus, elders must especially guard the use of the tongue."

The letter continued: "The spirit of the world has sensitized people regarding their legal 'rights' and the legal means by which they can exact punishment if such 'rights' are violated. Hence, a growing number of vindictive or disgruntled ones, as well as opposers, have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the Society. Many of these lawsuits are the result of the misuse of the tongue. . . . [¶] . . . [¶] The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended. Substantial monetary damages could be assessed against the elders or congregation."

The letter went on to discuss "what to do in specific cases," such as "[s]earch warrants and [s]ubpoenas," "[c]rimes and [c]riminal investigations," "[w]hen [l]awsuits are [t]hreatened," and "[c]hild [c]ustody." On the subject of "[c]hild [a]buse," the letter stated: "Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department

immediately. Victims of such abuse need to be protected from further danger." The letter concluded with "points to remember," such as "[b]e extremely careful with written material," and "[a]ppreciate the [i]mportance of [m]aintaining [c]onfidentiality." With respect to confidentiality, the letter stated: "Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out favorably, valuable time and energy that could have been devoted to Kingdom interests will be lost."

Clarke testified that the policy stated in the letter was intended to protect confidential ministerial communications as well as to avoid legal liability. He thought that "confidentiality is important for a minister." He asked, "Why would anybody come to us with their problems if they knew that as soon as they come to us we were going to announce it? Why would anybody confess to a Catholic priest if they knew that after they confessed it was going to be announced at mass next week. It is ludicrous. [¶] So [the policy was] put in place so that the friends would feel comfortable coming to us and we could keep confidence."

Clarke testified that the elders told Kendrick he could not "show affection to children, put children on his lap, work with them out in the door-to-door ministry, work with children in the Kingdom Hall. [¶] And we made it clear to him that we were going to be watching him. And we did, all, the whole body of elders." Elder Lawrence Lamerdin said the Congregation had 10 to 13 elders at the time and they "made sure that [Kendrick] was watched." Abrahamson saw "no need" to inform the Congregation that Kendrick had molested a child because the elders would have warned the parents of any child they saw Kendrick getting close to or isolating.

In an August 1, 1995 policy letter to United States elders on the subject of child abuse, Watchtower stated: "[S]teps should be taken to protect the child, or other children, from further sexual abuse. Obviously, parents would be keenly interested in taking adequate precautions in this regard. . . . Loving elders, too, will want to act in a way that

demonstrates their protective care, since the word 'overseer' carries the thought of one who watches over, a guardian, a shepherd of the flock. . . . [¶] It would be appropriate to talk very frankly to a former child abuser, strongly cautioning him as to the dangers of hugging or holding children on his lap and that he should never be in the presence of a child without another adult being present."

There was testimony that Jehovah's Witnesses conduct no activities such as classes or trips that by their nature separate children from their parents, and Clarke testified that parents in the congregations are regarded as "the first line of defense" in preventing child sexual abuse. Parents were educated about child sexual abuse in *Awake!*, a publication distributed to all congregation members. Child abuse was discussed at length in the January 22, 1985 issue, which covered topics such as "Who Would Do a Thing Like That?" and "You Can Protect Your Child." The subject was also the focus of the October 8, 1993 issue, which addressed the question "How Can We Protect [Our Children]?" The discussion under that heading stated: "Tragically, adult society often unwittingly collaborates with child abusers. How so? By refusing to be aware of this danger, by fostering a hush-hush attitude about it, by believing oft-repeated myths. Ignorance, misinformation, and silence give safe haven to abusers, not their victims." Both issues addressed misconceptions about child sexual abuse, including the belief that such abuse is most commonly perpetrated by strangers to the victims, and the 1985 issue gave as an example a girl who was molested by "a man who was running a church group."

Conti testified that she met Kendrick at the Fremont Congregation's Kingdom Hall, a building for Congregation meetings that seats 220 people. She said that Kendrick insinuated himself into her family, befriended her father Neal at meetings, and then began coming to their house. He molested her several times a month for a couple of years. With one exception, the incidents occurred at Kendrick's home, where he drove Conti after meetings and during field service. On one occasion, Kendrick put his hand up her shirt while they were riding on a train with her father.

Kendrick began getting physical with her by repeatedly hugging her at Kingdom Hall. She always went to Kingdom Hall with at least one parent, but Kendrick made her sit on his lap during meetings. She sometimes went to field service without her parents, and Kendrick sometimes drove her to the group meetings that preceded the door-to door field service, where partners for the activity were assigned. They did field service together many times without either of Conti's parents present. Conti said that the molestations occurred while they were supposed to be performing field service: "Our groups would go out, we would get our territories, and we would go out and service. And we would do door to door. [¶] And then there were times when our groups would separate even further. And we would go to . . . laundry mats . . . and things like that. And sometimes he would take me . . . to go do some of these things and then we would end up at his house." Kendrick drove her to his house, and when he finished molesting her, they would go "[m]aybe to the Kingdom Hall. Maybe to lunch with the rest of the service group."

Conti's father Neal testified that he did not see Kendrick engage in any of the inappropriate behavior described by Conti. Neal said he was always with Conti at meetings and during field service, he did not allow Conti to leave meetings with Kendrick, and did not see Kendrick hug Conti or Conti sit on Kendrick's lap. Conti's mother Kathleen testified that she had mental health problems during the two years before she and Neal separated in July 1996, which prevented her from caring for Conti. As a result, Conti was often on her own during that time. Kendrick was always offering to help Conti and take her places, and Kathleen thought he was just being nice.

Clinical social worker Laura Fraser counseled Conti and her parents from August 1996 to April 1998. Fraser testified that Neal and Kathleen were going through a tumultuous divorce, and Conti had assumed a caretaker role in the family. Neal and Kathleen were not "psychologically well-developed," and it was "like three children, in some respects, living together." Conti's home life was chaotic and unpredictable. There were a "multitude of emotional crises . . . particularly related to her mother," and Neal's work and Congregation activities left him little time for Conti. She was craving for adult

care at the time, and extremely vulnerable to manipulation. Fraser was not surprised that Conti did not disclose her sexual abuse during the counseling. Fraser had told Conti that she would be required to report such abuse, and Conti had "no safety" because she "was still rescuing both parents."

Congregation member Carolyn Martinez testified that she saw Kendrick and Conti together at Kingdom Hall, and that he "was very enamored with her. He just looked at her inappropriately. . . . I remember them holding hands. I remember his arm around her." Martinez said that she never saw Conti come to Kingdom Hall or field service without a parent, but more than once she saw Kendrick and Conti together in field service. Martinez recalled Conti sitting on Kendrick's lap in meetings at her home.

Elders Clarke, Abrahamson, Lamerdin, and three Congregation members testified that at Kingdom Hall they did not see Conti get hugs from Kendrick, sit on his lap, or leave with him as Conti testified. The Congregation members said they never saw Conti do field service with Kendrick.

An expert testified for Conti about Child Sex Abuse Accommodation Syndrome, which describes behaviors often exhibited by victims, including delayed reporting of their abuse. Physician notes in evidence state that Conti reported in August 2002 that she was sexually abused from around age nine to 13. Conti did not recall that doctor visit, but remembered disclosing the molestations to her parents in 2003. She disclosed the molestations to elders, including Clarke and Lamerdin, in 2009.

A psychologist who was counseling Conti at the time of trial testified that she suffered from depression, anxiety, and most severely from post-traumatic stress disorder (PTSD). A psychiatrist treating Conti testified that she was afflicted by PTSD due to the sexual abuse and she would require a lifetime of therapy. A psychiatrist qualified as an expert in child and adolescent psychology testified that Conti reported having been molested hundreds of times, that she had severe, chronic PTSD, and she would require therapy costing $160,000.

Anna Salter, a clinical psychologist and an expert on child sexual abuse testified for Conti that defendants, after learning that Kendrick had molested a child, did not meet

the standard of care for organizations that sponsor or promote activities that bring adults and children together. Salter said that, by 1993, the major religions and secular organizations conducting such activities had "adopted policies of transparency regarding known sex abusers." United Methodist Church policies, for example, were to "[u]phold the rights of children, speak out when abuses occur, and advocate for the strengthening and strict enforcement of these rights." Salter said that "people knew what the risk was when you had a child molester," and that the standard of care "was not to keep it secret and let the person continue in the same activities with the same access to children." The standard of care required "reporting these cases . . . and making people aware . . . if they had a sex offender in their midst."

Monica Applewhite, a clinical social worker and an expert on child sexual abuse, testified for defendants that Watchtower's policy against "disclosing private information . . . very closely mirror[ed]" the codes of ethics of the National Association of Social Workers and the American Counseling Association. Based on her review of the evidence, Applewhite opined that the Congregation never put Kendrick "into a position that required or allowed him to be alone with children, to be in supervision of children, [or] to spend time with children away from their families." Because the church's activities did not separate children from their parents, Appelwhite opined that its best means of protecting children was to educate parents about child sexual abuse, and it exceeded the standard of care for such education in the 1990's. According to Applewhite, the elders met the standard of care in Kendrick's case when they left it up to Evelyn and her daughter whether to tell the police about the abuse he admitted, and "they kept a special watch on him and paid attention to whether or not he had any inappropriate contact with children within the meetings at Kingdom Hall."

Conti sued Watchtower, the Fremont Congregation, and Kendrick for damages for sexual abuse, alleging willful acts by Kendrick and negligence on the part of defendants. The negligence consisted of failing to warn members of the Congregation that Kendrick was a child molester, and failing to restrict and supervise his participation in church activities. Conti executed a covenant not to execute on any judgment against Kendrick,

in exchange for his agreement not to participate in the case, or harass Conti or her witnesses. Conti obtained leave to add a cause of action for "acts of malice" supporting punitive damages against Watchtower, arguing that Watchtower acted despicably and with conscious disregard for the safety of others by maintaining a "secrecy policy" with respect to child sexual abusers despite knowing of their "high recidivism." The "secrecy policy" was set forth in the July 1989 letter we have quoted at length. Awareness of child abuse recidivism was exhibited in church publications such as the January 1, 1997 issue of The Watchtower, which stated that child sex abusers "may well molest other children. True, not every child molester repeats the sin, but many do."

The jury found Kendrick, Watchtower, and the Congregation liable, and apportioned fault 60 percent to Kendrick, 27 percent to Watchtower, and 13 percent to the Congregation. The jury awarded Conti $7,000,000 in compensatory damages, including $130,000 for future counseling and therapy, and $6,870,000 in non-economic damages. The jury awarded $21,000,001 in punitive damages against Watchtower. The court conditionally granted Watchtower's motion for a new trial on punitive damages, subject to Conti's acceptance of an $8,610,000 punitive damage award. Conti accepted the reduced punitive damages, and judgment was entered against Watchtower for $10,464,900, against the Congregation for $893,100, and against Watchtower and the Congregation jointly and severally for $130,000. Watchtower and the Congregation timely appeal.

II. DISCUSSION

A. Introduction

Defendants initially demurred, and have consistently argued throughout the case that they had no duty to prevent Conti from being molested by Kendrick. The trial court overruled their demurrer, and rejected their subsequent arguments that no duty was owed on the facts of this case. The court declined to give defendants' proposed jury instructions that the Congregation had no duty to warn its members that Kendrick had committed an act of child sexual abuse, and that defendants were not liable unless Conti's abuse occurred on church property or during a church-sponsored activity.

Over defendants' objection, the court gave the following "duty" instruction to the jury: "The defendants . . . had a duty to take reasonable protective measures to protect [Conti] from the risk of sexual abuse by . . . Kendrick. In determining whether or not [defendants] took reasonable protective measures, you may consider the following: [¶] 1. The presence or absence of any warning; [¶] 2. Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses from the [Congregation] members for the purposes of sexual abuse education and prevention; [¶] 3. Such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures."

"Duty is a question of law for the court, to be reviewed de novo on appeal." (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770.)

B. Failures to Warn

(1) *Warning the Congregation*

Conti argued that the Fremont Congregation elders had a duty to warn members of the Congregation that Kendrick had molested a child and, as we have said, failure to fulfill that alleged duty was the sole basis for the punitive damage award against Watchtower. Congregation elders were following Watchtower's policy when they kept the molestation Kendrick reported confidential. We disagree with Conti that they had a legal duty to warn the Congregation about Kendrick.

" '[A]s a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct.' " (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1129.) "This rule derives from the common law's distinction between misfeasance and nonfeasance, and its reluctance to impose liability for the latter." (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 435, fn. 5.) "The basic idea is often referred to as the 'no duty to aid' rule, which remains a fundamental and long-standing rule of tort law. . . . 'As a rule, one has no duty to come to the aid of another.' " (*Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727.) For instance, in *Eric J. v. Betty M.*, a convicted child molester sexually abused his girlfriend's minor child, and the molester's family members who did nothing "to facilitate any molestation" were not

liable for failing to warn the girlfriend about the molester's past. (*Id.* at pp.717, 727.) In *Eric J. v. Betty M.*, the court distinguished *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206, where the wife of a child molester who knew of her husband's past was subject to misfeasance liability for telling the parents of girls he sexually abused that the girls could safely swim at her house when she was away because her husband would be there to take care of them. (*Id.* at pp. 209-210; *Eric J. v. Betty M., supra,* 76 Cal.App.4th at p. 729.)

"Where, as here, a 'complaint alleges injuries resulting from the *criminal acts of third persons* . . .'the common law, reluctant to impose liability for nonfeasance, generally does not impose a duty upon a defendant to control the conduct of another [citations], or to warn of such conduct [citations], unless the defendant stands in some *special relationship* either to the person whose conduct needs to be controlled, or to the foreseeable victim of such conduct." ' " (*Roman Catholic Bishop of San Diego v. Superior Court* (1996) 42 Cal.App.4th 1556, 1564 (*Roman Catholic Bishop*), italics in original); see also Rest.2d Torts § 315; *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 293 ["one is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a special relationship of custody or control"].) In *Pamela L. v. Farmer*, the wife of the child molester "assumed that special relationship" with his new victims when she invited them to her home and assured them they could safely play there. (*Pamela L. v. Farmer, supra,* 112 Cal.App.3d at pp. 211–212.)

The alleged duty to warn cannot be justified in this case on the basis of a special relationship. Fremont Congregation elders were required, as Conti's expert put it, to make Congregation members aware that "they had a sex offender in their midst" only if: (1) members of a church have a special relationship with the church solely by virtue of that membership that requires the church to take affirmative steps to safeguard them against harm from other congregation members; or (2) a church has a special relationship with any member it has reason to believe may perpetrate such harm. (See generally, *Roman Catholic Bishop, supra,* 42 Cal.App.4th at p. 1564 [defendant must have a special relationship with the person whose conduct needs to be controlled, or the foreseeable

victims of such conduct].) Conti makes neither assertion, and identifies no authority for any such broad duty on the part of a church to prevent its members from harming each other.

Rather, her arguments for a special relationship focus on the Congregation's custody or control of her and Kendrick. She maintains that the Congregation "exerted custody and control over [her] by assigning her to perform field service with Kendrick," and "took charge of Kendrick when they determined where and with whom he was to perform field service." But these arguments are material to the duty of care in connection with Kendrick's field service—a matter we discuss below—not to a duty to warn the Congregation that he had molested a child.

A number of cases have held that, where the issue is whether the defendant had a duty to protect the plaintiff from harm caused by a third party, the absence of a special relationship is dispositive and there is no reason to conduct the analysis prescribed in *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*), to determine whether a duty nevertheless existed. "Because the traditional weighing process using [the *Rowland* factors] 'has already been done by courts over the centuries in formulating the "no duty to aid" rule,' in the context of liability for nonfeasance, it is not necessary to engage in [that] weighing process" where no special relationship exists. (*Seo v. All-Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1203, quoting *Eric J. v. Betty M., supra,* 76 Cal.App.4th 715, 729-730; see also *Suarez v. Pacific Northstar Mechanical, Inc.* (2009) 180 Cal.App.4th 430, 438; but see *Nally v. Grace Community Church, supra,* 47 Cal.3d at p. 293 [applying both the special relationship doctrine and the *Rowland* factors in analyzing whether church pastors had a duty to prevent a foreseeable suicide].) However, even if we were required to consider the *Rowland* factors, we would not conclude that the elders had a duty to warn the Congregation about Kendrick's past child sexual abuse.

The *Rowland* factors are: "[T]he foreseeability of harm to the plaintiff; the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant

and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Rowland*, *supra*, 69 Cal.2d at p. 113.) "Forseeability and the extent of the burden to the defendant are ordinarily the crucial considerations, but in a given case one or more of the other *Rowland* factors may be determinative of the duty analysis." (*Castaneda v. Osher* (2007) 41 Cal.4th 1205, 1213.)

While it is readily foreseeable that someone who has molested a child may do so again, the burden the duty to warn would create and the adverse social consequences the duty would produce outweigh its imposition. The burden would be considerable because the precedent could require a church to intervene whenever it has reason to believe that a congregation member is capable of doing harm, and the scope of that duty could not be limited with any precision. For example, would the duty to warn be triggered by an accusation, or only an admission, of misconduct? Would one warning be sufficient, or would continuous warnings be required to ensure that new congregation members are alerted to the danger? Child molestation is a particularly heinous evil, but which other potential harms would the church have a duty to avert? Would the duty be limited to crimes and, if so, which ones? Imposition of a duty to warn would also have detrimental social consequences. It would discourage wrongdoers from seeking potentially beneficial intervention, and contravene the public policy against disclosure of penitential communications. No moral blame can be cast on defendants for adhering to that public policy.

The law generally protects the confidentiality of communications with clergy like those of Kendrick to the elders here. Under the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164, et seq.) clergy members such as a minister or similar functionary of a church or recognized denomination must report suspected child sexual abuse to law enforcement or a specified county agency. (Pen. Code, §§ 11165, 11165.6, 11165.7, subd. (a)(32), 11165.9, 11166, subd. (a).) However, this obligation does not arise when the clergy member is informed of the abuse during a "penitential communication," which is defined to mean "a communication, intended to be in confidence, including, but not

limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination or organization, has a duty to keep those communications secret." (Pen. Code, § 11166, subds. (a), (d)(1).)

Similarly, clergy and penitents each have a privilege not to testify about penitential communications. (Evid. Code, §§ 1032, 1033, 1034.) " 'The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return.' " (*Roman Catholic Archbishop of Los Angeles v. Los Angeles Superior Court* (2005) 131 Cal.App.4th 417, 443.) It has been argued that "the humanistic case for this privilege is stronger than the corresponding case for any other privilege. A person's religious beliefs lie at the core of the decisional autonomy needed to develop his or her life plan. In a philosophic sense, the person's chosen religious beliefs are arguably his or her most important life preferences." (Imwinkelried, The New Wigmore, Evidentiary Privileges (2nd.ed. 2010) § 6.2.3.b, p. 529.) The treatise observes that the United States Supreme Court has recognized "a constitutional 'right to believe . . . whatever religious doctrine one desires,' 'according to the dictates of his own conscience,' " and continues: "If the person has a constitutional right to independence in making religious choices, the recognition of an evidentiary privilege is an apt means of protecting that autonomy. If any type of relationship deserves the protection of an enclave shored up with an evidentiary privilege, it is a consultative relationship dealing with this kind of choice." (*Id.* at p. 531.)

Admittedly, neither mandatory reporting to the government nor evidentiary privilege control in this case. The privilege for penitential communications does not apply unless the communication is made "in the presence of no third person so far as the penitent is aware," a condition not satisfied at the Kendrick family meeting with the Congregation elders. (See *Roman Catholic Archbishop of Los Angeles v. Los Angeles Superior Court, supra,* 131 Cal.App.4th at pp. 444–445 [no privilege for communications

in church interventions with troubled priests because participants knew communications would likely be shared with more than one person].) Nor is it clear that Kendrick's communication was "penitential" as it is commonly understood given the elders' testimony that he said he touched his stepdaughter inadvertently. (Webster's Collegiate Dict. (10th Ed. 2001) p. 856 ["penitence" means "sorrow for sins or faults"].)

However, the public policy to protect the confidentiality of penitential communications that underlies the privilege and reporting statutes militates strongly against imposition of the duty claimed here to inform congregations of such communications. When the clergy member privilege was codified in Evidence Code section 1034, the California Law Revision Commission commented: "The extent to which a clergyman should keep secret or reveal penitential communications is not an appropriate subject for legislation; the matter is better left to the discretion of the individual clergyman involved and the discipline of the religious body of which he is a member." (7 Cal. Law Revision Com. (1965) p. 202.) Courts should likewise be wary to intrude in this realm.

Accordingly, we conclude that the elders of the Fremont Congregation had no duty to depart from Watchtower's policy of confidentiality and warn the members of the Congregation that Kendrick had molested a child. Since that "secrecy policy" was the only basis for the punitive damages assessed against Watchtower, the punitive damage award must be reversed.[3]

(2) *Failure to Warn Conti's Parents*

Congregation elders testified that they monitored Kendrick after learning that he had sexually abused a child, and would have disclosed his prior molestation to the parents of any child toward whom his behavior was inappropriate. In jury argument, Conti's

[3] In view of this conclusion, we need not reach Watchtower's arguments that the punitive damage award was not supported by substantial evidence, and was excessive as a matter of law. We also need not reach Watchtower's contention that imposition of a duty to warn the Congregation would unconstitutionally require the jury to assess the propriety of the church's religious beliefs.

counsel asked, "Did they really watch this guy like a hawk?" Conti and Congregation member Martinez testified that, at Kingdom Hall, Kendrick hugged Conti repeatedly, put his arm around her, held hands with her, had her sit on his lap, and "looked at her inappropriately"—the sort of behavior the elders said they were watching for, and if they had seen would have caused them to warn Conti's parents about Kendrick. Thus, if the elders had a duty to watch over Kendrick that included warning the parents of any child his actions might appear to threaten, there was substantial evidence from which to find that they breached the duty in Conti's case. However, we conclude that the elders had no such legal duty.

The reasons for our conclusion are largely the same as those that led us to reject the alleged duty to warn the Congregation about Kendrick. There was no special relationship between the church and all of the children in the Congregation simply because they were members of the church. Nor did the church have a special relationship with Kendrick, for purposes of a duty to monitor his behavior toward children, by virtue of control over his conduct with them. As for the *Rowland* factors, it would place an intolerably great and uncertain burden on a church to require that it continuously monitor a member for inappropriate behavior, and attempt to gauge when that behavior justified a warning about possible harm to another member. Telling individual parents that a member had molested a child would also conflict with the public policy of confidentiality for penitential communications. While such a disclosure would do less immediate damage to that policy than an announcement to the entire congregation, it would be naïve to think that word of the molester's behavior would not spread within the group.[4]

Nonetheless, the Congregation elders voluntarily undertook to watch Kendrick and, if necessary, warn individual parents about him, and the "negligent undertaking" doctrine, like the special relationship doctrine, is an exception to the "no duty to aid" rule. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 248-249.) Under the negligent

[4] Since we conclude that the Congregation had no duty to warn any of its members that Kendrick was a child molester, we need not reach defendants' arguments that such a disclosure would have violated his rights to privacy and due process.

undertaking doctrine, "a volunteer who, having no initial duty to do so, undertakes to provide protective services to another, will be found to have a duty to exercise due care in the performance of that undertaking if one of two conditions is met: either (a) the volunteer's failure to exercise such care increases the risk of harm to the other person, or (b) the other person reasonably relies upon the volunteer's undertaking and suffers injury as a result." (*Id.* at p. 249.) Neither of those conditions for liability is met here. Nine-year-old Conti was not relying on a church undertaking, and any lack of due care by the elders in monitoring Kendrick's interactions with children did not increase the risk of harm to her, it only failed to reduce that risk.

Therefore, defendants cannot be held liable for negligent failure by the elders to notice Kendrick's behavior with Conti and warn her parents that he posed a danger.

C. Failure to Limit and Supervise Kendrick's Field Service

Conti's case demonstrates the obvious threat that child molesters pose to children in a congregation when they perform field service. They are also a threat to children in the community when they engage in that activity. The prospect of children opening their doors to proselytizing child molesters is frightening. To avoid the risks posed by having child molesters in field service, Watchtower's asserted policy was to prohibit them from doing the service alone or with children. Watchtower has not disclaimed a duty to impose those restrictions, and could not plausibly do so since the restrictions were a professed policy it had adopted for very good reasons.[5]

However, the jury could conclude from the testimony of Watchtower official Shuster, quoted above in footnote 2, that Watchtower in fact had no such policy. When Shuster could not identify any documentation of that alleged policy, he abandoned any suggestion that Watchtower had uniform, church-wide rules on field service by child

[5] Watchtower arguably had a duty to altogether preclude field service by known child molesters. Evidence in Conti's case suggested that a determined molester could easily circumvent Watchtower's professed rules. According to her testimony, Kendrick was repeatedly able to isolate her from other congregants in the field. However, Conti has not argued that Watchtower's asserted policy was negligent, and we need not reach that issue.

molesters, and said that the policy was "specific to each individual situation." He said that Watchtower dealt with child molesters on a case-by-case basis, with letters of instruction to the elders of the molester's congregation.

Even if Watchtower had a policy of preventing known child molesters from performing field service alone or with children, there is no evidence that Watchtower did anything to implement that policy in Kendrick's case. Elder Abrahamson testified that Watchtower, not the Congregation, determined how matters such as the one involving Kendrick were handled. (Fn. 1, *supra*.) Shuster said that such matters were addressed by Watchtower through letters of instruction to the elders of individual congregations, but no such letter was produced in this case. Insofar as it appears from the evidence, Watchtower placed no limits whatsoever on Kendrick's field service.

Moreover, if Watchtower policy was to prevent a child molester from performing field service alone or with children, and even if that policy was communicated to the Fremont Congregation elders, substantial evidence was presented that the elders failed to see that the policy was carried out in Kendrick's case. Conti and Congregant Martinez testified that Kendrick and Conti performed field service together on multiple occasions. Conti described how Kendrick would separate her from field service groups, take her to his home, molest her, and then take her back to Kingdom Hall or the service group. The jury could find from this evidence that the elders were negligent in failing to supervise Kendrick's field service.

In this respect, Conti's case is similar to *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377 (*Juarez*). In *Juarez*, the plaintiff was repeatedly molested by a scoutmaster "during officially sanctioned scouting events, such as overnight camping trips. . . ." (*Id.* at p. 385.) Before the molestations occurred, the Boy Scouts had identified child sexual abuse as a serious problem, and had developed "a comprehensive 'Youth Protection Program' " designed to prevent it. (*Id.* at p. 398.) The program included guidelines prohibiting an adult from sleeping in a tent with an unrelated scout, and requiring that two adults be present at any scouting activity. (*Id.* at p. 400.) The offending scoutmaster broke these rules, and the other scoutmaster of the troop said that

he was never informed of them. (*Ibid.*) The plaintiff argued that the Boy Scouts had a duty to take reasonable measures to protect him from the molestations, and that they breached this duty because, among other things, they failed to implement their child protection policies in his case. (*Id.* at pp. 385, 400.) The court reversed a summary judgment for the Boy Scouts, finding that a duty was owed under the special relationship doctrine and the *Rowland* factors, and that there were triable issues of fact as to whether the duty was breached. (*Id.* at pp. 400–413.)

We likewise conclude under the special relationship doctrine and the *Rowland* factors that defendants had a legal duty to exercise due care to prevent Conti from being molested during her church-sponsored field service. They could be found to have breached that duty by failing to implement Watchtower's proclaimed limitations on field service by child molesters like Kendrick.

For purposes of the special relationship doctrine, defendants exerted control over Conti and Kendrick's field service in several ways. Watchtower determined that child molesters like Kendrick remained eligible to perform field service, and thus presumably could have banned him from that activity had it chosen to do so. The testimony showed that the Congregation determined when, where, and with whom field service was to be conducted. The members went to group meetings scheduled by the elders where partners and the areas of service were assigned. Elder Abrahamson testified that he controlled where the members went so that neighborhoods would not be inundated with proselytizing. Abrahamson said that a single male was never assigned to do field service with a single female, and that children were never partnered with adults other than their parents. Elder Clark said that Kendrick was not assigned to do field service with a child, and characterized any such assignment as "suicidal" for the elders. But Conti and Martinez testified that Conti and Kendrick often ended up in field service together. It could be reasonably inferred from this testimony that, even if Conti and Kendrick were never partnered together by the elders, the elders facilitated his access to her by putting them in the same group from which partners were assigned, and sending them out with the group to the same neighborhood. Most importantly, the Congregation had the ability

to control Kendrick's access to children in the field by keeping an adult with him at all times as required by Watchtower's professed policy.

The Fremont Congregation states in its briefs that field service is "a personal ministry, not a required congregation function or activity," and that Conti "presented no evidence that [defendants] had the ability to control when, or even if, a congregation member will decide to engage in their door-to-door ministry. Preaching from door-to-door is an activity that individual Jehovah's Witnesses only engage in when they feel motivated to speak about God." Even if the Congregation could not require field service, the evidence established that, when members wanted to do field service, Watchtower determined whether they were eligible and the Congregation controlled the manner in which the service was performed.

Watchtower writes in its briefing: "[Conti] . . . testified that Kendrick sexually abused her at his home *after* field service activity . . . . During closing argument, [Conti's] counsel incorrectly suggested to the jury that plaintiff was abused by Kendrick *during* field service. . . . The record demonstrates, however, that [Conti] never testified to being molested by Kendrick during field service." (Italics in original.) But, as we have said, Conti testified that Kendrick molested her while they were supposed to be performing field service, which to us means "during" field service. If Watchtower's point is that the molestations occurred at his home, rather than in "the field," the distinction is immaterial. While the Congregation may not have been able to police Kendrick's behavior after scheduled field service was over, it could have controlled his access to Conti during the field service.

For these reasons, the facts here are distinguishable from those in *Roman Catholic Bishop, supra,* 42 Cal.App.4th 1556, on which defendants rely, where summary judgment was affirmed for the church in a suit based on molestation of a minor by a priest. The court rejected the victim's claim that the church " 'entrusted [her]to [the priest's] care.' " (*Id.* at p. 1567.) There were "no specific allegations or facts the church somehow placed [the victim] in [the priest's] actual custody or control. Rather, the various police reports . . . indicated nearly all of the contact [the victim] had with [the priest] occurred

when [the priest] took [her] from her home to various public places and hotels. [The victim] did not attend a church school, where an affirmative duty to protect students may exist." (*Ibid.*) Here, Conti was harmed during a church-sponsored activity, and defendants' control over that activity placed them in special relationships with Kendrick and Conti thus requiring them to take reasonable steps to prevent the harm from occurring.

The *Rowland* factors point to the same conclusion. It is foreseeable that a child molester will reoffend, and the risk is heightened when the molester is put in a position, as Kendrick was here, to be alone with a child. Defendants will not be heavily burdened by a duty to take reasonable care to ensure that molesters are accompanied by another adult, and no children, in the field. Defendants cannot claim that imposition of this duty would be unduly burdensome when it was Watchtower's avowed policy. Moreover, recognition of a duty of reasonable care in the supervision of known child molesters in the field furthers the policy of preventing future harm without affecting the confidentiality of penitential communications.

We therefore conclude that defendants had a duty to use reasonable care to restrict and supervise Kendrick's field service to prevent him from harming children in the community and in the Congregation. Conti's testimony provided substantial evidence that defendants breached this duty.

D. Jury Instructions

(1) *Duty to Protect Conti from Harm*

Over defense objection, the court instructed the jury that it could consider the "absence of any warning" in deciding whether defendants took reasonable measures to protect Conti from being molested by Kendrick. In the context of this trial, in which such heavy emphasis was placed on the failure to give a warning—which we have concluded defendants were under no duty to give—this instruction was misleading to the extent it

could be misunderstood to indicate that liability could be predicated on the failure to warn.[6]

Conti argues that the error was waived. But, we cannot agree. Defendants argued throughout the case that they had no duty to take any action whatsoever to protect Conti from being molested by Kendrick, an argument that subsumed objections to any instruction permitting a finding of liability for either a failure to warn or supervise. Thus, there was no waiver. (See also *Lund v. San Joaquin Valley Railroad* (2003) 31 Cal.4th 1, 7 [no objection at trial required to challenge erroneous instruction on appeal].)

"Instructional error in a civil case is prejudicial 'where it seems probable' that the error 'prejudicially affected the verdict.' " (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580 (*Soule*).) Relevant considerations include: "(1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indication by the jury that it was misled." (*Id.* at pp. 580–581.)

As for the state of the evidence and as we have said, there was substantial evidence to support a finding that the Congregation failed to take reasonable precautions to ensure that Kendrick was accompanied by an adult during field service, and did not end up alone with Conti during that activity. As for the effect of other instructions, the duty instruction did not tell the jury that the absence of any warning was the only relevant factor for its consideration. The instruction stated broadly that the jury could also consider defendants' efforts on sex abuse education and prevention, and "such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures."

As for the effect of counsel's arguments, Conti's jury arguments emphasized the failure to warn Congregation members that Kendrick had molested a child, consistent with what her counsel described as Watchtower's "policy of secrecy which allows for an

[6]This is not to say that whether a warning was given will necessarily be irrelevant in all cases. For example, if the elders had warned the Congregation or Conti's parents that Kendrick had molested a child, they would undoubtedly cite the warning in defense of any claim that they failed to take adequate precautions, even though the law did not require that the warning be given.

identified child sex offender to strike again." In his opening statement, counsel argued: "The governing body, through this policy, had made a determination that its own needs would be placed above protection of children and [showed] an indifference to children like [Conti] who were placed at risk by the presence of known sexual abusers within the congregations and the secrecy that surrounded it. [¶] That is what this case is about." In closing argument, counsel reiterated "we are here" because a "policy that keeps secret known child molesters in the congregations is wrong and needs to be changed."

However, Conti's arguments were not confined to failure to warn. Her counsel argued that field service was where Kendrick "got the best opportunity to abuse her. [¶] Now, that is actually related to the Jehovah's Witnesses because field service is what they do." Counsel argued further that defendants "didn't restrict Mr. Kendrick in any way that was meaningful. [¶] He is still a minister. He is still Brother Kendrick. [¶] He is still a member in good standing of the congregation. [¶] He is still sitting or sleeping in the back row or whatever it was of the Kingdom Hall there with children and adults all present. [¶] He is still a baptized publisher going out in the neighborhoods and collecting and spreading the Jehovah's Witnesses message. [¶] He is doing all of that with children. [¶] Now we heard from Mr. Shuster that there is a policy. 'No, he would never have been allowed to go out into field service with a child. That's our policy.' And when I say, 'Okay, well can I see it?' [¶] No policy produced."

It is apparent from the punitive damage award against Watchtower that the jury was misled by the failure to warn theory to a certain extent. We note also that the jury's allocation of fault—27 percent to Watchtower and only 13 percent to the Congregation—in apportioning Conti's noneconomic damages would be inconsistent with liability associated with field service if the only basis for that liability was failure to supervise Kendrick in the field. Our discussion of field service liability has focused primarily on that failure, and the Congregation, not Watchtower, was responsible for it. However, as we have explained, there were also grounds to hold Watchtower independently and primarily liable for negligence connected with field service. Watchtower, not the Congregation, dictated the conditions under which field service by child molesters was

permissible. The jury could have found that Watchtower falsely claimed to have a policy that prevented child molesters from performing field service alone or with children, or, even if it had that policy, it did not impose the policy on the Congregation or Kendrick.

Therefore, weighing the *Soule* factors, we do not find it reasonably probable that the compensatory damages verdict would have been different if the warning instruction had not been given.

(2) *Allocation of Fault to Non-Parties*

Defendants contend that the court erred in denying their request to have the jury consider assigning some responsibility for Conti's injury to entities and individuals who are not parties to the litigation. We disagree. Defendants argue that, if the Congregation had a duty to warn the members that Kendrick had molested a child, then the police, the child welfare agency, and the district attorney who responded to the report of that molestation also had that duty because they "all had information [about the incident] superior to that possessed by Fremont Congregation elders." But defendants did not have the duty to warn on which this argument is predicated. Defendants contend that Conti's parents could be found at least partially responsible for the harm she suffered because they were negligent in supervising her and entrusting her to Kendrick's care. However, the court properly refused to allow attribution of fault to Conti's parents given the absence of any evidence they had reason to know Kendrick was a threat to her. (See *Chaney v. Superior Court* (1995) 39 Cal.App.4th 152, 156–158 [parent must have actual knowledge of threat of molestation to be liable for negligent supervision of the victim; such knowledge was not established by perpetrator's allegedly "excessive" gift-giving and attention paid to minor].)

III. DISPOSITION

The judgment against defendants on the negligence count is affirmed. The judgment against Watchtower on the cause of action for punitive damages is reversed with directions to enter judgment for Watchtower on punitive damages. The parties are to bear their own costs on appeal.

_____
Siggins, J.

We concur:

_____
Pollak, Acting P. J.

_____
Jenkins, J.

Trial Court:	Alameda County Superior Court
Trial Judge:	Robert D. McGuiness

Counsel:

Watchtower Bible & Tract Society of New York, Mark F. Moreno; Boudreau Williams, Jon R. Williams; Jackson Lewis, Robert J. Schnack, for Defendant and Appellant Watchtower Bible & Tract Society of New York.

The McCabe Law Firm, James M. McCabe for Defendant and Appellant Fremont California Congregation of Jehovah's witnesses, North Unit.

Furtado, Jaspovice, & Simons, Richard J. Simons, Kelly I. Kraetsch for Plaintiff and Respondent, Candace Conti.

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
Douglas M. Egbert (SBN 265062)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorneys for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S CONSOLIDATED REPLY IN SUPPORT OF MOTIONS FOR JNOV AND NEW TRIAL

Date: August 13, 2012
Time: 8:30 a.m.
Dept.: 22

*****COURT LOSES JURISDICTION TO RULE ON 08/27/12*****

TRIAL DATE: May 21, 2012

I. INTRODUCTION

A thorough review of Plaintiff's opposition to Defendants' consolidated JNOV/New Trial motions reveals that Plaintiff still has not identified one shred of evidence of "malice" on the part of Watchtower to support the jury's punitive damages award. Plaintiff, for all intents and purposes, admits this fact by arguing in her opposition that the jury simply chose to ignore or disbelieve the defense witnesses when they explained the purposes of Watchtower's letter of July 1, 1989 to all bodies of elders. Plaintiff produced no other evidence on the subject of "malice." Plaintiff thus relies wholly on the July 1, 1989 letter, but by no stretch of the imagination can that letter provide evidence of malice, much less clear and convincing evidence of malice

In a similar vein, Plaintiff's opposition does nothing to disprove that her clear and oft-repeated purpose in seeking punitive damages against Watchtower was, and still is, to change Watchtower's alleged national "policy of secrecy" about child sexual abuse. The evidence is undeniable that Plaintiff's overriding theme for this case was to change Watchtower's national policy. Plaintiff herself succinctly stated in her mandatory settlement conference statement that there could be no settlement of this case until Watchtower changed its policy. Plaintiff's attempt in her opposition papers to deny this unconstitutional and improper intent is completely disingenuous.

The jury found Watchtower liable for 27% of Plaintiff's non-economic damages or $1,854,900, when added to the $130,000 in economic damages equates to liability for compensatory damages of $1,984,900. Plaintiff fails to refute the cases that clearly hold that the ratio of punitive to compensatory damages against a defendant should be based on that defendant's percentage of liability for compensatory damages. Here, the jury's punitive damages award in a ratio of more than 10.5 to 1 thus is clearly constitutionally excessive.

To exclude certain non-parties from the special verdict form was prejudicial error, as was the failure to instruct the jury of the fact that clergy or ministers were not mandated reporters during the time period relevant to this case. The defense motions should be granted.

///

II. DISCUSSION

A. The punitive damages award against Watchtower must be vacated because Plaintiff presented no evidence at trial of alleged malice to support the jury's punitive damages verdict, much less clear and convincing evidence of malice.

Plaintiff devotes almost five pages of her opposition to the issue of whether there was clear and convincing evidence of malice to support the jury's verdict on punitive damages. In those five pages, Plaintiff does not identify *any* evidence admitted at trial that would support that finding. Plaintiff instead largely argues that the jury had the right to reject defense witnesses' testimony regarding the interpretation of the July 1, 1989 letter to all bodies of elders. (*See* Plaintiff's Memorandum of Points and Authorities ("Pl's Opp.") at 1:21 – 6:10.)

The *only* trial testimony cited by Plaintiff to support the punitive damages award is certain testimony by her expert witness, Anna Salter, Ph.D. (*See* Pl's Opp. at 3:6-7, which cited to Dr. Salter's trial testimony [Ex. 7 to Mr. Simons' Declaration] at 54:25-56:21 and 61:14-65:3.) Specifically, the testimony of Dr. Salter cited by Plaintiff was that "the Jehovah's Witnesses" did not meet what Dr. Salter considered to be the "applicable standard of care for organizations who [*sic*] sponsor or promote activities that involve adults and children together in their handling of the Jonathan Kendrick report of abuse in 1993[.]" (Simons Decl., Ex. 7 at 61:14 -62:17.) However, a careful review of Dr. Salter's testimony shows that she testified only about standard of care issues. At no time did she testify about the issue of malice, nor did any of her testimony justify the jury in drawing any inference of malice against Watchtower.

Therefore, Dr. Salter's testimony does *not* provide *any* evidence of "malice" on the part of a managing agent of Watchtower, as the term malice was defined in the jury instructions, and her testimony certainly does *not* meet the requisite "clear and convincing evidence" standard. For example, Dr. Salter did not testify, and no reasonable inference can be drawn from her cited testimony, that the alleged failure to meet what she considered to be the standard of care was done with "malice." She never testified that Watchtower "acted with intent to cause injury or that [the] conduct was despicable *and* was done with a knowing disregard of the rights or safety of another." (CACI 3948 [italics added].)

The jury instructions also defined "despicable conduct" as "conduct so vile, base, or contemptible that it would be looked down on and despised by reasonable people." (*Id.; see also College Hosp., Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725 [malice sufficient to sustain an award of punitive damages requires "despicable conduct" in addition to "willful and conscious disregard" of the plaintiff's interests].) Here, Dr. Salter's cited testimony also fails to provide clear and convincing evidence of such "despicable conduct." (*See Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 909-10 [punitive damages award against multiple defendants reversed where the record failed to establish clear and convincing evidence of conduct that could be described as "despicable," even where the conduct at issue amounted to bad faith]; *see also Fariba v. Dealer Services Corp.* (2009) 178 Cal.App.4th 156, 174-75 [directed verdict for defendant on plaintiff's punitive damages claims affirmed where there was no clear and convincing evidence of fraud, *i.e.*, no clear and convincing evidence that defendant "intended to deprive [the plaintiff] of his property rights, or otherwise cause injury."].)

Once again, Plaintiff is left with the only evidence she offered to support her claim for punitive damages - the letter of July 1, 1989. The clear and undisputed language of that letter instructed elders to contact the Watchtower Legal Department for advice about their legal obligations and to protect victims from any further harm. That is Plaintiff's only evidence of alleged "malice" on the part of Watchtower. Yet obviously, that letter alone is not sufficient evidence of malice, much less "clear and convincing" evidence of malice.

Plaintiff's opposition also argues that the jury could "infer" from that letter of July 1, 1989, that Watchtower's policy was to avoid lawsuits. However, Plaintiff had the burden to present "clear and convincing" evidence of malice by Watchtower, not mere speculation from which the jury is required to draw inferences.

Plaintiff clearly failed to meet her high burden of proof for punitive damages. Accordingly, JNOV must be granted in favor of Watchtower, and the punitive damages award must be vacated in its entirety. Alternatively, if, *arguendo*, the Court should deny the motion for

JNOV on this issue, Watchtower is entitled to a new trial on punitive damages because there was no clear and convincing evidence of malice on the part of a managing agent of Watchtower.

B. The punitive damages award must be vacated because it is unconstitutional to award punitive damages to change Watchtower's national policy.

Before, during, and even after trial, Plaintiff openly and repeatedly argued that Watchtower's alleged "policy of secrecy" (*i.e.*, the July 1, 1989 letter to all bodies of elders) should be changed to protect *not only* Candace Conti *but also* other possible victims of alleged child abuse. In fact, Plaintiff's mandatory settlement conference statement (Schnack Decl. at Ex. J) very pointedly stated that the case was not subject to settlement until Watchtower's policy was changed "to allow parents, children, law enforcement, and congregation leaders (to) be notified of known sex abusers practicing their predatory evils on unsuspecting children and families."

Plaintiff goes on to argue that *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, prohibiting a state from imposing economic sanctions on violations of its laws with the intent of changing the tortfeasor's lawful conduct in other states, is inapplicable to this case. Plaintiff submits that *BMW* does not apply because her expert, Dr. Salter, opined that the conduct of Watchtower did not meet the standard of care. Therefore, Plaintiff asserts that Watchtower's conduct was unlawful in all states. However, no court in the United States has found that Watchtower's alleged conduct is unlawful. Furthermore, other than this Court, no court in the United States has found that Watchtower has a duty to warn congregation members of the past sexual abuse committed by a rank-and-file congregation member. Thus, if this Court allows the punitive damages award against Watchtower to stand, it will unconstitutionally sanction Watchtower, knowing that the punitive damages were based on Plaintiff's intent to change Watchtower's lawful conduct. Indeed, doing so would be the equivalent of California imposing its policies on the entire United States.

Plaintiff correctly quotes from *Johnson v. Ford Motor Company* (2005) 35 Cal.4th 1191: "Nothing the high court [*i.e.*, the U.S. Supreme Court] has said about due process review requires that California juries and courts ignore evidence of corporate policies and practices and

evaluate the defendant's harm to the plaintiff in isolation." (*Id.* at p. 1207.) Under *Johnson*, an examination of "corporate" policies goes to the reprehensibility "guidepost" when evaluating punitive damages claims.

However, Plaintiff's citation to and reliance on *Johnson* is misplaced here, because in this case Plaintiff's counsel did *not* argue that the jury should look at the national policy as evidence of Watchtower's alleged reprehensible conduct toward Plaintiff. Instead, Plaintiff's counsel repeatedly argued that Watchtower's alleged "policy of secrecy" should be *changed*, referencing *other alleged victims*. For example, in Plaintiff's motion for leave to amend her complaint to include alleged facts supporting a punitive damages claim, Plaintiff states: "[Watchtower's] implementation and maintenance of the secrecy policy epitomizes despicable conduct carried on with a willful and conscious disregard of the rights or safety of *children*." (Schnack Decl., Exh. K at 11:25, 12:6-7) (italics added.) Plaintiff's counsel expressly used the plural "children," obviously staking out the position that punitive damages are proper because of the alleged policy of secrecy's effect on *children other than Plaintiff*. Similarly, during opening argument at trial, Plaintiff's counsel argued "[t]he governing body, through this policy, had made a determination that its own needs would be placed above the protection of *children* and an indifference to *children like Candice who were placed at risk by the presence of known sexual abusers within the congregations* and the secrecy that surrounded it . . . and [t]hat is what this case is about." (*Id.*, Exh. A at 41:15-21) (italics added.) Again, Plaintiff argued the connection between the alleged national policy and *other alleged victims*, not just the effect the alleged national policy had on this particular Plaintiff.

Finally, Plaintiff makes no secret that Plaintiff's oft-stated goal in making these connections is to change Watchtower's policy. While Plaintiff is correct that there was no evidence of other victims based on the Court's granting of a defense motion *in limine* to exclude such evidence, Plaintiff's counsel's arguments to the jury strongly suggested, and allowed the jury to infer, that such other victims exist. In other words, Plaintiff undeniably sought to recover punitive damages based on alleged harm to children other than herself, which violates Watchtower's constitutional due process rights.

Again, it is abundantly clear that Plaintiff's purpose was to effect a change in Watchtower's alleged national "policy of secrecy" and that she intended to do so through a large punitive damages award. However, the U.S. Supreme Court has repeatedly held that such a purpose is constitutionally improper, as discussed in Watchtower's original memorandum of points and authorities in support of the motions for JNOV and new trial. The punitive damages award must be vacated. Alternatively, if, *arguendo*, the motion for JNOV on this issue should be denied, Watchtower is entitled to a new trial on the punitive damages issue because an award of punitive damages to change national policy is unconstitutional.

C. To the extent the Court does not grant JNOV and vacate the punitive damages award, a new trial should be ordered because the punitive damages award is excessive.

In her opposition, Plaintiff erroneously states that Watchtower's argument regarding the ratio of punitive to compensatory damages is not supported by law. (Pl's Opp. at 14:26 – 15:20.) Specifically, Plaintiff incorrectly argues that the proper ratio for calculating punitive damages is "[t]he ratio of *total* compensatory damages suffered by the Plaintiff is correct and Constitutional measure of disparity, not the ratio to the individual defendant's proportionate share of non-economic damages." (Pl's Opp. at 15:2 – 4) (italics added.)

The decision of the First District Court of Appeal in *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68 is instructive and, indeed, controlling, because there the appellate court held that, while a low percentage of liability does not affect the defendant's degree of reprehensibility when calculating punitive damages, the low percentage of liability does "reduce the amount of compensatory damages with which the amount of punitive damages is compared, when considering the ratio between the two." (*Id.* at p. 87.) The Court of Appeal in *Bankhead* affirmed a 2.4 to 1 ratio of punitive damages to compensatory against the defendant, and *when calculating the ratio, the court used only the defendant's share of compensatory damages.* (*Id.* at pp. 88–90.) Therefore, contrary to Plaintiff's contention, when calculating the ratio of punitive damages to compensatory damages awarded in the instant case, this Court is required to use the net compensatory damages awarded to Plaintiff against Watchtower rather than the entire amount of compensatory damages awarded against all defendants.

Here, the jury found Watchtower 27 percent liable for the alleged harm to Plaintiff. Therefore, Watchtower's share of the non-economic damages awarded is 27 percent of $6,870,000, or $1,854,900. Adding in the $130,000 in economic damages awarded by the jury (because economic damages are joint and several), the net amount of compensatory damages for which the jury found Watchtower liable is $1,984,900. Under *Bankhead*, it is that amount "with which the amount of punitive damages is compared, when considering the ratio between the two." (*Id.*) Therefore, because the jury awarded Plaintiff $21,000,001 in punitive damages against Watchtower, the ratio of punitive damages to compensatory damages in this case exceeds 10.5 to 1, which on its face is a constitutionally excessive ratio.

An important factor in determining whether an award of punitive damages falls within a constitutionally permissible ratio when compared to compensatory damages is whether the compensatory damages awarded include a punitive element. In *Bankhead*'s discussion of the range of constitutionally permissible ratios, the Court of Appeal cites to *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 718-19, to explain that a jury's substantial award of emotional distress damages already includes a punitive element and, therefore, the maximum constitutionally permissible ratio in *Roby* was 1 to 1. (*Bankhead*, 205 Cal.App.4th at p. 88.)

As noted above, in *Bankhead* the jury awarded punitive damages in a ratio of 2.4 times the amount of compensatory damages; *Bankhead* was a personal injury asbestos case in which the net compensatory damages awarded to the plaintiff against defendant/appellant ArvinMeritor was $1,845,000 with a punitive damages of $4,500,000. The Court of Appeal in *Bankhead* commented that the defendant "ArvinMeritor's conduct was highly reprehensible." (*Id.* at p. 90.) *Bankhead* further held that the gross award of $2,500,000 in non-economic damages to the plaintiff "is high enough that it appears to include a punitive component. The inclusion of a punitive element in emotional distress damages reduces the permissible ratio of punitive to compensatory damages." (*Id.*, citing *Roby v. McKesson Corp., supra*, 47 Cal.4th at 718-20). *Bankhead* then affirmed the 2.4 to 1 ratio of punitive damages to the net compensatory damages awarded against ArvinMeritor. (*Bankhead, supra,* 205 Cal.App.4th at p. 90.)

In the instant case, the fact that the vast majority – over 98 percent - of compensatory damages were for non-economic damages ($130,000 in economic damages versus $6,870,000 in non-economic damages) demonstrates that the jury clearly included a punitive element in the non-economic damages, as held by *Roby* and *Bankhead*. Indeed, even if one considers only the net non-economic damages awarded against Watchtower of $1,854,900, it still demonstrates a punitive element in the non-economic damages awarded by the jury. Thus, it is beyond dispute that the more than 10.5 to 1 ratio of punitive damages to compensatory damages awarded against Watchtower is constitutionally impermissible. Under *Roby* and *Bankhead*, the constitutionally permissible ratio for the instant case would be a ratio of one-to-one up to 2.4 to 1, and it necessarily follows that an award of punitive damages, if any, constitutionally cannot be more than the range of $1,894,900 up to $4,547,760.

Therefore, a new trial is warranted to cure the grossly and constitutionally excessive award of punitive damages against Watchtower. Also, for the reasons discussed in Defendants' opening brief on the motions for JNOV and new trial, should the Court find the punitive damages and/or the non-economic damages awarded in this case excessive and order a new trial solely on the issue of damages, Defendants request remittitur pursuant to Civil Code section 662.5(b) and ask the Court to reduce the punitive and non-economic damages awards to amounts the Court independently determines to be fair and reasonable.

D. The failure to instruct the jury that clergy or ministers were not mandated reporters during the relevant time period was prejudicial error.

Plaintiff's opposition fails to even address the particular testimony of Dr. Salter that misled and confused the jury about whether clergy or ministers were mandated reporters under California law during the relevant time period. As cited in Defendants' opening brief, Dr. Salter's testimony was ambiguous at best, if not disingenuous, and Dr. Salter did indeed suggest that clergy *were* mandated reporters in 1993. (Schnack Decl., Exh. D at 71:3 – 72:15.) Dr. Salter said the mandated reporting law as it read in 1993 "*Didn't exclude ministers or clergy*." (*Id.* at 71:19-25) (italics added.) Further, when asked a second time to admit that "clergy and ministers were not required to report until January 1 of '97 in California," Dr. Salter

responded, "Clergies [*sic*] and *ministers were not singled out. I think there was a question about whether the case law applies to them.*" (*Id.* at p. 72:9-14) (italics added.)

Thus, Dr. Salter was allowed to mislead and confuse the jury, particularly because the Court's duty instruction to the jury included reference to the presence or absence of any warning about Jonathan Kendrick by the North Fremont Congregation elders. The confusion created by Dr. Salter could have been avoided by giving Defendants' requested instruction on mandated reporting, which made clear that clergy were not mandated reporters until January 1, 1997.

Plaintiff's counsel only further compounded the jury's confusion and misled the jury by arguing during closing that they had heard two expert opinions regarding whether the North Fremont Congregation elders were mandated reporters in 1993 and that there was thus a question about whether the elders had a duty to report Kendrick to the authorities. Specifically, Plaintiff's counsel argued to the jury in pertinent part as follows: "the question about the laws and mandated [] reporting and there is questions back and forth about, and you have heard two experts testify about that." (*Id.*, Exh. F at 107:6-10.) This clearly misled the jury for two reasons. First, Plaintiff's counsel knew that there was no question on this legal issue because the law clearly did not make ministers or clergy (or elders) mandated reporters in 1993. Second, contrary to Plaintiff's counsel's argument that the jury had heard two experts testify about this question, a careful review of all the testimony in this case confirms that Defendants did not present any testimony on this issue because the law was clear: *elders were not mandated reporters in 1993*. The only expert testimony on this issue was the confusing and misleading testimony of Dr. Salter which erroneously, if not disingenuously, suggested that the elders were mandated reporters in 1993. Defendants' expert did not testify on this subject at trial.

Further, Plaintiff cannot have it both ways, saying in her opposition that Dr. Salter did not create confusion and then arguing in closing that there was an alleged question between the experts about whether the elders were mandated reporters, especially when the law was clearly contrary to Dr. Salter's testimony on this issue. The requested instruction would have made it clear to the jury that clergy – the elders - were not mandated reporters in 1993. Thus, the failure to give the requested mandated reporter instruction created prejudicial error.

E. The failure to allow the jury to allocate fault to non-parties was prejudicial error.

The undisputed evidence established that in February and March 1994, the Fremont Police Department, Child Protective Services, and the Alameda County District Attorney's Office had the same, if not *more*, information concerning Jonathan Kendrick's touching of his step-daughter in July 1993 than the North Fremont Congregation elders obtained in November 1993. Further, the evidence was undisputed that the Fremont Police Department and Child Protective Services knew that Mr. Kendrick attended the North Fremont Congregation. Despite having that information, and despite those governmental agencies having the responsibility to protect minors, those agencies took no steps whatsoever to warn congregation members about Kendrick. As discussed in Defendants' opening brief, there was ample evidence from which the jury could have allocated fault to those entities. The failure to allow the jury to even consider whether to allocate fault to any or all of them is prejudicial error that requires a new trial.

Further, if Plaintiff's evidence at trial was to be believed, one or both of her parents, Neal and Kathleen Conti, allowed Kendrick to: (a) improperly and forcibly hug her and forcibly sit her on his lap at the Kingdom Hall numerous times; and (b) allow Kendrick to take Plaintiff from the Kingdom Hall to his home after Sunday services hundreds of times from 1994 to 1996, where he would sexually abuse her. As noted in the opening brief, Plaintiff even testified that Kendrick abused her in her father's presence on an Amtrak train. For those reasons, among others, there was ample evidence from which the jury could have allocated fault to one or both of Plaintiff's parents. The failure to allow the jury to even consider whether to allocate fault to either them is prejudicial error that requires a new trial.

III. CONCLUSION

For each of the independent and alternative reasons discussed in Defendants' opening brief and in this reply, the Court should grant Watchtower's motion for JNOV on punitive damages, as well as Defendants' motions for new trial and request for remittitur.

///

///

///

DATED: August 9, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack
Douglas M. Egbert

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: August 9, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.

CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On August 9, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S CONSOLIDATED REPLY IN SUPPORT OF MOTIONS FOR JNOV AND NEW TRIAL** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 9, 2012, at Sacramento, California.

Lori Gilmette

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.

CASE NO. HG11558324

Counsel for Plaintiff
Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

Defendant Jonathan Kendrick, in pro per
200 Honey Lane
Oakley, CA 94561
(925) 484-1008

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
Douglas M. Egbert (SBN 265062)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorneys for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTIONS FOR JNOV AND MOTIONS FOR NEW TRIAL

Date: August 13, 2012
Time: 8:30 a.m.
Dept.: 22

*****COURT LOSES JURISDICTION TO RULE ON 08/27/12*****

TRIAL DATE: May 21, 2012

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. INTRODUCTION 1

II. LEGAL ARGUMENT—JNOV 3

A. Standard for JNOV 3

B. There Is No "Clear And Convincing Evidence" of Malice Supporting the Punitive Damages Award 4

C. The Punitive Damages Award Must Be Vacated Because It Is Unconstitutional to Award Punitive Damages to Change Watchtower's National Policy 8

III. LEGAL ARGUMENT—NEW TRIAL 10

A. Standard for Granting a New Trial 10

B. The Court Erred by Refusing to Give the Church Defendants' Requested Jury Instruction Regarding Allocation of Fault to Non-Parties and to Include Non-Parties Either Generally or Specifically, on the Special Verdict Form 11

1. State of the Evidence 13

2. The Effect of Other Instructions 15

3. The Effect of Counsel's Arguments 15

C. The Court Erred by Refusing to Give the Church Defendants' Requested Jury Instruction Regarding Clergy Not Being Mandated Reporters Until January 1, 1997 15

1. State of the Evidence 16

2. The Effect of Other Instructions and the Effect of Counsel's Arguments 17

D. The Non-Economic Damages Award Is Excessive 18

E. A New Trial Is Necessary Because There Was No Clear and Convincing Evidence of Malice to Support the Punitive Damages Award 20

F. A New Trial Is Necessary Because it Was Unconstitutional to Award Punitive Damages to Change Watchtower's National Policy—Plaintiff's Stated Purpose for Her Claim of an Alleged Act of Malice 20

G. The Punitive Damages Award Is Excessive 21

1. Degree of Reprehensibility 21

2. Disparity Between Compensatory Damages and Punitive Damages Awarded 22

H. Request for Remittitur 22

IV. CONCLUSION 22

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

BMW of North America, Inc. v. Gore
(1996) 517 U.S. 559 8

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah
(1993) 508 U.S. 520 13

Employment Div., Dept. of Human Resources of Ore. v. Smith
(199) 494 U.S. 872 13

Philip Morris USA v. Williams
(2007) 549 U.S. 346 ..... 8, 21

State Farm Mutual Auto. Ins. Co. v. Campbell
(2003) 538 U.S. 408 ..... 8, 21, 22

OTHER CASES

Basich v. Allstate Ins. Co.
(2001) 87 Cal.App.2d 1112 ..... 4, 7

Beavers v. Allstate Ins. Co.
(1991) 225 Cal.App.3d 310 3

Bly-Magee v. Budget Rent-A-Car Corp.
(1994) 24 Cal.App.4th 318 12

Carney v. Simmonds
(1957) 49 Cal.2d 84 10

College Hospital Inc. v. Superior Court (Crowell)
(1994) 8 Cal.4th 704 ..... 4, 7

Dafonte v. Up-Right
(1992) 2 Cal.4th 593 11

Dyna-Med, Inc. v. Fair Employment & Housing Commission
(1987) 43 Cal.3d 1379 4

George F. Hillenbrand, Inc. v. Ins. Co. of N. America
(2002) 104 Cal.App.4th 784 4

Gerard v. Ross
(1988) 204 Cal.App.3d 968 ..... 18, 21

Hand Electronics, Inc. v. Snowline Joint Unified School Dist.
(1994) 21 Cal.App.4th 862 11

Harrison v. Sutter Street Railway Co.
(1897) 116 Cal. 156 18

Hauter v. Zogarts
(1975) 14 Cal.3d 104 3

Kendall Yacht Corp. v. United Cal. Bank
(1975) 50 Cal.App.3d 949 ..... 4, 7

Maher v. Saad
(2000) 82 Cal.App.4th 1317 11

McCoy v. Gustafson
(2009) 180 Cal.App.4th 56 3

Mize-Kurzman v. Marin Comm. College Dist.
(2012) 202 Cal.App.4th 832 ..... 10, 11

Nally v. Grace Community
(1988) 47 Cal.3d 278 ..... 16, 18

Roddenberry v. Roddenberry
(1996) 44 Cal.App.4th 634 3

Roslan v. Permea, Inc.
(1993) 17 Cal.App.4th 110 12

White v. Ultramar, Inc.
(1999) 21 Cal.4th 563 4

Whiteley v. Philip Morris Inc.
(2004) 117 Cal.App.4th 635 11

Williams v. Garcetti
(1993) 5 Cal.4th 561 14

OTHER STATUTES

Cal. Welfare and Institutions Code § 300 14

California Penal Code 11166 ..... 16, 17

Civil Code § 662.5(b) 22

Civil Code § 1431.1 11

Civil Code § 1431.2(a) 11

Civil Code § 3294 ..... 6, 7, 9, 10
Civil Code § 3294(a) 4
Civil Code § 3294(b) 4
Code of Civil Procedure § 6 18
Code of Civil Procedure § 647 11
Code of Civil Procedure § 656 10
Code of Civil Procedure § 629 3
Code of Civil Procedure § 657 10
Code of Civil Procedure § 657(1) 10
Code of Civil Procedure § 657(5) 18, 21
Code of Civil Procedure § 657(7) 11
Code of Civil Procedure § 659 23
Code of Civil Procedure § 660 23

I. INTRODUCTION

Stripped down to their essence, the claims of Jane Doe ("Plaintiff") at trial have attempted to deviate from well-established authority by imposing substantial liability on a religious organization, Defendant Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), for the criminal acts of one of its rank-and-file members. Indeed, over $21 million in punitive damages have been awarded to the Plaintiff based solely upon one piece of evidence: Watchtower's July 1, 1989, letter regarding confidential communications to elders which, among other legal and spiritual subjects, discussed the importance of maintaining confidentiality. Notably, the only reference to child abuse in that six-page letter is where it mentions that elders who learn of such an allegation should immediately contact the Watchtower Legal Department and take steps to protect victims from further danger. Although Plaintiff vociferously argued that letter amounted to clear and convincing evidence of "malice" on Watchtower's part, that correspondence actually reveals the exact opposite of malice, demonstrating instead that Watchtower was not only concerned that reports of child abuse be handled promptly and appropriately, but also that the victims of such abuse be protected. In the absence of a requisite showing of malice—much less clear and convincing evidence of malice—that letter cannot serve as the basis for the jury's substantial punitive damages award, compelling this Court to grant Judgment Notwithstanding the Verdict ("JNOV") in Watchtower's favor.

Moreover, Plaintiff and her trial counsel openly and repeatedly stated to the Court and the jury that the purpose of this lawsuit in general—and the claim for punitive damages in particular—was to force Watchtower to change its alleged national "policy of secrecy." As will be demonstrated below, doing so is a completely improper and unconstitutional use of a claim for punitive damages. On that basis, as well, JNOV is similarly mandated.

Additionally, Watchtower and North Congregation of Jehovah's Witnesses, Fremont, California ("North Fremont Congregation") (collectively "Church Defendants"), also seek a new trial on several related grounds. Specifically, during the trial of this action, Plaintiff presented evidence that her parents allowed Defendant Jonathan Kendrick ("Kendrick") to take

Plaintiff to his home alone on numerous occasions, where he sexually abused her. Although related evidence further revealed that the North Fremont Police Department, Child Protective Services, and the District Attorney all were notified during February of 1994 that Kendrick had molested his step-daughter and was convicted of a misdemeanor for that conduct, none of those governmental agencies did anything to notify the North Fremont elders, the members of the North Fremont Congregation, or the public in general about Kendrick's conduct. Despite those undisputed facts, this Court refused to instruct the jury that it could properly allocate fault to the Plaintiff's parents, the North Fremont Police Department, Child Protective Services, and the District Attorney. Further, this Court refused to give the jury the special verdict form requested by the Church Defendants allowing the jury to so allocate fault. Doing so was error which now requires a new trial.

Plaintiff also inappropriately created confusion during trial about whether the law in force in 1993 required the North Fremont elders to report allegations of child abuse to the authorities when Kendrick confessed to them that he had inappropriately touched his stepdaughter. Plaintiff's expert witness, Anna Salter, Ph.D., offered misleading testimony that the elders had such a duty at that time. Contrary to unequivocal statutory authority on that very issue, this Court refused to instruct the jury that the North Fremont elders had no legal obligation to report child abuse until January 1, 1997, when the law subsequently changed. Doing so was error which allowed the Plaintiff's attorney to further mislead and confuse the jury during closing argument and now requires a new trial.

Finally, the Church Defendants further explain how both the award of non-economic damages and punitive damages are excessive as a matter of law, and therefore this Court should either remit those damages substantially or order a new trial.

In sum, the Church Defendants respectfully request this Court to exercise now the wide-ranging authority given to it under relevant post-trial statutes to reject substantial damages unsupported by the requisite standards of proof, to rectify instructional error and irregularities at trial, and to prevent a miscarriage of justice.

II. LEGAL ARGUMENT—JNOV

A. Standard for JNOV

JNOV must be granted where there is no substantial evidence to support a verdict. Code of Civil Procedure section 629 directs that on motion of a party against whom a verdict has been rendered:

> The court . . . **shall** render judgment in favor of the aggrieved party notwithstanding the verdict whenever a motion for a directed verdict . . . should have been granted had a previous motion been made.

(Emphasis added.) A court is also empowered in an appropriate case to order partial JNOV as to individual causes of action. (*Beavers v. Allstate Ins. Co.* (1991) 225 Cal.App.3d 310, 323-24.) A motion for JNOV must be granted where "there is no **substantial evidence** in support [of the verdict]." (*McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 84 (emphasis added); *see also Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110 (motion for JNOV must be granted where the evidence at trial is insufficient to support the jury's verdict).)

In *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, the Court of Appeal described the "substantial evidence" test as follows:

> "Substantial evidence" is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. "**Substantial evidence . . . is not synonymous with 'any' evidence." Instead, it is "'substantial' proof of the essentials which the law requires."** The focus is on the quality, rather than the quantity, of the evidence. "Very little solid evidence may be 'substantial,' while a lot of extremely weak evidence might be 'insubstantial.'" Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence. . . . The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question **in light of the whole record**.

(*Id.* at p. 651-52 (emphasis added) (citations omitted).) As explained below, there is no "substantial evidence" to support the jury's award of punitive damages against Watchtower.

The jury awarded Plaintiff a total of $21,000,001 in punitive damages. (Special Verdict Form filed June 14, 2012).

Because there is no substantial evidence supporting the jury's award of punitive damages against Watchtower, entry of JNOV is appropriate, and the award for punitive damages should be vacated in its entirety.

B. There Is No "Clear And Convincing Evidence" of Malice Supporting the Punitive Damages Award.

California law "codifies the universally recognized principle that '[t]he law does not favor punitive damages and they should be granted with the greatest caution.'" (*Dyna-Med, Inc. v. Fair Employment & Housing Comm'n* (1987) 43 Cal.3d 1379, 1392 (citation omitted).) Punitive damages are awarded, not to compensate a tort victim, but to punish persons "guilty of recklessness or wickedness." (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 569.) The Legislature has established a greater standard of proof, "clear and convincing evidence," as the predicate to punitive damages awards. (Civ. Code, §3294(a); *Basich v. Allstate Ins. Co.* (2001) 87 Cal.App.4th 1112, 1118-19.) A plaintiff must establish by clear and convincing evidence the existence of "despicable conduct." (*College Hosp., Inc. v. Superior Court (Crowell)* (1994) 8 Cal.4th 704, 725 (malice sufficient to sustain an award of punitive damages requires **"despicable conduct" in addition to "willful and conscious disregard" of the plaintiff's interests**); *Kendall Yacht Corp. v. United Cal. Bank* (1975) 50 Cal.App.3d 949, 958 (***evil motive*** is a central element of malice).) Mere carelessness or ignorance does not justify the imposition of punitive damages. Punitive damages are proper only when the tortious conduct rises to levels of **extreme indifference**. (*George F. Hillenbrand, Inc. v. Ins. Co. of N. America* (2002) 104 Cal.App.4th 784, 815.) Finally, to hold an organization liable for punitive damages, a plaintiff must prove an "officer, director, or managing agent" either perpetrated or knowingly ratified conduct amounting to malice, oppression, or fraud. (Civ. Code, § 3294(b); *College Hosp.*, *supra*, 8 Cal.4th at p. 723.)

Plaintiff's entire argument regarding malice to support the claimed punitive damages—malice was the only basis on which Plaintiff sought punitive damages at trial—was based solely on the July 1, 1989, letter from Defendant Watchtower to all bodies of elders. (Schnack Decl. at Exh. I.)[1] Plaintiff's counsel repeatedly styled that letter as a "policy of secrecy." (*Id.* at Exh. A

[1] All factual references in this brief are to exhibits attached to the Declaration of Robert J. Schnack in Support of Defendants Watchtower and the North Fremont Congregation's Motions for JNOV and Motions for New Trial, filed concurrently with this brief, and abbreviated as follows: (Schnack Decl. at Exh. [letter] at [page:line].)

at 30:23-31:4, 32:21-23, 41:5-9; Exh. F at 100:18-108:25, 121:18-19.) However, there was not one witness who testified at trial that the July 1, 1989, letter was a "policy of secrecy." Instead, it was only argument and statements by Plaintiff's counsel.

The only evidence at trial regarding the July 1, 1989, letter actually showed that there was no such "policy of secrecy," as testified to by elders from the North Fremont Congregation and by Defendant Watchtower's representative, Allen Shuster. (*Id.* at Exh. A at 188:3-190:5, 216:21-217:24; Exh. B at 16:21-17:2; Exh. E at 159:1-176:3.) Watchtower delivered the letter at issue to all bodies of elders because of "a growing concern regarding the handling of [the elders'] duties that may involve legal issues or questions." (*Id.* at Exh. I.) It is not uncommon at all for an organization to discuss matters of legal importance with its leadership. Watchtower also had a spiritual concern that elders follow the Bible's mandate regarding confidentiality. Thus, the letter also stated:

> Elders share the obligation to shepherd the flock. However, they must **be careful not to divulge information about personal matters to unauthorized persons.** There is "a time to keep quiet," when "your words should prove to be few." (Ecclesiastes 3:7; 5:2) Proverbs 10:19 warns: "In the abundance of words there does not fail to be transgression, but the one keeping his lips in check is acting discreetly." Problems are created when elders unwisely reveal matters that should be kept confidential. Elders must give special heed to the counsel: "Do not reveal the confidential talk of another." (Proverbs 25:9) Often the peace, unity, and spiritual well-being of the congregation are at stake.

(*Id.* at Exh. I, pg. 1.)

Among other subjects of legal and spiritual concern to Watchtower, the letter instructed elders on the handling of confidential information so as to avoid legal and spiritual problems. As the Court is fully aware, there exist a number of causes of action based on the improper disclosure of confidential information, and the right to privacy is protected by both the U.S. and California Constitutions. The evidence showed that the purpose of the letter was not to keep reports of child abuse secret—indeed, the issue of child abuse was addressed in one short paragraph on page 3 of the six-page letter. (*Id.* at pg. 3.) Rather, the purpose of the letter was to help the elders, who are untrained in secular law, to navigate the potential legal pitfalls they might encounter in performance of their spiritual and church duties. For example, the letter instructs elders on how to handle search warrants and subpoenas, and how to handle sensitive

information when a member moves to another congregation or when there are criminal or child custody proceedings involving a member. (*Ibid.*) Confidentiality can come up in countless situations unrelated to child abuse, and the instruction in this letter clearly shows that it was designed to assist elders in dealing with these situations, including child abuse.

As noted above, the six-page letter has only one short paragraph on page three that addressed the topic of child abuse:

> ***Many states have child abuse reporting laws.*** When elders receive reports of physical or sexual abuse of a child, they should ***contact the Society's Legal Department immediately***. Victims of such abuse need to be ***protected*** from further danger.

(*Id.* at pg. 3 (emphasis added).) As a result, the entirety of the $21,000,001 punitive damages awarded by the jury is necessarily based solely on that short paragraph. It would take a contortionist to twist that paragraph or any other paragraph in that letter into a so-called "policy of secrecy." Neither that one paragraph nor any other paragraph in that letter says anything about keeping reports of child sex abuse secret. To the contrary, the paragraph quoted above acknowledges that many states have child abuse reporting laws and instructs the elders to immediately contact Watchtower's Legal Department when a report of child abuse is received, so that they can promptly and properly comply with the legal reporting requirements and protect victims from further danger.

In a letter full of instructions about keeping private information confidential, the single paragraph on child abuse acted as an exception to those instructions and set forth a policy in which sensitive information could be disclosed to the authorities where required by law. Doing so was not evidence of a "policy of secrecy," as Plaintiff's counsel argued, and neither does that paragraph nor any other paragraph in that letter support a jury finding of clear and convincing evidence of malice. Instead, it demonstrated just the opposite: Watchtower was seeking to have local congregation elders nationwide comply with child abuse reporting laws and wanted victims of child sexual abuse protected. In short, that letter in no way satisfied the clear and convincing standard required under Civil Code section 3294.

Watchtower, on the other hand, presented ample evidence regarding its views on child sexual abuse and its policies related thereto. Watchtower's representative, Service Department elder Allen Shuster, testified that Watchtower abhors child sexual abuse, because it is a gross, horrible sin. (*Id.* at Exh. E at 158:2-10, 172:11-173:18.) Watchtower's expert, Monica Applewhite, Ph.D., testified that in an organization like Jehovah's Witnesses where children are not separated from their parents, the best method of protecting children is to give parents information about the prevalence of sexual abuse, the warning signs of abuse, and the need for parents to protect their children and how to meet that need. She further testified that Jehovah's Witnesses have done an exceptional job in this regard since the 1970's through the 1990's. (*Id.* at Exh. E at 113:21-115:3.) In addition, Dr. Applewhite testified that during the mid-1990's, Jehovah's Witnesses well exceeded the standard of care for educating parents about sexual abuse. (*Id.* at Exh. E at 117:3-13.) Moreover, Dr. Applewhite testified that Watchtower does not provide unique or special access to children, because Jehovah's Witnesses do not separate children from their parents at any church meetings or in any church-sponsored activities. (*Id.* at Exh. E at 110:11-112:13.) Even Plaintiff's own expert, Anna Salter, PhD, opined that Watchtower has good policies in place. (*Id.* at Exh. D at 84:4-16.) Dr. Applewhite further testified that the wording of Watchtower's policy on confidentiality closely mirrored the concerns of other religious organizations and the codes of ethics for the National Association of Social Workers, the American Counseling Association, and Child Welfare League of America. (*Id.* at Exh. E at 119:9-121:19.)

Plaintiff presented no admissible evidence at trial regarding any alleged malice other than Watchtower's letter of July 1, 1989. That letter is completely insufficient to prove the element of malice at the high standard of proof the law requires. Further, Watchtower's evidence demonstrates that it abhors child abuse and has good educational materials and policies to protect children. None of the evidence demonstrates the "despicable conduct" and "willful and conscious disregard" of the plaintiff's interests or the "evil motive" required for malice sufficient to sustain an award of punitive damages. (*Basich*, *supra*, 87 Cal.App.4th at pp. 1118-19; *College Hosp.*, *supra*, 8 Cal.4th at p. 725; *Kendall Yacht*, *supra*, 50 Cal.App.3d at p. 958.)

Because Plaintiff failed to carry her high burden for punitive damages, JNOV must be granted in favor of Watchtower, and the award for punitive damages must be vacated in its entirety.

C. The Punitive Damages Award Must Be Vacated Because It Is Unconstitutional to Award Punitive Damages to Change Watchtower's National Policy.

The punitive damages award must also be vacated in its entirety because Plaintiff's stated purpose for pursuing punitive damages was to effect a change in Watchtower's **national policy**. The U.S. Supreme Court has expressly and repeatedly held that seeking punitive damages for that purpose is improper. (*BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 572, 585 ("While each State has ample power to protect its own [citizens], none may use the punitive damages deterrent as a means of imposing its regulatory policies on the **entire Nation**.") (emphasis added); *State Farm Mutual Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 420-21 (award of punitive damages reversed where plaintiff used case as a platform to expose and punish defendant for perceived deficiencies in its **national operations**; "as a general rule . . . a State [does not] have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction").)

Further, the U.S. "Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties." (*Philip Morris USA v. Williams* (2007) 549 U.S. 346, 353.) Punitive damages cannot be used to punish a defendant for injury that it inflicts upon "strangers to the litigation." (*Id.*) This is because the defendant "has no opportunity to defend against the charge" by showing why one victim's case is different from another's. *Id.* Finally, to permit punishment for injuring a nonparty victim "would add a near standardless dimension to the punitive damages equation." (*Id.* at p. 354.) For example, how many such victims are there? How seriously were they injured? Under what circumstances did the injury occur? "The trial will not likely answer such questions as to nonparty victims [and] [t]he jury will be left to speculate." (*Id.*)

Here, Plaintiff and her counsel have openly admitted before and during trial, that their purpose was to effect a change in Watchtower's **national** policy. Plaintiff's mandatory settlement conference statement openly admitted:

> [A]t the time [Plaintiff] first reported her abuse to Jehovah's Witnesses' officials, [she] asked to have the policy of secrecy regarding the identity of known child molesters in local [c]ongregations changed. The [Jehovah's] Witnesses have refused to amend their policy . . . Until this policy is changed to allow parents, children, law enforcement, and congregation leaders be notified of known sex abusers practicing their predatory evils on unsuspecting children and families, **the case is not subject to settlement**.

(Schnack Decl. at Exh. J (emphasis added).) In other words, Plaintiff refused to discuss settlement and was going to take the matter to trial to change Watchtower's alleged **national policy**. Similarly, before trial, Plaintiff filed a motion for leave to amend her complaint to include facts supporting a claim for punitive damages. Her motion, which concerned only alleging a claim for punitive damages, is full of references to Watchtower's alleged **national policy**. For example, the motion states that "[a]ll of the disputed conduct involved following the policies of, and instructions of, [Watchtower]," and that "[Watchtower's] implementation and maintenance of the secrecy policy epitomizes despicable conduct carried on with a willful and conscious disregard of the rights or safety of children." (*Id.* at Exh. K at 11:25, 12:6-7.) In making this latter statement, Plaintiff cites to California Civil Code section 3294, thereby specifically tying her claim for punitive damages to Watchtower's alleged **national policy**.

At the May 21, 2012, hearing concerning motions in limine, Plaintiff's counsel argued that reports of child abuse to Watchtower **from all parts of the nation** should be admissible. (May 21, 2012, Pre-Trial Transcript, pp. 40, 41.) Plaintiff's counsel explained that Plaintiff intended to use these **national reports** to demonstrate a "deliberate indifference" on the part of Watchtower regarding its alleged "policy of secrecy," suggesting that Plaintiff intended to accomplish the desired change through a large award of punitive damages against Defendant Watchtower. (*Id.* at Exh. H at 40:1-25.) Further, at trial Plaintiff testified that she told the elders she wanted to change this alleged policy of secrecy and that she would not have brought this lawsuit had they agreed to change this alleged policy. (*Id.* at Exh. D at 150:22-151:17.) In addition, during opening statements, Plaintiff's counsel stated that "[t]he governing body, through this policy, had made a determination that its own needs would be placed above the protection of children and an indifference to children like Candice who were placed at risk by the presence of known sexual abusers within the congregations and the secrecy that surrounded

it . . . and [t]hat is what this case is about." (*Id.* at Exh. A at 41:15-21.) Further, during closing arguments, Plaintiff's counsel argued that punitive damages were necessary to effect a change in Watchtower's policy. (*Id.* at Exh. G at 15:3-17; 24:21-25:10.)

It is abundantly apparent that Plaintiff's purpose was to change Watchtower's alleged national policy of secrecy and that she intended to do so through a large award of punitive damages. However, as discussed above, the U.S. Supreme Court has repeatedly and consistently held that such a purpose is improper and cannot be the basis for a punitive damages award. Thus, the punitive damages award here must be vacated in its entirety because Plaintiff's purpose in seeking punitive damages was to change Watchtower's alleged national policy.

In the alternative, if this Court denies this motion for JNOV on the punitive damages issue, Watchtower moves for a new trial on the punitive damages issue, as well as the other grounds set forth below. The application for this alternative relief is based on the grounds that there was no clear and convincing evidence of malice on the part of Watchtower, the award of punitive damages to "change national policy" is unconstitutional, and because the award of punitive damages was excessive.

III. LEGAL ARGUMENT—NEW TRIAL

A motion for new trial asks the Court to re-examine one or more issues of fact or law after trial. (Code Civ. Proc., § 656; *Carney v. Simmonds* (1957) 49 Cal.2d 84, 90.) Code of Civil Procedure section 657 expressly authorizes a verdict to be vacated and any other decision to be modified or vacated, and that section authorizes the Court to grant a new trial under various circumstances. The Court should order a new trial for each of the independent reasons discussed below.

A. Standard for Granting a New Trial

Code of Civil Procedure section 657(1) authorizes a new trial based on "any order of the court or abuse of discretion by which either party was prevented from having a fair trial." Error in jury instructions may be grounds for a new trial where the error is prejudicial to the moving party's right to a fair trial (*i.e.*, the error led to a miscarriage of justice). (*Mize-Kurzman v.*

Marin Comm. College Dist. (2012) 202 Cal.App.4th 832, 845-46.) When evaluating whether an error of instructional omission was prejudicial, the Court must evaluate (1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indications by the jury itself that it was misled. (*Id.* at p. 863.) Instructional error is prejudicial "where it seems probable" that the error "prejudicially affected the verdict." (*Id.* at p. 846.) An erroneous failure to instruct may also be grounds for a new trial under Code of Civil Procedure section 657(7), which authorizes a new trial for an "[e]rror in law, occurring at the trial and excepted to by the party making the application." (*Maher v. Saad* (2000) 82 Cal.App.4th 1317, 1325; *Hand Electronics, Inc. v. Snowline Joint Unified School Dist.* (1994) 21 Cal.App.4th 862, 871 (trial court's instruction erroneously permitting jury to award damages using an improper measure of damages prejudiced defendant and required a new trial); *Whiteley v. Philip Morris Inc.* (2004) 117 Cal.App.4th 635, 657-65 (trial court's failure to instruct jury regarding certain aspects of negligence claim entitled defendants to a judgment on that claim).) Giving an instruction, refusing to give an instruction, or modifying an instruction requested are all "deemed excepted to." (Code Civ. Proc., § 647.)

B. The Court Erred by Refusing to Give the Church Defendants' Requested Jury Instruction Regarding Allocation of Fault to Non-Parties and to Include Non-Parties, Either Generally or Specifically, on the Special Verdict Form.

It is undisputed that trial courts can allow a jury to allocate fault to nonparties. Civil Code section 1431.2(a) (*i.e.*, Proposition 51) provides that "the liability of each defendant for non-economic damages shall be several only and shall not be joint." The purpose of Proposition 51 was to eliminate the unfairness and cost of the so-called "deep pocket rule," which exploited relatively blameless defendants who are "perceived to have substantial financial resources." (Civil Code, § 1431.1.) Citing to Proposition 51, the California Supreme Court held that a defendant's liability for non-economic damages "cannot exceed his or her proportionate share of fault **as compared with all fault responsible for plaintiff's injury**, not merely that of defendants present in the lawsuit." (*Dafonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 603 (emphasis added).)

Here, and consistent with Proposition 51, the Church Defendants each requested a jury instruction and a special verdict form that provided the jury the opportunity to allocate fault to "other persons," *i.e.*, the universe of possible tortfeasors the jury might find contributed to Plaintiff's claimed damages. (*Bly-Magee v. Budget Rent-A-Car Corp.* (1994) 24 Cal.App.4th 318, 325; *see also Roslan v. Permea, Inc.* (1993) 17 Cal.App.4th 110, 113 (trial court erred by not including in the special verdict forms defendants who had settled before trial and by refusing to permit the trial defendant to present evidence of one settling defendant's culpability; the matter was remanded so that the jury could apportion liability among the "universe of tortfeasors").) Significantly, *Bly-Magee* involved the issue of allocation of the alleged negligent conduct of not only the named defendants, but also of two public entities, the California Highway Patrol and the Los Angeles County Sheriff's Department. The Court of Appeal in *Bly-Magee* held it was appropriate for the trial court to include on the verdict form the phrase "other persons" so that the jury could "apportion damages among the defendants and the universe of tortfeasors." (*Id.*) The *Bly-Magee* court also discussed that counsel for the defendant Budget Rent-A-Car could argue to the jury that the "other persons" to whom or to which the jury should allocate fault included the public entities of the California Highway Patrol and the Los Angeles County Sheriff.

Despite the above authority, the Court here declined to provide the requested instruction or special verdict form, including expressing reluctance to allow the jury to allocate fault to public entities like the Fremont Police Department, the District Attorney, and Child Protective Services, even though those agencies had the same or even more information about individual defendant Jonathan Kendrick than had the Church Defendants and their elders. (Schnack Decl. at Exh. F at 13:18-14:25.) The instruction and verdict forms requested would have provided the jury the opportunity to properly allocate fault to nonparties. (*Id.* at Exhs. L and M.) The Court's refusal to allow the jury to allocate fault to nonparties severely prejudiced the Church Defendants and, as a result, a miscarriage of justice occurred because the jury was prevented from even considering allocating fault to nonparties. Given the jury's ultimate findings of

liability, the jurors were thus forced to allocate more fault to the Church Defendants than they otherwise might have.

Furthermore, by not allowing the jury to allocate fault to nonparties, the Court violated the Church Defendants' free exercise of religion protected by the First Amendment and its California counterpart. A church is not spared from complying with "a neutral, generally applicable law [which is applied] to religiously motivated action." (*Employment Div., Dept. of Human Resources of Ore. v. Smith* (1990) 494 U.S. 872, 881.) However, by holding that only the Church Defendants can potentially be held liable for a failure to inform, the Court targeted only "religious conduct for distinctive treatment." (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 534.) "The Free Exercise Clause 'protect[s] religious observers against unequal treatment,' and inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation." (*Id.* at p. 542-43 (citation omitted).)

1. State of the Evidence. The undisputed trial testimony showed that on November 11, 1993, individual defendant Jonathan Kendrick confessed to two North Fremont Congregation elders that he had inappropriately touched his stepdaughter in July 1993 while they were in the Kendrick family home. The elders testified that on November 11, 1993, they advised the stepdaughter and her mother, Evelyn Kendrick, that they had the absolute right to report the July 1993 incident of abuse to the authorities. (Schnack Decl. at Exh. A at 102:21-103:13; 104:11-19; 120:22-121:7; 200:18-201:16.)

Evelyn Kendrick and Fremont Police Officer Davila each testified at trial that in February 1994, Evelyn Kendrick and her stepdaughter reported the July 1993 incident of abuse to the authorities, including Child Protective Services ("CPS"). Thereafter, still in February 1994, a CPS case worker and Officer Davila interviewed the stepdaughter, and in early March 1994, they interviewed Evelyn Kendrick and Jonathan Kendrick. (*Id.* at Exh. B at 52:22-55:9; *Id.* at Exh. D at 23:4-24:1.) After Jonathan Kendrick confessed to Officer Davila about the July 1993 incident of abuse, Officer Davila recommended to the Alameda County District Attorney's Office that Mr. Kendrick be charged with a sex crime for the July 1993 incident. (*Id.* at Exh. D

at 21:5-13.) The District Attorney filed charges against Mr. Kendrick, and he was convicted of a misdemeanor as a result. However, the evidence from Officer Davila and from the North Fremont Congregation elders in this case is that Officer Davila, the Fremont Police Department, the District Attorney, and Child Protective Services did **not** inform the North Fremont Congregation members or elders about their investigation of Mr. Kendrick having molested his stepdaughter, the resulting charges brought against him, or his conviction, even though Officer Davila was aware that Kendrick was a congregation member at the North Fremont Congregation. (*Id.* at Exh. D at 23:4-27:4.) Also, Officer Davila, the Fremont Police Department, the District Attorney, and Child Protective Services did not inform Kendrick's neighbors or anyone else in the local community about Kendrick's incident of abuse of his stepdaughter. (*Ibid.*)

Furthermore, if Plaintiff's trial testimony was believed by the jury, Plaintiff's parents allegedly put Plaintiff in harm's way by allowing her to go alone with Kendrick to his home numerous times—perhaps hundreds of times—over a two to three-year period, where Plaintiff testified Kendrick sexually abused her many, many times. For example, Plaintiff's father, Neal Conti, testified about certain interactions with Kendrick that included Plaintiff in their activities (*e.g.*, riding the train and a couple of other outings). (*Id.* at Exh. C at 67:4-70:8.) Plaintiff herself even testified to being abused by Kendrick in the presence of her father in an Amtrak dining car. (*Id.* at Exh. D at 129:20-130:24.) California law makes it the **parents' responsibility** to protect their child from the conduct of others. (*E.g.*, Cal. Welfare and Institutions Code, § 300; *Williams v. Garcetti* (1993) 5 Cal.4th 561, 570.) In addition, trial testimony revealed that Plaintiff's mother was a drug addict and alcoholic, made poor choices, and, among other things, would parade around the house naked and engage in sexual conduct with boyfriends in front of Plaintiff and when Plaintiff was within earshot. (Schnack Decl. at Exh. B at 121:6-9; Exh. C at 184:18-185:7, 193:7-25; 201:4-202:10; 209:17-210:10; 215:5-21.)

Based on the foregoing, the jury had ample evidence from which it could have concluded that certain nonparties, including the Fremont Police Department, Child Protective Services, the District Attorney, and Plaintiff's parents, were at fault and contributed to

Plaintiff's damages. As a result, the Court erroneously declined to allow the jury to allocate fault to those nonparties. On this basis alone, this matter should be remanded so that the jury can apportion liability among the "universe of tortfeasors."

2. The Effect of Other Instructions. The effect of the other instructions is entirely moot because the Court's refusal to include nonparties in its instructions and the special verdict form took away the jury's ability to allocate fault to any nonparties. The jury could only allocate fault between Kendrick and the Church Defendants.

3. The Effect of Counsel's Arguments. Because of the Court's refusal to instruct the jury on allocating fault to nonparties, the Church Defendants were precluded from arguing to the jury that fault should be attributed to certain nonparties on the special verdict form. Defense counsel did reference what the nonparties did or did not do, consistent with the evidence presented. However, these were arguments without any weight or practical effect, because the Court's refusal to include nonparties in its instructions and the special verdict form took away the jury's ability to allocate fault to any nonparties.

For each of the reasons set forth above, the Church Defendants were substantially and unfairly prejudiced by the Court's refusal to instruct the jury regarding the allocation of fault to nonparties and by the Court's refusal to provide a special verdict form that provided for such allocation.

C. The Court Erred by Refusing to Give the Church Defendants' Requested Jury Instruction Regarding Clergy Not Being Mandated Reporters Until January 1, 1997.

The Court also erroneously refused to provide an instruction to the jury that clergy were **not** mandated reporters of child sex abuse under California law until January 1, 1997, which was more than **three years after Kendrick inappropriately touched his stepdaughter in 1993**. This is significant because Plaintiff's "breach of duty" argument was premised in part on an alleged failure to warn, and the Court's so-called duty instruction to the jury included reference to the presence or absence of any warning about Kendrick by the North Fremont Congregation elders.

The statutory scheme in place in 1993 was analogous to that which the California Supreme Court dealt with in *Nally v. Grace Community* (1988) 47 Cal.3d 278. In *Nally*, the plaintiffs alleged that their son had committed suicide, in part due to the negligent counseling that had been provided to their son by a minister. As discussed above, however, the Court uniformly rejected that theory of liability. Of note, the Supreme Court held that the legislative exemption of the clergy from licensing requirements that were applicable to other counselors was an acknowledgement "that access to the clergy for counseling should be free from state imposed counseling standards, and that 'the secular state is not equipped to ascertain the competence of counseling when performed by those affiliated with religious organizations.'" (*Id.* at p. 298.) The Supreme Court in *Nally* further explained:

> Because of the differing theological views espoused by the myriad of religions in our state and practiced by church members, it would certainly be impractical, and quite possibly unconstitutional, to impose a duty of care on pastoral counselors. Such a duty would necessarily be intertwined with the religious philosophy of the particular denomination or ecclesiastical teachings of the religious entity.

(*Id.* at p. 299.)

Likewise, the Legislature recognized the need for ministers, such as the elders in the North Fremont Congregation, to provide counseling and spiritual assistance to congregation members without interference from the State. For this reason, the Legislature did not make ministers or clergy mandated reporters.

Here, because of the Court's refusal to give the requested instruction, the jury was misled and confused. They did not have the proper understanding that the elders, as agents of the Church Defendants, were **not** mandated reporters at the time they learned of Kendrick's 1993 misconduct.

1. State of the Evidence. Effective January 1, 1997, California Penal Code 11166 added ministers to its list of mandated reporters of suspected child abuse, unless the minister learned of this abuse as a result of a "penitential communication." However, Plaintiff's expert, Anna Salter, Ph.D., intentionally misled the jury on this issue by suggesting that clergy were legally obligated to report under the California mandated child abuse reporting law in 1993 and that the 1997 law simply clarified this reporting obligation. (Schnack Decl. at Exh. D at 71:3-

72:15.) An instruction that **clergy were not mandated reporters under California law at any time relevant to this action** would have prevented Dr. Salter's intentionally misleading testimony from being used by Plaintiff's counsel during closing to plant in the jury's mind that the Church Defendants' elders had a legal duty to report child sexual abuse in 1993 was an open question, when the law is clear that no such legal duty existed.

2. The Effect of Other Instructions and the Effect of Counsel's Arguments. The Court's so-called "duty" instruction states that the Church Defendants "had a duty to take reasonable protective measures to protect [Plaintiff] from the risk of sexual abuse by . . . Kendrick." (*Id.* at Exh. F at 60:5-24.) Plaintiff's counsel argument suggested to the jury that one measure the Church Defendants could have taken was reporting Kendrick's confession regarding touching his stepdaughter to the authorities. (*Id.* at Exh. F at 107:6-10, 215:20-216:19.)

This argument by Plaintiff's counsel, combined with Dr. Salter's intentionally misleading the jury to make them think that the Church Defendants' elders had a legal duty to report child sexual abuse to the authorities in 1993, and the Court's refusal to properly instruct the jury that the Church Defendants were not mandated reporters under California law until 1997, misled, confused, and allowed the jury to conclude that the Church Defendants failed to comply with the mandatory child abuse reporting law and breached some alleged duty owed to Plaintiff.

Plaintiff's counsel also argued to the jury that the North Fremont elders had a duty to inform all of the congregation parents of the 1993 incident involving Kendrick, and to let them know that he was a child molester. (*Id.* at Exh. F at 95:6-17.) However, the testimony of the Church Defendant elders and the July 1, 1989, letter to all bodies of elders clearly showed that this would have been a serious breach of confidentiality in violation of the tenets and practices of their faith. The Court's duty instruction to the jury that it could consider the presence or the absence of any warning by the Church Defendants' in its determination of whether Church Defendants took reasonable steps to protect Plaintiff from abuse by Kendrick, in the absence of any statutory law that requires such action, resulted in an unconstitutional clergy malpractice

claim in that the Church Defendants' elders' supposed failure to take action was the basis of Plaintiff's claim. (*Nally, supra*, 47 Cal.3d at p. 299 (California law does not recognize clergy malpractice claims, holding that it is unconstitutional to impose a duty of care on a church for counseling).)

For each of the reasons set forth above, the Church Defendants were each substantially and unfairly prejudiced by the Court's refusal to instruct the jury that clergy, including the elders in the North Fremont Congregation, were not mandated reporters under California law until January 1, 1997. Thus, a new trial is warranted.

D. The Non-Economic Damages Award Is Excessive.

Code of Civil Procedure section 657(5) authorizes a new trial where the award of damages is excessive. The Court has the power and responsibility to reweigh the evidence when deciding a motion for new trial:

> A new trial shall not be granted upon the ground of. . . excessive . . . damages, **unless after weighing the evidence** the court is convinced from the entire record, including reasonable inferences therefrom, that the . . . jury clearly should have reached a different verdict . . . .

(Code Civ. Proc., § 657 (emphasis added).) It has long been held that a trial court can order a new trial where the award is so disproportionate to the facts of the case that it shocks the sense of justice and immediately raises a strong presumption that it is based on prejudice or passion, rather than sober judgment. (*Harrison v. Sutter Street Railway Co.* (1897) 116 Cal. 156, 164; *Gerard v. Ross* (1988) 204 Cal.App.3d 968, 978 (new trial for excessive damages granted where award resulted from the passion and prejudice of the jury).)

During the trial, the only witness who testified that Plaintiff was abused was the Plaintiff herself. Her trial testimony varied greatly from her deposition testimony about the number of times she was abused, as well as the period of time during which she alleged that she was abused and the circumstances that led to her abuse. While she testified during her deposition that the abuse by Kendrick took place at his home when he took her from the Kingdom Hall hundreds of times after Sunday meetings over a two-year period, her trial testimony was that she was uncertain of the number of incidents of abuse or the time period during which the abuse

occurred. She also testified to one incident of abuse by Kendrick in an Amtrak train dining car while her father was sitting across from them. In addition, during her trial testimony, she added for the first time that there were times when she was in field service with Kendrick and that **after** field service Kendrick took her to his home and abused her. (Schnack Decl. at Exh. D at 110:22-113:21, 125:25-126:23, 127:12-130:24, 148:25-149:3.) Furthermore, during closing argument, Plaintiff's counsel mislead the jury by suggesting that the Plaintiff was abused by Kendrick **during** field service even though there was no evidence to support this suggestion. (*Id.* at Exh. F at 212:14-21.)

In addition, the Plaintiff's description of being hugged by Kendrick at the Kingdom Hall and sitting on Kendrick's lap at the Kingdom Hall and being taken to Kendrick's home alone were disputed by her father, Neal Conti (*id.* at Exh. C at 48:17-21, 48:24-49:6, 61:2-11, 64:3-13, 65:23-66:22; 69:13-21, 77:2-13, 80:22-82:5, 83:11-84:1, 85:9-86:18), elders Abrahamson and Clarke (*id.* at Exh. A at 126:15-17, 139:16-23, 140:21-141:1, 143:22-144:9, 150:5-24, 208:20-209:11, 214:10-215:5), and elder Lamerdin (*id.* at Exh. B at 168:2-8, 173:9-12, 179:3-9, 181:24-184:3). They kept an eye on Kendrick after the 1993 incident with his stepdaughter and never saw such things happen. Congregation members Bernice Munoz, Sylvia Munoz, and Pamela Figuerido also testified that they never saw such conduct at the Kingdom Hall, that such conduct would have been inappropriate and they would have reported it to the elders if they had seen it. (*Id.* at Exh. E at 59:25-61:16, 68:13-70:10, 85:23-88:1.) Even Plaintiff's mother, Kathleen Conti, who was represented by Plaintiff's attorney during her deposition, testified at trial that she never saw Plaintiff sitting on Kendrick's lap at the Kingdom Hall, never saw Kendrick "bear hug" Plaintiff at the Kingdom Hall, and she never allowed Plaintiff to go alone to Kendrick's home. (*Id.* at Exh. B at 124:5-125:1.)

Another factor to keep in mind in evaluating the propriety of the award of non-economic damages in this case is that while Plaintiff testified at her deposition that the abuse by Kendrick occurred at his house while he lived alone, he only lived alone for a few weeks in 1996. After his separation from his wife and losing his home in foreclosure, he lived with the Francis

family. (*Id.* at Exh. B at 91:6-14.) Thus, if Plaintiff was abused by Kendrick, it occurred over a very short time span.

While child sexual abuse is tragic, the only thing Plaintiff claims the Church Defendants did wrong was have a so-called "policy of secrecy." As fully discussed in Section II.B above, the single paragraph regarding child abuse in the July 1, 1989, letter did not provide for a "policy of secrecy" but was an instruction to the elders to immediately report information concerning child abuse, including sexual abuse, to Watchtower's Legal Department because certain states required reporting and Watchtower also wanted to ensure that the victims were protected from further harm. Despite Watchtower's stated concern for protecting children and compliance with child abuse reporting laws, Plaintiff's counsel manipulated and twisted language in this same letter that was unrelated to child abuse to concoct an argument that Watchtower had an alleged "policy of secrecy." As demonstrated by the extremely large non-economic damages awarded, Plaintiff's counsel's manipulation and twisting of the evidence so inflamed the jury's passions and prejudices that they awarded even more than Plaintiff's counsel asked for. The award for non-economic damages is way out of line with the evidence at trial and is excessive. Thus, a new trial is necessary.

E. A New Trial Is Necessary Because There Was No Clear and Convincing Evidence of Malice to Support the Punitive Damages Award.

In the interest of brevity and judicial economy, the Church Defendants do not here fully repeat the legal analysis set forth in Section II.B. For the same reasons discussed therein, this Court should order a new trial because there was not clear and convincing evidence of malice to support the $21,000,001 punitive damages award.

F. A New Trial Is Necessary Because it Was Unconstitutional to Award Punitive Damages to Change Watchtower's National Policy—Plaintiff's Stated Purpose for Her Claim of an Alleged Act of Malice.

Again in the interest of brevity and judicial economy, the Church Defendants also do not here fully repeat the legal analysis set forth in Section II.C. For the same reasons discussed therein, this Court should order a new trial because Plaintiff's stated purpose for her claim of

punitive damages (to change Watchtower's **national policy**) is unconstitutional as a matter of law.

G. The Punitive Damages Award Is Excessive.

To the extent the Court does not vacate the damages award in its entirety, the Court should order a new trial pursuant to Code of Civil Procedure section 657(5) because the punitive damages award is excessive. In *Gerard*, 204 Cal.App.3d at 978-79, the court of appeal ordered a new trial on the basis that the damages awarded were excessive because the punitive damages award was "confiscatory in nature" and did not a bear reasonable relationship to compensatory damages or the defendant's total assets or annual income. (*Id.* at p. 978 n. 6.) The U.S. Supreme Court has held that "grossly excessive" or arbitrary punitive awards violate due process. (*State Farm*, *supra*, 538 U.S. at p. 416.) The Court recognized the following "guideposts" in assessing the reasonableness of a punitive damages award: (1) the degree of reprehensibility of defendant's conduct; and (2) the disparity between plaintiff's harm and the punitive damages award. (*Id.* at p. 418 (note that the Court also recognized a third guidepost not applicable here—the difference between the punitive award and any authorized civil penalties).) The Court further held that there are no mathematical limits to calculating a punitive damages award but that ordinarily, a single-digit ratio between punitive and compensatory damages is more likely to satisfy due process. (*Id.* at p. 424-26.) In a separate case, the U.S. Supreme Court held that due process requires that juries not punish defendants for harm caused to strangers to the action. (*Philip Morris USA*, *supra*, 549 U.S. at pp. 349, 356-57 (award based on jury's desire to punish defendant for harming nonparties would amount to taking of defendant's process without due process).)

1. Degree of Reprehensibility. As discussed in Section II.B above, the Church Defendant's July 1, 1989, letter was not a "policy of secrecy" but was an instruction to the elders to immediately report information concerning child abuse, including sexual abuse, to Watchtower's Legal Department because certain states required reporting, and Watchtower wanted to ensure that the victims were protected from further harm. This three-sentence

paragraph is not reprehensible at all, much less so reprehensible as to justify an award of over $21,000,000 in punitive damages. The award is thus unconstitutional on its face.

2. Disparity Between Compensatory Damages and Punitive Damages Awarded. The compensatory damages awarded totaled $7,000,000. The jury found that Watchtower was twenty-seven percent (27%) responsible for Plaintiff's harm. Twenty-seven percent (27%) of the $6,870,000 in noneconomic damages awarded is $1,854,900, and there is a great disparity between that number and the punitive damages awarded. Furthermore, in light of the evidence in this case showing a lack of malice, a new trial is warranted to cure the grossly excessive and arbitrary award of punitive damages.

In addition, "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." (*State Farm*, *supra*, 538 U.S. at p. 425.) Here, the jury indisputably awarded Plaintiff a substantial amount of compensatory damages, whether one considers the $7,000,000 in total compensatory damages awarded against all defendants or only the $1,984,900 against Defendant Watchtower when the economic and noneconomic damages are combined. Either way, the *Campbell* case supports the view that a "ratio . . . equal to compensatory damages" reaches the outer limits of due process here. For this reason, too, a new trial is warranted to cure the grossly excessive and arbitrary award of punitive damages.

H. Request for Remittitur.

Should the Court find the damages, non-economic and/or punitive, awarded to Plaintiff excessive and order a new trial solely on the issue of damages, the Church Defendants request remittitur pursuant to Civil Code section 662.5(b) and asks that the Court reduce the non-economic and punitive damages awards to amounts the Court independently determines to be fair and reasonable. This request for remittitur is made for each and every reason discussed in Sections II.A through II.C and III.C through III.G.

IV. CONCLUSION

For the independent reasons discussed herein, the Church Defendants request that the Court grant Watchtower's motion for judgment notwithstanding the verdict on punitive

damages, as well as the Church Defendants' motion for new trial, and request for remittitur. Further, the Church Defendants remind the Court that pursuant to Code of Civil Procedure sections 629, 659, and 660, the Court's jurisdiction to rule on these matters ends on August 13, 2012. Therefore, the Court must rule on this Motion by that date to avoid severe prejudice and irreparable harm to the Church Defendants.

DATED: July 17, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack
Douglas M. Egbert

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: July 17, 2012

THE McCABE LAW FIRM, APC

By _____
FOR James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On July 17, 2012, I served the following document(s) described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTIONS FOR JNOV AND MOTIONS FOR NEW TRIAL** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to NORCO OVERNIGHT DELIVERY for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 17, 2012, at Sacramento, California.

Noreen F. Witt

NOREEN F. WITT

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

Jonathan Kendrick, Defendant in pro per
200 Honey Lane
Oakley, CA 94561
(925) 484-1008

9115552

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JAN 28 2011
CLERK OF THE SUPERIOR COURT
By A. Mendoza
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation;
THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation;
THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association;
JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity;
KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation;
JONATHAN KENDRICK, an individual;
and ROES 1 to 10,

Defendants.

No. HG11558324

COMPLAINT FOR DAMAGES FOR CHILDHOOD SEXUAL ABUSE

Plaintiff alleges,

1. Plaintiff JANE DOE is an adult, under the age of 26, and residing in Los Angeles County. Plaintiff appears by the fictitious name JANE DOE to preserve her anonymity because of the sensitive and highly personal nature of the subject matter of this action. (*Doe v. Lincoln Unified School District* (2010) 187 Cal. App. 4th 1286). Plaintiff's true name and identity will be disclosed to defendants with service of this Complaint.

2. At all times herein, defendant THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc. (WATCHTOWER NY) was a corporation, licensed in the State of New York, with a principle place of business in the City of New York, State of New York. At all times herein, defendant THE

WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA (WATCHTOWER PA) was a corporation, licensed in the State of State of Pennsylvania, with a principle place of business in the City of New York, State of New York. At all times herein, defendant THE GOVERNING BODY OF JEHOVAH'S WITNESSES (GBJW), was an unincorporated association of individuals, with a principle place of business in the City of New York, State of New York.

3. Plaintiff is unaware of the true names and capacities of defendants sued herein as ROES 1 to 10 and therefore sue said defendants by such fictitious names. Said fictitiously named defendants were negligent in and about the matters alleged herein, and that such negligence was the proximate cause of the damages complained of by plaintiff. Plaintiff will seek leave to amend this Complaint when the true names and capacities of such fictitiously-named defendants have been ascertained.

4. At all times herein, defendant JEHOVAH'S WITNESSES on Peralta Boulevard (JWP), Fremont, was an entity, the form of which is unknown, that owned, managed, operated, supervised, and staffed a religious facility, organized and existing for the purpose of practicing and promoting the faith of Jehovah's Witnesses, and located within the City of Fremont, State of California. At all times herein, defendant KINGDOM HALL OF JEHOVAH'S WITNESSES (KHJW), a corporation, was a corporation with a principle place of business located in the City of Fremont, County of Alameda, State of California. At all times herein, defendant KHJW concurrently with defendant JWP owned, managed, operated, supervised, and staffed the facility located in the City of Fremont, County of Alameda, California. At all relevant times herein, defendants WATCHTOWER NY, WATCHTOWER PA, and GBJW, concurrently owned, managed, operated, supervised, and staffed that religious facility located in the City of Fremont, County of Alameda, California.

5. At all times herein, defendant JONATHAN KENDRICK was an individual, residing in the State of California, with a date of birth of January 31, 1954, and is currently a registered sex offender within the State of California.

///

///

FIRST CAUSE OF ACTION
Negligence
(As to Defendants WATCHTOWER NY, WATCHTOWER PA, GBJW, KHJW, and JWP Only)

6. In the time period of 1996 and 1997, plaintiff JANE DOE was a minor. During that time period, plaintiff JANE DOE, was a member of the religious group commonly known as the Jehovah's Witnesses, and attended, participated in, and was a member of the Jehovah's Witness religious facility located in the City of Fremont, and owned, managed, operated, supervised, and staffed by defendants WATCHTOWER NY, WATCHTOWER PA, GBJW, KHJW, JWP, and each of them. During that same time period, defendant JONATHAN KENDRICK was a volunteer, active member, and participant in the congregation and congregation leadership of the religious facility in Fremont. During that time period, defendant KENDRICK sexually molested and abused plaintiff JANE DOE on multiple occasions within the County of Alameda. Defendant KENDRICK accomplished the sexual abuse and molestation of plaintiff by use of the trust, position, and authority he held as a fellow member, volunteer, and leader of the religious facility and congregation in Fremont.

7. At all times herein, defendants WATCHTOWER NY, WATCHTOWER PA, GBJW, KHJW, JWP, and each of them, negligently supervised, managed, and controlled defendant KENDRICK in his membership and participation in the Fremont religious facility, and negligently failed to warn plaintiff JANE DOE, her family, and other members of the congregation, of the propensity and risk that defendant KENDRICK would sexually molest or abuse minor girls, a propensity and history of which defendants, and each of them, acting through their employees, agents, and volunteers, had actual notice. During the same time period, defendants, and each of them, were negligent in failing to exercise reasonable care to protect plaintiff JANE DOE, and other minors, who were members of, or participants in, activities at the religious facility in Fremont, from the risk of sexual abuse or molestation by perpetrators, including defendant JONATHAN KENDRICK.

8. As a result of the negligence of defendants, and each them, as herein alleged, plaintiff JANE DOE was caused to suffer the physical, mental, and emotional injuries of childhood sexual abuse and molestation; was caused to incur medical and other expenses for care, treatment, and counseling; and has suffered loss of earnings and earning capacity. Plaintiff will further continue to

incur all such damages in the future, in amounts of which plaintiff will advise defendants at least sixty days prior to trial.

SECOND CAUSE OF ACTION
Willful and Intentional Acts
(As to Defendant Jonathan Kendrick Only)

9. Plaintiff realleges each and every allegation contained in paragraphs 1 through 8 as though fully set forth herein.

10. During the time period stated herein, defendant JONATHAN KENDRICK intentionally, willfully, and maliciously sexually abused and molested plaintiff JANE DOE during the time that she was a minor.

11. As a result of the intentional, willful conduct of defendant JONATHAN KENDRICK, as set forth herein, plaintiff has incurred, and will continue to incur the damages as set forth in paragraph 8 of this Complaint.

WHEREFORE, plaintiff prays for relief as follows:

1. For compensatory damages, including economic and non-economic, according to proof in amounts of which plaintiff will advise defendants at least 60 days prior to trial;

2. For costs of suit incurred herein; and

3. For such further relief as the Court deems just and proper.

Dated: January 26, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Watchtower et. al.

FILED
ALAMEDA COUNTY
MAR 28 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA
ALAMEDA COUNTY

JANE DOE

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation.

Defendants.

Case No: HG 11558324

DEFENDANTS NOTICE OF DEMURRER AND DEMURRER TO PLAINITFF'S COMPLAINT

JUDGE: ROBERT McGUINESS
DEPT.: 22
DATE: May 19, 2011
TIME: 3:00 p.m.

TRIAL DATE: Not yet set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 19, 2011 at 10:30 a.m. or as soon thereafter as the matter may be heard in Department 22 of the above titled court located at 24405 Amador Street Hayward, CA 94544, Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation,

(collectively hereinafter "Church Defendants"),[1] will Generally and Specially Demurrer and hereby Generally and Specially Demurrer to Plaintiffs' Complaint. The Demurrers are based on this notice of Demurrer and Demurrers, the attached Memorandum of Points and Authorities, the records and papers on file herein, and upon other such documentary evidence and argument that may be presented at the hearing of these Demurrers.

PLEASE TAKE FURTHER NOTICE THAT an appearance by parties or counsel is necessary on the date and time set forth above. A tentative ruling can be obtained by calling (510) 267 6938 or by accessing the court's website at http://www.alameda.court.ca.gov/.

DATED: March 23, 2011

THE McCABE LAW FIRM, APC

James M. McCabe
Attorneys for Church Defendants

[1] This appearance is *not* made on behalf of JONATHAN KENDRICK, the individual named in the Complaint. Additionally, this appearance is not made on behalf of the entity described by the Plaintiff as "THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association" because this entity has not yet been served with a copy of the Summons and Complaint in this matter.

9234210

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Watchtower et. al.

FILED
ALAMEDA COUNTY
MAR 28 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation.

Defendants.

Case No.: HG11558324

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRER TO PLAINTIFF'S COMPLAINT

JUDGE: ROBERT MCGUINESS
DEPT.: 22
DATE:
TIME:

TRIAL DATE: Not yet set

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, and KINGDOM HALL OF JEHOVAH'S WITNESSES,[1] by and through the undersigned counsel, submit this Memorandum of Points and Authorities in Support of Church Defendants' Demurrer to Plaintiff's Complaint.

[1] This appearance is *not* made on behalf of JONATHAN KENDRICK, the individual named in the Complaint. Additionally, this appearance is not made on behalf of the entity described by the Plaintiff as "THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association" because this entity has not yet been served with a copy of the Summons and Complaint in this matter.

PLAINTIFF'S COMPLAINT

The Plaintiff's *Complaint For Damages For Childhood Sexual Abuse* (hereinafter "Complaint") is four pages long and contains two causes of action. In it, the Plaintiff is described as a 26-year-old female and resident of Los Angeles County, California. *Complaint* ¶1. The Defendants appearing in this motion include the two corporations, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., as well as two other entities described as JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, and KINGDOM HALL OF JEHOVAH'S WITNESSES (collectively "Church Defendants"). *Complaint* ¶¶ 2, 4.

The lone cause of action against the Church Defendants is one for negligence that allegedly occurred in 1996 and 1997. In paragraph six, the Plaintiff is described as a minor who was a "member of the religious group commonly known as Jehovah's Witnesses, and attended, participated in, and was a member of the Jehovah's Witness religious facility located in the City of Fremont." *Complaint* ¶ 6. The individual defendant, JONATHAN KENDRICK (hereinafter "KENDRICK"), is described as a "volunteer, active member, and participant in the congregation and congregation leadership of the religious facility in Fremont." *Id.* He is also described as a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." *Id.*

The Church Defendants are alleged to have: (1) "negligently failed to warn" and/or fail to "exercise reasonable care to protect" Plaintiff Doe and others from the alleged criminal acts of Defendant KENDRICK; and (2) negligently supervised, managed, and controlled defendant KENDRICK "in his membership and participation in the Freemont religious facility." *Complaint* ¶ 7. Finally, as a result of the alleged negligence of the Church Defendants, Plaintiff Doe is said to have suffered physical and emotional damages. *Complaint* ¶ 8.

DEMURRER STANDARD

For the purposes of a demurrer, "the rule is that we accept as true all the material allegations of the complaint." *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7, 276 Cal.Rptr. 303, 305. The Court thus treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. Demurrers do not test the truth of a plaintiff's allegations or the accuracy with which they describe a defendant's alleged conduct. *E.g., Baltins v. James* (1995) 36 Cal.App.4th 1193, 1196-97, 42 Cal.Rptr.2d 896, 898.

ARGUMENT

I. Plaintiffs' Allegations Concerning Negligence Are Ambiguous And Subject To Demurrer Under Code Of Civil Procedure § 430.10(f)

The only claim alleged in the Complaint against the Church Defendants is one for "negligence." However, this cause of action, only three paragraphs long, is ambiguous as pled and subject to special demurrer under Civil Procedure Code § 430.10(f).

In *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 151 Cal.Rptr. 828, the Court of Appeal noted that the plaintiff's complaint was uncertain and alleged conclusions of law as opposed to facts. "It is settled law that a pleading *must allege facts and not conclusions*, and that material facts must be alleged directly and not by way of recital." *Id.* at 537, 151 Cal.Rptr. at 832 (emphasis added). These "essential facts upon which a determination of the controversy depends should be stated with *clearness and precision so that nothing is left to surmise*." *Id.* (emphasis added). Otherwise, "[t]hose recitals, references to, or allegations of material which are left to surmise are subject to special demurrer for uncertainty." *Id.*

As set forth more fully below, the Plaintiff has not alleged sufficient facts to show that either: 1) a "special relationship" existed between herself and the Church Defendants that would give rise to a duty to warn or aid; or that 2) an agency relationship existed between Defendant

KENDRICK and the Church Defendants. Thus, this Court should grant the Church Defendants' special demurrer on the negligence cause of action because the *Complaint* is vague and ambiguous and subject to demurrer under Code Of Civil Procedure § 430.10(f).

II. There Is No Legal Duty To Aid A Third Party Absent A "Special Relationship" Showing Custody Or Control.

A tort involves the violation of a *legal* duty, imposed by statute, contract or otherwise, owed by the defendant to the person injured. *Romero v. Superior Court* (2001) 89 Cal.App. 4th 1068, 1078, 107 Cal.Rptr.2d 801, 808. If a legal duty does not exist, "any injury is 'damnum absque injuria'— injury without wrong." 5 Witkin, *Summary of Cal. Law* (10th ed. 2005) Torts, § 6, p. 48; *Romero, supra.* Because the existence of a duty is an essential element of a tort claim and thus a necessary precondition for liability, the first determination a court must make when examining a negligence claim is whether a legal duty exists. *Hooks v. Southern Ca. Permanente MedicalGroup* (1980) 107 Ca1.App.3d 435, 443, 165 Cal.Rptr. 741, 745.

It is axiomatic that a person does *not* have a legal duty to come to the aid of another. RESTATEMENT (SECOND) OF TORTS (1965) § 314. This is true irrespective of the gravity of the danger to which the other is subjected and the insignificance of the trouble, effort or expense of giving aid or protection. *Id.,* § 314 comment c. "A determination that as a matter of law no duty is owed to the Plaintiff is particularly common in situations in which the defendant's responsibility for the activities of third parties is involved." *Hooks*, 107 Ca1.App.3d at 443, 165 Cal.Rptr. at 745. However, this general "no duty" rule is subject to an exception in certain situations where a "special relationship" exists between the parties. *Id.,* § 314A.

California courts have long adhered to these "no duty to aid" principles. As the Court of Appeal noted, "'[a] person is ordinarily not liable for the actions of another and is under no duty to protect another from harm in the absence of a *special relationship* of custody or control.'" *Romero,* 89 Cal.App.4th at 1078-79, 107 Cal.Rptr.2d at 808 (emphasis in original) (citations omitted); *see also Garcia v. Superior Court* (1990) 50 Cal.3d 728, 734, 268 Cal.Rptr. 779, 782

("A special relationship is a prerequisite for liability based on a defendant's *failure to act.*") (emphasis in original). Furthermore, "[a]bsent a 'special relationship,' one cannot be held liable for mere nonfeasance, such as not protecting another from a criminal attack by a third party." *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727, 90 Cal.Rptr.2d 549, 558.

In one recent case, the Court of Appeal considered whether a "special relationship" existed between a priest and a sexual abuse victim. *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 130 Cal.Rptr.2d 601. The court concluded that a "special relationship" did not exist, and affirmed the dismissal of the negligence claims against the priest and the supervising Archdiocese. The court reasoned that the priest "cannot be liable to appellant [the victim] for breach arising out of a duty arising out of a special relationship" because it would be the equivalent to a prohibited clergy malpractice claim. *Id.* at 270, 130 Cal.Rptr.2d at 609. Therefore, unlike physician/patient or attorney/client relationships, the Court determined that a church and its ministers did not have "special relationships" with their parishioners.

III. Plaintiff Has Not Alleged Sufficient Facts To Show That A "Special Relationship" Existed Between Herself And The Church Defendants.

In order to survive a special demurrer, Plaintiff's negligence claim must allege some facts or other circumstances sufficient to show that a "special relationship" existed between herself and the local and national Church Defendants. However, the Complaint only alleges that Plaintiff Doe was "a member of the religious group commonly known as Jehovah's Witnesses, and ***attended***, ***participated*** in, and was a ***member*** of the Jehovah's Witness religious facility located in the City of Fremont." *Complaint*, ¶ 6 (emphasis added). Therefore, Plaintiff Doe was only alleged to be a "member" and/or a "participant" with one of the local Church Defendants.

This conclusory allegation is not sufficient to establish a "special relationship" between the Plaintiff and the local Church Defendant(s), let alone between the Plaintiff and the national

Church Defendants. This is not a church daycare setting. This is not a situation where the minor was entrusted to the Church Defendants on a field trip. The Plaintiff is alleged to be simply a member who attended religious services with, presumably, her parents, although the Complaint is silent on that issue as well. The Complaint does not state where the minor's parents may have been when the abuse allegedly took place, or how the minor ended up with Defendant KENDRICK. In fact, there are no facts alleged about where, when, or how the abuse took place aside from the fact that it took place "on various occasions within the County of Alameda." *Complaint*, ¶ 6.

Using the standard set forth by the Plaintiff, every church, temple, or other religious institution forms a "special relationship" with the minors who may "attend" or "participate" in their religious services. This would be a wholesale expansion of the "special relationship" doctrine and eviscerate the "no duty to aid" rule found in the common law and California law. The nature of the relationship between the Plaintiff and the Church Defendants is one of the fundamental issues in this litigation. The Plaintiff cannot simply 'leave these essential facts to surmise' and ask the Court to guess at the nature of the relationship between herself and the Church Defendants. *Ankeny*, 88 Cal.App.3d at 537, 151 Cal.Rptr. at 832..

Because Plaintiff's allegations concerning negligence have left out material facts, such as the basis of the alleged "special relationship" with the Church Defendants, Plaintiff's cause of action for negligence is subject to a special demurrer under Civil Procedure Code § 430.10(f).

IV. Plaintiff Has Not Alleged Sufficient Facts to Show that Defendant KENDRICK Was An Agent Of The Church Defendants.

In order for the Church Defendants to have been responsible for negligently 'supervising, managing, and or controlling' Defendant KENDRICK, there must have existed an agency relationship between Church Defendants and Defendant KENDRICK at the time of the abuse. *See e.g. Warfield v. Summerville Senior Living, Inc.*, 158 Cal.App.4th 443, 69 Cal.Rptr.3d 783

(2007) (holding that the formation of an agency relationship is a bilateral matter, and words or conduct by both principal and agent are necessary to create the relationship.).

However, there is no allegation of agency contained within the Complaint. The Complaint only notes that KENDRICK was a "fellow member, volunteer, and leader of the religious facility and congregation in is Fremont." *Complaint*, ¶ 6. The Church Defendants are alleged to have "negligently supervised, managed, and controlled Defendant KENDRICK in his membership and participation in the Fremont religious facility." *Id.* Thus, according to the Complaint, Defendant KENDRICK appears to have only been a fellow member of the congregation at the time of the alleged abuse, not an agent or employee of the church. Also, he is not alleged to have occupied any clerical position such as a priest, minister, or pastor. Furthermore, KENDRICK is not alleged to have been assigned any responsibilities to care for or supervise children, including, but not limited to, Plaintiff Doe.

If the Plaintiff is contending that a church, temple or other religious institution has a duty to protect one member of the congregation from sexual abuse committed by another member, this would be a novel cause of action in California – and one that has been rejected elsewhere. *Cf. Meyer et al. v. Lindala et al.*, 675 N.W.2d 635, 640 (Minn. App. 2004) (holding that "special relationship" did not exist between victims and congregation, and thus congregation did not have affirmative duty to protect victims from abuse committed by another member); *Bryan R. v. Watchtower et al.*, 738 A.2d 839, 843 (Me. 1999) (holding no fiduciary duty existed between congregation and member who was a victim of sexual abuse, where perpetrator was not an agent or employee of the church, and simply another member in congregation).

Because Plaintiff's allegations concerning negligent supervision, management, and control of Defendant KENDRICK leave out material facts, such as the description of his

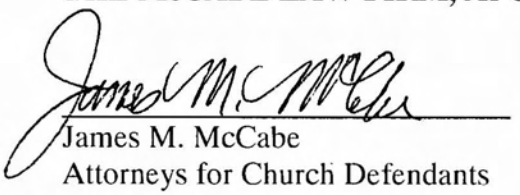
relationship with the Church Defendants, Plaintiff's cause of action for negligence on these issues is also subject to a special demurrer under Civil Procedure Code § 430.10(f).

CONCLUSION

For the reasons set forth above, this Court should grant Church Defendants' demurrer on Plaintiff's negligence cause of action.

DATED: March 23, 2011

THE McCABE LAW FIRM, APC



James M. McCabe
Attorneys for Church Defendants

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Law Offices Of James M. McCabe
Attn: McCabe, James M.
4817 Santa Monica Avenue
Suite B
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Demurrer to Complaint Overruled

The Demurrer to Complaint was set for hearing on 05/19/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Demurrer of Defendants Watchtower Bible and Tract Society of New York, Watchtower Bible and Tract Society of Pennsylvania, Inc., Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses ("Defendants") to the Complaint is OVERRULED. Plaintiff Jane Doe ("Plaintiff") has sufficiently alleged facts to support a duty by Defendants to Plaintiff in order to support this negligence claim. (See Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377.)

The Court notes that in Defendants' moving papers, Defendants cite to out-of-state cases, but have not provided copies of such cases. In the future, Defendants should comply with Cal. Rules of Court, Rule 3.1113(i).

Defendants shall file and serve an answer to the Complaint within 20 days, which time shall run from service of notice of entry of this order by Plaintiff.

Dated: 05/19/2011

facsimile

Judge Robert McGuiness

9432914

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
James M. McCabe, SBN 51040 The McCabe Law irm, APC 4817 Santa Monica Ave Suite B San Deigo, CA 92107 TELEPHONE NO.: 619224-2848 FAX NO. (Optional): 619 224-0089 E-MAIL ADDRESS (Optional): jim@mccabelaw.net ATTORNEY FOR (Name): Defendant Watchtower Bible and Tract Society et.al.	FILED AT ALAMEDA COUNTY MAY 25 2011 CLERK OF THE SUPERIOR COURT By _____ Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 22405 AMADOR STREET MAILING ADDRESS: CITY AND ZIP CODE: HAYWARD, CA 94544 BRANCH NAME:	
PLAINTIFF/PETITIONER: JANE DOE DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY ET.AL	

CASE MANAGEMENT STATEMENT

(*Check one*): ☑ **UNLIMITED CASE** (Amount demanded exceeds $25,000) ☐ **LIMITED CASE** (Amount demanded is $25,000 or less)

CASE NUMBER: HG11558324

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: JUNE 14, 2011 Time: 3:00 P.M. Dept.: 22 Div.: Room:

Address of court (*if different from the address above*):
1221 OAK STREET OAKLAND CA 94612

☑ **Notice of Intent to Appear by Telephone, by (*name*):** JAMES McCABE

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** (*answer one*):
   a. ☑ This statement is submitted by party (*name*): DEFENDANTS WATCHTOWER ET. AL.
   b. ☐ This statement is submitted **jointly** by parties (*names*):

2. **Complaint and cross-complaint** (*to be answered by plaintiffs and cross-complainants only*)
   a. The complaint was filed on (*date*):
   b. ☐ The cross-complaint, if any, was filed on (*date*):

3. **Service** (*to be answered by plaintiffs and cross-complainants only*)
   a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. ☐ The following parties named in the complaint or cross-complaint
      (1) ☐ have not been served (*specify names and explain why not*):
      (2) ☐ have been served but have not appeared and have not been dismissed (*specify names*):
      (3) ☐ have had a default entered against them (*specify names*):
   c. ☐ The following additional parties may be added (*specify names, nature of involvement in case, and the date by which they may be served*):

4. **Description of case**
   a. Type of case in ☑ complaint ☐ cross-complaint (*Describe, including causes of action*):
   ALLEGED CHILDHOOD SEXUAL ABUSE

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. January 1, 2009]

CASE MANAGEMENT STATEMENT

Cal. Rules of Court, rules 3.720–3.730
www.courtinfo.ca.gov

www.accesslaw.com

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY ET.AL	HG11558324

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

PLAINTIFF CLAIMS THAT SHE WAS SEXUALLY ABUSED AS A MINOR BY JONATHAN KENDRICK. SHE CLAIMS THAT KENDRICK WAS A MEMBER AND LEDER IN THE JEHOVAH'S WITNESS CHURCH IN FREEMONT AND MET AND ABUSED PLAINTIFF THROUGH THE CHURCH. SHE CLAIMS EMOTIONAL DISTRESS AND PAST AND FUTURE MENTAL HEALTH EXPENSES.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☑ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☑ days *(specify number):* 8
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☑ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☑ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY ET.AL	HG11558324

10. d. The party or parties are willing to participate in *(check all that apply):*
    - (1) ☑ Mediation
    - (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
    - (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
    - (4) ☐ Binding judicial arbitration
    - (5) ☐ Binding private arbitration
    - (6) ☐ Neutral case evaluation
    - (7) ☐ Other *(specify):*

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court *(specify exemption):*

11. **Settlement conference**

☐ The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

a. ☐ Insurance carrier, if any, for party filing this statement *(name):*

b. Reservation of rights: ☐ Yes ☐ No

c. ☐ Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other *(specify):*

Status:

14. **Related cases, consolidation, and coordination**

a. ☐ There are companion, underlying, or related cases.
   - (1) Name of case:
   - (2) Name of court:
   - (3) Case number:
   - (4) Status:

   ☐ Additional cases are described in Attachment 14a.

b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by *(name party):*

15. **Bifurcation**

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

☑ The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*

DEMURRER SET FOR HEARING 5/19/2011; MOTION FOR SUMMARY JUSDGMENT UPON COMPLETION OF DISCOVERY.

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY ET.AL	HG11558324

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☑ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
DEFENDANT	PLAINTIFF'S WRITTEN DISCOVERY	7/31/2011
	PLAINITFF'S DEPSOITION	8/30/2011
	DEPOSITIONS OF EXPERT WITNESSES WHEN ID'D	TBA

    c. ☑ The following discovery issues are anticipated *(specify):*

CLAIMS OF CLERGY PENITENT PRIVILEGES TO PROTECT CONFIDENTIAL COMMUNICATIONS

18. **Economic litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify):*

21. Total number of pages attached *(if any):* _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: 5/18/2011

JAMES M. McCABE
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

9435216

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Church Defendants

FILED
ALAMEDA COUNTY

JUN 03 2011

CLERK OF THE SUPERIOR COURT
By Debra Tustello
Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants The Watchtower Bible and Tract Society of New York, Inc, and The Watchtower Bible and Tract Society of Pennsylvania, and the North Congregation of Jehovah's Witnesses, Freemont California erroneously sued as Jehovah's Witnesses on Peralta Blvd. Fremont, an entity, Kingdom Hall of Jehovah's Witnesses, a corporation (collectively hereinafter "Church Defendants") answer the complaint of plaintiff and admit, deny, and allege as follows:

Church Defendants generally deny each and every allegation of Paragraphs 1-9 of plaintiff's complaint pursuant to California Code of Civil Procedure § 431.30, deny having

knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 10 and 11 of plaintiff's complaint, and specifically deny that plaintiff is entitled to any damages from the Church Defendants. The Church Defendants also specifically deny that "Jehovah's Witnesses on Peralta Boulevard, Fremont" and "Kingdom Hall of Jehovah's Witnesses, a corporation, are existing legal entities. This answer to plaintiff's complaint is filed without prejudice to these answering Church Defendants' right to file an amended answer, including additional affirmative defenses and/or cross-complaints, after conducting further investigation and discovery.

For their separate and distinct affirmative defenses, Church Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

(First Amendment)

The complaint, and each cause of action thereof, is barred by the First Amendment to the U.S. Constitution and/or Article 1, §4 of the California Constitution.

SECOND AFFIRMATIVE DEFENSE

(Constitutional Proscriptions)

The complaint, and each cause of action thereof, characterizes church hierarchy, doctrine, policy, and practices to establish a foundational basis for liability in violation of federal and state constitutional proscriptions.

THIRD AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The complaint, and each cause of action thereof, fails to state facts sufficient to constitute causes of action against each of these answering Church Defendants.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The complaint, and each cause of action thereof, is barred by the applicable statute of limitations set forth in California Code of Civil Procedure, including without limitation sections 335.1, 338, 340, 340.1, 340.3, 340.35, and 343.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff has unreasonably delayed in bringing this action to the prejudice of each of these answering Church Defendants and is therefore barred from bringing the action by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

To the extent that plaintiff failed or neglected to use reasonable care to minimize and mitigate her claimed losses, injuries, and damages, if there are any, plaintiff's damages, if any, are barred or subject to reduction.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Provide Notice)

Plaintiff failed to give appropriate or timely notices required to bring her claims.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver and/or Estoppel)

By her own conduct, plaintiff has waived and/or is estopped from pursuing the claims alleged in their complaint.

NINTH AFFIRMATIVE DEFENSE

(Third Parties)

The acts or omissions of third parties, individuals, or entities for which Church Defendants have no responsibility, either directly or indirectly, whether or not presently named parties to this action, were the sole, intervening, or contributing cause of the plaintiff's claimed damages, if there are any. Such acts or omissions bar and/or proportionately reduce recovery, if any, by plaintiff against the Church Defendants.

TENTH AFFIRMATIVE DEFENSE

(Superseding Acts)

The alleged acts or omissions, if any, of Church Defendants were not a substantial factor in bringing about plaintiff's claimed damages, if there are any, and thereafter were not a contributing cause thereof, but were superseded by the acts or omissions of other persons and/or entities, which were independent, intervening, and proximate causes of any damages suffered by plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

(No Legal Duty)

None of the Church Defendants owed plaintiff an actionable legal duty of care necessary to support the causes of action alleged in the complaint.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Personal Jurisdiction)

Watch Tower Bible and Tract Society of Pennsylvania lacks the contacts with California necessary for this Court to constitutionally exercise personal jurisdiction over it.

WHEREFORE, Church Defendants each pray for judgment as follows:

1. That plaintiff takes nothing from the Church Defendants by her complaint;
2. That Church Defendants each be dismissed with prejudice, with an award of costs; and
3. That Church Defendants each be awarded such other and further relief as the court deems just and proper.

DATED: June 2, 2011

THE McCABE LAW FIRM, APC

James M. McCabe
Attorneys for Church Defendants

9434905

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JUN 29 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

NOTICE OF ENTRY OF CASE MANAGEMENT ORDER

TO ALL PARTIES TO THE ABOVE-ENTITLED ACTION AND THE ATTORNEYS OF RECORD FOR SAME:

PLEASE TAKE NOTICE that on June 14, 2011, the Court entered its Order Re Case Management and Trial Setting Order with Notice of Trial. A copy of said Order is attached to this Notice as Exhibit "1".

Dated: June 20, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

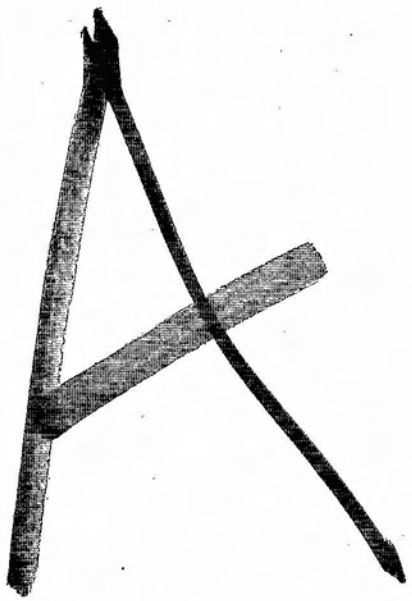


EXHIBIT 1

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Law Offices Of James M. McCabe
Attn: McCabe, James M.
4817 Santa Monica Avenue
Suite B
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Case Management Order Complaint - Other PI/PD/WD Tort

ORDER re: CASE MANAGEMENT

& TRIAL SETTING ORDER WITH NOTICE OF TRIAL

The Court has ordered the following at the conclusion of a judicially supervised Case Management Conference.

MANDATORY SETTLEMENT CONFERENCE (CRC § 3.1380)

A Mandatory Settlement Conference pursuant to CRC § 3.1380 is set for 02/24/2012 in Dept. 14 at 01:30 PM.
Trial counsel, the parties, claims representatives and all other persons with full authority to settle the case must personally attend unless the Court has, before the Conference, authorized telephonic participation upon written application with notice to all other parties and good cause shown.
A Settlement Conference Statement complying with CRC § 3.1380 must be filed with the court no later than 02/17/2012 and served on all other parties.
If the foregoing date is a court holiday or a weekend, the time is extended to the next business day.

PRETRIAL CONFERENCE

A Pretrial Conference is scheduled for 03/02/2012 at 08:30 AM in Dept. 22.

TRIAL SETTING ORDERS

The Court makes the following trial setting orders:

Jurt Trial is set for 3/26/2012 at 08:30 AM in Dept. 22.

NOTICES

Clerk is directed to serve endorsed-filed copies of this order, with proof of service, to counsel and to self-represented parties of record by mail.

Any delay in the trial, caused by non-compliance with any order contained herein, shall be the subject of sanctions pursuant to CCP 177.5.

Dated: 06/14/2011

facsimile

Judge Robert McGuiness

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On June 20, 2011, I served the within **NOTICE OF ENTRY OF CASE MANAGEMENT ORDER** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.
JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT
KINGDOM HALL OF JEHOVAH'S WITNESSES

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 20, 2011, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

9469370

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

FILED
ALAMEDA COUNTY
JUL 19 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]

Date:	**8/25/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1196202**

TO ALL PARTIES TO THE ABOVE-ENTITLED ACTION AND TO THE ATTORNEYS OF RECORD FOR SAME:

PLEASE TAKE NOTICE that on August 25, 2011, at 3:00 p.m. in Department 22 of the above-entitled Court, plaintiff JANE DOE will move for an Order Compelling defendants The Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) to provide a further response to the Demand for Inspection of Documents, Set Number One, Request Nos. 5 and 7, served upon each, and specifically for an Order compelling each said defendant to produce the following documents:

1. Letter of February 9, 1992;
2. Letter of December 3, 1993;
3. Letter of November 15, 1993;
4. Letter of November 7, 2002; and

5. Letter of November 5, 1996.

Please further take notice that at the time and place set forth above, plaintiff will request that sanctions in the amount of $790.00 be awarded against each said defendant.

Said motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities and Separate Statement in Support, and the Meet and Confer Declaration of Richard J. Simons filed herewith.

Dated: July 13, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

9469378

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JUL 19 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]

Date:	**8/25/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1196202**

STATEMENT OF FACTS

This action involves a complaint for damages for childhood sexual abuse brought by Jane Doe, now an adult, and arises out of sexual abuse by Jonathan Kendrick during the time that Jane Doe was a minor. The sexual abuse is alleged to have been accomplished by Mr. Kendrick "by use of the trust, position, and authority he held as a fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Complaint, ¶6, 3:11-13). It is alleged that the defendants "negligently supervised, managed, and controlled defendant Kendrick in his membership and participation in the Fremont religious facility, and negligently failed to warn plaintiff Jane Doe, her family, and other members of the congregation, of the propensity and risk that defendant Kendrick would sexually molest or abuse minor girls, a propensity and history of which defendants, and each of them, acting through their employees, agents, and volunteers had actual notice." (Complaint, ¶7, 3:15-21).

Plaintiff served Requests for Production of Documents upon the defendants, seeking records concerning Jonathan Kendrick, plaintiff, and her family. Defendants Watchtower Bible and Tract Society of New York, Inc. and the Fremont Congregation each identified five items of correspondence, for which minister communicant privilege was claimed. Each of the five items of correspondence are letters from between elders of the North Congregation of Jehovah's Witnesses, Fremont, and the U.S. Service Department of Jehovah's Witnesses – The Watchtower New York Corporation. In addition to the issues of privilege, defendants generally raised objections to production of the correspondence on First Amendment grounds.

Meet and confer attempts were undertaken and unsuccessful. (See Meet and Confer Declaration of R. Simons in Support of Motion). Plaintiff now requests the Court order disclosure, as the clergy penitent privilege does not apply on its face, there is no legitimate First Amendment protective for sexual abuse of children, and any privacy interests of Mr. Kendrick or plaintiff's family are far outweighed by the need for discovery in this matter, and the other objections are without merit.

I. THERE IS NO FIRST AMENDMENT PROTECTION FOR SEXUAL ABUSE OF CHILDREN.

Defendants' First Amendment argument is supported by its citation to *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. That case does not involve issues of discovery regarding sexual abuse of children. ´ However, California courts have exhaustively looked at First Amendment issues where secular matters are concerned. The most complete discussion in this context is found in *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, at 430-40. In its thorough discussion of the First Amendment objections raised by Cardinal Mahoney in response to Grand Jury subpoenas, the Court of Appeal exhaustively rejected the applicability of First Amendment protection to a Civil Court inquiry into child molestation. The Court noted such an inquiry "does not involve an internal church dispute over religious authority or dogma" (131 Cal.App.4th at 432). The Court later added "the core issue in the case at bar is whether children were molested by priests who worked for the Archdiocese, an issue having no comparable religious doctrine aspect" (Id., at 435).

Defendants' objection does not cite any authority applying the First Amendment to bar Civil Court inquiry into matters related to childhood sexual abuse.

II. THE CLERGY PENITENT PRIVILEGE IS INAPPLICABLE TO THE DOCUMENTS SOUGHT.

A penitential communication "means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, organization, is authorized or accustomed to hear those communications and, under the discipline or tenants of his or her church, denomination, or organization, has a duty to keep those communications secret."

The key elements of a penitential communication are no third person is aware, and the duty to keep those communications secret. The party claiming a privilege normally has the burden of showing that the evidence it seeks to suppress is within the terms of the statute (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 441). However, where a clergy penitent privilege is claimed and it is shown that the communication "sought to be disclosed is a communication made in confidence, in the course of the relationship, the applicability of the privilege is presumed and the burden of proof falls on the party challenging the privilege (Evidence Code §917(a)).

In this case, all of the letters sought in discovery are correspondence between elders of the North Congregation of Fremont, and the U.S. Service Department of The Watchtower. Therefore, defendants have not established their initial burden of showing that the communications sought were made in the course of the clergy penitent relationship. On the contrary, each of the five items of correspondence sought are communications by and between elders of the Congregation of Fremont, and U.S. Service Department personnel. The U.S. Service Dept. personnel are all third persons not present at the time of any communication. The privilege does not extend to communications which third parties participate in, or which are known by the penitent to be disclosed in the future to third parties (*Doe 2 v. Superior Court,* (2005) 132 Cal. App. 4th 1504, at 1518). No communications that are the subject of this motion are even identified as communications by and between any clergy and penitent, and all are communications involving third persons.

///

///

///

6. Defendants New York and Congregation's responses to the request for production of documents identified five documents for which privilege was claimed. These documents were all letters received by elders in the U.S. Service Department, from the North Congregation Elders and Circuit Overseer. The response to Request No. 5 of the production of documents identifies three of the letters, concerning Mr. Kendrick, and dates February 9, 1992; December 3, 1993; and November 15, 1993. Subsequent communications by and between counsel advised this declarant that a redacted copy of the February 9, 1992, letter would be produced, but it has not been produced as of the time of the filing of this Motion. Letters from the Elders of the North Congregation to the U.S. Service Department dated November 5, 1996, and November 7, 2002, were identified in response to Request No. 7, as to plaintiff's family. All of the correspondence was objected to as calling for violation of the minister communicant privilege.

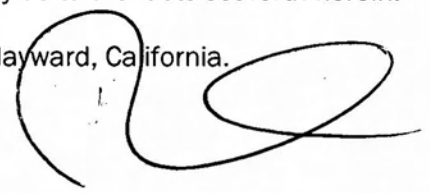
7. Following the receipt of the initial responses to requests for production of documents, plaintiff's counsel sent a written "meet and confer" letter to defense counsel, Mr. McCabe, requesting production of the documents. A true and correct copy of plaintiff's correspondence is attached as Exhibit "4". Thereafter, defendant served amended responses no longer asserting the First Amendment objections, but maintaining the objections as to all of the documents except the February 9, 1992, letter on the grounds of clergy penitent privilege. Counsel for the defendants, Mr. McCabe, advised me by telephone message and correspondence that the privilege could not be waived and, in his view, remained applicable. A true and correct copy of Mr. McCabe's correspondence of July 8, 2011, is attached as Exhibit "5". The parties are unable to resolve this issue because of the privilege claim.

8. For the reasons set forth in plaintiff's Separate Statement, it is requested that the Court order the production of the disputed documents, and impose sanctions upon defendants and their counsel for the failure to produce such documents in discovery. This declarant submits that the objections were not reasonable or in good faith, on the grounds that none of the correspondence was a communication between any penitent or parishioner and any minister. All of the correspondence was between elders and officers of the Congregation, and persons at the service center of the

Watchtower Bible and Tract Society of New York, Inc.'s corporate offices. I have spent two hours in the preparation of this Motion, anticipate spending an additional hour in the review of any opposition and the preparation of a Reply, and in addition spending one half hour for the appearance for oral argument. In addition to the filing fee for this Motion of $40.00, sanctions in the amount of an additional $750.00 for attorney's fees are requested.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 18th day of July, 2011, at Hayward, California.



RICHARD J. SIMONS

EXHIBIT 1

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DEMAND FOR INSPECTION OF DOCUMENTS, THINGS, AND/OR PLACES, SET NUMBER ONE

DEMANDING PARTY:	Plaintiff JANE DOE
RESPONDING PARTY:	Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
SET NUMBER:	ONE

DEMAND IS HEREBY MADE to produce the following documents and tangible things, of the category specified herein, which are in the possession, custody, or control of you or your attorneys, for inspection, photocopying, testing, and sampling. Plaintiff will copy and inspect said documents and things. Said production and inspection shall occur on the following date and place: May 18, 2011, at 10:00 a.m. at the law offices of Furtado, Jaspovice & Simons.

1. Any and all documentary, tangible, or electronically created or stored evidence of the Articles of Incorporation, By-Laws, or other organizational corporate or entity information evidencing the organization, creation, management, or structure of this responding defendant.

2. Copies of any and all filings with any state, local, or federal public agencies, bureaus, offices, or agencies by this responding defendant , for the years 1996, 1997, and 2011, including but not limited to Statements of Domestic Corporations; applications, statements, or eligibility information evidencing or renewing any non-profit status; documents evidencing the identity of the Board of Directors, Officers, and Managing Agents of responding defendant; or other filings made in California or the state of the principle place of business of this responding defendant. This request does not include tax returns or filings related to any employee benefit or pension plan.

3. Any and all documentary, tangible, or electronically created or stored evidence of any kind, indicating the identity, titles, and responsibilities of persons holding any formal title within the Jehovah's Witnesses on Peralta Blvd., Fremont, at present, and at any time during 1996 or 1997.

4. Roster, directory, membership list, or any other documentary, tangible, or electronically created or stored information of any kind, evidencing the identity of persons participating in activities at the Jehovah's Witnesses on Peralta Blvd., Fremont, during 1996 and 1997.

5. Any and all files, records, correspondence, disciplinary or investigatory records, photographs, memorandum, notes, emails, or other documentary, tangible, or electronically created or stored information of any kind, under the control of or possessed by this responding defendant, concerning Jonathan Kendrick, date of birth: January 31, 1954, including but not limited to, any such information evidencing his participation in any Jehovah's Witnesses institutions or activities at or arising from the Jehovah's Witnesses on Peralta Blvd., Fremont, or any Kingdom Hall or Jehovah's Witnesses organization in Oakdale, Stanislaus County, California.

6. Any and all documentary, tangible, or electronically created or stored materials of any kind, evidencing procedures, policies, protocols, guidelines, or other information promulgated by or provided to persons participating in or supervising Jehovah's Witnesses' activities, including the Jehovah's Witnesses on Peralta Blvd., Fremont, on the subjects of prevention of the sexual abuse of minors during or arising out of Jehovah's Witness activities, or the protection of minors against such abuse, including policies, procedures, or guidelines developed, circulated, or promulgated between 1990 and the present.

7. Any and all records, files, photographs, or other information, documents, or tangible materials of any kind, concerning Candace Conti, her mother Kathleen Conti, or any present or past member of her immediate family.

Dated: April 13, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On April 13, 2011, I served the within **DEMAND FOR INSPECTION OF DOCUMENTS, THINGS, AND/OR PLACES, SET NUMBER ONE** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.
JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT
KINGDOM HALL OF JEHOVAH'S WITNESSES

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 13, 2011, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S AMENDED RESPONSES TO PLAINTIFFS' REQUEST FOR DOCUMENTS

PROPOUNDING PARTY: PLAINTIFF JANE DOE

RESPONDING PARTY: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SET NUMBER: ONE AMENDED

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter, "this Defendant") by and through its undersigned counsel and pursuant to CAL. CIV. PROC. CODE § 2031, hereby responds to Plaintiff Jane Doe's ("Plaintiff") Request for Production of Documents as follows:

to lead to the discovery of admissible evidence. Finally, this Defendant objects to this request as vague and ambiguous.

Subject to and without waiving the above objections, see documents produced in response to Request No. 3 above.

REQUEST FOR PRODUCTION NO. 5:

Any and all files, records, correspondence, disciplinary or investigatory records, photographs, memorandum, notes, emails, or other documentary, tangible, or electronically created or stored information of any kind, under the control of or possessed by this responding defendant, concerning Jonathan Kendrick, date of birth: January 31, 1954, including but not limited to, any such information evidencing his participation in any Jehovah's Witnesses institutions or activities at or arising from the Jehovah's Witnesses on Peralta Blvd., Fremont, or any Kingdom Hall or Jehovah's Witnesses organization in Oakdale, Stanislaus County, California.

RESPONSE NO. 5:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege. California Evidence Code § 1034. In addition, this Defendant objects to this request as vague and ambiguous. Further, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons who are not parties to this litigation.

Subject to and without waiving the above objections, this Defendant attaches the following documents:

1. Letter received by elders in U.S. Service Department on February 9, 1992, from the North Congregation, Fremont, California elders and the circuit overseer. (Redacted to remove information protected by the minister-communicant privilege related to the appointment or deletion of elders and ministerial servants that had nothing to do

with Jonathan Kendrick or any alleged incident(s) between Jonathan Kendrick and plaintiff.)

Privilege log: The following documents responsive to this request are not produced based on the minister-communicant privilege, California Evidence Code §1034.

1. December 3, 1993, letter from elders in the U.S. Service Department to elders in the North Congregation of Jehovah's Witnesses, Fremont, California (2 Pages).

2. November 15, 1993, letter from elders in the North Congregation, Fremont, California, to elders in the U.S. Service Department (2 Pages).

REQUEST FOR PRODUCTION NO. 6:

Any and all documentary, tangible, or electronically created or stored materials of any kind, evidencing procedures, policies, protocols, guidelines, or other information promulgated by or provided to persons participating in or supervising Jehovah's Witnesses' activities, including the Jehovah's Witnesses on Peralta Blvd., Fremont, on the subjects of prevention of the sexual abuse of minors during or arising out of Jehovah's Witness activities, or the protection of minors against such abuse, including policies, procedures, or guidelines developed, circulated, or promulgated between 1990 and the present.

RESPONSE NO. 6:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege. California Evidence Code § 1034. In addition, this Defendant objects to this request to the extent that it requests documents related to religious faith, custom or law, or to internal church organization which are protected from discovery by the First Amendment of the U.S. Constitution and it's California analog, which bar civil court inquiry into such matters. *See, Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. Further, this Defendant objects to this request as overbroad as to time since the relevant time period in this complaint ended in 1997.

Privilege log: The following documents responsive to this request are not produced based on the minister-communicant privilege, California Evidence Code §1034.

3. Letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 7, 2002), involving a Non-Party to this action.

4. Letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 5, 1996), involving a Non-Party to this action.

DATED: June 28, 2011

THE McCABE LAW FIRM, APC

James M. McCabe
Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

EXHIBIT 2

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DEMAND FOR INSPECTION OF DOCUMENTS, THINGS, AND/OR PLACES, SET NUMBER ONE

DEMANDING PARTY:	Plaintiff JANE DOE
RESPONDING PARTY:	Defendant JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT
SET NUMBER:	ONE

DEMAND IS HEREBY MADE to produce the following documents and tangible things, of the category specified herein, which are in the possession, custody, or control of you or your attorneys, for inspection, photocopying, testing, and sampling. Plaintiff will copy and inspect said documents and things. Said production and inspection shall occur on the following date and place: May 18, 2011, at 10:00 a.m. at the law offices of Furtado, Jaspovice & Simons.

1. Any and all documentary, tangible, or electronically created or stored evidence of the Articles of Incorporation, By-Laws, or other organizational corporate or entity information evidencing the organization, creation, management, or structure of this responding defendant.

2. Copies of any and all filings with any state, local, or federal public agencies, bureaus, offices, or agencies by this responding defendant , for the years 1996, 1997, and 2011, including but not limited to Statements of Domestic Corporations; applications, statements, or eligibility information evidencing or renewing any non-profit status; documents evidencing the identity of the Board of Directors, Officers, and Managing Agents of responding defendant; or other filings made in California or the state of the principle place of business of this responding defendant. This request does not include tax returns or filings related to any employee benefit or pension plan.

3. Any and all documentary, tangible, or electronically created or stored evidence of any kind, indicating the identity, titles, and responsibilities of persons holding any formal title within the Jehovah's Witnesses on Peralta Blvd., Fremont, at present, and at any time during 1996 or 1997.

4. Roster, directory, membership list, or any other documentary, tangible, or electronically created or stored information of any kind, evidencing the identity of persons participating in activities at the Jehovah's Witnesses on Peralta Blvd., Fremont, during 1996 and 1997.

5. Any and all files, records, correspondence, disciplinary or investigatory records, photographs, memorandum, notes, emails, or other documentary, tangible, or electronically created or stored information of any kind, under the control of or possessed by this responding defendant, concerning Jonathan Kendrick, date of birth: January 31, 1954, including but not limited to, any such information evidencing his participation in any Jehovah's Witnesses institutions or activities at or arising from the Jehovah's Witnesses on Peralta Blvd., Fremont, or any Kingdom Hall or Jehovah's Witnesses organization in Oakdale, Stanislaus County, California.

6. Any and all documentary, tangible, or electronically created or stored materials of any kind, evidencing procedures, policies, protocols, guidelines, or other information promulgated by or provided to persons participating in or supervising Jehovah's Witnesses' activities, including the Jehovah's Witnesses on Peralta Blvd., Fremont, on the subjects of prevention of the sexual abuse of minors during or arising out of Jehovah's Witness activities, or the protection of minors against such abuse, including policies, procedures, or guidelines developed, circulated, or promulgated between 1990 and the present..

7. Any and all records, files, photographs, or other information, documents, or tangible materials of any kind, concerning Candace Conti, her mother Kathleen Conti, or any present or past member of her immediate family.

Dated: April 13, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On April 13, 2011, I served the within **DEMAND FOR INSPECTION OF DOCUMENTS, THINGS, AND/OR PLACES, SET NUMBER ONE** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission - By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.
JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT
KINGDOM HALL OF JEHOVAH'S WITNESSES

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 13, 2011, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S RESPONSES TO PLAINTIFFS' REQUEST FOR DOCUMENTS

PROPOUNDING PARTY: PLAINTIFF JANE DOE

RESPONDING PARTY: NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA (erroneously sued herein as "Jehovah's Witnesses on Peralta Blvd. Fremont," an entity, and "Kingdom Hall of Jehovah's Witnesses", a corporation)

SET NUMBER: ONE

Defendant North Congregation of Jehovah's Witnesses, Fremont, California, erroneously sued as "Jehovah's Witnesses on Peralta Blvd. Fremont" and "Kingdom Hall of Jehovah's Witnesses," (hereinafter, "this Defendant") by and through its undersigned counsel

extent that it seeks information that would invade the privacy of persons who are not parties to this litigation.

Subject to and without waiving the above objections, this Defendant has never possessed any such requested membership lists, rosters, or rolls, for the identified Defendant congregation and therefore has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 5:

Any and all files, records, correspondence, disciplinary or investigatory records, photographs, memorandum, notes, emails, or other documentary, tangible, or electronically created or stored information of any kind, under the control of or possessed by this responding defendant, concerning Jonathan Kendrick, date of birth: January 31, 1954, including but not limited to, any such information evidencing his participation in any Jehovah's Witnesses institutions or activities at or arising from the Jehovah's Witnesses on Peralta Blvd., Fremont, or any Kingdom Hall or Jehovah's Witnesses organization in Oakdale, Stanislaus County, California.

RESPONSE NO. 5:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege. In addition, this Defendant objects to this request to the extent that it requests documents related to religious faith, custom or law, or to internal church organization which are protected from discovery by the First Amendment of the U.S. Constitution and it's Florida analog, which bar civil court inquiry into such matters. *See, Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. Further, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons who are not parties to this litigation.

RESPONSE NO. 7:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege, California Evidence Code §1030, and §1033.

In addition, this Defendant objects to this request to the extent that it requests documents related to religious faith, custom or law, or to internal church organization which are protected from discovery by the First Amendment of the U.S. Constitution and it's Florida analog, which bar civil court inquiry into such matters. *See, Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. Further, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons not party to this litigation.

Privilege log: The following documents responsive to this request are not produced based on the objections noted above, and more specifically based on the First Amendment and its California analog, the minister-communicant privilege, California Evidence Code §1030, and §1033.

3. Letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 7, 2002), involving a Non-Party to this action.

4. Letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 5, 1996), involving a Non-Party to this action.

DATED: June 14, 2011

THE McCABE LAW FIRM, APC

James M. McCabe
Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

EXHIBIT 3

Name of congregation North City Fremont Province or State California

SCN MAY 1 3 1992
For Office Use Only

Your fellow servants,

Presiding overseer

Secretary

Service overseer

(Comments of circuit overseer)

Names and date of appointment of elders in the congregation Name	Date	Baptism Date (Ordination)	In what capacity does each serve?
Gary A. Abrahamson	9/30/87	7/17/70	SO, CBSC; REG PIO
Michael L. Clarke	8/29/89	11/12/66	
Dominic H. Lee	9/10/90	12/29/84	
Thomas A. Mant	9/10/90	10/31/81	
Benjamin Nelson	5/10/91	1/ 6/74	
Duane G. Olson	8/29/89	11/24/78	
Lawrence D. Piquet	4/13/88	4/23/50	
Albert E. Wichmann	8/29/88	4/23/50	
[redacted]			

Names and date of appointment of ministerial servants in the congregation Name	Date	Baptism Date (Ordination)	In what capacity does each serve?
~~Laureto P. Bada~~	8/29/89	2/20/71	
Walter W. Courtney	1/15/90	7/18/69	
Rodney Francis	5/10/91	9/26/71	
Anthony E. Hanson	5/10/91	4/17/82	
~~Alexander Jr Haydek~~	8/28/89	12/11/71	
~~Paul R. Inman~~	8/28/89	7/24/82	
~~Bruce W. Mulcahy~~	9/10/90	4/17/82	
Johathon Kendricks	9/10/90	5/28/88	
~~Joseph Peyton Jr~~	1/15/90	8/ 5/66	
David L Ramirez	8/29/89	6/ 9/84	
~~Leslie R. Thiessen~~	1/15/90	5/20/74	
Andrew Vega	1/15/90	4/10/82	
[redacted]			

(If additional space is needed, use additional sheets.)

Circuit overseer

Name of congregation North City Fremont Province or State California

Cong. No. 15685 February 9, 1992 (Date)

ORIGINAL COPY to Society. The circuit overseer will send this form to the Society along with his report following his visit to the congregation.

Presiding overseer Albert E. Wichmann
43400 Osgood Road
Fremont, CA 94539

Governing Body of Jehovah's Witnesses
c/o Watchtower Bible and Tract Society of New York, Inc.
25 Columbia Heights
Brooklyn, New York 11201

Dear Brothers:

After careful and prayerful consideration of the requirements for elders and ministerial servants as set out in God's Word, we submit the following recommendations for NEW appointments. To the best of our knowledge, the brothers recommended meet all the requirements set out in the Bible for the positions indicated. These brothers regularly participate in proclaiming the good news to others. (Matt. 24:14; Rom. 10:10)

ELDERS

	First name	Last name	Age	Date of Baptism	An't'd (A) or "other sheep" (O)	E or MS	If he has ever served as an elder (E) or ministerial servant (MS) state which and give name of last congregation. If favorable recommendation for any person listed was not received from the congregation where he last served, please place a check mark in the column headed "NR" (not recommended).*	NR
✓	Joseph B Peyton, Jr		35	8/ 5/66	O	MS	North-Fremont, CA	
✓	Leslie R. Thiessen		39	5/20/74	O	MS	North-Fremont, CA	

MINISTERIAL SERVANTS (Brothers must be at least 20 years old at time of making recommendation and baptized for at least a year.)

If brothers recommended have been reproved in the last three years for serious wrongdoing, or if they have been reinstated in the last five years, state when on a separate sheet. Also mention when all restrictions were removed and whether they have gained the respect of the congregation. If any elders have reservations about recommending a brother, state this and the reason. If you recommend the appointment of a brother previously removed as an elder or ministerial servant, provide complete information on his progress since being removed, mentioning the date of his removal and the reason why he was removed. Please see *The Watchtower* of March 15, 1983, page 29, regarding individuals who entered into an adulterous marriage.

* For any not recommended by previous congregation, please attach a copy of their letter to this form showing why not recommended. State how long the person has been with your congregation and why you recommend him.

DELETIONS

It is recommended that the following brothers be deleted from the list of appointed elders and ministerial servants, as indicated, for the reasons stated. If reason for deletion is other than moving, death, disassociation or disfellowshipping, etc., supply complete information below or in supplementary letter as to Scriptural reasons for recommending removal. Also state whether elders discussed matter with individual and if he agrees he no longer qualifies Scripturally to serve. If he does not and wishes to express himself, please attach his letter to this form.

First name	Last name	Present position (elder [E] or ministerial servant [MS])	Reason for deletion	(If person moved, show name of new congregation, if known.)

EXHIBIT 4

MANUEL FURTADO (1925-1999)
MARTIN L. JASPOVICE
RICK SIMONS

OF COUNSEL:
BILL LOCKYER

FURTADO
JASPOVICE
& SIMONS
A LAW CORPORATION

22274 MAIN STREET
HAYWARD, CALIFORNIA 94541
TELEPHONE: (510) 582-1080
FACSIMILE: (510) 582-8254

July 5, 2011

James Murray McCabe, Esq.
The McCabe Law Firm, APC
4817 Santa Monica Avenue, Suite B
San Diego, CA 92107

BY FACSIMILE (619-224-0089) AND MAIL:

Re: Doe v. Watchtower, et al.

Dear Mr. McCabe:

Thank you for the Supplemental Responses to discovery you recently provided. The sole remaining issues now are limited to 2 issues. The first is the 2 letters dated December 3, 1993, and November 15, 1993 relevant to Mr. Kendrick, and identified in the privilege log of NY's responses to document request, number 5. The second is the redacted February 9, 1992 letter identified as produced in that same response, but not attached to the production I received. The last issue is the 3 letters regarding the Conti family identified in the privilege log provided as part of Response 7. As I previously stated, I do not see that these letters are subject to the clergy-penitent privilege as defined in Evidence Code 1032.

Since a motion to compel production of these materials is due July 19, I must ask you to let me know immediately if the objection will not be withdrawn and the 5 letters produced.

Thank you for your professional cooperation in this matter.

Very truly yours,

RICK SIMONS
FURTADO, JASPOVICE & SIMONS
A Law Corporation

RS:etl

MANUEL FURTADO (1925-1999)
MARTIN L. JASPOVICE
RICK SIMONS

OF COUNSEL:
BILL LOCKYER

FURTADO JASPOVICE & SIMONS
A LAW CORPORATION

22274 MAIN STREET
HAYWARD, CALIFORNIA 94541
TELEPHONE: (510) 582-1080
FACSIMILE: (510) 582-8254



FACSIMILE TRANSMISSION:

TO: James Murray McCabe, Esq.

Facsimile: 619/224-0089

DATE: July 5, 2011

FROM: Laura Rojas Assistant to
Rick Simons, Esq.

RE: Doe v. Watchtower case

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

COMMENTS:

MANUEL FURTADO (1925-1999)
MARTIN L. JASPOVICE
RICK SIMONS

OF COUNSEL:
BILL LOCKYER

FURTADO JASPOVICE & SIMONS
A LAW CORPORATION

22274 MAIN STREET
HAYWARD, CALIFORNIA 94541
TELEPHONE: (510) 582-1080
FACSIMILE: (510) 582-8254



FACSIMILE TRANSMISSION:

TO: James Murray McCabe, Esq.

Facsimile: 619/224-0089

DATE: July 5, 2011

FROM: Laura Rojas Assistant to
Rick Simons, Esq.

RE: Doe v. Watchtower case

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

COMMENTS:

07/05/2011 08:53 5105828254 FJS LAW P.001

****
*** TX REPORT ***
****

JOB NO.	MODE	NO.	DESTINATION TEL/ID	START TIME	PAGE	RESULT
5001	TX ECM	001	16192240089	07/05 08:53	002	OK 00'23

EXHIBIT 5

THE MCCABE LAW FIRM, APC

4817 Santa Monica Avenue, Suite B
San Diego, CA 92107
Telephone (619) 224-2848
Facsimile (619) 224-0089
jim@mccabelaw.net

James M. McCabe*
Ryan M. McCabe
Jesse R. McCabe

*Admitted in NY and CA

July 8, 2011

Mr. Richard Simons
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541

Original By Facsimile to 510 582-8254 and Us Mail

Re: Doe v. Watchtower, et. al.

Dear Mr. Simons:

I left a voice mail with your office today. I understand that you are in depositions for the day. I have reviewed your July 5, 2011 letter and must respectfully disagree with your view of the withheld documents. The privilege we are debating is two fold and belongs to the minister and the communicant. Documents relating to other Conti family members are privileged in my view as are the documents relating to Mr. Kendrick himself. I have been away from the office all week and will track down the redacted February 9, 1992 letter that indicate was not attached to our response and provide it to you by Monday July 11, 2011.

If you need additional time to file your motion to compel I will cooperate with you for this purpose. Thank you for your continued courtesy and cooperation in this matter.

Very truly yours,

James M. McCabe

C: Watchtower

9469369

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JUL 19 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PROOF OF SERVICE OF NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]; MEMORANDUM OF POINTS AND AUTHORITIES; MEET AND CONFER DECLARATION OF RICHARD J. SIMONS; SEPARATE STATEMENT IN SUPPORT; PROPOSED ORDER

Date:	8/25/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1196202

///
///
///
///
///
///
///
///
///
///

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On July 19, 2011, I served the within **NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]; MEMORANDUM OF POINTS AND AUTHORITIES; MEET AND CONFER DECLARATION OF RICHARD J. SIMONS; SEPARATE STATEMENT IN SUPPORT; and PROPOSED ORDER** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission - By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 19, 2011, at Hayward, California.

Laura Rojas
LAURA ROJAS

9469365

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JUL 19 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

[PROPOSED] ORDER GRANTING MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]

Date:	**8/25/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1196202**

The Motion of Plaintiff JANE DOE will move for an Order Compelling defendants The Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) to produce specific documents and for sanctions having regularly come before the Court on August 25, 2011, at 3:00 p.m. in Department 22, notice having been duly given, the matter having been submitted on the papers and pleadings produced in support of the motion,

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel production of documents is GRANTED. The Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) are hereby ordered to produce the following documents within ten days of the date of this Order:

///

1. Letter of February 9, 1992;

2. Letter of December 3, 1993;

3. Letter of November 15, 1993;

4. Letter of November 7, 2002; and

5. Letter of November 5, 1996.

IT IS FURTHER ORDERED that sanctions in the amount of $790.00 are awarded in favor of plaintiff and her counsel, and against the defendants The Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) and their counsel, payable forthwith. The Court finds that the documents at issue could not reasonably be interpreted as falling within the clergy penitent privilege.

Dated: _____

_____
THE HONORABLE ROBERT McGUINESS
Judge of the Superior Court

9469374

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JUL 19 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND IN SUPPORT OF SANCTIONS. [CRC 3.1345]

Date:	**8/25/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1196202**

I. REQUEST NO. 5 FOR PRODUCTION OF DOCUMENT TO DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY, INC.

(a) **REQUEST:** Any and all files, records, correspondence, disciplinary or investigatory records, photographs, memorandum, notes, emails, or other documentary, tangible, or electronically created or stored information of any kind, under the control of or possessed by this responding defendant, concerning Jonathan Kendrick, date of birth: January 31, 1954, including but not limited to, any such information evidencing his participation in any Jehovah's Witnesses institutions or activities at or arising from the Jehovah's Witnesses on Peralta Blvd., Fremont, or any Kingdom Hall or Jehovah's Witnesses organization in Oakdale, Stanislaus County, California.

(b) **AMENDED RESPONSE:** This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege. California Evidence Code §1034. In addition, this Defendant objects to this request as vague and ambiguous. Further, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons who are not parties to this litigation.

Subject to and without waiving the above objections, this Defendant attaches the following documents:

1. Letter received by elders in U.S. Service Department on February 9, 1992, from the North Congregation, Fremont, California elders and the circuit overseer. (Redacted to remove information protected by the minister-communicant privilege related to the appointment or deletion of elders and ministerial servants that had nothing to do with Jonathan Kendrick or any alleged incident(s) between Jonathan Kendrick and plaintiff.)

Privilege log: The following documents responsive to this request are not produced based on the minister-communicant privilege, California Evidence Code §1034.

1. December 3, 1993, letter from elders in the U.S. Service Department to elders in the North Congregation of Jehovah's Witnesses, Fremont, California (2 pages).
2. November 15, 1993, letter from elders in the North Congregation, Fremont, California, to elders in the U.S. Service Department (2 pages).

(c) **ARGUMENT:**

1. Claim of Privilege:

A "penitential communication" "means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who...has a duty to keep those communications secret." All three items of correspondence at issue are communications between elders in the "U.S. Service Department" and elders in the "North Congregation of Jehovah's Witnesses, Fremont." The existence of the communications evidences that the correspondence does not include communications which any clergy member had "a duty to keep those communications secret." In fact, the communications are not communications between Mr. Kendrick and any clergy member at all, but rather communications between members of the defendants' organizations.

2. Vague and Ambiguous:

The request is neither vague nor ambiguous as it specifically sets forth in the request what specific information is requested – information evidencing Jonathan Kendrick's participation in Jehovah's Witnesses institutions or activities.

3. Overbroad:

The objection of overbroad because information subsequent to 1997 is sought is of no relevance, as all three items of correspondence are prior to 1997.

4. Privacy:

Defendants' claim of the right of privacy is inapplicable to this case. None of the documents are "Personal records" requiring notice to a consumer before production, as defined in C.C.P. section 1985.3(a). To establish a third party's privacy interest to shield information from civil discovery, the party claiming the privacy must establish 3 elements (*Alch v. Superior Court* (2008) 165 Cal. App. 4th 1412, at 1423-4). These are 1) A well established social norm recognizing the need to maintain the privacy of the information; 2) A reasonable expectation of

privacy on the part of the third party; and 3) That the invasion of the privacy is a substantial and serious one. (Ibid.)

Mr. Kendrick's records of work and participation in the Congregation are hardly "private." He was not a secret agent, but an established appointee of the elders to a position of leadership and trust as Ministerial Servant" (Simons Dec., Ex. 3). If a person in such a position is a threat to children's safety, and that information came to an Elder or other official of the Congregation through some source other than the abuser Mr. Kendrick himself, it does not qualify as a "private" matter for which Mr. Kendrick can state a claim of privacy.

II. **REQUEST NO. 7 FOR PRODUCTION OF DOCUMENT TO DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY, INC.**

(a) **REQUEST:** Any and all records, files, photographs, or other information, documents, or tangible materials of any kind, concerning Candace Conti, her mother Kathleen Conti, or any present or past member of her immediate family.

(b) **AMENDED RESPONSE:** This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege, California Evidence Code §1034.

In addition, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons not party to this litigation.

Privilege log: The following documents responsive to this request are not produced based on the minister-communicant privilege, California Evidence Code §1034.

3. Letter from elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 7, 2002), involving a Non-Party to this action.
4. Letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 5, 1996), involving a Non-Party to this action.

(c) **ARGUMENT:**

1. Claim of Privilege:

The penitent clergy privilege only extends to communications made in confidence by a penitent, to a member of the clergy, who has a duty to keep those communications secret. (Evidence Code §1032). The correspondence of 1996 and 2002 are not communications between a penitent and any clergy member, but correspondence between elders of the North Congregation and the U.S. Service Department.

2. Vague and Ambiguous:

The request is neither vague nor ambiguous as to the specific correspondence identified, and this objection is of no consequence.

3. Overbroad:

Information concerning plaintiff, including information obtained after her molestation in 1997, is relevant to the action. Similarly, information concerning plaintiff's family members is relevant to issues of damages, since defendant may argue that plaintiff's long term and current emotional and mental health issues are related to family dysfunction rather than her sexual molestation by Mr. Kendrick. Therefore, the time period is not overbroad in the context of this specific request.

4. Privacy:

Defendants' claim of the right of privacy is inapplicable to this case. None of the documents are "Personal records" requiring notice to a consumer before production, as defined in C.C.P. section 1985.3(a). To establish a third party's privacy interest to shield information from civil discovery, the party claiming the privacy must establish 3 elements (*Alch v. Superior Court* (2008) 165 Cal. App. 4th 1412, at 1423-4). These are 1) A well established social norm recognizing the need to maintain the privacy of the information; 2) A reasonable expectation of privacy on the part of the third party; and 3) That the invasion of the privacy is a substantial and serious one. (Ibid.)

Conti family information or records could not reasonably be expected to be private from a family member like Plaintiff, since they were openly shared with a third person at the Congregation. Family history, such as the Dissolution of the Conti marriage, is in large part public court record. No basis for any privacy interest is established by the description of the documents.

III. **REQUEST NO. 5 FOR PRODUCTION OF DOCUMENT TO DEFENDANT JEHOVAH'S WITNESSES OF PERALTA BLVD., FREMONT.**

(a) **REQUEST:** Any and all files, records, correspondence, disciplinary or investigatory records, photographs, memorandum, notes, emails, or other documentary, tangible, or electronically created or stored information of any kind, under the control of or possessed by this responding defendant, concerning Jonathan Kendrick, date of birth: January 31, 1954, including but not limited to, any such information evidencing his participation in any Jehovah's Witnesses institutions or activities at or arising from the Jehovah's Witnesses on Peralta Blvd., Fremont, or any Kingdom Hall or Jehovah's Witnesses organization in Oakdale, Stanislaus County, California.

(b) **RESPONSE:** This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege. In addition, this Defendant objects to this request to the extent that it requests documents related to religious faith, custom or law, or to internal church organization which are protected from discovery by the First Amendment of the U.S. Constitution and it's Florida analog, which bar civil court inquiry into such matters. *See, Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. Further, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects

to this request to the extent that it seeks information that would invade the privacy of persons who are not parties to this litigation.

Privilege log: The following documents responsive to this request are not produced based on objections noted above, and more specifically based on the First Amendment and its California analog, the minister-communicant privilege, California Evidence Code §1030, and §1033.

1. December 3, 1993, letter from elders to the U.S. Service Department to elders in the North Congregation of Jehovah's Witnesses, Fremont, California (2 Pages).
2. November 15, 1993, letter from elders in the North Congregation, Fremont, California, to elders in the U.S. Service Department (2 Pages).

(c) **ARGUMENT:**

1. First Amendment:

Cases involving whether or not a child was molested by an individual who worked for or was a volunteer in a position of leadership with a religious institution have no religious doctrine aspect, and discovery of information concerning sexual molestation of minors in a religious institution violates no First Amendment prohibition as to either the establishment clause or the free exercise clause of the First Amendment. (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 430-440).

2. Claim of Privilege:

A "penitential communication" "means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who...has a duty to keep those communications secret." All three items of correspondence at issue are communications between elders in the "U.S. Service Department" and elders in the "North Congregation of Jehovah's Witnesses, Fremont." The existence of the communications evidences that the correspondence does not include communications which any clergy member had "a duty to keep those communications secret." In fact, the communications are not communications between Mr. Kendrick and any clergy member at all, but rather communications between members of the defendants' organizations.

3. Overbroad:

The objection of overbroad because information subsequent to 1997 is sought is of no relevance, as all three items of correspondence are prior to 1997.

4. Privacy:

Defendants' claim of the right of privacy is inapplicable to this case. None of the documents are "Personal records" requiring notice to a consumer before production, as defined in C.C.P. section 1985.3(a). To establish a third party's privacy interest to shield information from civil discovery, the party claiming the privacy must establish 3 elements (*Alch v. Superior Court* (2008) 165 Cal. App. 4th 1412, at 1423-4). These are 1) A well established social norm recognizing the need to maintain the privacy of the information; 2) A reasonable expectation of

privacy on the part of the third party; and 3) That the invasion of the privacy is a substantial and serious one. (Ibid.)

Mr. Kendrick's records of work and participation in the Congregation are hardly "private." He was not a secret agent, but an established appointee of the elders to a position of leadership and trust as Ministerial Servant" (Simons Dec., Ex. 3). If a person in such a position is a threat to children's safety, and that information came to an Elder or other official of the Congregation through some source other than the abuser Mr. Kendrick himself, it does not qualify as a "private" matter for which Mr. Kendrick can state a claim of privacy.

IV. REQUEST NO. 7 FOR PRODUCTION OF DOCUMENT TO DEFENDANT JEHOVAH'S WITNESSES OF PERALTA BLVD., FREMONT.

(a) **REQUEST:** Any and all records, files, photographs, or other information, documents, or tangible materials of any kind, concerning Candace Conti, her mother Kathleen Conti, or any present or past member of her immediate family.

(b) **RESPONSE:** This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege, California Evidence Code §1030, and §1033.

In addition, this Defendant objects to this request to the extent that it requests documents related to religious faith, custom or law, or to internal church organization which are protected from discovery by the First Amendment of the U.S. Constitution and it's Florida analog, which bar civil court inquiry into such matters. *See, Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. Further, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons who are not parties to this litigation.

Privilege log: The following documents responsive to this request are not produced based on objections noted above, and more specifically based on the First Amendment and its California analog, the minister-communicant privilege, California Evidence Code §1030, and §1033.

3. Letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 7, 2002), involving a Non-Party to this action.
4. Letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department (date-stamped as received on November 5, 1996), involving a Non-Party to this action.

(c) **ARGUMENT:**

1. First Amendment:

Cases involving whether or not a child was molested by an individual who worked for or was a volunteer in a position of leadership with a religious institution have no religious doctrine aspect, and discovery of information concerning sexual molestation of minors in a religious institution violates no First Amendment prohibition as to either the establishment clause or the free exercise clause of the First Amendment. (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 430-440).

2. Claim of Privilege:

A "penitential communication" "means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who...has a duty to keep those communications secret." All three items of correspondence at issue are communications between elders in the "U.S. Service Department" and elders in the "North Congregation of Jehovah's Witnesses, Fremont." The existence of the communications evidences that the correspondence does not include communications which any clergy member had "a duty to keep those communications secret." In fact, the communications are not communications between Mr. Kendrick and any clergy member at all, but rather communications between members of the defendants' organizations.

3. Overbroad:

The objection of overbroad because information subsequent to 1997 is sought is of no relevance, as all three items of correspondence are prior to 1997.

4. Privacy:

Defendants' claim of the right of privacy is inapplicable to this case. None of the documents are "Personal records" requiring notice to a consumer before production, as defined in C.C.P. section 1985.3(a). To establish a third party's privacy interest to shield information from civil discovery, the party claiming the privacy must establish 3 elements (*Alch v. Superior Court* (2008) 165 Cal. App. 4th 1412, at 1423-4). These are 1) A well established social norm recognizing the need to maintain the privacy of the information; 2) A reasonable expectation of privacy on the part of the third party; and 3) That the invasion of the privacy is a substantial and serious one. (Ibid.)

Conti family information or records could not reasonably be expected to be private from a family member like Plaintiff, since they were openly shared with a third person at the Congregation. Family history, such as the Dissolution of the Conti marriage, is in large part public court record. No basis for any privacy interest is established by the description of the documents.

///

///

///

Dated: July 18, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

III. THERE IS NO RIGHT OF PRIVACY VIOLATION IN THE DISCOVERY REQUEST AT ISSUE

Defendants' claim of the right of privacy is inapplicable to this case. None of the documents are "Personal records" requiring notice to a consumer before production, as defined in C.C.P. section 1985.3(a). To establish a third party's privacy interest to shield information from civil discovery, the party claiming the privacy must establish 3 elements (*Alch v. Superior Court* (2008) 165 Cal. App. 4th 1412, at 1423-4). These are 1) A well established social norm recognizing the need to maintain the privacy of the information; 2) A reasonable expectation of privacy on the part of the third party; and 3) That the invasion of the privacy is a substantial and serious one. (Ibid.)

There is no such showing here. Conti family information or records could not reasonably be expected to be private from a family member like Plaintiff, since they were openly shared with a third person at the Congregation. Family history, such as the Dissolution of the Conti marriage, is in large part public court record. No basis for any privacy interest is established by the description of the documents.

Similarly, Mr. Kendrick's records of work and participation in the Congregation are hardly "private." He was not a secret agent, but an established appointee of the elders to a position of leadership and trust as Ministerial Servant" (Simons Dec., Ex. 3). If a person in such a position is a threat to children's safety, and that information came to an Elder or other official of the Congregation through some source other than the abuser Mr. Kendrick himself, it does not qualify as a "private" matter for which Mr. Kendrick can state a claim of privacy. No privacy basis has been established for any of the requested documents.

IV. SANCTIONS ARE APPROPRIATE IN THIS CASE.

The Court has the power to issue an Order compelling further responses to a demand for production of documents where the responding party has posed an objection that is without merit. (C.C.P. §2031.310(a)(3)). The Motion must be accompanied by a Declaration setting forth the specific facts showing good cause for the discovery, and showing efforts to meet and confer. The Declaration of Richard Simons in support of this Motion meets both prongs of this test. Good cause for this discovery is

shown because of the relevance of the information sought to both issues of liability and those of damages (Simons Dec., ¶5 p. 2:13-26). Meet and confer efforts were unsuccessful. (Simons Dec., ¶7 p.3:10-20 and Exs.4 & 5).

The Court "shall impose a monetary sanction" against any party who unsuccessfully opposes a Motion to Compel, unless it finds that one subject of the sanction acted with substantial justification or other circumstances making the imposition of the sanction unjust (2031.310(h)). In this case, communications which are clearly not between a clergy and penitent are objected to as clergy penitent privilege, and First Amendment claims are made without any citation or reference to the authorities holding that inquiries into childhood sexual abuse are not in violation of the First Amendment. Plaintiff's counsel has been required to expend both time and filing fees to obtain discovery to which plaintiff is legitimately entitled (See Simons Dec.¶8 p. 3:21-4:8).

Dated: July 18, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

9469361

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JUL 19 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEET AND CONFER DECLARATION OF COUNSEL RICHARD SIMONS IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]

Date:	**8/25/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1196202**

I, Richard J. Simons, hereby declare:

1. That I am an attorney at law licensed to practice before all Courts of the State of California and am the attorney for the plaintiff in the above-entitled action.

2. That the complaint in this matter alleges that plaintiff, now an adult under the age of 26, was sexually molested during the time that she was a child by defendant Jonathan Kendrick who was a leader and member of the Jehovah's Witnesses Congregation in Fremont.

3. During the course of initial exchanges of written discovery in this matter, I served upon the defendants Watchtower Bible and Tract Society of New York, Inc. and the defendant North Congregation of Jehovah's Witnesses, Fremont (erroneously named as Jehovah's Witnesses on Peralta Blvd., Fremont), Demands for Inspection of Documents. True and correct copies of the pertinent requests and proof of service of the Demands for Inspection of Documents on defendant

Watchtower Bible and Tract Society of New York, Inc. and pertinent Responses are attached as Exhibit "1". True and correct copies of the pertinent requests and proof of service of the Demands for Inspection of Documents on defendant Jehovah's Witnesses on Peralta Blvd., Fremont, and pertinent Responses are attached as Exhibit "2".

4. In response to the requests, certain documents were produced by defendants establishing that Jonathan Kendrick, the perpetrator of the sexual abuse, did serve in the Congregation as an appointed "ministerial servant", a position of official responsibility, and that notice of the appointment was sent to the Watchtower Bible and Tract Society of New York, Inc. True and correct copies of the documents produced by defendant Watchtower Bible and Tract Society of New York, Inc. establishing the appointment of Mr. Kendrick as a ministerial servant as of September 10, 1990, a time period well before the sexual molestation of plaintiff Jane Doe, is attached as Exhibit "3".

5. That the request for production of documents served upon both defendants New York and the Congregation requested files, records, disciplinary and investigative records, or other information concerning Jonathan Kendrick (Request No. 5), including information "evidencing his participation in any Jehovah's Witness institution or activities", and files or documents concerning plaintiff, her mother, and family members (Request No. 7). The information requested is relevant to both liability and damage issues. Information concerning Mr. Kendrick, knowledge of his propensity for sexual abuse of children, the institutional defendants' knowledge of past reports of any reports of sexual abuse of children, the nature and extent of his involvement in the Congregation, and of his involvement with youth, are all relevant as to issues of liability. Information concerning plaintiff, her mother, and other family members, is relevant as to both issues of liability concerning their involvement in and reliance upon the Congregation, and is relevant to issues of damages caused by the sexual abuse of plaintiff, in that defendant will likely point to other "stressors" and family relationship issues as possible causes of emotional distress and mental health damage to plaintiff both as a child and later in life.

9535767

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
AUG 16 2011
CLERK OF THE SUPERIOR COURT
By A. Mendoza Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF JANE DOE'S REPLY BRIEF IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]

Date:	**8/25/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1196202**

INTRODUCTION

The Watchtower New York and the North Congregation of Jehovah's Witnesses, Fremont (referred to collectively as "the Church defendants") opposed the Motion to Compel production of written communications between management personnel involving (1) childhood sexual abuse perpetrator Jonathan Kendrick, and (2) plaintiff's family members. The Church defendants raise three issues. First, they claim disclosure should be denied because of the confidentiality of spiritual communications. Secondly, they argue that the statutory clergy/penitent privilege does not apply. Lastly, the Church defendants claim that the privacy rights of non-parties, plaintiff's parents, are a basis to deny discovery.

The so-called "spiritual privilege" is contrary to California law. Defendants' evidentiary showing demonstrates plaintiff's argument that the clergy/penitent privilege is inapplicable. The privacy rights of plaintiff's parents do not prevent discovery under the facts of this case.

I. THERE IS NOT "SPIRITUAL CONFIFENTIALITY" PRIVILEGE FOR SEXUAL ABUSE CLAIMS

Defendants urge the Court to apply a "spiritual confidentiality" privilege that extends "to all confidential communications of a spiritual nature, including those that take place in the course of judicial investigations or committees, or while seeking and providing spiritual counsel and advice. Additionally, based upon Scripture and church tradition, such confidentiality requirements also extend to congregation files, notes, papers, reports, minutes, or other documents prepared in conjunction with, or as a result of, confidential or spiritual communications." (Church Defendants' MPA 5:14-21). In essence, the Church defendants claim that all communications involving childhood sexual abusers within its ranks, and all proceedings concerning the childhood sexual abusers, are strictly confidential because they are "spiritual". No authority is cited to support this proposition. The argument is identical to the argument made by the Roman Catholic Church that, "under the tenants of the Church", communications between managerial personnel regarding childhood sexual abuse by priests must be kept secret. The argument was squarely rejected. (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, at 444-5). Production of all such communications was ordered. (Id., at 445-6).

Evidentiary privileges are available only as defined by statute. (Evidence Code §911; *American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App.4th 881, 887). As stated by the Court in *American Airlines,* after a review of multiple decisions over the decades, "Courts may not add to the statutory privileges except as required by State or Federal Constitutional law, nor may courts imply unwritten exceptions to existing statutory privileges." (Ibid).

The Church defendants are attempted to distinguish *Roman Catholic Archbishop of Los Angeles v. Superior Court* by claiming it involved Grand Jury proceedings. However, as the opinion aptly demonstrates by its reliance on civil discovery cases, this is a distinction without a difference. The Constitutional and statutory privilege issues presented are identical.

II. THE CHURCH DEFENDANTS' INTERPRETATION OF EVIDENCE CODE PRIVILEGES IS OUTSIDE THE SCOPE OF THE STATUTE.

The Church defendants' argument of privilege is not consistent with the statutory language.

The Church defendants argue that disclosure of penitent communications where the penitent has knowledge that disclosure to other church officials may occur does not constitute disclosure to a "third party", and resulting waiver of the Evidence Code privilege. As held by the Court in *Roman Catholic Archbishop of Los Angeles v. Superior Court*, supra, in rejecting this very argument, no third persons means no third persons. (131 Cal.App.4th at 440-441, and Fn.11, and 444-446).

III. THE FIRST AMENDMENT ARGUMENT IS WITHOUT SUPPORT.

As clearly set forth in *Roman Catholic Archbishop of Los Angeles v. Superior Court*, supra, there is no First Amendment issue in the protection of children from institutional sexual abuse.

The Church defendants have produced a compendium of foreign cases. None have any applicability to the discovery issue at hand. None of the cases address the secular nature of the issue of protecting children from sexual abuse by adults. None address the discoverability of internal corporate communications regarding a leader involved in sexual abuse of children.

Abington School District v. Schemp (1963) 374 U.S.203 involves the issue of opening the school day with reading from the bible. *Employment Division Dept of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, addresses the use of ceremonial peyote. *Lemon v. Kurtzman* (1971) 403 U.S. 602, addresses state funding of religious schools. *NAACP v. Alabama ex rel. Patterson* (1958) 357 U.S. 449, addresses the political persecution by the State of Alabama against the NAACP, and a discovery order requiring it to disclose the names and addresses of all members. It is a freedom of association, not establishment, case. *Shelley v. Kramer* (1948) 334 U.S. 1, addresses racially restrictive covenants on real property. *West Virginia Bd. of Educ. v. Barnette* (1943) 319 U.S. 624 addresses mandatory American flag salutes in public schools.

IV. THE PRIVACY CONCERNS OF "THIRD PARTIES" ARE NOT SUFFICIENT TO PREVENT DISCOVERY OF PLAINTIFF'S FAMILY RECORDS.

The Church defendants agree that "private information about non-parties" sought in discovery is subject to a "balancing test to evaluate the need for the information sought against the asserted right of privacy." (CD MPA 12:10-15). In this case, the "third persons" are plaintiff's parents. Plaintiff's parents divorced within the same time frame as Jonathan Kendrick was sexually abusing

her. The Church defendants will argue that plaintiff's emotional distress and subsequent mental health issues arise from her parental divorce, and not her sexual abuse. Every Church defendant has always made that argument. In addition, the Church defendants will doubtlessly inquire of plaintiff at her upcoming deposition about family history matters, in order to obtain evidence to support this argument.

Given the need for this information for both parties to define and identify damages caused by plaintiff's childhood sexual abuse at the hands of Mr. Kendrick, and the fact that the information sought directly involves plaintiff herself as a child in a family of divorcing parents, the balancing clearly supports plaintiff's rights to this information.

In addition, the nature of the information obtained, particularly as it supports the knowledge of Church Elders of plaintiff's vulnerability to sexual abuse by Mr. Kendrick, and the policies and practices of the Church defendants demonstrated by their treatment of the parents, are relevant to issues of the liability of the Church defendants for failing to fulfill their duty to protect plaintiff and other children from sexual abuse by Mr. Kendrick arising out of church activities.

Dated: August 16, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.,
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On August 16, 2011, I served the within **PLAINTIFF JANE DOE'S REPLY BRIEF IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 16, 2011, at Hayward, California.

Elaine Landro

ELAINE T. LANDRO

8521314

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued as the "Jehovah's Witnesses on Peralta Blvd. Fremont" and "Kingdom Hall of Jehovah's Witnesses")

FILED
ALAMEDA COUNTY
AUG 17 2011
CLERK OF THE SUPERIOR COURT
By Deputy

AUG 15 2011

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL FURTHER PRODUCTION OF DOCUMENTS AND FOR SANCTIONS

Date: August 25, 2011
Time: 3:00 p.m.
Dept.: 22
Reservation #: 1196202

TABLE OF CONTENTS

Page

TABLE OF CONTENTS I

TABLE OF AUTHORITIES II

I. Introduction 1

II. Statement of Facts 2

III. Penitential Privilege 5

A. California's Penitential Privilege 6

B. The Withheld Documents Constitute Penitential Communications 7

1. There is No Evidence that Penitential Communications Were Made With the Knowledge that they Would be Revealed to Anyone Other than Elders 8

2. A Disclosure That is Privileged Itself Does Not Waive the Privilege 10

IV. Withheld Documents Referred to as 1, 4, and 5 in Plaintiff's Notice of Motion Contain Confidential and Private Information Regarding Individual(s) who are Not a Party to this Lawsuit and are Unrelated to Plaintiff's Claims or Defendant Kendrick 11

V. First Amendment 14

VI. Trial Court Should Conduct an in Camera Inspection 15

VII. There is No Basis for Awarding Sanctions against the Watchtower Defendants 16

VIII. Conclusion 16

PROOF OF SERVICE 18

SERVICE LIST 19

TABLE OF AUTHORITIES

CASES:

Abington School Dist. v. Schemp (1963) 374 U.S. 203 14

Catholic Charities of Sacramento, Inc. v. Superior Court (2004) 32 Cal.4th 527 15

Doe 2 v. Superior Court (2005) 132 Cal.App.4th 1504 ..... 6, 7, 10, 13

Employment Division Dep't of Human Resources of Oregon v. Smith (1990) 494 U.S. 872 15

Lemon v. Kurtzman (1971) 403 U.S. 602 14

Lipton v. Superior Court (1996) 48 Cal.App.4th 1599 15

NAACP v. Alabama ex rel. Patterson (1958) 357 U.S. 449 14

People v. Edwards (1988) 203 Cal.App.3d 1358 7

Pioneer Electronics (USA), Inc. v. Superior Court (2007) 40 Cal. 4th 360, 53 Cal. Rptr. 3d 513 12

Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417 ..... 9, 15

Schnabel v. Superior Court (1993) 5 Cal.4th 704, 21 Cal. Rptr. 2d 200 ..... 12, 13

Shelley v. Kramer (1948) 334 U.S. 1 14

Tien v. Superior Court (2006) 139 Cal.App.4th 528 ..... 12, 13

West Virginia Bd. of Educ. v. Barnette (1943) 319 U.S. 624 14

STATUTES:

California Evidence Code section 912 ..... 6, 9, 10

California Evidence Code section 917 8

California Evidence Code section 1030 6

California Evidence Code section 1031 ..... 5, 6, 7, 10

California Evidence Code section 1032 ..... 6, 10, 11

California Evidence Code section 1033 ..... 6, 10

California Evidence Code section 1034 ..... 6, 10

MISCELLANEOUS:

First Amendment, United States Constitution 14

Fourteenth Amendment, United States Constitution 14

Cal. Law Revision Com. Com., West's Ann. Evid. Code (2011 ed.) foll. § 1032 7

I. Introduction

This lawsuit arises from the alleged conduct of co-defendant Jonathan Kendrick that occurred in 1996/1997. (*See* Plaintiffs' Complaint at ¶¶ 6-8) Plaintiff's counsel served his Demand for Inspection of Documents, Things, and/or Places, Set Number One on each of the Watchtower Defendants on April 13, 2011.[1] Plaintiff's document requests include overly broad and irrelevant requests for documents without any time restrictions at all, even though the last alleged abuse occurred in 1997. The Watchtower Defendants responded to those demands by producing numerous documents and providing a privilege log as to four documents. A fifth document was provided to Plaintiff after redacting references to non-parties and information totally unrelated to co-defendant Kendrick. It is unclear from Plaintiff's motion papers whether Plaintiff is seeking the production of the unredacted version of that document. The five documents that are listed in her Notice of Motion as being the subject of Plaintiff's motion to compel are also protected by the penitential privilege and the Watchtower Defendants have provided Plaintiff's counsel a complete privilege log identifying documents by title and the specific objections and privilege that attach thereto.

Two of the documents relate solely to the internal organizational discipline of persons who are not parties to this litigation. Those non-parties have privacy rights which would be violated by the disclosure of those documents. The fifth document has been provided in a redacted form removing only information about non-parties unrelated to this litigation.

[1] Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued as the "Jehovah's Witnesses on Peralta Blvd. Fremont" and "Kingdom Hall of Jehovah's Witnesses") referred to herein collectively as "Watchtower Defendants."

II. Statement of Facts

All of the five documents involve spiritual communications with ordained elders and appointed congregation elders (hereinafter referred to as "elders") which are private and confidential communications pursuant to the religious practices, beliefs, tenets and teachings of Jehovah's Witnesses based upon Scripture and tradition. *See* Exhibit '1' Affidavit of Allen Shuster[2] ¶¶ 8-10, 12-13, 18-22; Exhibit '2'Affidavit of Michael L. Clarke[3] ¶¶ 7-13.

Each congregation of Jehovah's Witnesses is provided with spiritual oversight on a local level by a small group of appointed elders who form the congregation's body of elders. Before elders are appointed, they must meet the strict Scriptural qualifications outlined in the Bible and be recommended and approved by current body of elders, a circuit overseer (*i.e.* traveling elder), and elders who serve in the Service Department at the Branch Office of Jehovah's Witnesses in New York. Once an individual is approved and appointed to serve as a congregation elder, a letter from the Branch Office is read to the congregation and the individual is officially vested with ministerial authority as an ordained minister and appointed as an elder. All elders of the North Congregation of Jehovah's Witnesses, Fremont California (hereinafter "North Congregation") are and were at all times relevant to this case ordained ministers and spiritual leaders of the congregation. *See* Exhibit '1' Shuster Affidavit ¶¶ 5-7, 11; Exhibit '2' Clarke Affidavit ¶ 5.

Congregation elders are responsible for the spiritual development and spiritual teaching of the members of the congregation, as well as for pastoral care. Elders frequently provide spiritual counsel and advice to members of the congregation concerning highly confidential personal and spiritual matters. For example, congregation elders are authorized to hear confessions and other private, confidential communications and to provide spiritual guidance and spiritual coun-

---

[2] Hereinafter "Exhibit '1' Shuster Affidavit."

[3] Hereinafter "Exhibit '2' Clarke Affidavit."

sel by virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses. According to the religious beliefs and practices of Jehovah's Witnesses, congregation elders are expected to maintain the confidentiality of confessions and other confidential spiritual communications. *See* Exhibit '1' Shuster Affidavit ¶¶ 8-10, 12; Exhibit '2' Clarke Affidavit ¶¶ 5-10.

From time to time, congregation elders, including those in the North Congregation, communicated with elders in the Branch Office in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. All such spiritual communications between congregation elders and Branch Office elders must be kept strictly confidential under the religious tenets and teachings of Jehovah's Witnesses. *See* Exhibit '1' Shuster Affidavit ¶¶ 13, 19.

Congregation elders are also responsible for conducting "judicial investigations" or "judicial committees" where a member of the congregation is accused of serious wrongdoing or a sin. The goal of a judicial investigation or judicial committee is to ensure that the congregation remains spiritually and morally clean. In addition, the elders endeavor to provide spiritual counseling and assistance to those who may have erred, with the hope of helping them to regain their spirituality and relationship with God. When the elders on a judicial committee confirm that a congregant has in fact committed a serious sin for which spiritual discipline is required based on Jehovah's Witnesses' understanding of the Bible, the judicial committee will decide what that spiritual discipline should be. Based on the religious beliefs, practices, and procedures of Jehovah's Witnesses, at least two elders are required to conduct a judicial investigation and at least three elders are required for a judicial committee involving a congregant who is alleged to have committed a serious sin. Jehovah's Witnesses believe that men are imperfect and, therefore, three elders can provide more full and complete spiritual counsel and advice based on a broader range of experience and knowledge than can a single elder alone. Pursuant to the beliefs, prac-

tices, and procedures of Jehovah's Witnesses, all spiritual communications taking place during a "judicial investigation" or "judicial committee," are considered extremely private and strictly confidential by all present, including the accused congregant and elders. *See* Exhibit '1' Shuster Affidavit ¶¶ 14-16, 19-21.

Where a serious sin is confirmed by the elders on the judicial committee, the judicial committee may give private or public reproof or disfellowship that congregant, depending on whether the individual is repentant. When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses." If a congregation member is disfellowshipped, the judicial committee elders forward a notice of disfellowshipping to Branch Office elders for their review to ensure that their decision was spiritually-based and well-founded. The notice of disfellowshipping has the name of the disfellowshipped person, the date of disfellowshipping, and the Scriptural basis for disfellowshipping. *See* Exhibit '1' Shuster Affidavit ¶¶ 16, 19.

The confidentiality of spiritual communication between congregation members and elders is a foundational element of the religious beliefs and teachings of Jehovah's Witnesses. Jehovah's Witnesses recognize the Bible's admonition to confess one's sins to God and believe that there is a great benefit from speaking to congregation elders regarding such confidential spiritual matters. As such, Jehovah's Witnesses encourage those who need spiritual assistance to approach the congregation elders and convey to them whatever information may be necessary to provide such spiritual assistance. *See* Exhibit '1' Shuster Affidavit ¶¶ 17-21; Exhibit '2' Clarke Affidavit ¶¶ 6-11.

Since open and free communication between congregation members and elders is required to provide spiritual counsel and advice under the religious beliefs and practices of Jeho-

vah's Witnesses, emphasis is placed on privacy and strict confidentiality. The confidentiality requirements with respect to such spiritual communications are explained in official literature and publications of Jehovah's Witnesses. Congregants expect that all spiritual communications with congregation elders will remain strictly confidential. Further, revealing confidential spiritual communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation. Moreover, if an elder was compelled to disclose confidential information, his credibility and effectiveness as an elder, as well as the credibility and effectiveness of other elders in the congregation, would be adversely affected and compromised, since congregants would not trust and rely upon their belief that personal problems and information they disclose would not be revealed and used against them in a court action. *See* Exhibit '1' Shuster Affidavit ¶¶ 10, 18-21; Exhibit '2' Clarke Affidavit ¶¶ 7-11.

Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with congregation elders is limited to confessions. Such confidentiality extends to all confidential communications of a spiritual nature, including those that take place in the course of judicial investigations or committees, or while seeking and providing spiritual counsel and advice. Additionally, based upon Scripture and church tradition, such confidentiality requirements also extend to congregation files, notes, papers, reports, minutes or other documents prepared in conjunction with, or as a result of, confidential spiritual communications. Should the disclosure of such documents be compelled, the credibility and effectiveness of those in charge of the spiritual well being of entire congregations will be compromised. *See* Exhibit '1' Shuster Affidavit ¶¶ 19-22; Exhibit '2' Clarke Affidavit ¶¶ 7, 11-13.

III. Penitential Privilege

The penitential privilege should apply to all five of the documents in question because (1) the drafters meet the definition of "penitent" under Cal. Evid. Code Section 1031; (2) the

recipients of the documents meet the definition of "member of the clergy" under Cal. Evid. Code section 1030; (3) the documents are "penitential communications" under Cal. Evid. Code section 1032.

A. California's Penitential Privilege

The documents Plaintiff seeks to compel the Watchtower Defendants to disclose are protected by the penitential privilege set forth in California Evidence Code section 1030, *et seq.* California Evidence Code section 1033 provides: "Subject to section 912, a penitent, whether or not a party, has a privilege to refuse to, and to prevent another from disclosing, a penitential communication if he claims the privilege." California Evidence Code section 1034 further provides: "Subject to section 912, a clergyman, whether or not a party, has a privilege to refuse to disclose a penitential communication if he claims the privilege." Under California's statutory scheme, a "member of the clergy" is defined as a "priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization." California Evidence Code section 1031. Therefore, appointed elders of Jehovah's Witnesses are clearly within this definition of "clergyman."

Furthermore, a "penitent" is defined simply as "a person who has made a penitential communication to a clergyman." California Evidence Code section 1031. In turn, a "penitential communication" is defined as follows:

> As used in this article, 'penitential communication' means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a clergyman who, in the course of the discipline or practice of his church, denomination, or organization, is authorized or accustomed to hear such communications and, under the discipline or tenants of his church, denomination or organization, has a duty to keep such communication secret.

Under Evidence Code section 1032, there is no requirement that the communication "have as its purpose the confession of a 'flawed act' to 'receive religious consolation and guidance in return' in order to be privileged." *Doe 2 v. Superior Court* (2005) 132 Cal.App.4th

1504, 1518. Rather, the privilege applies to any communication that fits the statutory description. *See* Cal. Law Revision Com. com., West's Ann. Evid. Code (2011) foll. § 1032 (statute extends protection of privilege beyond just "confessions"). Consequently, a "penitential communication" is not limited to just confessions in the stereotypical sense of the word. It is any communication that fits the statutory description.

California case law supports the foregoing analysis. The court in *People v. Edwards* (1988) 203 Cal.App.3d 1358, 1362-63,[4] defined the elements of the rule of privilege.

B. The Withheld Documents Constitute Penitential Communications

The written communications at issue were made in a fashion that requires the rule of privilege to apply. The evidence indicates that the written communications were made by a "penitent" as defined by California Evidence Code section 1031 to an elder or elders of Jehovah's Witnesses (clergy) with a reasonable expectation of privacy under the religious beliefs and tenets of Jehovah's Witnesses. More specifically, each of the documents sought by Plaintiff are communications among elders regarding internal organizational matters relating to the discipline of a congregation member. Each was intended to remain strictly confidential. Each was made to elders, members of the "clergy." (*See* Exhibit '1' Shuster Affidavit ¶¶ 13-22.) Each elder has a duty under the tenets of the Jehovah's Witness faith to keep such communications secret. As pointed out in the Affidavit of Allen Shuster, the sharing of this information between the elders in Mr. Kendrick's congregation and the elders in the Service Department (headquarters) is part of the spiritual counsel and advice as to the proper application of religious doctrine and procedures. The sharing of that information does not affect the confidentiality of those communica-

[4] "In order for a statement to be privileged, it must satisfy all of the conceptual requirements of a penitential communication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed to hear such communications; and (3) such member of the clergy has a duty under the discipline or tenants of the church, religious denomination or organization to keep such communications secret."

tions, or destroy the privilege for such "penitential communications." Under these circumstances, Evidence Code section 917 provides that the confidential quality of the communications *must be presumed.* California Evidence Code section 917 provides that the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

1. There is No Evidence that Penitential Communications Were Made With the Knowledge that they Would be Revealed to Anyone Other than Elders

From time to time, congregation elders communicate with elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers, in order to receive spiritual guidance and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. All such spiritual communications between congregation elders and the Branch Office Service Department or circuit overseer must be kept strictly confidential under the religious tenets and teachings of Jehovah's Witnesses. *See* Shuster Affidavit ¶¶ 13, 19.

Congregation elders are required by the tenets of their faith to keep confessions and other confidential spiritual communications strictly confidential. Similarly, Jehovah's Witnesses doctrine requires that all confidential spiritual communications between congregation elders and elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers, be kept in the strictest confidence. Additionally, confidential spiritual communications taking place during a 'judicial investigation" and during "judicial committee" meetings are considered to be extremely private and elders must keep such confidential spiritual communications strictly confidential. Plaintiff asserts that the penitential privilege does not apply because the elders were required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters. First, this argument does not ap-

ply to each document. Second, the elders' communications to the elders in the Service Department does not automatically result in a breach of their duty to keep penitential communications—whether made to an individual elder or a judicial committee—secret and confidential. Rather, the relevant inquiry is (1) what information was communicated in those documents (i.e. did the congregation elders reveal the penitent's *actual* communications?), and (2) did the penitent know or expect that his confidential communication would be disclosed to the Service Department elders.

With regard to the first question, it is unlikely that the congregation elders in this case revealed the contents of the actual communications they had with Jonathan Kendrick (penitent). Thus, any such communication would not be a waiver under Section 912(a) (a waiver would occur only if the holder of a privilege "has disclosed a significant part of the communication or has consented to disclosure made by anyone"). If the Court finds any legal validity to Plaintiff's arguments, it would then be necessary for the Court to undertake an *in camera* inspection of the documents in question that relate to Mr. Kendrick to determine whether any confidential communications that the elders may have made to elders serving in the Service Department disclosed "a significant part" of a communication resulting in a waiver. (It should be noted that the other documents listed in the privilege log do not even relate in any way to Mr. Kendrick, but to non-parties.)

With regard to the second question, in *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal. App 4th 417, 445, upon which plaintiff relies, a priest discussed his psychological and sexual problems with the cardinal and an appointed "vicar for clergy." The priest knew that his conversations, along with the documents that were created as a result of the conversations, were routinely shared with the archbishop, the cardinal, the vicar for clergy, as well as other employees of the archdiocese. Although the priest claimed that these communi-

cations were privileged under Section 1032, the court held that the privilege was waived because "both parties to the original communication knew it likely would be transmitted to a third person." *Id.* Importantly, it was noted by that court that disclosure of this confidential information to the bishop and vicar was not required by Catholic tenets or doctrine. Thus, any privilege was waived by the communicant, since he knew the information would not be kept in confidence. In this case, Plaintiff provides no evidence to refute the fact that Jonathan Kendrick expected his communications with his congregation elders to remain strictly confidential. Under the tenets and doctrines of the Jehovah's Witness faith, the communications between Mr. Kendrick and his congregation elders and between his congregation elders and the Branch Office elders were all confidential. In determining whether a penitent's communication to a clergy member qualifies as a penitential communication, courts look to whether the penitent had an expectation of confidentiality at the time of their communication. *Doe 2*, 132 Cal.App.4th at 1518.

2. A Disclosure That is Privileged Itself Does Not Waive the Privilege

Plaintiff asserts that the penitential privilege was waived when the elders sought the spiritual advice of the elders in the Service Department. Again, a plain reading of Section 912 of the Evidence Codes indicates that such a disclosure does not constitute a waiver.

First, it must be acknowledged that elders (i.e., clergy) may also be penitents under Evidence Code section 1031, when they engage in confidential spiritual communications with other elders. Therefore, any confidential spiritual communications between congregation elders, circuit overseers (i.e., traveling elders), and Branch Office elders in New York for the purpose of obtaining spiritual counsel and advice are also penitential communications under Evidence Code section 1032 and thus protected from disclosure by Evidence Code sections 1033 and 1034.

According to the provisions of Section 912(c), "[a]disclosure that is itself privileged is not a waiver of any privilege." Thus, California recognizes that there will be situations when a

privilege holder will have the need to speak to others about matters relating to their privileged communications. And, as long as the privilege holder limits these communications to individuals with whom he also has a privilege, then the privilege is not waived.

Thus, an elder who sought spiritual advice and direction from another elder—no matter where he was physically situated—regarding a privileged communication he received from a penitent, will not be deemed to have been waived the privilege as long as the three requirements of Section 1032 are met. The three requirements are met in this case. *See* Shuster Affidavit ¶ 19.

IV. Withheld Documents Referred to as 1, 4, and 5 in Plaintiff's Notice of Motion Contain Confidential and Private Information Regarding Individual(s) who are Not a Party to this Lawsuit and are Unrelated to Plaintiff's Claims or Defendant Kendrick

If this court finds that the Watchtower Defendants' objections to production based on the penitential privilege do not apply to some of the documents in question, the Watchtower Defendants submit that Withheld Documents 1, 4 and 5 should not have to be produced because they contain confidential and private information regarding individual(s) who are not a party to this lawsuit. In particular, document 1 (February 9, 1992, letter received by elders in U.S. Service Department from the North Congregation, Fremont, California elders and the circuit overseer), as provided to Plaintiff, redacted only information related to the appointment and/or deletion of person other than Mr. Kendrick. No information relevant to Plaintiff or Mr. Kendrick was redacted. Also, documents 4 (November 7, 2002, letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department) and 5 (November 5, 1996, letter from the elders on the North Congregation, Fremont, California Judicial Committee to elders in the U.S. Service Department) deal with internal organizational disciplinary action involving family members of Plaintiff. They are totally unrelated to the claims in

this action or to Mr. Kendrick. They relate to personal matters of persons who are not parties to this action.

Plaintiff's attorney alleges on this motion that those documents could not reasonably be expected to be private from Plaintiff, who is a family member, since the information was shared with elders. However, Plaintiff's attorney has produced no evidence or affidavits from family members stating that the non-parties mentioned in those documents told Plaintiff everything they told the elders, or that those family members expected or consented to the disclosure of that information to Plaintiff.

Where private information about non-parties is sought, courts will generally perform a balancing test to evaluate the need for the information sought against the asserted right of privacy. "Drawing this ultimate balance requires a careful evaluation of the privacy right asserted, the magnitude of the imposition on that right, and the interests militating for and against any intrusion on privacy." *Pioneer Electronics (USA), Inc. v. Superior Court*, (2007) 40 Cal. 4th 360, 370, 53 Cal. Rptr. 3d 513.

In weighing the privacy interests of third parties, courts will also consider "the nature of the information sought, its inherent intrusiveness, and any specific showing of a need for privacy, including any specific harm that disclosure of the information might cause." *Schnabel v. Superior Court*, (1993) 5 Cal. 4th 704, 21 Cal. Rptr. 2d 200. For example, the third party may demonstrate that public disclosure of confidential information would embarrass persons not involved in the litigation. *Id.*

The more sensitive the nature of the personal information that is sought to be discovered, the more substantial the showing of the need for the discovery that will be required before disclosure will be permitted." *Tien v. Superior Court*, (2006) 139 Cal.App.4th 528, 43 Cal .Rptr.

3d 121. One would hope that the Court would recognize that forcing an individual to reveal that he was sexually abused fits in the realm of 'sensitive.'

With respect to sensitive information, in determining whether disclosure is required, the court must indulge in a "careful balancing" of the right of a civil litigant to discover relevant facts, on the one hand, and the right of the third parties to maintain reasonable privacy regarding their sensitive personal affairs, on the other. *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 712, 21 Cal. Rptr. 2d 200.

In this case, with respect to disputed documents 1, 4, and 5, the information about non-parties relates to their appointments or deletions from positions in the congregation (document 1) and internal disciplinary matters (documents 4 and 5). Thus, they include very sensitive information that these non-parties have a right to expect will be kept confidential.

It is respectfully submitted that Plaintiff has no right to confidential information about persons, even her family members, who are not parties to this action. To force disclosure of those documents would compel elders (clergy) to violate the confidence placed in them by those non-parties. In addition, these documents will not lead to the discovery of admissible evidence.

Even when the state has enough of an interest in discovering the truth in legal proceedings, that it may compel disclosure of confidential material, before a court can make such a determination, it must afford the parties whose privacy rights are at issue an opportunity to present their views. *Doe 2*, 132 Cal.App.4th 1504.

Finally, if this court eventually finds that despite the privacy interests of individuals who are not a party to this lawsuit these documents must be produced, the Watchtower Defendants request that they be allowed to redact the name(s) and any other identifying information so as to protect the privacy of these individuals who are not parties to this lawsuit.

V. First Amendment

The establishment clause in the First Amendment to the federal constitution provides that, "Congress shall make no law respecting an establishment of religion...." Among other things, the U.S. Supreme Court has held that this clause prohibits the government's excessive entanglement with religion. *See Lemon v. Kurtzman* (1971) 403 U.S. 602, 621-24. Under the established clause, every religion is guaranteed the same rights and protections. The U.S. Supreme Court has decisively settled that these protections have been made wholly applicable to the states by the Fourteenth Amendment. *Abington School Dist. v. Schemp* (1963) 374 U.S. 203, 216; *NAACP v. Alabama ex ret Patterson* (1958) 357 U.S. 449, 463; *West Virginia Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 637. "Judicial action is to be regarded as action of the state for the purposes of the Fourteenth Amendment [and) is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common law policy." *Shelley v. Kramer* (1948) 334 U.S. 1, 15, 20.

As explained above, the tenets and religious beliefs of Jehovah's Witnesses doctrine establish the requirement that three or more elders receive and investigate penitent communications regarding allegations of serious transgression or sin. They also require that the Branch Office elders be informed. However, all elders are obligated to keep the information confidential. If this court denies the penitential privilege on the basis of a distinction between Jehovah's Witnesses' pastoral procedures and those of other religions, it would essentially establish "acceptable" religious practices in violation of the federal and state constitutional prohibitions of excessive governmental entanglement with religion.

Additionally, of this Court refused to apply the penitential privilege to the religious practices and doctrines of Jehovah's Witnesses for confidential communications, it would inhibit the free exercise of religion of Jehovah's Witnesses and the Watchtower Defendants in violation of

the free exercise clauses of the state and federal constitutions. Only a neutral law of general applicability may burden the right to free exercise of religion. *Employment Division Dep't of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 879-80. California courts also apply the strict scrutiny standard when deciding matters under the free exercise clause of the California Constitution. *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562.

The decision in *Roman Catholic Archbishop* is inapplicable because it concerned testimony and evidence to be presented to a grand jury in a criminal proceeding. Disclosure was required in that instance, the court held, "because the government had a compelling interest in prosecuting child molesters." In contrast, this case involves civil actions and not the criminal prosecutions of child molesters.

Here, the government has no compelling interest for granting the penitent-clergy privilege to religions that require a penitent confess to one minister but denying the same privilege to religions that require that a penitent confess to more than one minister. Because there is no compelling state interest for the court's non-neutral judicial interpretation of the rule of privilege, Plaintiffs' arguments must be rejected.

VI. Trial Court Should Conduct an in Camera Inspection

Should this Court look favorably upon Plaintiff's Motion, the Watchtower Defendants alternatively request that this Court inspect each of the requested documents *in camera* before determining whether or not the privilege should apply as to each document in question. An in camera review by the trial court is appropriate to resolve a dispute as to whether requested documents, which contain privileged information, are discoverable. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1619-20.

VII. There is No Basis for Awarding Sanctions against the Watchtower Defendants

Plaintiff admits that sanctions are only appropriate where the party seeking disclosure has shown good cause and that the objections to that disclosure are totally meritless. In this case, it seems clear that Plaintiff has not shown any good cause for seeking privileged confidential documents relating to non-parties (documents 1, 4, and 5). Plaintiff has not even shown how the production of those documents would lead to the discovery of admissible evidence.

In addition, the Watchtower Defendants have shown that there are valid legal arguments against the forced disclosure of each of the five documents sought by Plaintiff. Therefore, it is respectfully submitted that, regardless of the outcome of this motion, Plaintiff's application for sanctions against the Watchtower Defendants should be denied.

VIII. Conclusion

The Watchtower Defendants have attempted in good faith to reasonably respond to all of Plaintiff's requests for documents and information. In the face of overly broad and irrelevant document requests, however, the Watchtower Defendants asserted all appropriate objections and privileges. While Plaintiff is entitled to information reasonably calculated to lead to the discovery of admissible evidence (*i.e.*, "relevant" information), Plaintiff is not entitled to obtain documents that are protected from disclosure by the penitential privilege, that are irrelevant, or that invade the privacy of individuals not party to this action.

Therefore, based on the foregoing, the Watchtower Defendants respectfully request that Plaintiffs' application re production of withheld documents be denied.

DATED: August 11, 2011

THE McCABE LAW FIRM, APC

By _____
James M. McCabe
Attorneys for Watchtower Defendants

Exhibit "A"

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

AFFIDAVIT OF ALLEN SHUSTER

I, Allen Shuster, after being duly sworn, depose and state and if called to testify would do so as follows:

1. I am over 18 years of age, of sound mind, and competent to make this Affidavit. I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I reside in Patterson, New York and have served as an elder in the faith of Jehovah's Witnesses since 1979.

3. Since February 1981, I have served in the Service Department at the U.S. Branch Offices of Jehovah's Witnesses in New York. I provide spiritual assistance to congregation elders who call or write the Service Department for help. Prior to March 2001, the spiritual assistance provided by the Service Department, along with the appointment of elders, was communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc. Since March 2001, this has been communicated through the Christian Congregation of Jehovah's Witnesses.

4. My duties in the Service Department also include monitoring the functioning, organization, and staffing of congregations of Jehovah's Witnesses, including reviewing the qualifications for the appointment of elders to congregations of Jehovah's Witnesses in the United States.

QUALIFICATIONS OF ELDERS

5. Jehovah's Witnesses are not automatically appointed to serve as congregation elders. Rather, they must first meet certain qualifications that are outlined in the Bible, as follows: Before a male member of the congregation can be considered for appointment as a congregation elder, he must first be baptized as one of Jehovah's Witnesses. Next the individual must gain further knowledge of the Holy Scriptures and show a willingness to be used in a further way to assist others in the congregation. If he shows such a willingness, he must then meet Scriptural qualifications set out in 1 Timothy 3:8-13. Thereafter, he may qualify and be appointed as a ministerial servant. Although a ministerial servant would not provide spiritual supervision in the congregation, he could be assigned certain tasks to assist the congregation elders as they carry out their duties. After a period of time—perhaps many years—a ministerial servant who has faithfully carried out his assignments and has gained more experience may meet the qualifications of a congregation elder as outlined in 1 Timothy 3:1-7 and Titus 1:6-9.

When this occurs, the congregation body of elders will make this recommendation to the circuit overseer (a representative of the Branch office who is also an experienced elder). If the circuit overseer agrees with the recommendation, it will then be forwarded to the Branch office's Service Department. Approved elders in the Service Department will then review the recommendation in accord with the guidelines outlined in the Holy Scriptures, adopted by the Governing Body of Jehovah's Witnesses. The Branch office will then inform the local congregation's body of elders, in writing, of their determination with regards the recommendation.

6. If an individual is appointed to serve as a congregation elder, the letter of appointment from the Branch office is read to the congregation. It is at this time that he is officially vested with ministerial authority. In other words, he is appointed as a congregation elder.

7. Jehovah's Witnesses who serve as appointed elders are recognized as ordained ministers and congregation elders.

8. Like Jesus and his apostles, congregation elders do not receive a salary for their ministerial work. Nonetheless, as ordained ministers and congregation elders, they are responsible for providing spiritual supervision to the congregations, which includes hearing confessions and other confidential spiritual communications made to them by congregation members who are seeking spiritual counsel, advice or comfort.

9. Congregation elders are authorized to hear confessions and other confidential spiritual communications and to provide confidential spiritual counsel, advice, and comfort by virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses.

10. According to the religious beliefs and practices of Jehovah's Witnesses, congregation elders are expected to keep confession and other confidential spiritual

communications confidential. An elder who reveals such a confession or other confidential spiritual communication, without the express permission of the one making the confession or confidential spiritual communication may be disqualified from serving as an elder.

11. All elders of local congregations of Jehovah's Witnesses, including the North Congregation of Jehovah's Witnesses in Fremont, California (hereinafter "North Congregation"), are and were at all times relevant to this case ordained ministers and the spiritual leaders of their respective congregations.

DUTIES OF ELDERS

12. As with all congregations of Jehovah's Witnesses, the North Congregation elders frequently provide spiritual counsel, advice, and comfort to congregation members concerning highly confidential and personal matters of a spiritual nature.

13. In addition, at all times relevant to this case, the North Congregation elders occasionally communicated with elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers, in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. As discussed more fully below, the religious beliefs of these elders also require that any confidential spiritual communications between elders serving in the Branch Office's Service Department, elders serving as circuit overseers, and congregation elders must be kept strictly confidential. The spiritual counsel and advice given by the elders serving in the Branch Office's Service Department, elders serving as circuit overseers, and congregation elders is based on Jehovah's Witnesses' understanding of the Bible.

14. The elders of congregations of Jehovah's Witnesses are also responsible for conducting what is referred to as "judicial investigations" when a member of a congregation is

accused of serious Scriptural wrongdoing. Judicial investigations are carried out by two elders selected by the congregation body of elders.

15. The goal of a judicial investigation is to make certain that the Christian congregation remains spiritually and morally clean. (James 1:26) In doing so, if the elders confirm that serious Scriptural wrongdoing has occurred, a judicial committee of at least three elders is selected by the congregation body of elders to endeavor to provide spiritual assistance to the congregant who may have sinned, with the hope of assisting them to regain their spirituality and relationship with God. (Galatians 6:1, 2) At times, a judicial committee will determine that an accused congregant should be spiritually disciplined internally, based on Jehovah's Witnesses' understanding of the Bible.

16. Spiritual discipline administered by elders of Jehovah's Witnesses serving on a judicial committee is based solely on Jehovah's Witnesses' understanding of the Bible as applied to the facts of the matter. Where a serious sin is involved and the accused person is repentant, the judicial committee may recommend private or public reproof. But if the person who committed a serious sin cannot be brought back to repentance, the individual will have to be disfellowshipped. When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses."

17. Jehovah's Witnesses recognize the Bible's admonition to confess ones sins to God. 1 John 1:8, 9 ("If we confess our sins, he is faithful and righteous so as to forgive us our sins and to cleanse us from all unrighteousness.").

18. In addition Jehovah's Witnesses also believe that there can be much benefit from speaking to the congregation elders ("older men") regarding such confidential matters. James 5:13-16 ("Is there anyone suffering evil among YOU? Let him carry on prayer. Is there anyone

in good spirits? Let him sing psalms. Is there anyone sick among YOU? Let him call the older men of the congregation to [him], and let them pray over him, greasing [him] with oil in the name of Jehovah. And the prayer of faith will make the indisposed one well, and Jehovah will raise him up. Also, if he has committed sins, it will be forgiven him. Therefore openly confess YOUR sins to one another and pray for one another, that YOU may get healed."). Jehovah's Witnesses view confessions and other confidential and private communications of a spiritual nature between congregation members and elders as communications that elders must keep confidential. Proverbs 25:9.

19. Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with the congregation elders is limited to confessions. Rather, as outlined in James 5:13-16, Jehovah's Witnesses are encouraged to seek the spiritual counsel and advice of the elders in a variety of life situations. Congregation elders are also encouraged to seek spiritual counsel and advice from elders serving in the Branch Office's Service Department, or from elders serving as circuit overseers, in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members, and on occasion congregation elders seek such spiritual counsel and advice. Such confidential spiritual communications from congregation elders are only handled by elders in the Branch Office Service Department. In addition, if a congregation member is disfellowshipped, the judicial committee elders forward a notice of disfellowshipping to Branch Office elders for their review to ensure that their decision was spiritually based and well founded. The notice of disfellowshipping has the name of the disfellowshipped person, the date of disfellowshipping, and the Scriptural basis for disfellowshipping. Jehovah's Witnesses view all such spiritual communications as confidential communications that must be kept strictly confidential.

20. Elders do not allow unnecessary third parties to be a party to a confidential communication. However, at times more than one elder may be a party to the conversation. For instance, it is Jehovah's Witnesses religious belief and practice to have at least two elders present during a judicial investigation and at least three elders present during a judicial committee. (Deuteronomy 17:6; Deuteronomy 19:15; Matthew 18:15-17; 2 Corinthians 13:1; 1 Timothy 5:19) Before one becomes one of Jehovah's Witnesses, he would be made aware of this provision. *Your Word Is a Lamp To My Foot*, pages 176-79; *Organization for Kingdom-Preaching and Disciple-Making*, pages 159-65; *Organized to Accomplish Our Ministry*, pages 145-47; *Organized To Do Jehovah's Will*, pages 151-2. In addition, there may be instances where a husband and wife, or a parent and child, may together seek or would be provided with spiritual counsel, advice or comfort from the elders. Jehovah's Witnesses believe that men are imperfect and, therefore, three elders serving on a judicial committee can provide more full and complete spiritual counsel and advice based on a broader range of experience and knowledge than can a single elder alone. The elders and participants to these confidential and private spiritual communications would view these communications as confidential and congregants would expect the elders to keep such communications strictly confidential.

21. In addition, the religious doctrine of Jehovah's Witnesses requires that all elders keep these confidential and private spiritual communications strictly confidential. *The Watchtower*, April 1, 1971, pages 222-224; *Kingdom Ministry*, July 1975; *The Watchtower*, December 15, 1975, pages 764-66; *The Watchtower*, September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-27; *The Watchtower*, November 15, 1991, pages 19-23. Indeed, an elder who reveals the contents of such a confidential communication may be subject to removal.

22. In this case, Withheld Documents one through five referenced in Plaintiff's Notice of Motion and Motion to Compel, were all received by or sent by elders serving in the Branch Office's Service Department and are the type of confidential communications and documents described in paragraphs 13-21 above, which must be kept strictly confidential. The undersigned therefore claims and does not waive the penitent privilege as to any of the Withheld Documents.

SIGNED this the 11th day of August, 2011.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my information, belief, and knowledge.

Allen Shuster

Allen Shuster

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

SUBSCRIBED AND SWORN TO BEFORE ME on the 11 day of August, 2011, to certify which witness my hand and official seal.

Robert J. Budrecki

Notary Public, State of New York

ROBERT J. BUDRECKI
Notary Public, State Of New York
No. 01BU6003185
Qualified In Putnam County
Commission Expires 02/23/2014

Exhibit "B"

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

AFFIDAVIT OF MICHAEL L. CLARKE

I, Michael L. Clarke, after being duly sworn, depose and state and if called to testify would do so as follows:

1. That I am over 21 years of age and reside in Fremont, California.

2. That I have been a member of the North Congregation of Jehovah's Witnesses, in Fremont, California since 1989.

3. That from August 29, 1989, until the present I have served as a duly ordained minister and elder of the North Congregation of Jehovah's Witnesses in Fremont, California.

4. That I am thoroughly familiar with the religious beliefs, teachings, practices, and organization of Jehovah's Witnesses.

5. That Jehovah's Witnesses who are responsible for teaching and pastoral care of congregation members are called "elders."

6. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder has a responsibility to provide spiritual counsel and advice to those who seek or need it, and that a person who seeks or needs spiritual counsel and advice conveys to the elders whatever information may be needed to provide this spiritual assistance.—Isaiah 32:2; James 5:14-16; Hebrews 13:17.

7. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and tradition, that elders must maintain in strict confidence any church communications connected with such spiritual counsel and advice and congregants expect that their communications to elders will remain confidential.—Proverbs 15:22; 25:9, 10.

8. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

9. That if Affiant or any other elder is compelled to disclose such confidential information, his credibility and effectiveness as an elder, as well as the credibility and effectiveness of the other elders in the congregation, would be adversely affected and compromised, since congregation members will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action or otherwise violate their expectation of privacy and confidentiality.

10. That the requirement of keeping the above-described confidential and spiritual communications to elders confidential is explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowledge in the congregation or community.
>
> Those mature ministers will not discuss even with their wives and close friends what they thus learn in confidence. They know that if they did so it would undermine respect for their positions; it would make individuals hesitant to come to them; yes, in time it might even make it impossible for them to fulfill their role as spiritual shepherds.

The Watchtower, April 1, 1971, p. 223.

11. That it is also the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, to keep congregation files, papers, reports, minutes or other documents prepared in conjunction with, or as a result of, the above-described confidential communications, strictly confidential.

12. That Withheld Documents one through five referenced in Plaintiffs' Ex Parte Application Re Production of Withheld Documents, were all prepared, signed, and sent by Affiant or received by Affiant as an elder in the North Congregation, and are the type of confidential communications and documents described in paragraph 6-11 above, which must be kept strictly confidential. The undersigned Affiant therefore claims and does not waive the penitential privilege as to any of the Withheld Documents.

13. That if Affiant or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described

confidential communications, the credibility and effectiveness of Petitioner and other elders in the congregation, will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

SIGNED this the 11 day of August, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

Michael L. Clarke

STATE OF CALIFORNIA)
) ss.:
COUNTY OF ALAMEDA)

SUBSCRIBED AND SWORN TO BEFORE ME on the 11th day of August, 2011, to certify which witness my hand and official seal.

Carol Giddens
Notary Public, State of California

CAROL GIDDENS
Commission # 1854130
Notary Public - California
Alameda County
My Comm. Expires Jul 12, 2013

PROOF OF SERVICE
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
Case No. HG11558324

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is 4817 Santa Monica Ave., Ste. B, San Diego, CA 92107

On August 11, 2011, I served the following document(s) described as WATCHTOWER DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL FURTHER DOCUMENTS FROM DEFENDANT on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST.

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with The Law Offices of James M. McCabe's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Ocean Beach, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to Fed Ex for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (619) 224-0089 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 11, 2011 at Ocean Beach, California.

_____
Employee of the McCabe Law Firm

SERVICE LIST

JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.

Case No. HG11558324

Richard J. Simons, Esq.
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

(ATTORNEY FOR PLAINTIFF)

8521318

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued as the "Jehovah's Witnesses on Peralta Blvd. Fremont" and "Kingdom Hall of Jehovah's Witnesses")

FILED
ALAMEDA COUNTY
AUG 17 2011
CLERK OF THE SUPERIOR COURT
By Deputy

RCS

AUG 15 2011

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

FOREIGN CASES FILED IN SUPPORT OF WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL FURTHER PRODUCTION OF DOCUMENTS AND FOR SANCTIONS

FOREIGN CASES

	Pages Found in Memorandum
Abington School Dist. v. Schemp (1963) 374 U.S. 203	14
Employment Division Dep't of Human Resources of Oregon v. Smith (1990) 494 U.S. 872	15
Lemon v. Kurtzman (1971) 403 U.S. 602	14
NAACP v. Alabama ex rel. Patterson (1958) 357 U.S. 449	14

Shelley v. Kramer (1948) 334 U.S. 1 14
West Virginia Bd. of Educ. v. Barnette (1943) 319 U.S. 624 14

Supreme Court of the United States
SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, et al., Appellants,
v.
Edward Lewis SCHEMPP et al.
William J. MURRAY III, etc., et al., Petitioners,
v.
John N. CURLETT, President, et al., Individually, and Constituting the Board of School Commissioners of Baltimore City.

Nos. 142 and 119.
Argued Feb. 27 and 28, 1963.
Decided June 17, 1963.

Two companion cases presenting issues in the context of state action requiring that schools begin each day with readings from the Bible. In one case, No. 142, an action by parents to enjoin enforcement of a Pennsylvania statute providing for Bible reading in public schools, the United States District Court for the Eastern District of Pennsylvania, 201 F.Supp. 815, rendered judgment for the plaintiffs and a direct appeal was taken. In the other action, No. 119, a Maryland mandamus proceeding to compel a school board to rescind a rule providing for opening exercises in public schools embracing reading of the Bible or recitation of the Lord's Prayer, the Superior Court of Baltimore City, Maryland, rendered judgment for defendants, and plaintiffs appealed. The Court of Appeals of Maryland, 228 Md. 239, 179 A.2d 698, affirmed. Certiorari was granted. The Supreme Court, Mr. Justice Clark, held that the practices at issue and the laws requiring them were unconstitutional under the Establishment Clause, as applied to the states under the Fourteenth Amendment.

Judgment in No. 142 affirmed; judgment in No. 119 reversed and cause remanded with directions.

Mr. Justice Stewart dissented.

West Headnotes

[1] Constitutional Law 92 ⚿3851

92 Constitutional Law
92XXVII Due Process
92XXVII(A) In General
92k3848 Relationship to Other Constitutional Provisions; Incorporation
92k3851 k. First Amendment. Most Cited Cases
(Formerly 92k274(1), 92k274(3), 92k274)

The First Amendment's mandate that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof has been made wholly applicable to the states by the Fourteenth Amendment. U.S.C.A.Const. Amends. 1, 14.

[2] Constitutional Law 92 ⚿1295

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1), 92k84)

The Establishment Clause of the First Amendment is not restricted to forbidding governmental preference of one religion over another. U.S.C.A.Const. Amend. 1.

[3] Constitutional Law 92 ⚿1298

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1298 k. Advancement, Endorsement, or Sponsorship of Religion; Favoring or Preferring Religion. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

The Establishment Clause of the First Amendment prohibits a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the state and

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

federal government would be placed behind tenets of one or all orthodoxies. U.S.C.A.Const. Amends. 1, 14.

[4] Constitutional Law 92 ⚿1295

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 k. In General. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

The Establishment Clause of the First Amendment withdrew all legislative power respecting religious belief or expression thereof. U.S.C.A.Const. Amends. 1, 14.

[5] Constitutional Law 92 ⚿1295

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 k. In General. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

Test under Establishment Clause of the First Amendment is as to purpose and primary effect of enactment, and if either is advancement or inhibition of religion, enactment exceeds scope of legislative power. U.S.C.A.Const. Amends. 1, 14.

[6] Constitutional Law 92 ⚿1298

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1298 k. Advancement, Endorsement, or Sponsorship of Religion; Favoring or Preferring Religion. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

Constitutional Law 92 ⚿1303

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1302 Free Exercise of Religion
92k1303 k. In General. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

To withstand the strictures of the Establishment Clause of the First Amendment there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. U.S.C.A.Const. Amends. 1, 14.

[7] Constitutional Law 92 ⚿1303

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1302 Free Exercise of Religion
92k1303 k. In General. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

The Free Exercise Clause of the First Amendment like the Establishment Clause withdraws from legislative power, state and federal, the exertion of any restraint on free exercise of religion. U.S.A.Const. Amends. 1, 14.

[8] Constitutional Law 92 ⚿1303

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1302 Free Exercise of Religion
92k1303 k. In General. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

Purpose of the Free Exercise Clause of the First Amendment is to secure religious liberty in the individual by prohibiting any invasion thereof by civil authority. U.S.C.A.Const. Amends. 1, 14.

[9] Constitutional Law 92 ⚿1299

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1299 k. Inhibiting, Interfering With,

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

or Coercing Religion. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

Constitutional Law 92 ⚿1303

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1302 Free Exercise of Religion
92k1303 k. In General. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

It is necessary in case under Free Exercise Clause of First Amendment for one to show coercive effect of enactment as it operates against him in practice of religion and violation of Free Exercise Clause is predicated on coercion, while Establishment Clause violation need not be so attended. U.S.C.A.Const. Amends. 1, 14.

[10] Constitutional Law 92 ⚿1350

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1341 Public Education
92k1350 k. Prayer or Silence in General. Most Cited Cases
(Formerly 92k274(1), 92k274(4), 92k274)

Constitutional Law 92 ⚿1354(3)

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1341 Public Education
92k1354 Curriculum, Books, and Classroom Materials
92k1354(3) k. Bible. Most Cited Cases
(Formerly 92k274(1), 92k274(4), 92k274)

Schools 345 ⚿165

345 Schools
345II Public Schools
345II(L) Pupils
345k165 k. Religious Instruction and Reading of Scriptures. Most Cited Cases
(Formerly 92k274(1), 92k274(4), 92k274)

Practices of selection and reading of verses of Bible and recitation, by students in unison, of Lord's Prayer, at opening of school day, as part of curricular activities of students required by law to attend school, were religious in character and they and the laws requiring them were unconstitutional under the Establishment Clause of the First Amendment as applied to the states through the Fourteenth Amendment. U.S.C.A.Const. Amends. 1, 14; 24 P.S.Pa. §§ 11-1122, 15-1516; Code Md.1957, art. 77, § 202.

[11] Pleading 302 ⚿214(3)

302 Pleading
302V Demurrer or Exception
302k214 Admissions by Demurrer
302k214(3) k. Specific Matters Admitted in General. Most Cited Cases

Demurrer to petition alleging that uniform practice in schools under respondents' rule had been to read from King James version of Bible and that exercise was sectarian admitted religious character of exercises.

[12] Constitutional Law 92 ⚿832

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)8 Freedom of Religion and Conscience
92k832 k. Education. Most Cited Cases
(Formerly 92k42.1(1), 92k42)

Constitutionality of laws and practices relating to religious exercises in schools could be challenged only by persons having standing to complain. U.S.C.A.Const. Amends. 1, 14.

[13] Constitutional Law 92 ⚿825

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)8 Freedom of Religion and Con-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

science
92k825 k. In General. Most Cited Cases
(Formerly 92k42.2(1), 92k42)

Requirements for standing to challenge state action under Establishment Clause of First Amendment, unlike those relating to Free Exercise Clause, do not include proof that particular religious freedoms are infringed. U.S.C.A.Const. Amends. 1, 14.

[14] Constitutional Law 92 ⚿832

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)8 Freedom of Religion and Conscience
92k832 k. Education. Most Cited Cases
(Formerly 92k42.1(1), 92k42)

School children and their parents, directly affected by laws and practices relating to religious exercises in schools against which their complaints were directed, had standing to complain of the practices as unconstitutional under the Establishment Clause. U.S.C.A.Const. Amends. 1, 14; 24 P.S.Pa. §§ 11-1122, 15-1516; Code Md.1957, art. 77, § 202.

[15] Constitutional Law 92 ⚿1343

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1341 Public Education
92k1343 k. Students in General. Most Cited Cases
(Formerly 92k274(4), 92k274)

The fact that individual students could absent themselves from religious exercises in schools upon parental request furnished no defense to claim of unconstitutionality under the Establishment Clause. U.S.C.A.Const. Amends. 1, 14; 24 P.S.Pa. §§ 11-1122, 15-1516; Code Md.1957, art. 77, § 202.

[16] Constitutional Law 92 ⚿1342

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1341 Public Education
92k1342 k. In General. Most Cited Cases
(Formerly 92k274(4), 92k274)

It was no defense to urge that religious practices in schools might be relatively minor encroachment upon First Amendment. U.S.C.A.Const. Amends. 1, 14.

[17] Constitutional Law 92 ⚿1299

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1299 k. Inhibiting, Interfering With, or Coercing Religion. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

State may not establish a religion of secularism in sense of affirmatively opposing or showing hostility to religion and thus preferring those who believe in no religion over those who do believe. U.S.C.A.Const. Amends. 1, 14.

[18] Constitutional Law 92 ⚿1354(1)

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1341 Public Education
92k1354 Curriculum, Books, and Classroom Materials
92k1354(1) k. In General. Most Cited Cases
(Formerly 92k274(4), 92k274)

Constitutional Law 92 ⚿1354(3)

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1341 Public Education
92k1354 Curriculum, Books, and Classroom Materials
92k1354(3) k. Bible. Most Cited Cases
(Formerly 92k274(4), 92k274)

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Study of the Bible for its literary and historic qualities and study of religion, when presented objectively as part of secular program of education, may be effected consistent with the First Amendment. U.S.C.A.Const. Amends. 1, 14.

[19] Constitutional Law 92 ⚿1307

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1302 Free Exercise of Religion
92k1307 k. Neutrality; General Applicability. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

The concept of neutrality which does not permit state to require religious exercise even with consent of majority of those affected does not collide with the majority's right to free exercise of religion. U.S.C.A.Const. Amends. 1, 14.

[20] Constitutional Law 92 ⚿1303

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1302 Free Exercise of Religion
92k1303 k. In General. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274, 92k44)

While Free Exercise Clause of First Amendment clearly prohibits use of state action to deny rights of free exercise to anyone, it does not mean that majority may use machinery of state to practice its beliefs. U.S.C.A.Const. Amends. 1, 14.

[21] Constitutional Law 92 ⚿1291

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1291 k. Neutrality. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

Constitutional Law 92 ⚿1292

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1292 k. Beliefs Protected; Inquiry Into Beliefs. Most Cited Cases
(Formerly 92k274(3.1), 92k274(3), 92k274)

In the relationship between man and religion, state is firmly committed to a position of neutrality and it is not within power of government to invade citadel of individual heart and mind whether its purpose or effect be to aid or oppose, to advance or retard. U.S.C.A.Const. Amends. 1, 14.

****1562** No. 142.

***203** Philip H. Ward III, Philadelphia, Pa., and John D. Killian, III, Harrisburg, Pa., for appellants.

Henry W. Sawyer III, Philadelphia, Pa., for appellees.

No. 119.

Leonard J. Kerpelman, Baltimore, Md., for petitioners.

Francis B. Burch and George W. Baker, Jr., Baltimore, Md., for respondents.

***204** Thomas B. Finan, Baltimore, Md., for State of Maryland, as amicus curiae.

***205** Mr. Justice CLARK delivered the opinion of the Court.

Once again we are called upon to consider the scope of the provision of the First Amendment to the United States Constitution which declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.' These companion cases present the issues in the context of state action requiring that schools begin each day with readings from the Bible. While raising the basic questions under slightly different factual situations, the cases permit of joint treatment. In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause, as applied to the States through the Four-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

teenth Amendment.

I.

The Facts in Each Case: No. 142. The Commonwealth of Pennsylvania by law, 24 Pa.Stat. s 15-1516, as amended, Pub.Law 1928 (Supp.1960) Dec. 17, 1959, requires that 'At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.' The Schempp family, husband and wife and two of their three children, brought suit to enjoin enforcement of the statute, contending that their rights under the Fourteenth Amendment to the Constitution of the United States are, have been, and will continue to be violated unless this statute be declared unconstitutional as violative of these provisions of the First Amendment. They sought to enjoin the appellant school district, wherein the Schempp children attend school, and its officers and the ***206** Superintendent of Public Instruction of the Commonwealth from continuing to conduct such readings and recitation of the Lord's Prayer in the public schools of the district pursuant to the statute. A three-judge statutory District Court for the Eastern District of Pennsylvania held that the statute is violative of the Establishment Clause of the First Amendment as applied****1563** to the States by the Due Process Clause of the Fourteenth Amendment and directed that appropriate injunctive relief issue. D.C., 201 F.Supp. 815.[FN1] On appeal by the District, its officials and the Superintendent, under 28 U.S.C. s 1253, we noted probable jurisdiction. 371 U.S. 807, 83 S.Ct. 25, 9 L.Ed.2d 52.

FN1. The action was brought in 1958, prior to the 1959 amendment of s 15-1516 authorizing a child's nonattendance at the exercises upon parental request. The three-judge court held the statute and the practices complained of unconstitutional under both the Establishment Clause and the Free Exercise Clause. D.C., 177 F.Supp. 398. Pending appeal to this Court by the school district, the statute was so amended, and we vacated the judgment and remanded for further proceedings. 364 U.S. 298, 81 S.Ct. 268, 5 L.Ed.2d 89. The same three-judge court granted appellees' motion to amend the pleadings, D.C., 195 F.Supp. 518, held a hearing on the amended pleadings and rendered the judgment, D.C., 201 F.Supp. 815, from which appeal is now taken.

The appellees Edward Lewis Schempp, his wife Sidney, and their children, Roger and Donna, are of the Unitarian faith and are members of the Unitarian Church in Germantown, Philadelphia, Pennsylvania, where they, as well as another son, Ellory, regularly attend religious services. The latter was originally a party but having graduated from the school system pendente lite was voluntarily dismissed from the action. The other children attend the Abington Senior High School, which is a public school operated by appellant district.

On each school day at the Abington Senior High School between 8:15 and 8:30 a.m., while the pupils are attending their home rooms or advisory sections, opening exercises***207** are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. This is followed by the recitation of the Lord's Prayer, likewise over the intercommunications system, but also by the students in the various classrooms, who are asked to stand and join in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent announcements as are of interest to the students. Participation in the opening exercises, as directed by the statute, is voluntary. The student reading the verses from the Bible may select the passages and read from any version he chooses, although the only copies furnished by the school are the King James version, copies of which were circulated to each teacher by the school district. During the period in which the exercises have been conducted the King James, the Douay and the Revised Standard versions of the Bible have been used, as well as the Jewish Holy Scriptures. There are no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the classroom or, should he elect to remain, not partici-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

pate in the exercises.

It appears from the record that in schools not having an intercommunications system the Bible reading and the recitation of the Lord's Prayer were conducted by the ***208** home-room teacher,[FN2] who chose the text of the verses and read them herself or had students read them in rotation or by volunteers. This ****1564** was followed by a standing recitation of the Lord's Prayer, together with the Pledge of Allegiance to the Flag by the class in unison and a closing announcement of routine school items of interest.

> FN2. The statute as amended imposes no penalty upon a teacher refusing to obey its mandate. However, it remains to be seen whether one refusing could have his contract of employment terminated for 'wilful violation of the school laws.' 24 Pa.Stat. (Supp.1960) s 11-1122.

At the first trial Edward Schempp and the children testified as to specific religious doctrines purveyed by a literal reading of the Bible 'which were contrary to the religious beliefs which they held and to their familial teaching.' 177 F.Supp. 398, 400. The children testified that all of the doctrines to which they referred were read to them at various times as part of the exercises. Edward Schempp testified at the second trial that he had considered having Roger and Donna excused from attendance at the exercises but decided against it for several reasons, including his belief that the children's relationships with their teachers and classmates would be adversely affected.[FN3]

> FN3. The trial court summarized his testimony as follows:
>
> 'Edward Schempp, the children's father, testified that after careful consideration he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. Among his reasons were the following. He said that he thought his children would be 'labeled as 'odd balls'' before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable 'to lump all particular religious difference(s) or religious objections (together) as 'atheism'' and that today the word 'atheism' is often connected with 'atheistic communism', and has 'very bad' connotations, such as 'un-American' or 'anti-Red', with overtones of possible immorality. Mr. Schempp pointed out that due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, excusing his children from the Bible reading would mean that probably they would miss hearing the announcements so important to children. He testified also that if Roger and Donna were excused from Bible reading they would have to stand in the hall outside their 'homeroom' and that this carried with it the imputation of punishment for bad conduct.' 201 F.Supp., at 818.

***209** Expert testimony was introduced by both appellants and appellees at the first trial, which testimony was summarized by the trial court as follows:

'Dr. Solomon Grayzel testified that there were marked differences between the Jewish Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures. Dr. Grayzel testified that portions of the New Testament were offensive to Jewish tradition and that, from the standpoint of Jewish faith, the concept of Jesus Christ as the Son of God was 'practically blasphemous'. He cited instances in the New Testament which, assertedly, were not only sectarian in nature but tended to bring the Jews into ridicule or scorn. Dr. Grayzel gave as his expert opinion that such material from the New Testament could be explained to Jewish children in such a way as to do no harm to them. But if portions of the New Testament were read without explanation, they could be, and in his specific experience with children Dr. Grayzel observed, had been, psychologically harmful to the child and had caused a divisive force within the social media of the school.

'Dr. Grayzel also testified that there was significant difference in attitude with regard to the respective Books of the Jewish and Christian Religions in that Judaism attaches no special significance to the reading of the Bible per se and that the Jewish Holy Scriptures are source materials to be studied. But Dr. Grayzel did state that many portions of the New,

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

***210** as well as of the Old, Testament contained passages of great literary and moral value.

****1565** 'Dr. Luther A. Weigle, an expert witness for the defense, testified in some detail as to the reasons for and the methods employed in developing the King James and the Revised Standard Versions of the Bible. On direct examination, Dr. Weigle stated that the Bible was non-sectarian. He later stated that the phrase 'non-sectarian' meant to him non-sectarian within the Christian faiths. Dr. Weigle stated that his definition of the Holy Bible would include the Jewish Holy Scriptures, but also stated that the 'Holy Bible' would not be complete without the New Testament. He stated that the New Testament 'conveyed the message of Christians.' In his opinion, reading of the Holy Scriptures to the exclution of the New Testament would be a sectarian practice. Dr. Weigle stated that the Bible was of great moral, historical and literary value. This is conceded by all the parties and is also the view of the court.' 177 F.Supp. 398, 401-402.

The trial court, in striking down the practices and the statute requiring them, made specific findings of fact that the children's attendance at Abington Senior High School is compulsory and that the practice of reading 10 verses from the Bible is also compelled by law. It also found that:

'The reading of the verses, even without comment, possesses a devotional and religious character and constitutes in effect a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises ***211** does not mitigate the obligatory nature of the ceremony for * * * Section 1516 * * * unequivocally requires the exercises to be held every school day in every school in the Commonwealth. The exercises are held in the school buildings and perforce are conducted by and uner the authority of the local school authorities and during school sessions. Since the statute requires the reading of the 'Holy Bible', a Christian document, the practice * * * prefers the Christian religion. The record demonstrates that it was the intention of * * * the Commonwealth * * * to introduce a religious ceremony into the public schools of the Commonwealth.' 201 F.Supp., at 819.

No. 119. In 1905 the Board of School Commissioners of Baltimore City adopted a rule pursuant to Art. 77, s 202 of the Annotated Code of Maryland. The rule provided for the holding of opening exercises in the schools of the city, consisting primarily of the 'reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer.' The petitioners, Mrs. Madalyn Murray and her son, William J. Murray III, are both professed atheists. Following unsuccessful attempts to have the respondent school board rescind the rule, this suit was filed for mandamus to compel its rescission and cancellation. It was alleged that William was a student in a public school of the city and Mrs. Murray, his mother, was a taxpayer therein; that it was the practice under the rule to have a reading on each school morning from the King James version of the Bible; that at petitioners' insistence the rule was amended[FN4] to permit children to ***212** be excused from the exercise on request of the parent and that William ****1566** had been excused pursuant thereto; that nevertheless the rule as amended was in violation of the petitioners' rights 'to freedom of religion under the First and Fourteenth Amendments' and in violation of 'the principle of separation between church and state, contained therein. * * *' The petition particularized the petitioners' atheistic beliefs and stated that the rule, as practiced, violated their rights

> FN4. The rule as amended provides as follows:
>
> 'Opening Exercises. Each school, either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. Appropriate patriotic exercises should be held as a part of the general opening exercise of the school or class. Any child shall be excused from participating in the opening exercises or from attending the opening exercises upon the written request of his parent or guardian.'

'in that it threatens their religious liberty by placing a premium on belief as against non-belief and subjects their freedom of conscience to the rule of the majority; it pronounces belief in God as the source of

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

all moral and spiritual values, equating these values with religious values, and thereby renders sinister, alien and suspect the beliefs and ideals of your Petitioners, promoting doubt and question of their morality, good citizenship and good faith.'

The respondents demurred and the trial court, recognizing that the demurrer admitted all facts well pleaded, sustained it without leave to amend. The Maryland Court of Appeals affirmed, the majority of four justices holding the exercise not in violation of the First and Fourteenth Amendments, with three justices dissenting. 228 Md. 239, 179 A.2d 698. We granted certiorari. 371 U.S. 809, 83 S.Ct. 21, 9 L.Ed.2d 52.

II.

It is true that religion has been closely identified withour history and government. As we said in Engel v. Vitale, 370 U.S. 421, 434, 82 S.Ct. 1261, 1268, 8 L.Ed.2d 601 (1962), 'The history of man is inseparable from the history of religion. And * * * since ***213** the beginning of that history many people have devoutly believed that 'More things are wrought by prayer than this world dreams of.'' In Zorach v. Clauson, 343 U.S. 306, 313, 72 S.Ct. 679, 684, 96 L.Ed. 954 (1952), we gave specific recognition to the proposition that '(w)e are a religious people whose institutions presuppose a Supreme Being.' The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, 'So help me God.' Likewise each House of the Congress provides through its Chaplain an opening prayer, and the sessions of this Court are declared open by the crier in a short ceremony, the final phrase of which invokes the grace of God. Again, there are such manifestations in our military forces, where those of our citizens who are under the restrictions of military service wish to engage in voluntary worship. Indeed, only last year an official survey of the country indicated that 64% of our people have church membership, Bureau of the Census, U.S. Department of Commerce, Statistical Abstract of the United States (83d ed. 1962), 48, while less than 3% profess no religion whatever. Id., at p. 46. It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are 'earnestly praying, as * * * in duty bound, that the Supreme Lawgiver of the Universe * * * guide them into every measure which may be worthy of his (blessing * * *.)' Memorial and Remonstrance Against Religious Assessments, quoted in ****1567**Everson v. Board of Education, 330 U.S. 1, 71-72, 67 S.Ct. 504, 538-539, 91 L.Ed. 711 (1947) (Appendix to dissenting opinion of Rutledge, J.).

***214** This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbeded in our public and private life. Nothing but the most telling of personal experiences in religious persecution suffered by our forebears, see Everson v. Board of Education, supra, 330 U.S., at 8-11, 67 S.Ct., at 507-509, 91 L.Ed. 711, could have planted our belief in liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists, but this is readily accountable by their close ties to the Mother Country.[FN5] However, the views of Madison and Jefferson, preceded by Roger Williams,[FN6] came to be incorporated not only in the Federal Constitution but likewise in those of most of our States. This freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion. Today authorities list 83 separate religious bodies, each with membership exceeding 50,000, existing among our people, as well as innumerable smaller groups. Bureau of the Census, op. cit., supra, at 46-47.

FN5. There were established churches in at least eight of the original colonies, and various degrees of religious support in others as late as the Revolutionary War. See Engel v. Vitale, supra, 370 U.S. at 428, n. 10, 82 S.Ct., at 1265, 8 L.Ed.2d 601.

FN6. 'There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or human combination, or society. It hath fallen out sometimes, that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal, I affirm that all the liberty

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

senting, agreed:

'There is no answer to the proposition * * * that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense. * * * This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity.' Id., 330 U.S., at 26, 67 S.Ct., at 516, 91 L.Ed. 711.

***217** Further Mr. Justice Rutledge, joined by Justices Frankfurter, Jackson and Burton, declared:

'The (First) Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.' Id., 330 U.S., at 31-32, 67 S.Ct., at 519, 91 L.Ed. 711.

The same conclusion has been firmly maintained ever since that time, see Illinois ex rel. McCollum, supra, 333 U.S., at pp. 210-211, 68 S.Ct., at pp. 464-465, ****1569** 92 L.Ed. 648; McGowan v. Maryland, supra, 366 U.S., at 442-443, 81 S.Ct., at 1113-1114, 6 L.Ed.2d 393; Torcaso v. Watkins, supra, 367 U.S., at 492-493, 495, 81 S.Ct., at 1682-1683, 1684, 6 L.Ed.2d 982, and we reaffirm it now.

While none of the parties to either of these cases has questioned these basic conclusions of the Court, both of which have been long established, recognized and consistently reaffirmed, others continue to question their history, logic and efficacy. Such contentions, in the light of the consistent interpretation in cases of this Court, seem entirely untenable and of value only as academic exercises.

IV.

The interrelationship of the Establishment and the Free Exercise Clauses was first touched upon by Mr. Justice Roberts for the Court in Cantwell v. Connecticut, supra, 310 U.S., at 303-304, 60 S.Ct., at 903, 84 L.Ed. 1213, where it was said that their 'inhibition of legislation' had

'a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of ***218** conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,-freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.'

A half dozen years later in Everson v. Board of Education, supra, 330 U.S., at 14-15, 67 S.Ct., at 511, 91 L.Ed. 711, this Court, through Mr. Justice BLACK, stated that the 'scope of the First Amendment * * * was designed forever to suppress' the establishment of religion or the prohibition of the free exercise thereof. In short, the Court held that the Amendment

'requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them.' Id., 330 U.S., at 18, 67 S.Ct. at 513, 91 L.Ed. 711.

And Mr. Justice Jackson, in dissent, declared that public schools are organized

'on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to chose his religion.' Id., 330 U.S., at 23-24, 67 S.Ct. at 515, 91 L.Ed. 711.

Moreover, all of the four dissenters, speaking through Mr. Justice Rutledge, agreed that

'Our constitutional policy * * * does not deny the value or the necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this ***219** reason the sphere of religious activity, as

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

distinguished from the secular intellectual liberties, has been given the twofold protection and, as the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private.' Id., 330 U.S., at 52, 67 S.Ct., at 529, 91 L.Ed. 711.

Only one year later the Court was asked to reconsider and repudiate the **1570 doctrine of these cases in McCollum v. Board of Education. It was argued that 'historically the First Amendment was intended to forbid only government preference of one religion over another * * *. In addition they ask that we distinguish or overrule our holding in the Everson case that the Fourteenth Amendment made the 'establishment of religion' clause of the First Amendment applicable as a prohibition against the States.' 333 U.S., at 211, 68 S.Ct., at 465, 92 L.Ed. 648. The Court, with Mr. Justice Reed alone dissenting, was unable to 'accept either of these contentions.' Ibid. Mr. Justice Frankfurter, joined by Justices Jackson, Rutledge and Burton, wrote a very comprehensive and scholarly concurrence in which he said that '(s)eparation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally.' Id., 333 U.S., at 227, 68 S.Ct., at 473, 92 L.Ed. 648. Continuing, he stated that:

'the Constitution * * * prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.' Id., 333 U.S., at 228, 68 S.Ct., at 473, 92 L.Ed. 648.

In 1952 in Zorach v. Clauson, supra, Mr. Justice DOUGLAS for the Court reiterated:

'There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the ';ree exercise' of religion and an *220 'ESTABLISHMENT' OF RELIGION ARE CONCERNED, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter.' 343 U.S., at 312, 72 S.Ct., at 683, 96 L.Ed. 954.

And then in 1961 in McGowan v. Maryland and in Torcaso v. Watkins each of these cases was discussed and approved. Chief Justice WARREN in McGowan, for a unanimous Court on this point, said:

'But, the First Amendment, in its final form, did not simply bar a congressional enactment establishing a church; it forbade all laws respecting an establishment of religion. Thus, this Court has given the Amendment a 'broad interpretation * * * in the light of its history and the evils it was designed forever to suppress * * *.'' 366 U.S., at 441-442, 81 S.Ct., at 1113, 6 L.Ed.2d 393.

And Mr. Justice BLACK for the Court in Torcaso, without dissent but with Justices FRANKFURTER and HARLAN concurring in the result, used this language:

'We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.' 367 U.S., at 495, 81 S.Ct., at 1683, 6 L.Ed.2d 982.

Finally, in Engel v. Vitale, only last year, these principles were so universally recognized that the Court, without*221 the citation of a single case and over the sole dissent of Mr. Justice STEWART, **1571 reaffirmed them. The Court found the 22-word prayer used in 'New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer * * * (to be) a religious activity.' 370 U.S., at 424, 82 S.Ct., at 1264, 8 L.Ed.2d 601. It held that 'it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.' Id., 370 U.S., at 425, 82 S.Ct., at 1264, 8 L.Ed.2d 601. In discussing the reach of the Establishment and Free Exercise Clauses of the First Amendment the Court said:

'Although these two clauses may in certain instances overlap, they forbid two quite different kinds

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> of conscience I ever pleaded for, turns upon these two hinges, that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any.'

III.

Almost a hundred years ago in Minor v. Board of Education of Cincinnati, [FN7] Judge Alphonso Taft, father ***215** of the revered Chief Justice, in an unpublished opinion stated the ideal of our people as to religious freedom as one of

> FN7. Superior Court of Cincinnati, February 1870. The opinion is not reported but is published under the title, The Bible in the Common Schools (Cincinnati: Robert Clarke & Co. 1870). Judge Taft's views, expressed in dissent, prevailed on appeal. See Board of Education of Cincinnati v. Minor, 23 Ohio St. 211, 253 (1872), in which the Ohio Supreme Court held that:
>
> 'The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government.'

'absolute equality before the law, of all religious opinions and sects * * *.

'The government is neutral, and, while protecting all, it prefers none, and it disparages none.'

Before examining this 'neutral' position in which the Establishment and Free Exercise Clauses of the First Amendment place our Government it is well that we discuss the reach of the Amendment under the cases of this Court.

[1] First, this Court has decisively settled that the First Amendment's mandate that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof' has been made wholly applicable to the States by the Fourteenth Amendment. Twenty-three years ago in ****1568**Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), this Court, through Mr. Justice Roberts, said:

'The fundamental concept of liberty embodied in that (Fourteenth) Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment"**216** has rendered the legislatures of the states as incompetent as Congress to enact such laws. * * *'[FN8]

> FN8. Application to the States of other clauses of the First Amendment obtained even before Cantwell. Almost 40 years ago in the opinion of the Court in Gitlow v. People of State of New York, 268 U.S. 652, 666, 45 S.Ct. 625, 630, 69 L.Ed. 1138 (1925), Mr. Justice Sanford said: 'For present purposes we may and do assume that freedom of speech and of the press-which are protected by the First Amendment from abridgment by Congress-are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States.'

In a series of cases since Cantwell the Court has repeatedly reaffirmed that doctrine, and we do so now. Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 108, 63 S.Ct. 870, 872, 87 L.Ed. 1292 (1943); Everson v. Board of Education, supra; Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 210-211, 68 S.Ct. 461, 464-465, 92 L.Ed. 648 (1948); Zorach v. Clauson, supra; McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961); Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961); and Engel v. Vitale, supra.

[2] Second, this Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another. Almost 20 years ago in Everson, supra, 330 U.S., at 15, 67 S.Ct., at 511, 91 L.Ed. 711, the Court said that '(n)either a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.' And Mr. Justice Jackson, dis-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.' Id., 370 U.S., at 430-431, 82 S.Ct., at 1267, 8 L.Ed.2d 601.

And in further elaboration the Court found that the 'first and most immediate purpose (of the Establishment Clause) rested on the belief that a union of government and religion tends to destroy government and to degrade religion.' Id., 370 U.S. at 431, 82 S.Ct., at 1267, 8 L.Ed.2d 601. When government, the Court said, allies itself with one particular form of religion, the ***222** inevitable result is that it incurs 'the hatred, disrespect and even contempt of those who held contrary beliefs.' Ibid.

V.

[3][4][5][6][7][8][9] The wholesome 'neutrality' of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees. Thus, as we have seen, the two clauses may overlap. As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on the point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. Everson v. Board of Education, supra; McGowan v. Maryland, supra, 366 U.S., at 442, ****1572**81 S.Ct. at 1113-114, 6 L.Ed.2d 393. The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise***223** of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent-a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended.

[10] Applying the Establishment Clause principles to the cases at bar we find that the States are requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison. These exercises are prescribed as part of the curricular activities of students who are required by law to attend school. They are held in the school buildings under the supervision and with the participation of teachers employed in those schools. None of these factors, other than compulsory school attendance, was present in the program upheld in Zorach v. Clauson. The trial court in No. 142 has found that such an opening exercise is a religious ceremony and was intended by the State to be so. We agree with the trial court's finding as to the religious character of the exercises. Given that finding, the exercises and the law requiring them are in violation of the Establishment Clause.

[11] There is no such specific finding as to the religious character of the exercises in No. 119, and the State contends (as does the State in No. 142) that the program is an effort to extend its benefits to all public school children without regard to their religious belief. Included within its secular purposes, it

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

says, are the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature. The case came up ***224** on demurrer, of course, to a petition which alleged that the uniform practice under the rule had been to read from the King James version of the Bible and that the exercise was sectarian. The short answer, therefore, is that the religious character of the exercise was admitted by the State. But even if its purpose is not strictly religious, it is sought to be accomplished through readings, without comment, from the Bible. Surely the place of the Bible as an instrument of religion cannot be gainsaid, and the State's recognition of the pervading religious character of the ceremony is evident from the rule's specific permission of the alternative use of the Catholic Douay version as well as the recent amendment permitting nonattendance at the exercises. None of these factors is consistent with the contention that the Bible is here used either as an instrument for nonreligious moral inspiration or as a reference for the teaching of secular subjects.

[12][13][14][15][16] The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners.[FN9] ****1573** Nor are these required exercises mitigated by the fact that individual students may absent ***225** themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. See Engel v. Vitale, supra, 370 U.S., at 430, 82 S.Ct., at 1266-1267, 8 L.Ed.2d 601. Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, 'it is proper to take alarm at the first experiment on our liberties.' Memorial and Remonstrance Against Religious Assessments, quoted in Everson, supra, 330 U.S., at 65, 67 S.Ct., at 536, 91 L.Ed. 711.

> FN9. It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain. But the requirements for standing to challenge state action under the Establishment Clause, unlike those relating to the Free Exercise Clause, do not include proof that particular religious freedoms are infringed. McGowan v. Maryland, supra, 366 U.S., at 429-430, 81 S.Ct., at 1106-1107, 6 L.Ed.2d 393. The parties here are school children and their parents, who are directly affected by the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain. See Engel v. Vitale, supra. Cf. McCollum v. Board of Education, surpa; Everson v. Board of Education, supra. Compare Doremus v. Board of Education, 342 U.S. 429, 72 S.Ct. 394, 96 L.Ed. 475 (1952), which involved the same substantive issues presented here. The appeal was there dismissed upon the graduation of the school child involved and because of the appellants' failure to establish standing as taxpayers.

[17][18] It is insisted that unless these religious exercises are permitted a 'religion of secularism' is established in the schools. We agree of course that the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe.' Zorach v. Clauson, supra, 343 U.S., at 314, 72 S.Ct., at 684, 96 L.Ed. 954. We do not agree, however, that this decision in any sense has that effect. In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment. But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.

[19][20] Finally, we cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority of those ***226** affected, collides with the majority's right to free exercise of religion.[FN10] While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to any-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

one, it has never meant that a majority could use the machinery of the State to practice its beliefs. Such a contention was effectively answered by Mr. Justice Jackson for the Court in West Virginia Board of Education v. Barnette, 319 U.S. 624, 628, 63 S.Ct. 117,, 1185, 87 L.Ed. 1628 (1943):

> FN10. We are not of course presented with and therefore do not pass upon a situation such as military service, where the Government regulates the temporal and geographic environment of individuals to a point that, unless it permits voluntary religious services to be conducted with the use of government facilities, military personnel would be unable to engage in the practice of their faiths.

'The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to * * * freedom of worship * * * and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.'

**1574 [21] The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment. Applying that rule to the facts of these cases, we affirm the judgment in No. 142. *227 In No. 119, the judgment is reversed and the cause remanded to the Maryland Court of Appeals for further proceedings consistent with this opinion.

It is so ordered.

Judgment in No. 142 affirmed; judgment in No. 119 reversed and cause remanded with directions.

Mr. Justice DOUGLAS, concurring.

I join the opinion of the Court and add a few words in explanation.

While the Free Exercise Clause of the First Amendment is written in terms of what the State may not require of the individual, the Establishment Clause, serving the same goal of individual religious freedom, is written in different terms.

Establishment of a religion can be achieved in several ways. The church and state can be one; the church may control the state or the state may control the church; or the relationship may take one of several possible forms of a working arrangment between the two bodies.[FN1] Under all of these arrangements the church typically has a place in the state's budget, and church law usually governs such matters as baptism, marriage, divorce and separation, at least for its members and sometimes for the entire body politic.[FN2] Education, too, is usually high on the priority *228 list of church interests.[FN3] In the past schools were often made the exclusive responsibility of the church. Today in some state-church countries the state runs the public schools, but compulsory religious exercises are often required of some or all students. Thus, under the agreement Franco made with the Holy See when he came to power in Spain, 'The Church regained its place in the national budget. It insists on baptizing all children and has made the catechism obligatory in state schools.' [FN4]

> FN1. See Bates, Religious Liberty: An Inquiry (1945), 9-14, 239-252; Cobb, Religious Liberty in America (1902), 1-2, cc. IV, V; Gledhill, Pakistan, The Development of its Laws and Constitution (8 British Commonwealth, 1957), 11-15; Keller, Church and State on the European Continent (1936), c. 2; Pfeffer, Church, State, and Freedom (1953), c. 2; I Stokes, Church and State in the United States (1950), 151-169.

> FN2. See III Stokes, op. cit., supra, n. 1, 42-67; Bates, op. cit., supra, n. 1, 9-11, 58-59, 98, 245; Gledhill, op. cit., supra, n. 1, 128, 192, 205, 208; Rackman, Israel's Emerging Constitution (1955), 120-134; Drinan, Religious Freedom in Israel, America (Apr. 6, 1963), 456-457.

> FN3. See II Stokes, op. cit., supra, n. 1, 488-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

548; Boles, The Bible, Religion, and the Public Schools (2d ed. 1963), 4-10; Rackman, op. cit., supra, n. 2, at 136-141; O'Brien, The Engel Case From A Swiss Perspective, 61 Mich.L.Rev. 1069; Freund, Muslim Education in West Pakistan, 56 Religious Education 31.

FN4. Bates, op. cit., supra, n. 1, at 18; Pfeffer, op. cit., supra, n. 1, at 28-31; Thomas, The Balance of Forces in Spain, 41 Foreign Affairs 208, 210.

The vice of all such arrangements under the Establishment Clause is that the state is lending its assistance to a church's efforts to gain and keep adherents. Under the First Amendment it is strictly a matter for the individual and his church as to what church he will belong**1575 to and how much support, in the way of belief, time, activity or money, he will give to it. 'This pure Religious Liberty' 'declared * * * (all forms of church-state relationships) and their fundamental idea to be oppressions of conscience and abridgments of that liberty which God and nature had conferred on every living soul.'[FN5]

FN5. Cobb, op. cit., supra, n. 1, at 2.

In these cases we have no coercive religious exercise aimed at making the students conform. The prayers announced are not compulsory, though some may think they have that indirect effect because the nonconformist student may be induced to participate for fear of being called an 'oddball.' But that coercion, if it be present, *229 has not been shown; so the vices of the present regimes are different.

These regimes violate the Establishment Clause in two different ways. In each case the State is conducting a religious exercise; and, as the Court holds, that cannot be done without violating the 'neutrality' required of the State by the balance of power between individual, church and state that has been struck by the First Amendment. But the Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. Thus, the present regimes must fall under that clause for the additional reason that public funds, though small in amount, are being used to promote a religious exercise. Through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others.

The most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance their religious schools.[FN6] Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others.[FN7] But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members.

FN6. See II Stokes, op. cit., supra, n. 1, at 681-695.

FN7. See Accountants' Handbook (4th ed. 1956) 4.8-4.15.

*230 Such contributions may not be made by the State even in a minor degree without violating the Establishment Clause. It is not the amount of public funds expended; as this case illustrates, it is the use to which public funds are put that is controlling. For the First Amendment does not say that some forms of establishment are allowed; it says that 'no law respecting an establishment of religion' shall be made. What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.

Mr. Justice BRENNAN, concurring.

Almost a century and a half ago, John Marshall, In M'Culloch v. Maryland, enjoined: '* * * we must never forget, that it is a constitution we are expounding.' 4 Wheat. 316, 407, 4 L.Ed. 579. The Court's historic duty to expound the meaning of the Constitution has encountered few issues more intricate or more demanding than that of the relationship between religion and the public schools. Since undoubtedly we are 'a religious people whose institutions presuppose a Supreme Being,' **1576Zorach v. Clauson, 343 U.S. 306, 313, 72 S.Ct. 679, 684, 96 L.Ed. 954, deep feelings are aroused when aspects of that relationship are claimed to violate the injunction of the First Amendment that government may make 'no law

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

respecting an establishment of religion, or prohibiting the free exercise thereof * * *.' Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government. It is therefore understandable that the constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom. Nevertheless it is this Court's inescapable duty to declare whether exercises in the public schools of the States, such as those of Pennsylvania and Maryland questioned here, are involvements of religion in public institutions of a kind which offends the First and Fourteenth Amendments.

***231** When John Locke ventured in 1689, 'I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other,' [FN1] he anticipated the necessity which would be thought by the Framers to require adoption of a First Amendment, but not the difficulty that would be experienced in defining those 'just bounds.' The fact is that the line which separates the secular from the sectarian in American life is elusive. The difficulty of defining the boundary with precision inheres in a paradox central to our scheme of liberty. While our institutions reflect a firm conviction that we are a religious people, those institutions by solemn constitutional injunction may not officially involve religion in such a way as to prefer, discriminate against, or oppress, a particular sect or religion. Equally the Constitution enjoins those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends where secular means would suffice. The constitutional mandate expresses a deliberate and considered judgment that such matters are to be left to the conscience of the citizen, and declares as a basic postulate of the relation between the citizen and his government that 'the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand * * *.' [FN2]

FN1. Locke, A Letter Concerning Toleration, in 35 Great Books of the Western World (Hutchins ed. 1952), 2.

FN2. Representative Daniel Carroll of Maryland during debate upon the proposed Bill of Rights in the First Congress, August 15, 1789, I Annals of Cong. 730.

I join fully in the opinion and the judgment of the Court. I see no escape from the conclusion that the exercises ***232** called in question in these two cases violate the constitutional mandate. The reasons we gave only last Term in Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601, for finding in the New York Regents' prayer an impermissible establishment of religion, compel the same judgment of the practices at bar. The involvement of the secular with the religious is no less intimate here; and it is constitutionally irrelevant that the State has not composed the material for the inspirational exercises presently involved. It should be unnecessary to observe that our holding does not declare that the First Amendment manifests hostility to the practice or teaching of religion, but only applies prohibitions incorporated in the Bill of Rights in recognition of historic needs shared by Church and State alike. While it is my view that not every involvement of religion in public life is unconstitutional, I consider the exercises at bar a form of involvement which clearly violates the Establishment Clause.

The importance of the issue and the deep conviction with which views on ****1577** both sides are held seem to me to justify detailing at some length my reasons for joining the Court's judgment and opinion.

I.

The First Amendment forbids both the abridgment of the free exercise of religion and the enactment of laws 'respecting an establishment of religion.' The two clauses, although distinct in their objectives and their applicability, emerged together from a common panorama of history. The inclusion of both restraints upon the power of Congress to legislate concerning religious matters shows unmistakably that the Framers of the First Amendment were not content to rest the protection of religious liberty exclusively upon either clause. 'In assuring the free exercise of religion,' Mr. Justice Frankfurter has said, ***233** 'the Framers of the First Amendment were sensitive to the then recent history of those persecutions and impositions of civil disability with which sectarian majorities in virtually all of the Colonies had visited deviation in the matter of conscience. This protection of unpopular creeds, however, was not to be

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the full extent of the Amendment's guarantee of freedom from governmental intrusion in matters of faith. The battle in Virginia, hardly four years won, where James Madison had led the forces of disestablishment in successful opposition to Patrick Henry's proposed Assessment Bill levying a general tax for the support of Christian teachers, was a vital and compelling memory in 1789.' McGowan v. Maryland, 366 U.S. 420, 464-465, 81 S.Ct. 1101, 1155-1156, 6 L.Ed.2d 393.

It is true that the Framers' immediate concern was to prevent the setting up of an official federal church of the kind which England and some of the Colonies had long supported. But nothing in the text of the Establishment Clause supports the view that the prevention of the setting up of an official church was meant to be the full extent of the prohibitions against official involvements in religion. It has rightly been said:

'If the framers of the Amendment meant to prohibit Congress merely from the establishment of a 'church,' one may properly wonder why they didn't so state. That the words church and religion were regarded as synonymous seems highly improbable, particularly in view of the fact that the contemporary state constitutional provisions dealing with the subject of establishment used definite phrases such as 'religious sect,' 'sect,' or 'denomination.' * * * With such specific wording in contemporary state constitutions, why was not a similar wording adopted for the First Amendment if its framers intended to prohibit nothing more than what the States were prohibiting?***234** ' Lardner, How Far Does the Constitution Separate Church and State? 45 Am.Pol.Sic.Rev. 110, 112 (1951).

Plainly, the Establishment Clause, in the contemplation of the Framers, 'did not limit the constitutional proscription to any particular, dated form of state-supported theological venture.' 'What Virginia had long practiced, and what Madison, Jefferson and others fought to end, was the extension of civil government's support to religion in a manner which made the two in some degree interdependent, and thus threatened the freedom of each. The purpose of the Establishment Clause was to assure that the national legislature would not exert its power in the service of any purely religious end; that it would not, as Virginia and virtually all of the Colonies had done, make of religion, as religion, an object of legislation. * * * The Establishment Clause withdrew from the sphere of legitimate legislative concern and competence a specific, but comprehensive, area of human conduct: man's belief or disbelief in the verity ****1578** of some transcendental idea and man's expression in action of that belief or disbelief.' McGowan v. Maryland, supra, 366 U.S. at 465-466, 81 S.Ct. at 1156-1157 (opinion of Frankfurter, J.).

In sum, the history which our prior decisions have summoned to aid interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which would tend to foster or discourage religious worship or belief.

But an awareness of history and an appreciation of the aims of the Founding Fathers do not always resolve concrete problems. The specific question before us has, for example, aroused vigorous dispute whether the architects of the First Amendment-James Madison and Thomas Jefferson particularly-understood the prohibition against any 'law respecting an establishment of ***235** religion' to reach devotional exercises in the public schools. [FN3] It may be that Jefferson and Madison would have held such exercises to be permissible-although even in Jefferson's case serious doubt is suggested by his admonition against 'putting the Bible and Testament into the hands of the children at an age when their judgments are not sufficiently matured for religious inquiries. * * *'[FN4] But ***236** I doubt that their view, even if perfectly clear one way or the other, would supply a dispositive answer to the question presented by these cases. A more fruitful inquiry, it seems to me, is whether the practices here challenged threaten those consequences which the Framers deeply feared; whether, in short, they tend to promote that type of interdependence between religion and state which the First Amendment was designed to prevent.[FN5] Our task is to translate****1579** 'the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials ***237** dealing with the problems of the twentieth century * * *.' West Virginia State Board of Education v. Barnette, 319 U.S. 624, 639, 63 S.Ct. 1178, 1186, 87 L.Ed. 1628.

FN3. See Healey, Jefferson on Religion in Public Education (1962); Boles, The Bible,

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Religion, and the Public Schools (1961), 16-21; Butts, The American Tradition in Religion and Education (1950), 119-130; Cahn, On Government and Prayer, 37 N.Y.U.L.Rev. 981 (1962); Costanzo, Thomas Jefferson, Religious Education and Public Law, 8 J.Pub.Law 81 (1959); Comment, The Supreme Court, the First Amendment, and Religion in the Public Schools, 63 Col.L.Rev. 73, 79-83 (1963).

FN4. Jefferson's caveat was in full:

'Instead, therefore, of putting the Bible and Testament into the hands of the children at an age when their judgments are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history.' 2 Writings of Thomas Jefferson (Memorial ed. 1903), 204.

Compare Jefferson's letter to his nephew, Peter Carr, when the latter was about to begin the study of law, in which Jefferson outlined a suggested course of private study of religion since '(y)our reason is now mature enough to examine this object.' Letter to Peter Carr, August 10, 1787, in Padover, The Complete Jefferson (1943), 1058. Jefferson seems to have opposed sectarian instruction at any level of public education, see Healey, Jefferson on Religion in Public Education (1962), 206-210, 256, 264-265. The absence of any mention of religious instruction in the projected elementary and secondary schools contrasts significantly with Jefferson's quite explicit proposals concerning religious instruction at the University of Virginia. His draft for 'A Bill for the More General Diffusion of Knowledge' in 1779, for example, outlined in some detail the secular curriculum for the public schools, while avoiding any references to religious studies. See Padover, supra, at 1048-1054. The later draft of an 'Act for Establishing Elementary Schools' which Jefferson submitted to the Virginia General Assembly in 1817 provided that 'no religious reading, instruction or exercise, shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination.' Padover, supra, at 1076. Reliance upon Jefferson's apparent willingness to permit certain religious instruction at the University seems, therefore, to lend little support to such instruction in the elementary and secondary schools. Compare, e.g., Corwin, A Constitution of Powers in a Secular State (1951), 104-106; Costanzo, Thomas Jefferson, Religious Education and Public Law, 8 J.Pub.Law 81, 100-106 (1959).

FN5. Cf. Mr. Justice Butledge's observations in Everson v. Board of Education, 330 U.S. 1, 53-54, 67 S.Ct. 504, 529-530, 91 L.Ed. 711 (dissenting opinion). See also Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis.L.Rev. 427, 428-429; Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt.L.Rev. 561, 569 (1961); MacKinnon, Freedom?-or Toleration? The problem of Church and State in the United States, (1959) Pub.Law 374. One author has suggested these reasons for cautious application of the history of the constitution's religious guarantees to contemporary problems:

'First, the brevity of Congressional debate and the lack of writings on the question by the framers make any historical argument inconclusive and open to serious question. Second, the amendment was designed to outlaw practices which had existed before its writing, but there is no authoritative declaration of the specific practices at which it was aimed. And third, most of the modern religious-freedom cases turn on issues which were at most academic in 1789 and perhaps did not exist at all. Public education was almost nonexistent in 1789, and the question of religious education in public schools may not have been foreseen.' Beth, The American Theory of Church and State (1958), 88.

A too literal quest for the advice of the Founding Fathers upon the issues of these cases seems to me futile and misdirected for several reasons: First, on our precise problem the historical record is at best ambiguous, and statements can readily be found to support either side of the proposition. The ambiguity

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

of history is understandable if we recall the nature of the problems uppermost in the thinking of the statesmen who fashioned the religious guarantees; they were concerned with far more flagrant intrusions of government into the realm of religion than any that our century has witnessed.[FN6] While it is clear to me that the Framers meant the Establishment Clause to prohibit more than the creation of an established federal church such as existed in England, I have no doubt that, in their preoccupation with the imminent question of established churches, they gave no distinct*238 consideration to the particular question whether the clause also forbade devotional exercises in public institutions.

FN6. See generally, for discussion of the early efforts for disestablishment of the established colonial churches, and of the conditions against which the proponents of separation of church and state contended, Sweet, The Story of Religion in America (1950), c. XIII; Cobb, The Rise of Religious Liberty in America (1902), c. IX; Eckenrode, Separation of Church and State in Virginia (1910); Brant, James Madison-The Nationalist, 1780-1787 (1948), c. XXII; Bowers, The Young Jefferson (1945), 193-199; Butts, The American Tradition in Religion and Education (1950), c. II; Kruse, The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment, 2 Washburn L.J. 65, 79-83 (1962). Compare also Alexander Hamilton's conception of 'the characteristic difference between a tolerated and established religion' and his grounds of opposition to the latter, in his remarks on the Quebec Bill in 1775, 2 Works of Alexander Hamilton (Hamilton ed. 1850), 133-138. Compare, for the view that contemporary evidence reveals a design of the Framers to forbid not only formal establishment of churches, but various forms of incidental aid to or support of religion, Lardner, How Far Does the Constitution Separate Church and State? 45 Am.Pol.Sci.Rev. 110, 112-115 (1951).

Second, the structure of American education has greatly changed since the First Amendment was adopted. In the context of our modern emphasis upon public education available to all citizens, any views of the eighteenth century as to whether the exercises at bar are an 'establishment' offer little aid to decision. Education,**1580 as the Framers knew it, was in the main confined to private schools more often than not under strictly sectarian supervision. Only gradually did control of education pass largely to public officials. [FN7] It would, therefore, *239 hardly be significant if the fact was that the nearly**1581 universal devotional exercises in the schools of the young Republic did not provoke criticism; even today religious ceremonies in church-supported private schools are constitutionally unobjectionable.

FN7. The origins of the modern movement for free state-supported education cannot be fixed with precision. In England, the Levellers unavailingly urged in their platform of 1649 the establishment of free primary education for all, or at least for boys. See Brailsford, The Levellers and the English Revolution (1961), 534. In the North American Colonies, education was almost without exception under private sponsorship and supervision, frequently under control of the dominant Protestant sects. This condition prevailed after the Revolution and into the first quarter of the nineteenth century. See generally Mason, Moral Values and Secular Education (1950), c. II; Thayer, The Role of the School in American Society (1960), c. X; Greene, Religion and the State: The Making and Testing of an American Tradition (1941), 120-122. Thus, Virginia's colonial Governor Berkeley exclaimed in 1671: 'I thank God there are no free schools nor printing, and I hope we shall not have them these hundred years; for learning has brought disobedience, and heresy, and sects into the world * * *.' (Emphasis deleted.) Bates, Religious Liberty: An Inquiry (1945), 327.

The exclusively private control of American education did not, however, quite survive Berkeley's expectations. Benjamin Franklin's proposals in 1749 for a Philadelphia Academy heralded the dawn of publicly supported secondary education, although the proposal did not bear immediate fruit. See Johnson and Yost, Separation of Church and State in the United States (1948), 26-27. Jef-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ferson's elaborate plans for a public school system in Virginia came to naught after the defeat in 1796 of his proposed Elementary School Bill, which found little favor among the wealthier legislators. See Bowers, The Young Jefferson (1945), 182-186. It was not until the 1820's and 1830's, under the impetus of Jacksonian democracy, that a system of public education really took root in the United States. See 1 Beard, The Rise of American Civilization (1937), 810-818. One force behind the development of secular public schools may have been a growing dissatisfaction with the tightly sectarian control over private education, see Harner, Religion's Place in General Education (1949), 29-30. Yet the burgeoning public school systems did not immediately supplant the old sectarian and private institutions; Alexis de Tocqueville, for example, remarked after his tour of the Eastern States in 1831 that '(a)lmost all education is entrusted to the clergy.' 1 Democracy in America (Bradley ed. 1945) 309, n. 4. And compare Lord Bryce's observations, a half century later, on the still largely denominational character of American higher education, 2 The American Commonwealth (1933), 734-735.

Efforts to keep the public schools of the early nineteenth century free from sectarian influence were of two kinds. One took the form of constitutional provisions and statutes adopted by a number of States forbidding appropriations from the public treasury for the support of religious instruction in any manner. See Moehlman, The Wall of Separation Between Church and State (1951), 132-135; Lardner, How Far Does the Constitution Separate Church and State? 45 Am.Pol.Sci.Rev. 110, 122 (1951). The other took the form of measures directed against the use of sectarian reading and teaching materials in the schools. The texts used in the earliest public schools had been largely taken over from the private academies, and retained a strongly religious character and content. See Nichols, Religion and American Democracy (1959), 64-80; Kinney, Church and State, The Struggle for Separation in New Hampshire, 1630-1900 (1955), 150-153. In 1827, however, Massachusetts enacted a statute providing that school boards might not thereafter 'direct any school books to be purchased or used, in any of the schools * * * which are calculated to favour any particular religious sect or tenet.' 2 Stokes, Church and State in the United States (1950), 53. For further discussion of the background of the Massachusetts law and difficulties in its early application, see Dunn, What Happened to Religious Education? (1958), c. IV. As other States followed the example of Massachusetts, the use of sectarian texts was in time as widely prohibited as the appropriation of public funds for religious instruction.

Concerning the evolution of the American public school systems free of sectarian influence, compare Mr. Justice Frankfurter's account:

'It is pertinent to remind that the establishment of this principle of Separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools of secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered.' Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 216, 68 S.Ct. 461, 467, 92 L.Ed. 648.

***240** Third, our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protes-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

tant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all.[FN8] ***241** See Torcaso v. Watkins, 367 U.S. 488, 495, 81 S.Ct. 1680, 1683, 6 L.Ed.2d 982. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.

> FN8. The comparative religious homogeneity of the United States at the time the Bill of Rights was adopted has been considered in Haller, The Puritan Background of the First Amendment, in Read ed., The Constitution Reconsidered (1938), 131, 133-134; Beth, The American Theory of Church and State (1958), 74; Kinney, Church and State, The Struggle for Separation in New Hampshire, 1630-1900 (1955), 155-161. However, Madison suggested in the Fifty-first Federalist that the religious diversity which existed at the time of the Constitutional Convention constituted a source of strength for religious freedom, much as the multiplicity of economic and political interests enhanced the security of other civil rights. The Federalist (Cooke ed. 1961), 351-352.

Whatever Jefferson or Madison would have thought of Bible reading or the recital of the Lord's Prayer in what few public schools existed in their day, our use of the history of their time must limit itself to broad purposes, not specific practices. By such a standard, I am persuaded, as is the Court, that the devotional exercises carried on in the Baltimore and Abington schools offend the First Amendment because they sufficiently threaten in our day those substantive evils the fear of which called forth the Establishment Clause of the First Amendment. It is 'a constitution we are expounding,' and our interpretation of the First Amendment must necessarily be responsive to the much more highly charged nature of religious questions in contemporary society.

Fourth, the American experiment in free public education available to all children has been guided in large measure by the dramatic evolution of the religious diversity among the population which our public schools serve. The interaction of these two important forces in our national life has placed in bold relief certain positive values in the consistent application to public institutions generally, and public schools particularly, of the constitutional decree against offical involvements of religion which might produce the evils the Framers meant the Establishment****1582** Clause to forestall. The public schools are supported entirely, in most communities, by public funds-funds exacted not only from parents, nor alone from those who hold particular religious views, nor indeed from those who subscribe to any creed at all. It is implicit in the history and character of American public education that the public schools serve a uniquely ***242** public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort-an atmosphere in which children may assimilate a heritage common to all American groups and religions. See Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 648. This is a heritage neither theistic nor atheistic, but simply civic and patriotic. See Meyer v. Nebraska, 262 U.S. 390, 400-403, 43 S.Ct. 625, 627-628, 67 L.Ed. 1042.

Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to choose the academic environment in which they wish their children to be educated. The relationship of the Establishment Clause of the First Amendment to the public school system is preeminently that of reserving such a choice to the individual parent, rather than vesting it in the majority of voters of each State or school district. The choice which is thus preserved is between a public secular education with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative-either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one-very much like the choice of whether or not to worship-which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election. The lesson of history-drawn more from the experiences of other countries than from our own-is that a system of free public education forfeits its unique contribution

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

to the growth of democratic citizenship when that choice ceases to be freely available to each parent.

***243** II.

The exposition by this Court of the religious guarantees of the First Amendment has consistently reflected and reaffirmed the concerns which impelled the Framers to write those guarantees into the Constitution. It would be neither possible nor appropriate to review here the entire course of our decisions on religious questions. There emerge from those decisions, however, three principles of particular relevance to the issue presented by the case at bar, and some attention to those decisions is therefore appropriate.

First. On line of decisions derives from contests for control of a church property or other internal ecclesiastical disputes. This line has settled the proposition that in order to give effect to the First Amendment's purpose of requiring on the part of all organs of government a strict neutrality toward theological questions, courts should not undertake to decide such questions. These principles were first expounded in the case of Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666, which declared that judicial intervention in such a controversy would open up 'the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination * * *.' 13 Wall., at 733. Courts above all must be neutral, for '(t)he law knows no heresy, and is committed to the support of no ****1583** dogma, the establishment of no sect.'[FN9] 13 Wall., at 728. This principle has recently***244** been reaffirmed in Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120; and Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140.

FN9. See Comment, The Power of Courts Over the Internal Affairs of Religious Groups, 43 Calif.L.Rev. 322 (1955); Comment, Judicial Intervention in Disputes Within Independent Church Bodies, 54 Mich.L.Rev. 102 (1955); Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv.L.Rev. 1142 (1962). Compare Vidal v. Girard's Executors, 2 How. 127, 11 L.Ed. 205. The principle of judicial nonintervention in essentially religious disputes appears to have been reflected in the decisions of several state courts declining to enforce essentially private agreements concerning the religious education and worship of children of separated or divorced parents. See, e.g., Hackett v. Hackett, Ohio App., 150 N.E.2d 431; Stanton v. Stanton, 213 Ga. 545, 100 S.E.2d 289, 66 A.L.R.2d 1401; Friedman, The Parental Right to Control the Religious Education of a Child, 29 Harv.L.Rev. 485 (1915); 72 Harv.L.Rev. 372 (1958); Note, 10 West.Res.L.Rev. 171 (1959).

Governmental nonintervention in religious affairs and institutions seems assured by Article 26 of the Constitution of India, which provides:

'Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

'(a) to establish and maintain institutions for religious and charitable purposes;

'(b) to manage its own affairs in matters of religion;

'(c) to own and acquire movable and immovable property; and

'(d) to administer such property in accordance with law.' See 1 Chaudhri, Constitutional Rights and Limitations (1955), 875. This Article does not, however, appear to have completely foreclosed judicial inquiry into the merits of intradenominational disputes. See Gledhill, Fundamental Rights in India (1955), 101-102.

The mandate of judicial neutrality in theological controversies met its severest test in United States v. Ballard, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148. That decision put in sharp relief certain principles which bear directly upon the questions presented in these cases. Ballard was indicted for fraudulent use of the mails in the dissemination of religious literature. He requested that the trial court submit to the jury the question of the truthfulness of the religious views he championed. The requested charge was refused, and we upheld that refusal, reasoning that the First

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Amendment foreclosed any judicial inquiry into the truth or falsity of the defendant's religious beliefs. We said: 'Man's relation to his God was made no concern of the state. He was granted the right to worship was he pleased and to answer to no man for the verity of his religious views.' 'Men may believe what they cannot ***245** prove. They may not be put to the proof of their religious doctrines or beliefs. * * * Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations.' 322 U.S., at 86-87, 64 S.Ct., at 886-887.

The dilemma presented by the case was severe. While the alleged truthfulness of nonreligious publications could ordinarily have been submitted to the jury, Ballard was deprived of that defense only because the First Amendment forbids governmental inquiry into the verity of religious beliefs. In dissent Mr. Justice Jackson expressed the concern that under this construction of the First Amendment '(p)rosecutions of this character easily could degenerate into religious persecution.' 322 U.S., at 95, 64 S.Ct., at 890. The case shows how elusive is the line which enforces the Amendment's injunction of strict neutrality, while manifesting no official hostility toward religion-a line which must be considered in the cases now before us.[FN10] Some might view the result of the Ballard case as a manifestation of hostility****1584** -in that the conviction stood because the defense could not be raised. To others it ***246** might represent merely strict adherence to the principle of neutrality already expounded in the cases involving doctrinal disputes. Inevitably, insistence upon neutrality, vital as it surely is for untrammeled religious liberty, may appear to border upon religious hostility. But in the long view the independence of both church and state in their respective spheres will be better served by close adherence to the neutrality principle. If the choice is often difficult, the difficulty is endemic to issues implicating the religious guarantees of the First Amendment. Freedom of religion will be seriously jeopardized if we admit exceptions for no better reason than the difficulty of delineating hostility from neutrality in the closest cases.

> FN10. For a discussion of the difficulties inherent in the Ballard case, see Kurland, Religion and the Law (1962), 75-79. This Court eventually reversed the convictions on the quite unrelated ground that women had been systematically excluded from the jury, Ballard v. United States, 329 U.S. 187, 67 S.Ct. 261, 91 L.Ed. 181. For discussions of the difficulties in interpreting and applying the First Amendment so as to foster to objective of neutrality without hostility, see e.g., Katz, Freedom of Religion and State Neutrality, 20 U. of Chi.L.Rev. 426, 438 (1953); Kauper, Church, State, and Freedom: A Review, 52 Mich.L.Rev. 829, 842 (1954). Compare, for an interesting apparent attempt to avoid the Ballard problem at the international level, Article 3 of the Multilateral Treaty between the United States and certain American Republics, which provides that extradition will not be granted, inter alia, when 'the offense is * * * directed against religion.' Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed. 1949), 316.

Second. It is only recently that our decisions have dealt with the question whether issues arising under the Establishment Clause may be isolated from problems implicating the Free Exercise Clause. Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711, is in my view the first of our decisions which treats a problem of asserted unconstitutional involvement as raising questions purely under the Establishment Clause. A scrutiny of several earlier decisions said by some to have etched the contours of the clause shows that such cases neither raised nor decided any constitutional issues under the First Amendment. Bradfield v. Roberts, 175 U.S. 291, 20 S.Ct. 121, 44 L.Ed. 168, for example, involved challenges to a federal grant to a hospital administered by a Roman Catholic order. The Court rejected the claim for lack of evidence that any sectarian influence changed its character as a secular institution chartered as such by the Congress.[FN11]

> FN11. See Kurland, Religion and the Law (1962), 32-34.

Quick Bear v. Leupp, 210 U.S. 50, 28 S.Ct. 690, 52 L.Ed. 954, is also illustrative. The immediate question there was one of statutory construction, although the issue had originally involved the ***247** constitutionality of the use of federal funds to support sectarian education on Indian reservations. Congress

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

had already prohibited federal grants for that purpose, thereby removing the broader issue, leaving only the question whether the statute authorized the appropriation for religious teaching of Treaty funds held by the Government in trust for the Indians. Since these were the Indians' own funds, the Court held only that the Indians might direct their use for such educational purposes as they chose, and that the administration by the Treasury of the disbursement of the funds did not inject into the case any issue of the propriety of the use of federal moneys.[FN12] ****1585** Indeed, the Court expressly approved the reasoning of the Court of Appeals that to deny the Indians the right to spend their own moneys for religious purposes of their choice might well infringe the free exercise of their religion: 'it seems inconceivable that Congress (should) have intended to prohibit them from receiving religious education at their own cost if they so desired it * * *.' 210 U.S., at 82, 28 S.Ct., at 700. This case forecast, however, an increasingly troublesome First Amendment paradox: that the logical interrelationship between the Establishment and Free Exercise Clauses may produce situations where an injunction against an apparent establishment must be withheld in order to avoid infringement of rights of free exercise. That paradox was not squarely presented in Quick Bear, but the care taken by the Court ***248** to avoid a constitutional confrontation discloses an awareness of possible conflicts between the two clauses. I shall come back to this problem later, infra, pp. 1610-1612.

> FN12. Compare the treatment of an apparently very similar problem in Article 28 of the Constitution of India:
>
> '(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
>
> '(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.' 1 Chaudhri, Constitutional Rights and Limitations (1955), 875-876, 939.

A third case in this group is Cochran v. Louisiana State Board, 281 U.S. 370, 50 S.Ct. 335, 74 L.Ed. 913, which involved a challenge to a state statute providing public funds to support a loan of free textbooks to pupils of both public and private schools. The constitutional issues in this Court extended no further than the claim that this program amounted to a taking of private property for nonpublic use. The Court rejected the claim on the ground that no private use of property was involved; '* * * we cannot doubt that the taxing power of the State is exerted for a public purpose.' 281 U.S., at 375, 50 S.Ct., at 336. The case therefore raised no issue under the First Amendment. [FN13]

> FN13. See Kurland, Religion and the Law (1962), 28-31; Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis.L.Rev. 427, 442.

In Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, a Catholic parochial school and a private but nonsectarian military academy challenged a state law requiring all children between certain ages to attend the public schools. This Court held the law invalid as an arbitrary and unreasonable interference both with the rights of the schools and with the liberty of the parents of the children who attended them. The due process guarantee of the Fourteenth Amendment 'excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.' 268 U.S., at 535, 45 S.Ct., at 573. While one of the plaintiffs was indeed a parochial school, the case obviously decided no First Amendment question but recognized only the constitutional right to establish and patronize private schools-including parochial schools-which meet the state's reasonable minimum curricular requirements.

***249** Third. It is true, as the Court says, that the 'two clauses (Establishment and Free Exercise) may overlap.' Because of the overlap, however, our decisions under the Free Exercise Clause bear considerable relevance to the problem now before us, and should be briefly reviewed. The early free exercise cases generally involved the objections of religious minorities to the application to them of general nonreligious legislation governing conduct. Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244, involved the claim that a belief in the sanctity of plural marriage precluded the conviction of members of a particular sect under nondiscriminatory legislation against such marriage. The Court rejected the claim,

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

saying:

'Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices.**1586 * * * Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.[FN14] 98 U.S., at 166-167.

FN14. This distinction, implicit in the First Amendment, had been made explicit in the original Virginia Bill of Rights provision that 'all men should enjoy the fullest toleration in the exercise of religion according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless under color of religion any man disturb the peace, the happiness, or safety of society.' See Cobb, The Rise of Religious Liberty in America (1902), 491. Concerning various legislative limitations and restraints upon religiously motivated behavior which endangers or offends society, see Manwaring, Render Unto Caesar: The Flag-Salute Controversy (1962), 41-52. Various courts have applied this principle to proscribe certain religious exercises or activities which were thought to threaten the safety or morals of the participants or the rest of the community, e.g., State v. Massey, 229 N.C. 734, 51 S.E.2d 179; Harden v. State, 188 Tenn. 17, 216 S.W.2d 708; Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972; cf. Sweeney v. Webb, 33 Tex.Civ.App. 324, 76 S.W. 766.

That the principle of these cases, and the distinction between belief and behavior, are susceptible of perverse application, may be suggested by Oliver Cromwell's mandate to the besieged Catholic community in Ireland:

'As to freedom of conscience, I meddle with no man's conscience; but if you mean by that, liberty to celebrate the Mass, I would have you understand that in no place where the power of the Parliament of England prevails shall that be permitted.' Quoted in Hook, The Paradoxes of Freedom (1962), 23.

***250** Davis v. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637, similarly involved the claim that the First Amendment insulated from civil punishment certain practices inspired or motivated by religious beliefs. The claim was easily rejected: 'It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society.' 133 U.S., at 342, 10 S.Ct., at 300. See also Mormon Church v. United States, 136 U.S. 1, 10 S.Ct. 792, 34 L.Ed. 481; Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643; Prince v. Massachusetts, 321 U.S. 158, 64 U.S. 438, 88 L.Ed. 645; Cleveland v. United States, 329 U.S. 14, 67 S.Ct. 13, 91 L.Ed. 12.

But we must not confuse the issue of governmental power to regulate or prohibit conduct motivated by religious beliefs with the quite different problem of governmental authority to compel behavior offensive to religious principles. In Hamilton v. Regents of the University of California, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343, the question was that of the power of a State to compel students at the State University to participate in military training instruction against their religious convictions. The validity of the statute was sustained against claims based upon the First Amendment. But the decision rested on a very narrow principle: since there was neither a constitutional right nor a legal obligation to attend the State University, the obligation to participate in military training courses, ***251** reflecting a legitimate state interest, might properly be imposed upon those who chose to attend. Although the rights protected by the First and Fourteenth Amendments were presumed to include 'the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training,' those Amendments were construed not to free such students from the military training obligations if they chose to attend the University. Justices Brandeis, Cardozo and Stone, concurring separately, agreed that the requirement infringed no constitutionally protected liberties. They added, however, that the case presented no question **1587 under the Establishment Clause. The military instruction program

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

was not an establishment since it in no way involved 'instruction in the practice or tenets of a religion.' 293 U.S., at 266, 55 S.Ct., at 206. Since the only question was one of free exercise, they concluded, like the majority, that the strong state interest in training a citizen militia justified the restraints imposed, at least so long as attendance at the University was voluntary. [FN15]

FN15. With respect to the decision in Hamilton v. Regents, compare two recent comments: Kurland, Religion and the Law (1962), 40; and French, Comment, Unconstitutional Conditions: An Analysis, 50 Geo.L.J. 234, 236 (1961).

Hamilton has not been overruled, although United States v. Schwimmer, 279 U.S. 644, 49 S.Ct. 448, 73 L.Ed. 889, and United States v. Macintosh, 283 U.S. 605, 51 S.Ct. 570, 75 L.Ed. 1302, upon which the Court in Hamilton relied, have since been overruled by Girouard v. United States, 328 U.S. 61, 66 S.Ct. 826, 90 L.Ed. 1084. But if Hamilton retains any vitality with respect to higher education, we recognized its inapplicability to cognate questions in the public primary and secondary schools when we held in West Virginia Board of Education v. Barnette, supra, that a State had no power to expel from public schools students who refused on religious grounds to comply with a daily flag ***252** salute requirement. Of course, such a requirement was no more a law 'respecting an establishment of religion' than the California law compelling the college students to take military training. The Barnette plaintiffs, moreover, did not ask that the whole exercise be enjoined, but only that an excuse or exemption be provided for those students whose religious beliefs forbade them to participate in the ceremony. The key to the holding that such a requirement abridged rights of free exercise lay in the fact that attendance at school was not voluntary but compulsory. The Court said:

'This issue is not prejudiced by the Court's previous holding that where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution. * * * Hamilton v. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343. In the present case attendance is not optional.' 319 U.S., at 631-632, 63 S.Ct., at 1182.

The Barnette decision made another significant point. The Court held that the State must make participation in the exercise voluntary for all students and not alone for those who found participation obnoxious on religious grounds. In short, there was simply no need to 'inquire whether non-conformist beliefs will exempt from the duty to salute' because the Court found no state 'power to make the salute a legal duty.' 319 U.S., at 635, 63 S.Ct., at 1184.

The distinctions between Hamilton and Barnette are, I think, crucial to the resolution of the cases before us. The different results of those cases are attributable only in part to a difference in the strength of the particular state interests which the respective statutes were designed to serve. Far more significant is the fact that Hamilton dealt with the voluntary attendance at college of young adults, while Barnette involved the compelled attendance ***253** of young children at elementary and secondary schools.[FN16] This distinction warrants a difference in constitutional results. And it is with the involuntary attendance of young school ****1588** children that we are exclusively concerned in the cases now before the Court.

FN16. See generally as to the background and history of the Barnette case, Manwaring, Render Unto Caesar: The Flag-Salute Controversy (1962), especially at 252-253. Compare, for the interesting treatment of a problem similar to that of Barnette, in a nonconstitutional context, Chabot v. Les Commissaires D'Ecoles de Lamorandie re, (1957) Que.B.R. 707, noted in 4 McGill L.J. 268 (1958).

III.

No one questions that the Framers of the First Amendment intended to restrict exclusively the powers of the Federal Government.[FN17] Whatever limitations that Amendment now imposes upon the States derive from the Fourteenth Amendment. The process of absorption of the religious guarantees of the First Amendment as protections against the States under the Fourteenth Amendment began with the Free Exercise Clause. In 1923 the Court held that the protections of the Fourteenth included at least a person's freedom 'to worship God according to the dictates of his own conscience * * *.'[FN18]

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

FN17. See Barron, for Use of Tiernan v. Baltimore, 7 Pet. 243, 8 L.Ed. 672; Permoli v. New Orleans, 3 How. 589, 609, 11 L.Ed. 739; cf. Fox v. Ohio, 5 How. 410, 434-435, 12 L.Ed. 213; Withers v. Buckley, 20 How. 84, 89-91, 15 L.Ed. 816. As early as 1825, however, at least one commentator argued that the guarantees of the Bill of Rights, excepting only those of the First and Seventh Amendments, were meant to limit the powers of the States. Rawle, A View of the Constitution of the United States of America (1825), 120-130.

FN18. In addition to the statement of this Court in Meyer, at least one state court assumed as early as 1921 that claims of abridgment of the free exercise of religion in the public schools must be tested under the guarantees of the First Amendment as well as those of the state constitution. Hardwick v. Board of School Trustees, 54 Cal.App. 696, 704-705, 205 P. 49, 52. See Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal.L.Rev. 751, 772 (1962). Even before the Fourteenth Amendment, New York State enacted a general common school law in 1844 which provided that no religious instruction should be given which could be construed to violate the rights of conscience 'as secured by the constitution of this state and the United States.' N.Y.Laws, 1844, c. 320, s 12.

Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042. See also Hamilton v. Regents, supra, 293 U.S., at 262, 55 S.Ct., at 204. Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213, completed in 1940 the process of absorption ***254** of the Free Exercise Clause and recognized its dual aspect: the Court affirmed freedom of belief as as absolute liberty, but recognized that conduct, while it may also be comprehended by the Free Exercise Clause, 'remains subject to regulation for the protection of society.' 310 U.S., at 303-304, 60 S.Ct., at 903. This was a distinction already drawn by Reynolds v. United States, supra. From the beginning this Court has recognized that while government may regulate the behavioral manifestations of religious beliefs, it may not interfere at all with the beliefs themselves.

The absorption of the Establishment Clause has, however, come later and by a route less easily charted. It has been suggested, with some support in history, that absorption of the First Amendment's ban against congressional legislation 'respecting an establishment of religion' is conceptually impossible because the Framers meant the Establishment Clause also to foreclose any attempt by Congress to disestablish the existing official state churches. FN19 Whether or not such was the ****1589** understanding of the Framers and whether such a purpose would have inhibited the absorption of the Establishment Clause at the threshold of the Nineteenth Century are questions not dispositive of our present inquiry. For it is ***255** clear on the record of history that the last of the formal state establishments was dissolved more than three decades before the Fourteenth Amendment was ratified, and thus the problem of protecting official state churches from federal encroachments could hardly have been any concern of those who framed the post-Civil War Amendments. FN20 Any such objective of the First Amendment, having become historical anachronism by 1868, cannot be thought to have deterred the absorption of the Establishment Clause to any greater degree than it would, for example, have deterred the absorption of the Free Exercise Clause. That no organ of the Federal Government possessed in 1791 any power to restrain the interference of the States in religious matters is indisputable. See Permoli v. New Orleans, 3 How. 589, 11 L.Ed. 739. It is equally plain, on the other hand, that the Fourteenth Amendment created a panoply of new federal rights for the protection of citizens of the various States. And among those rights was freedom from such state governmental involvement in the affairs of religion as the Establishment Clause had originally foreclosed on the part of Congress.

FN19. See, e.g., Snee, Religious Disestablishment and the Fourteenth Amendment, 1954 Wash.U.L.Q. 371, 373-394; Kruse, The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment, 2 Washburn L.J. 65, 84-85, 127-130 (1962); Katz, Religion and American Constitutions, Address at Northwestern University Law School, March 20, 1963, pp. 6-7. But see the debate in the Constitutional Convention over the question whether it was necessary or advis-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

able to include among the enumerated powers of the Congress a power 'to establish an University, in which no preferences or distinctions should be allowed on account of religion.' At least one delegate thought such an explicit delegation 'is not necessary,' for '(t)he exclusive power at the Seat of Government, will reach the object.' The proposal was defeated by only two votes. 2 Farrand, Records of the Federal Convention of 1787 (1911), 616.

FN20. The last formal establishment, that of Massachusetts, was dissolved in 1833. The process of disestablishment in that and other States is described in Cobb, The Rise of Religious Liberty in America (1902), c. X; Sweet, The Story of Religion in America (1950), c. XIII. The greater relevance of conditions existing at the time of adoption of the Fourteenth Amendment is suggested in Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 73 Harv.L.Rev. 729, 739, n. 79 (1960).

***256** It has also been suggested that the 'liberty' guaranteed by the Fourteenth Amendment logically cannot absorb the Establishment Clause because that clause is not one of the provisions of the Bill of Rights which in terms protects a 'freedom' of the individual. See Corwin, A Constitution of Powers in a Secular State (1951), 113-116. The fallacy in this contention, I think, is that it underestimates the role of the Establishment Clause as a coguarantor, with the Free Exercise Clause, of religious liberty. The Framers did not entrust the liberty of religious beliefs to either clause alone. The Free Exercise Clause 'was not to be the full extent of the Amendment's guarantee of freedom from governmental intrusion in matters of faith.' McGowan v. Maryland, supra, 366 U.S., at 464, 81 S.Ct., at 1156 (opinion of Frankfurter, J.).

Finally, it has been contended that absorption of the Establishment Clause is precluded by the absence of any intention on the part of the Framers of the Fourteenth Amendment to circumscribe the residual powers of the States to aid religious activities and institutions in ways which fell short of formal establishments.[FN21] That argument relies in part upon the express terms of the ***257** abortive ****1590** Blaine Amendment-proposed several years after the adoption of the Fourteenth Amendment-which would have added to the First Amendment a provision that '(n)o State shall make any law respecting an establishment of religion * * *.' Such a restriction would have been superfluous, it is said, if the Fourteenth Amendment had already made the Establishment Clause binding upon the States.

FN21. See Corwin, A Constitution of Powers in a Secular State (1951), 111-114; Fairman and Morrison, Does the Fourteenth Amendment Incorporate the Bill of Rights? 2 Stan.L.Rev. 5 (1949); Meyer, Comment, The Blaine Amendment and the Bill of Rights, 64 Harv.L.Rev. 939 (1951); Howe, Religion and Race in Public Education, 8 Buffalo L.Rev. 242, 245-247 (1959). Cf. Cooley, Principles of Constitutional Law (2d ed. 1891), 213-214. Compare Professor Freund's comment:

'Looking back, it is hard to see how the Court could have done otherwise, how it could have persisted in accepting freedom of contract as a guaranteed liberty without giving equal status to freedom of press and speech, assembly, and religious observance. What does not seem so inevitable is the inclusion within the Fourteenth Amendment of the concept of non-establishment of religion in the sense of forbidding nondiscriminatory aid to religion, where there is no interference with freedom of religious exercise.' Freund, The Supreme Court of the United States (1961), 58-59.

The argument proves too much, for the Fourteenth Amendment's protection of the free exercise of religion can hardly be questioned; yet the Blaine Amendment would also have added an explicit protection against state laws abriding that liberty.[FN22] Even if we assume that the draftsmen of the Fourteenth Amendment saw no immediate connection between its protections against state action infringing personal liberty and the guarantees of the First Amendment, it is certainly too late in the day to suggest that their assumed inattention to the question dilutes the force of these constitutional guarantees in their application to the States.[FN23] It is enough to conclude ****1591 *258** that the religious liberty embod-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ied in the Fourteenth Amendment would not be viable if the Constitution were interpreted to forbid only establishments ordained by Congress.[FN24]

FN22. The Blaine Amendment, 4 Cong.Rec. 5580, included also a more explicit provision that 'no money raised by taxation in any State for the support of public schools or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect or denomination * * *.' The Amendment passed the House but failed to obtain the requisite two-thirds vote in the Senate. See 4 Cong.Rec. 5595. The prohibition which the Blaine Amendment would have engrafted onto the American Constitution has been incorporated in the constitutions of other nations; compare Article 28(1) of the Constitution of India ('No religious instruction shall be provided in any educational institution wholly maintained out of State funds'); Article XX of the Constitution of Japan ('* * * the State and its organs shall refrain from religious education or any other religious activity'). See 1 Chaudhri, Constitutional Rights and Limitations (1955), 875, 876.

FN23. Three years after the adoption of the Fourteenth Amendment, Mr. Justice Bradley wrote a letter expressing his views on a proposed constitutional amendment designed to acknowledge the dependence of the Nation upon God, and to recognize the Bible as the foundation of its laws and the supreme ruler of its conduct:

'I have never been able to see the necessity or expediency of the movement for obtaining such an amendment. The Constitution was evidently framed and adopted by the people of the United States with the Fixed determination to allow absolute religious freedom and equality, and to avoid all appearance even of a State religion, or a State endorsement of any particular creed or religious sect. * * * And after the Constitution in its original form was adopted, the people made haste to secure an amendment that Congress shall make no law respecting an establishment or religion, or prohibiting the free exercise thereof. This shows the earnest desire of our Revolutionary fathers that religion should be left to the free and voluntary action of the people themselves. I do not regard it as manifesting any hostility to religion, but as showing a fixed determination to leave the people entirely free on the subject.

'And it seems to me that our fathers were wise; that the great voluntary system of this country is quite as favorable to the promotion of real religion as the systems of governmental protection and patronage have been in other countries. And whilst I do not understand that the association which you represent desire to invoke any governmental interference, still the amendment sought is a step in that direction which our fathers (quite as good Christians as ourselves) thought it wise not to take. In this country they thought they had settled one thing at least, that it is not the province of government to teach theology.

'* * * Religion, as the basis and support of civil government, must reside, not in the written Constitution, but in the people themselves. And we cannot legislate religion into the people. It must be infused by gentler and wiser methods.' Miscellaneous Writings of Joseph P. Bradley (1901), 357-359. For a later phase of the controversy over such a constitutional amendment as that which Justice Bradley opposed, see Finlator, Christ in Congress, 4 J.Church and State 205 (1962).

FN24. There is no doubt that, whatever 'establishment' may have meant to the Framers of the First Amendment in 1791, the draftsmen of the Fourteenth Amendment three quarters of a century later understood the Establishment Clause to foreclose many incidental forms of governmental aid to religion which fell far short of the creation or support of an official church. The Report of a Senate Committee as early as 1853, for example, contained this view of the Establishment Clause:

'If Congress has passed, or should pass, any

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

law which, fairly construed, has in any degree introduced, or should attempt to introduce, in favor of any church, or ecclesiastical association, or system of religious faith, all or any one of these obnoxious particulars-endowment at the public expense, peculiar privileges to its members, or disadvantages or penalties upon those who should reject its doctrines or belong to other communions-such law would be a 'law respecting an establishment of religion,' and, therefore, in violation of the constitution.' S.Rep. No. 376, 32d Cong., 2d Sess. 1-2.

Compare Thomas M. Cooley's exposition in the year in which the Fourteenth Amendment was ratified:

'Those things which are not lawful under any of the American constitutions may be stated thus:-

'1. Any law respecting an establishment of religion. * * *

'2. Compulsory support, by taxation or otherwise, of religious instruction. Not only is no one denomination to be favored at the expense of the rest, but all support of religious instruction must be entirely voluntary.' Cooley, Constitutional Limitations (1st ed. 1868), 469.

***259** The issue of what particular activities the Establishment Clause forbids the States to undertake is our more immediate concern. In Everson v. Board of Education of Ewing Tp., 330 U.S. 1, 15-16, 67 S.Ct. 504, 91 L.Ed. 711, a careful study of the relevant history led the Court to the view, consistently recognized in decisions since Everson, that the Establishment Clause embodied the Framers' conclusion that government and religion have discreet interests which are mutually best served when each avoids too close a proximity to the other. It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but in as high degree it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government.[FN25] It ***260** has rightly been said of the history of the Establishment Clause that 'our tradition of civil liberty rests not only on the secularism of a Thomas Jefferson but also on the fervent sectarianism * * * of a Roger Williams.' Freund, The Supreme Court of the United States (1961), 84.

FN25. Compare, e.g., Miller, Roger Williams: His Contribution to the American Tradition (1953), 83, with Madison, Memorial and Remonstrance Against Religious Assessments, reprinted as an Appendix to the dissenting opinion of Mr. Justice Rutledge, Everson v. Board of Education, supra, 330 U.S. at 63-72, 67 S.Ct. at 534-538. See also Cahn, On Government and Prayer, 37 N.Y.U.L.Rev. 981, 982-985 (1962); Jefferson's Bill for Establishing Religious Freedom, in Padover, The Complete Jefferson (1943), 946-947; Moulton and Myers, Report on Appointing Chaplains to the Legislature of New York, in Blau, Cornerstones of Religious Freedom in America (1949), 141-156; Bury, A History of Freedom of Thought (2d ed. 1952), 75-76.

Our decisions on questions of religious education or exercises in the public schools have consistently reflected this dual aspect of the Establishment Clause. Engel v. Vitale unmistakably has its roots in three earlier cases which, on cognate issues, shaped the contours of the Establishment Clause. First, in Everson the Court held that reimbursement by the town of parents for the cost of transporting their children by public carrier to ****1592** parochial (as well as public and private nonsectarian) schools did not offend the Establishment Clause. Such reimbursement, by easing the financial burden upon Catholic parents, may indirectly have fostered the operation of the Catholic schools, and may thereby indirectly have facilitated the teaching of Catholic principles, thus serving ultimately a religious goal. But this form of governmental assistance was difficult to distinguish from myriad other incidental if not insignificant government benefits enjoyed by religious institutions-fire and police protection, tax exemptions, and the pavement of streets and sidewalks, for example. 'The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from ***261** accredited schools.' 330 U.S., at 18, 67 S.Ct. at 513. Yet even this form of

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

assistance was thought by four Justices of the Everson Court to be barred by the Establishment Clause because too perilously close to that public support of religion forbidden by the First Amendment.

The other two cases, Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 648, and Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954, can best be considered together. Both involved programs of released time for religious instruction of public school students. I reject the suggestion that Zorach overruled McCollum in silence. [FN26] The distinction which the Court drew in Zorach between the two cases is, in my view, faithful to the function of the Establishment Clause.

> FN26. See, e.g., Spicer, The Supreme Court and Fundamental Freedoms (1959), 83-84; Kauper, Church, State, and Freedom: A Review, 52 Mich.L.Rev. 829, 839 (1954); Reed, Church-State and the Zorach Case, 27 Notre Dame Lawyer 529, 539-541 (1952).

I should first note, however, that McCollum and Zorach do not seem to me distinguishable in terms of the free exercise claims advanced in both cases. [FN27] The nonparticipant in the McCollum program was given secular instruction in a separate room during the times his classmates had religious lessons; the nonparticipant in any Zorach program also received secular instruction, while his classmates repaired to a place outside the school for religious instruction.

> FN27. See 343 U.S., at 321-322, 72 S.Ct. at 687-688 (Fraukfurter, J., dissenting); Kurland, Religion and the Law (1962), 89. I recognize that there is a question whether in Zorach the free exercise claims asserted were in fact proved. 343 U.S., at 311, 72 S.Ct., at 682.

The crucial difference, I think, was that the McCollum program offended the Establishment Clause while the Zorach program did not. This was not, in my view, because of the difference in public expenditures involved. True, the McCollum program involved the regular use of school facilities, classrooms, heat and light and time from the regular school day-even though the actual ***262** incremental cost may have been negligible. All religious instruction under the Zorach program, by contrast, was carried on entirely off the school premises, and the teacher's part was simply to facilitate the children's release to the churches. The deeper difference was that the McCollum program placed the religious instructor in the public school classroom in precisely the position of authority held by the regular teachers of secular subjects, while the Zorach program did not.[FN28] The McCollum program,***263** in lending to the support of sectarian instruction all the authority****1593** of the governmentally operated public school system, brought government and religion into that proximity which the Establishment Clause forbids. To be sure, a religious teacher presumably commands substantial respect and merits attention in his own right. But the Constitution does not permit that prestige and capacity for influence to be augmented by investiture of all the symbols of authority at the command of the lay teacher for the enhancement of secular instruction.

> FN28. Mr. Justice Frankfurter described the effects of the McCollum program thus:
>
> 'Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. * * * As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care.' 333 U.S., at 227-228, 68 S.Ct. at 473. For similar reasons some state courts have enjoined the public schools from employing or accepting the services of members of religious orders even in the teaching of secular subjects, e.g., Zellers v. Huff, 55 N.M. 501, 236 P.2d 949; Berghorn v. Reorganized School Dist. No. 8, 364 Mo. 121, 260 S.W.2d 573; compare ruling of Texas Commissioner of Education, Jan. 25, 1961, in 63 American Jewish Yearbook (1962), 188. Over a half century ago a New York court sustained a school board's exclusion from the public schools of teachers wearing religious garb on similar grounds:

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

'Then all through the school hours these teachers * * * were before the children as object lessons of the order and church of which they were members. It is within our common observation that young children * * * are very susceptible to the influence of their teachers and of the kind of object lessons continually before them in schools conducted under these circumstances and with these surroundings.' O'Connor v. Hendrick, 109 App.Div. 361, 371-372, 96 N.Y.S. 161, 169. See also Commonwealth v. Herr, 229 Pa. 132, 78 A. 68; Comment, Religious Garb in the Public Schools-A Study in Conflicting Liberties, 22 U. of Chi.L.Rev. 888 (1955).

Also apposite are decisions of several courts which have enjoined the use of parochial schools as part of the public school system, Harfst v. Hoegen, 349 Mo. 808, 163 S.W.2d 609, 141 A.L.R. 1136; or have invalidated programs for the distribution in public school classrooms of Gideon Bibles, Brown v. Orange County Board of Public Instruction, 128 So.2d 181 (Fla.App.); Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 857, 45 A.L.R.2d 729. See Note, The First Amendment and Distribution of Religious Literature in the Public Schools, 41 Va.L.Rev. 789, 803-806 (1955). In Tudor, the court stressed the role of the public schools in the Bible program:

'* * * the public school machinery is used to bring about the distribution of these Bibles to the children * * *. In the eyes of the pupils and their parents the board of education has placed its stamp of approval upon this distribution and, in fact, upon the Gideon Bible itself. * * * This is more than mere 'accommodation' of religion permitted in the Zorach case. The school's part in this distribution is an active one and cannot be sustained on the basis of a mere assistance to religion.' 14 N.J., at 51-52, 100 A.2d at 868.

The significance of the teacher's authority was recognized by one early state court decision:

'The school being in session, the right to command was vested in the teacher, and the duty of obedience imposed upon the pupils. Under such circumstances a request and a command have the same meaning. A request from one in authority is understood to be a mere euphemism. It is in fact a command in an inoffensive form.' State ex rel. Freeman v. Scheve, 65 Neb. 853, 876, 880, 93 N.W. 169, 170.

More recent decisions have further etched the contours of Establishment. In the Sunday Law Cases, we found in state laws compelling a uniform day of rest from worldly labor no violation of the Establishment Clause (McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393). The basic ***264** ground of our decision was that, granted the Sunday Laws were first enacted for religious ends, they were continued in force for reasons wholly secular, namely, to provide a universal day of rest and ensure the health and tranquillity of the community. In other words, government may originally have decreed a Sunday day of rest for the impermissible purpose of supporting religion but abandoned that purpose and retained the laws for ****1594** the permissible purpose of furthering overwhelmingly secular ends.

Such was the evolution of the contours of the Establishment Clause before Engel v. Vitale. There, a year ago, we held that the daily recital of the state-composed Regents' Prayer constituted an establishment of religion because, although the prayer itself revealed no sectarian content or purpose, its nature and meaning were quite clearly religious. New York, in authorizing its recitation, had not maintained that distance between the public and the religious sectors commanded by the Establishment Clause when it placed the 'power, prestige and financial support of government' behind the prayer. In Engel, as in McCollum, it did not matter that the amount of time and expense allocated to the daily recitation was small so long as the exercise itself was manifestly religious. Nor did it matter that few children had complained of the practice, for the measure of the seriousness of a breach of the Establishment Clause has never been thought to be the number of people who complain of it.

We also held two Terms ago in Torcaso v. Watkins, supra, that a State may not constitutionally re-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

quire an applicant for the office of Notary Public to swear or affirm that he believes in God. The problem of that case was strikingly similar to the issue presented 18 years before in the flag salute case, West Virginia Board of Education v. Barnette, supra. In neither case was there any claim of establishment of religion, but only of infringement of ***265** the individual's religious liberty-in the one case, that of the nonbeliever who could not attest to a belief in God; in the other, that of the child whose creed forbade him to salute the flag. But Torcaso added a new element not present in Barnette. The Maryland test oath involved an attempt to employ essentially religious (albeit nonsectarian) means to achieve a secular goal to which the means bore no reasonable relationship. No one doubted the State's interest in the integrity of its Notaries Public, but that interest did not warrant the screening of applicants by means of a religious test. The Sunday Law Cases were different in that respect. Even if Sunday Laws retain certain religious vestiges, they are enforced today for essentially secular objectives which cannot be effectively achieved in modern society except by designating Sunday as the universal day of rest. The Court's opinions cited very substantial problems in selecting or enforcing an alternative day of rest. But the teaching of both Torcaso and the Sunday Law Cases is that government may not employ religious means to serve secular interests, however legitimate they may be; at least without the clearest demonstration that nonreligious means will not suffice.[FN29]

FN29. See for other illustrations of the principle that where First Amendment freedoms are or may be affected, government must employ those means which will least inhibit the exercise of constitutional liberties, Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; Schneider v. State of New Jersey, 308 U.S. 147, 161, 60 S.Ct. 146, 84 L.Ed. 155; Martin v. City of Struthers, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313; Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574; Shelton v. Tucker, 364 U.S. 479, 488-489, 81 S.Ct. 247, 5 L.Ed.2d 231; Bantam Books, Inc., v. Sullivan, 372 U.S. 58, 66, 69-71, 83 S.Ct. 631, 9 L.Ed.2d 584. See also Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 73 Harv.L.Rev. 729, 743-745 (1960); Freund, The Supreme Court of the United States (1961), 86-87; 74 Harv.L.Rev. 613 (1961). And compare Miller v. Cooper, 56 N.M. 355, 244 P.2d 520 (1952), in which a state court permitted the holding of public school commencement exercises in a church building only because no public buildings in the community were adequate to accommodate the ceremony.

***266** IV.

I turn now to the cases before us.[FN30] The religious nature of the exercises here ****1595** challenged seems plain. Unless Engel v. Vitale is to be overruled, or we are to engage in wholly disingenuous distinction, we cannot sustain***267** these practices. Daily recital of the Lord's Prayer and the reading of passages of Scripture are quite as clearly breaches of the command of the Establishment Clause as was the daily use of the rather bland Regents' Prayer in the New York public schools. Indeed, I would suppose that, if anything, the Lord's Prayer and the Holy Bible are more clearly sectarian, and the present violations of the First Amendment consequently more serious. But the religious exercises challenged in these cases have a long history. And almost from the beginning, Bible reading and daily prayer in the schools have been the subject of debate, criticism by educators and other public officials and proscription by courts and legislative councils. At the outset, then, we must carefully canvass both aspects of this history.

FN30. No question has been raised in these cases concerning the standing of these parents to challenge the religious practices conducted in the schools which their children presently attend. Whatever authority Doremus v. Board of Education of Borough of Hawthorne, 342 U.S. 429, 72 S.Ct. 394, 96 L.Ed. 475, might have on the question of the standing of one not the parent of children affected by the challenged exercises is not before us in these cases. Neither in McCollum nor in Zorach was there any reason to question the standing of the parent-plaintiffs under settled principles of justiciability and jurisdiction, whether or not their complaints alleged pecuniary loss or monetary injury. The free-exercise claims of the parents alleged injury sufficient to give them standing. If, however, the gravamen of the lawsuit were exclusively one of establishment, it might seem illogical to confer stand-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ing upon a parent who-though he is concededly in the best position to assert a free-exercise claim-suffers no financial injury, by reason of being a parent, different from that of the ordinary taxpayer, whose standing may be open to question. See Sutherland, Establishment According to Engel, 76 Harv.L.Rev. 25, 41-43 (1962). I would suggest several answers to this conceptual difficulty. First, the parent is surely the person most directly and immediately concerned about and affected by the challenged establishment, and to deny him standing either in his own right or on behalf of his child might effectively foreclose judicial inquiry into serious breaches of the prohibitions of the First Amendment-even though no special monetary injury could be shown. See Schempp v. School District of Abington Township, D.C., 177 F.Supp. 398, 407; Kurland, The Regents' Prayer Case: 'Full of Sound and Fury, Signifying * * *,' 1962 Supreme Court Review 1, 22. Second, the complaint in every case thus far challenging an establishment has set forth at least a colorable claim of infringement of free exercise. When the complaint includes both claims, and neither is frivolous, it would surely be overtechnical to say that a parent who does not detail the monetary cost of the exercises to him may ask the court to pass only upon the free-exercise claim, however logically the two may be related. Cf. Pierce v. Society of Sisters, supra; Truax v. Raich, 239 U.S. 33, 38-39, 36 S.Ct. 7, 60 L.Ed. 131; NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 458-460, 78 S.Ct. 1163, 2 L.Ed.2d 1488; Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939; Bantam Books, Inc., v. Sullivan, 372 U.S. 58, 64, n. 6, 83 S.Ct. 631, 9 L.Ed.2d 584. Finally, the concept of standing is a necessarily flexible one, designed principally to ensure that the plaintiffs have 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions * * *.' Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663. It seems to me that even a cursory examination of the complaints in these two cases and the opinions below discloses that these parents have very real grievances against the respective school authorities which cannot be resolved short of constitutional adjudication. See generally Arthur Garfield Hays Civil Liberties Conference: Public Aid to Parochial Schools and Standing to Bring Suit, 12 Buffalo L.Rev. 35 (1962); Jaffe, Standing to Secure Judicial Review: Public Actions, 74 Harv.L.Rev. 1265 (1961); Sutherland, Due Process and Disestablishment, 62 Harv.L.Rev. 1306, 1327-1332 (1949); Comment, The Supreme Court, the First Amendment, and Religion in the Public Schools, 63 Col.L.Rev. 73, 94, n. 153 (1963).

****1596** The use of prayers and Bible readings at the opening of the school day long antedates the founding of our Republic. The Rules of the New Haven Hopkins Grammar School required in 1684 '(t)hat the Scholars being ***268** called together, the Mr. shall every morning begin his work with a short prayer for a blessing on his Laboures and their learning * * *.' [FN31] More rigorous was the provision in a 1682 contract with a Dutch schoolmaster in Flatbush, New York:

FN31. Quoted in Dunn, What Happened to Religious Education? (1958), 21.

'When the school begins, one of the children shall read the morning prayer, as it stands in the catechism, and close with the prayer before dinner; in the afternoon it shall begin with the prayer after dinner, and end with the evening prayer. The evening school shall begin with the Lord's prayer, and close by singing a psalm.' [FN32]

FN32. Quoted, id., at 22.

After the Revolution, the new States uniformly continued these long-established practices in the private and the few public grammar schools. The school committee of Boston in 1789, for example, required the city's several schoolmasters 'daily to commence the duties of their office by prayer and reading a portion of the Sacred Scriptures * * *.' [FN33] That requirement was mirrored throughout the original States, and exemplified the universal practice well into the nineteenth century. As the free public schools gradu-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ally supplanted the private academies and sectarian schools between 1800 and 1850, morning devotional exercises were retained with few alterations. Indeed, public pressures upon school administrators in many parts of the country would hardly have condoned abandonment of practices to which a century or more of private religious education had accustomed the American people. [FN34] The controversy centered, in ***269** fact, principally about the elimination of plainly sectarian practices and textbooks, and led to the eventual substitution of nonsectarian, though still religious, exercises and materials.[FN35]

FN33. Quoted in Hartford, Moral Values in Public Education: Lessons From the Kentucky Experience (1958), 31.

FN34. See Culver, Horace Mann and Religion in the Massachusetts Public Schools (1929), for an account of one prominent educator's efforts to satisfy both the protests of those who opposed continuation of sectarian lessons and exercises in public schools, and the demands of those who insisted upon the retention of some essentially religious practices. Mann's continued use of the Bible for what he regarded as nonsectarian exercises represented his response to these cross-pressures. See Mann, Religious Education, in Blau, Cornerstones of Religious Freedom in America (1949), 163-201 (from the Twelfth Annual Report for 1848 of the Secretary of the Board of Education of Massachusetts). See also Boles, The Bible, Religion, and the Public Schools (1961), 22-27.

FN35. See 2 Stokes, Church and State in the United States (1950), 572-579; Greene, Religion and the State: The Making and Testing of an American Tradition (1941), 122-126.

Statutory provision for daily religious exercises is, however, of quite recent origin. At the turn of this century, there was but one State-Massachusetts-which had a law making morning prayer or Bible reading obligatory. Statutes elsewhere either permitted such practices or simply left the question to local option. It was not until after 1910 that 11 more States, within a few years joined Massachusetts in making one or both exercises compulsory.[FN36] The Pennsylvania law ****1597** with which we are ***270** concerned in the Schempp case, for example, took effect in 1913; and even the Rule of the Baltimore School Board involved in the Murray case dates only from 1905. In no State has there ever been a constitutional or statutory prohibition against the recital of prayers or the reading of Scripture, although a number of States have outlawed these practices by judicial decision or administrative order. What is noteworthy about the panoply of state and local regulations from which these cases emerge is the relative recency of the statutory codification of practices which have ancient roots, and the rather small number of States which have ever prescribed compulsory religious exercises in the public schools.

FN36. E.g., Ala.Code, Tit. 52, s 542; Del.Code Ann., Tit. 14, ss 4101, 4102; Fla.Stat.Ann. s 231.09(2); Mass.Ann.Laws, c. 71, s 31; Tenn.Code Ann. s 49-1307(4). Some statutes, like the recently amended Pennsylvania statute involved in Schempp, provide for the excusal or exemption of children whose parents do not wish them to participate. See generally Johnson and Yost, Separation of Church and State in the United States (1948), 33-36; Thayer, The Role of the School in American Society (1960), 374-375; Beth, The American Theory of Church and State (1958), 106-107. Compare with the American statutory approach Article 28(3) of the Constitution of India:

'(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.' See 1 Chaudhri, Constitutional Rights and Limitations (1955), 876, 939.

The purposes underlying the adoption and perpetuation of these practices are somewhat complex. It is beyond question that the religious benefits and values realized from daily prayer and Bible reading have usually been considered paramount, and suffi-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

cient to justify the continuation of such practices. To Horace Mann, embroiled in an intense controversy over the role of sectarian instruction and texbooks in the Boston public schools, there was little question that the regular use of the Bible-which he thought essentially nonsectarian-would bear fruit in the spiritual enlightenment of his pupils. FN37 A contemporary of Mann's the Commissioner of Education of a neighboring State, expressed a view which many enlightened educators of that day shared:

FN37. See note 34, supra.

'As a textbook of morals the Bible is pre-eminent, and should have a prominent place in our schools, *271 either as a reading book or as a source of appeal and instruction. Sectarianism, indeed, should not be countenanced in the schools; but the Bible is not sectarian * * *. The Scriptures should at least be read at the opening of the school, if no more. Prayer may also be offered with the happiest effects.' FN38

FN38. Quoted from New Hampshire School Reports, 1850, 31-32, in Kinney, Church and State: The Struggle for Separation in New Hampshire, 1630-1900 (1955), 157-158.

Wisconsin's Superintendent of Public Instruction, writing a few years later in 1858, reflected the attitude of his eastern colleagues, in that he regarded 'with special favor the use of the Bible in public schools, as pre-eminently first in importance among text-books for teaching the noblest principles of virtue, morality, patriotism, and good order-love and reverence for God-charity and good will to man.' FN39

FN39. Quoted in Boyer, Religious Education of Public School Pupils in Wisconsin, 1953 Wis.L.Rev. 181, 186.

Such statements reveal the understanding of educators that the daily religious exercises in the schools served broader goals than compelling formal worship of God or fostering church attendance. The religious aims of the educators who adopted and retained such exercises were comprehensive, and in many cases quite devoid of sectarian bias-but the crucial fact is that they were nonetheless religious. While it has been suggested, see pp. 1601-1603, infra, that daily prayer **1598 and reading of Scripture now serve secular goals as well, there can be no doubt that the origins of these practices were unambiguously religious, even where the educator's aim was not to win adherents to a particular creed or faith.

Almost from the beginning religious exercises in the public schools have been the subject of intense criticism, vigorous debate, and judicial or administrative prohibition. Significantly, educators and school boards *272 early entertained doubts about both the legality and the soundness of opening the school day with compulsory prayer or Bible reading. Particularly in the large Eastern cities, where immigration had exposed the public schools to religious diversities and conflicts unknown to the homogeneous academies of the eighteenth century, local authorities found it necessary, even before the Civil War to seek an accommodation. In 1843, the Philadelphia School Board adopted the following resolutions:

'RESOLVED, that no children be required to attend or unite in the reading of the Bible in the Public Schools, whose parents are conscientiously opposed thereto:

'RESOLVED, that those children whose parents conscientiously prefer and desire any particular version of the Bible, without note or comment, be furnished with same.' FN40

FN40. Quoted in Dunn, What Happened to Religious Education? (1958), 271.

A decade later, the Superintendent of Schools of New York State issued an even bolder decree that prayers could no longer be required as part of public school activities, and that where the King James Bible was read, Catholic students could not be compelled to attend. FN41 This type of accommodation was not restricted to the East Coast; the Cincinnati Board of Education resolved in 1869 that 'religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, *273 to enjoy alike the benefit of the common-school fund.' FN42 The Board repealed at the same time an earlier regulation which had required the singing of hymns and psalms to accompany the Bible reading at the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

start of the school day. And in 1889, one commentator ventured the view that '(t)here is not enough to be gained from Bible reading to justify the quarrel that has been raised over it.' [FN43]

FN41. Quoted in Butts, The American Tradition in Religion and Education (1950), 135-136.

FN42. See Board of Education of City of Cleveland v. Minor, 23 Ohio St. 211; Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed. 1949), 864.

FN43. Report of the United States Commissioner of Education for the Year 1888-1889, part I, H.R.Exec.Doc. No. 1, part 5, 51st Cong., 1st Sess. 627.

Thus a great deal of controversy over religion in the public schools had preceded the debate over the Blaine Amendment, precipitated by President Grant's insistence that matters of religion should be left 'to the family altar, the church, and the private school, supported entirely by private contributions.' [FN44] There was ample precedent, too, for Theodore Roosevelt's declaration that in the interest of 'absolutely nonsectarian public schools' it was 'not our business to have the Protestant Bible or the Catholic Vulgate or the Talmud read in those **1599 schools.' [FN45] The same principle appeared in the message of an Ohio Governor who vetoed a compulsory Bible-reading bill in 1925:

FN44. Quoted in Illinois ex rel. McCollum v. Board of Education, supra, 333 U.S. at 218, 68 S.Ct. at 468 (opinion of Frankfurter, J.) See also President Grant's Annual Message to Congress, Dec. 7, 1875, 4 Cong.Rec. 175 et seq., which apparently inspired the drafting and submission of the Blaine Amendment. See Meyer, Comment, The Blaine Amendment and the Bill of Rights, 64 Harv.L.Rev. 939 (1951).

FN45. Theodore Roosevelt to Michael A. Schaap, Feb. 22, 1915, 8 Letters of Theodore Roosevelt (Morison ed. 1954), 893.

'It is my belief that religious teaching in our homes, Sunday schools, churches, by the good *274 mothers, fathers, and ministers of Ohio is far preferable to compulsory teaching of religion by the state. The spirit of our federal and state constitutions from the beginning * * * (has) been to leave religious instruction to the discretion of parents.' [FN46]

FN46. Quoted in Boles, The Bible, Religion, and the Public Schools (1961), 238.

The same theme has recurred in the opinions of the Attorneys General of several States holding religious exercises or instruction to be in violation of the state or federal constitutional command of separation of church and state. [FN47] Thus the basic principle upon which our decision last year in Engel v. Vitale necessarily rested, and which we reaffirm today, can hardly be thought to be radical or novel.

FN47. E.g., 1955 Op.Ariz.Atty.Gen. 67; 26 Ore.Op.Atty.Gen. 46 (1952); 25 Cal.Op.Atty.Gen. 316 (1955); 1948-1950 Nev.Atty.Gen.Rep. 69 (1948). For a 1961 opinion of the Attorney General of Michigan to the same effect, see 63 American Jewish Yearbook (1962) 189. In addition to the Governor of Ohio, see note 46, supra, a Governor of Arizona vetoed a proposed law which would have permitted 'reading the Bible, without comment, except to teach Historical or Literary facts.' See 2 Stokes, Church and State in the United States (1950), 568.

Particularly relevant for our purposes are the decisions of the state courts on questions of religion in the public schools. Those decisions, while not, of course, authoritative in this Court, serve nevertheless to define the problem before us and to guide our inquiry. With the growth of religious diversity and the rise of vigorous dissent it was inevitable that the courts would be called upon to enjoin religious practices in the public schools which offended certain sects and groups. The earliest of such decisions declined to review the propriety of actions taken by school authorities, so long as those actions were within *275 the purview of the administrators' powers. [FN48] Thus, where the local school board required religious exercises, the courts would not enjoin them; [FN49] and where, as in at least one case, the school of-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ficials forbade devotional practices, the court refused on similar grounds to overrule that decision.[FN50] Thus, whichever way the early cases came up, the governing principle of nearly complete deference to administrative discretion effectively foreclosed any consideration of constitutional questions.

FN48. See Johnson and Yost, Separation of Church and State in the United States (1948), 71; Note, Bible Reading in Public Schools, 9 Vand.L.Rev. 849, 851 (1956).

FN49. E.g., Spiller v. Inhabitants of Woburn, 12 Allen (94 Mass. 127) 127 (1866); Donahoe v. Richards, 38 Maine 376, 413 (1854); cf. Ferriter v. Tyler, 48 Vt. 444, 471-472 (1876).

FN50. Board of Education of City of Cleveland v. Minor, 23 Ohio St. 211 (1873).

The last quarter of the nineteenth century found the courts beginning to question the constitutionality of public school religious exercises. The legal context was still, of course, that of the state constitutions, since the First Amendment had not yet been held applicable to state action. And the state constitutional prohibitions against church-state cooperation or governmental aid to religion were generally less rigorous than the Establishment Clause of the First Amendment. It is therefore remarkable that the courts of a half dozen States found compulsory religious exercises in the public schools in violation of their respective state constitutions.[FN51] These ***276** courts attributed****1600** much significance to the clearly religious origins and content of the challenged practices, and to the impossibility of avoiding sectarian controversy in their conduct. The Illinois Supreme Court expressed in 1910 the principles which characterized these decisions:

FN51. People ex rel. Ring v. Board of Education of Dist. No. 24, 245 Ill. 334, 92 N.E. 251 (1910); Herold v. Parish Board of School Directors, 136 La. 1034, 68 So. 116 (1915); State ex rel. Weiss v. District Board, 76 Wis. 177, 44 N.W. 967 (1890); State ex rel. Finger v. Weedman, 55 S.D. 343, 226 N.W. 348 (1929); State ex rel. Dearle v. Frazier, 102 Wash. 369, 173 P. 35 (1918); cf. State ex rel. Clithero v. Showalter, 159 Wash. 519, 293 P. 1000 (1930); State ex rel. Freeman v. Scheve, 65 Neb. 853, 91 N.W. 846 (1902), modified, 65 Neb. 876, 93 N.W. 169 (1903). The cases are discussed in Boles, The Bible, Religion, and the Public Schools (1961), c. IV; Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 386-389 (1962).

'The public school is supported by the texes which each citizen, regardless of his religion or his lack of it, is compelled to pay. The school, like the government, is simply a civil institution. It is secular, and not religious, in its purposes. The truths of the Bible are the truths of religion, which do not come within the province of the public school. * * * No one denies that they should be taught to the youth of the State. The constitution and the law do not interfere with such teaching, but they do banish theological polemics from the schools and the school districts. This is done, not from any hostility to religion, but because it is no part of the duty of the State to teach religion,-to take the money of all and apply it to teaching the children of all the religion of a part, only. Instruction in religion must be voluntary.' People ex rel. Ring v. Board of Education of Dist. No. 24, 245 Ill. 334, 349, 92 N.E. 251, 256 (1910).

The Supreme Court of South Dakota, in banning devotional exercises from the public schools of that State, also cautioned that '(t)he state as an educator must keep out of this field, and especially is this true in the common schools, where the child is immature, without fixed religious convictions * * *.' State ex rel. Finger v. Weedman, 55 S.D. 343, 357, 226 N.W. 348, 354 (1929).

***277** Even those state courts which have sustained devotional exercises under state law[FN52] have usually recognized the primarily religious character of prayers and Bible readings. If such practices were not for that reason unconstitutional, it was necessarily because the state constitution forbade only public expenditures for sectarian instruction, or for activities which made the schoolhouse a 'place of worship,' but said nothing about the subtler question of laws 'respecting an establishment of religion.'[FN53] Thus the ****1601** panorama of history permits no ***278** other conclusion than that daily prayers and Bible readings in the public schools have always been designed to be, and have been regarded as, essentially religious exercises. Unlike the Sunday closing laws, these ex-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ercises appear neither to have been divorced from their religious origins nor deprived of their centrally religious character by the passage of time.[FN54] cf. McGowan v. Maryland, supra, 366 U.S. at 442-445, 81 S.Ct. at 1113-1115. On this distinction alone we might well rest a constitutional decision. But three further contentions have been pressed in the argument of these cases. These contentions deserve careful consideration, for if the position of the school authorities were correct in respect to any of them, we would be misapplying the principles of Engel v. Vitale.

FN52. Moore v. Monroe, 64 Iowa 367, 20 N.W. 475 (1884); Hackett v. Brooksville Graded School District, 120 Ky. 608, 87 S.W. 792 (1905); Billard v. Board of Education, 69 Kan. 53, 76 P. 422 (1904); Pfeiffer v. Board of Education, 118 Mich. 560, 77 N.W. 250 (1898); Kaplan v. Independent School District, 171 Minn. 142, 214 N.W. 18 (1927); Lewis v. Board of Education of City of New York, 157 Misc. 520, 285 N.Y.S. 164 (Sup.Ct.1935), modified on other grounds, 247 App.Div. 106, 286 N.Y.S. 174 (1936), appeal dismissed, 276 N.Y. 490, 12 N.E.2d 172 (1937); Doremus v. Board of Education, 5 N.J. 435, 75 A.2d 880 (1950), appeal dismissed, 342 U.S. 429, 72 S.Ct. 394, 96 L.Ed. 475; Church v. Bullock, 104 Tex. 1, 109 S.W. 115, 16 L.R.A.,N.S., 860 (1908); People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927); Wilkerson v. City of Rome, 152 Ga. 762, 110 S.E. 895, 20 A.L.R. 1334 (1922); Carden v. Bland, 199 Tenn. 665, 288 S.W.2d 718 (1956); Chamberlin v. Dade County Board of Public Instruction, 143 So.2d 21 (Fla.1962).

FN53. For discussion of the constitutional and statutory provisions involved in the state cases which sustained devotional exercises in the public schools, see Boles, The Bible, Religion, and the Public Schools (1961), c. III; Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 381-385 (1962); Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis.L.Rev. 427, 450-452; Note, Bible Reading in Public Schools, 9 Vand.L.Rev. 849, 854-859 (1956); Note, Nineteenth Century Judicial Thought Concerning Church-State Relations, 40 Minn.L.Rev. 672, 675-678 (1956). State courts appear to have been increasingly influenced in sustaining devotional practices by the availability of an excuse or exemption for dissenting students. See Cushman, The Holy Bible and the Public Schools, 40 Cornell L.Q. 475, 477 (1955); 13 Vand.L.Rev. 552 (1960).

FN54. See Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt.L.Rev. 561, 571-572 (1961); Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 399-400 (1962); 30 Ford.L.Rev. 801, 803 (1962); 45 Va.L.Rev. 1381 (1959). The essentially religious character of the materials used in these exercises is, in fact, strongly suggested by the presence of excusal or exemption provisions, and by the practice of rotating or alternating the use of different prayers and versions of the Holy Bible.

A.

First, it is argued that however clearly religious may have been the origins and early nature of daily prayer and Bible reading, these practices today serve so clearly secular educational purposes that their religious attributes may be overlooked. I do not doubt, for example, that morning devotional exercises may foster better discipline in the classroom, and elevate the spiritual level on which the school day opens. The Pennsylvania Superintendent of Public Instruction, testifying by deposition in the Schempp case, offered his view that daily Bible reading 'places upon the children or those hearing the reading of this, and the atmosphere which goes on in the reading * * * one of the last vestiges of moral value ***279** that we have left in our school system.' The exercise thus affords, the Superintendent concluded, 'a strong contradiction to the materialistic trends of our time.' Baltimore's Superintendent of Schools expressed a similar view of the practices challenged in the Murray case, to the effect that '(t)he acknowledgement of the existence of God as symbolized in the opening exercises establishes a discipline tone which tends to cause each individual pupil to constrain his overt acts and to consequently conform to accepted standards of be-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

havior during his attendance at school.' These views are by no means novel, see, e.g., Billard v. Board of Education, 69 Kan. 53, 57-58, 76 P. 422, 423, 66 L.R.A. 166 (1904).[FN55]

FN55. In the Billard case, the teacher whose use of the Lord's Prayer and the Twenty-third Psalm was before the court testified that the exercise served disciplinary rather than spiritual purposes:

'It is necessary to have some general exercise after the children come in from the playground to prepare them for their work. You need some general exercise to quiet them down.'

When asked again if the purpose were not at least partially religious, the teacher replied, (i)t was religious to the children that are religious, and to the others it was not.' 69 Kan., at 57-58, 76 P., at 423.

It is not the business of this Court to gainsay the judgments of experts on matters of pedagogy. Such decisions must ****1602** be left to the discretion of those administrators charged with the supervision of the Nation's public schools. The limited province of the courts is to determine whether the means which the educators have chosen to achieve legitimate pedagogical ends infringe the constitutional freedoms of the First Amendment. The secular purposes which devotional exercises are said to serve fall into two categories-those which depend upon an immediately religious experience shared by the participating children; and those which appear sufficiently divorced from the religious content of the devotional material that they can be served equally by nonreligious ***280** materials. With respect to the first objective, much has been written about the moral and spiritual values of infusing some religious influence or instruction into the public school classroom.[FN56] To the extent that only religious materials will serve this purpose, it seems to me that the purpose as well as the means is so plainly religious that the exercise is necessarily forbidden by the Establishment Clause. The fact that purely secular benefits may eventually result does not seem to me to justify the exercises, for similar indirect nonreligious benefits could no doubt have been claimed for the released time program invalidated in McCollum.

FN56. See, e.g., Henry, The Place of Religion in Public Schools (1950); Martin, Our Public Schools-Christian or Secular (1952); Educational Policies Comm'n of the National Educational Assn., Moral and Spiritual Values in the Public Schools (1951), c. IV; Harner, Religion's Place in General Education (1949). Educators are by no means unanimous, however, on this question. See Boles, The Bible, Religion, and the Public Schools (1961), 223-224. Compare George Washington's advice in his Farewell Address:

'And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle.' 35 Writings of George Washington (Fitzpatrick ed. 1940), 229.

The second justification assumes that religious exercises at the start of the school day may directly serve solely secular ends-for example, by fostering harmony and tolerance among the pupils, enhancing the authority of the teacher, and inspiring better discipline. To the extent that such benefits result not from the content of the readings and recitation, but simply from the holding of such a solemn exercise at the opening assembly or the first class of the day, it would seem that less sensitive materials might equally well serve the same purpose. I have previously suggested that Torcaso and the Sunday Law Cases forbid the use of religious means to achieve secular***281** ends where nonreligious means will suffice. That principle is readily applied to these cases. It has not been shown that readings from the speeches and messages of great Americans, for example, or from the documents of our heritage of liberty, daily recitation of the Pledge of Allegiance, or even the observance of a moment of reverent silence at the opening of class, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government.[FN57] Such substitutes would, I think, be un-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

satisfactory**1603 or inadequate only to the extent that the present activities do in fact serve religious goals. While I do not question the judgment of experienced educators that the challenged practices may well achieve valuable secular ends, it seems to me that the State acts unconstitutionally if it either sets about to attain even indirectly religious ends by religious means, or if it uses religious means to serve secular ends where secular means would suffice.

FN57. Thomas Jefferson's insistence that where the judgments of young children 'are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history,' 2 Writings of Thomas Jefferson (Memorial ed. 1903), 204, is relevant here. Recent proposals have explored the possibility of commencing the school day 'with a quiet moment that would still the tumult of the playground and start a day of study,' Editorial, Washington Post, June 28, 1962, s A, p. 22, col. 2. See also New York Times, Aug. 30, 1962, s 1, p. 18, col. 2. For a consideration of these and other alternative proposals see Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 329, 370-371 (1963). See also 2 Stokes, Church and State in the United States (1950), 571.

B.

Second, it is argued that the particular practices involved in the two cases before us are unobjectionable *282 because they prefer no particular sect or sects at the expense of others. Both the Baltimore and Abington procedures permit, for example, the reading of any of several versions of the Bible, and this flexibility is said to ensure neutrality sufficiently to avoid the constitutional prohibition. One answer, which might be dispositive, is that any version of the Bible is inherently sectarian, else there would be no need to offer a system of rotation or alternation of versions in the first place, that is, to allow different sectarian versions to be used on different days. The sectarian character of the Holy Bible has been at the core of the whole controversy over religious practices in the public schools throughout its long and often bitter history.[FN58] To *283 vary the version as the Abington and Baltimore schools have done may well be less offensive than to read from the King James version every day, as once was the practice. But the result even of this relatively benign procedure is that majority sects are preferred in approximate proportion to their representation in the community and in the student body, while the smaller sects suffer commensurate discrimination. So long as the subject matter of the exercise is sectarian in character, these consequences cannot be avoided.

FN58. The history, as it bears particularly upon the role of sectarian differences concerning Biblical texts and interpretation, has been summarized in Tudor v. Board of Education, 14 N.J. 31, 36-44, 100 A.2d 857, 859-864, 45 A.L.R.2d 729. See also State ex rel. Weiss v. District Board, 76 Wis. 177, 190-193, 44 N.W. 967, 972-975, 7 L.R.A. 330. One state court adverted to these differences a half century ago:

'The Bible, in its entirety, is a sectarian book as to the Jew and every believer in any religion other than the Christian religion, and as to those who are heretical or who hold beliefs that are not regarded as orthodox * * * its use in the schools necessarily results in sectarian instruction. There are many sects of Christians, and their differences grow out of their differing constructions of various parts of the Scriptures-the different conclusions drawn as to the effect of the same words. The portions of Scripture which form the basis of these sectarian differences cannot be thoughtfully and intelligently read without impressing the reader, favorably or otherwise, with reference to the doctrines supposed to be derived from then.' People ex rel. Ring v. Board of Education, 245 Ill. 334, 347-348, 92 N.E. 251, 255, 29 L.R.A., N.S., 442. But see, for a sharply critical comment, Schofield, Religious Liberty and Bible Reading in Illinois Public Schools, 6 Ill.L.Rev. 17 (1911).

See also Dunn, What Happened to Religious Education? (1958), 268-273; Dawson, America's Way in Church, State, and Society (1953), 53-54; Johnson and Yost, Separation of Church and State in the United States (1948), c. IV; Harpster, Religion, Education and the Law, 36 Marquette

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

L.Rev. 24, 44-45 (1952); 20 Ohio State L.J. 701, 702-703 (1959).

The argument contains, however, a more basic flaw. There are persons in every community-often deeply devout-to whom any version of the Judaeo-Christian Bible is offensive.[FN59] There are others ****1604** whose reverence for the Holy Scriptures demands private study or reflection and to whom public reading or recitation is sacrilegious, as one of the expert witnesses at the trial of the Schempp case explained. To such persons it is not the fact of using the Bible in the public schools, nor the content of any particular version, that is offensive, but only the manner in ***284** which it is used. [FN60] For such persons, the anathema of public communion is even more pronounced when prayer is involved. Many deeply devout persons have always regarded prayer as a necessarily private experience.[FN61] One Protestant group recently commented, for example: 'When one thinks of prayer as sincere outreach of a ***285** human soul to the Creator, 'required prayer' becomes an absurdity.'[FN62] There is a similar problem with respect to comment upon the passages of Scripture which are to be read. Most present statutes forbid comment, and this practice accords with the views of many religious groups as to the manner in which the Bible should be read. However, as a recent survey discloses, scriptural passages read without comment frequently convey no message to the younger children in the school. Thus there has developed a practice in some schools of bridging the gap between faith and understanding by means of 'definitions,' even where 'comment'****1605** is forbidden by statute. [FN63] The present practice therefore poses a difficult dilemma: While Bible reading is almost universally required to be without comment, since only by such a prohibition can sectarian interpretation be excluded from the classroom, ***286** the rule breaks down at the point at which rudimentary definitions of Biblical terms are necessary for comprehension if the exercise is to be meaningful at all.

FN59. See Torcaso v. Watkins, supra, 367 U.S. at 495, n. 11, 81 S.Ct. at 1684; Cushman, The Holy Bible and the Public Schools, 40 Cornell L.Q. 475, 480-483 (1955); Note, Separation of Church and State: Religious Exercises in the Schools, 31 U. of Cinc.L.Rev. 408, 411-412 (1962). Few religious persons today would share the universality of the Biblical canons of John Quincy Adams:

'You ask me what Bible I take as the standard of my faith-the Hebrew, the Samaritan, the old English translation, or what? I answer, the Bible containing the sermon upon the mount-any Bible that I can read and understand. * * * I take any one of them for my standard of faith. If Socinus or Preistley had made a fair translation of the Bible, I would have taken that, but without their comments.' John Quincy Adams to John Adams, Jan. 3, 1817, in Koch and Peden, Selected Writings of John and John Quincy Adams (1946), 292.

FN60. Rabbi Solomon Grayzel testified before the District Court, 'In Judaism the Bible is not read, it is studied. There is no special virtue attached to a mere reading of the Bible; there is a great deal of virtue attached to a study of the Bible.' See Boles, The Bible, Religion, and the Public Schools (1961), 208-218; Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 329, 372-375 (1963). One religious periodical has suggested the danger that 'an observance of this sort is likely to deteriorate quickly into an empty formality with little, if any spiritual significance. Prescribed forms of this sort, as many colleges have concluded after years of compulsory chapel attendance, can actually work against the inculcation of vital religion.' Prayers in Public Schools Opposed, 69 Christian Century, Jan. 9, 1952, p. 35.

FN61. See Cahn, On Government and Prayer, 37 N.Y.U.L.Rev. 981, 993-994 (1962). A leading Protestant journal recently noted:

'Agitation for removal of religious practices in public schools is not prompted or supported entirely by Jews, humanists, and atheists. At both local and national levels, many Christian leaders, concerned both for civil rights of minorities and for adequate religious education, are opposed to religious exercises in public schools. * * * Many per-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

sons, both Jews and Christians, believe that prayer and Bible reading are too sacred to be permitted in public schools in spite of their possible moral value.' Smith, The Religious Crisis In Our Schools, 128 The Episcopalian, May 1963, pp. 12-13. See, e.g., for other recent statements on this question, Editorial, Amending the Amendment, 108 America, May 25, 1963, p. 736; Sissel, A Christian View: Behind the Fight Against School Prayer, 27 Look, June 18, 1963, p. 25.

It should be unnecessary to demonstrate that the Lord's Prayer, more clearly than the Regents' Prayer involved in Engel v. Vitale, is an essentially Christian supplication. See, e.g., Scott, The Lord's Prayer: Its Character, Purpose, and Interpretation (1951), 55; Buttrick, So We Believe, So We Pray (1951), 142; Levy Lord's Prayer, in 7 Universal Jewish Encyclopedia (1948), 192-193.

FN62. Statement of the Baptist Joint Committee on Public Affairs, in 4 J. Church and State 144 (1962).

FN63. See Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 397 (1962). The application of statutes and regulations which forbid comment on scriptural passages is further complicated by the view of certain religious groups that reading without comment is either meaningless or actually offensive. Compare Rabbi Grayzel's testimony before the District Court that 'the Bible is misunderstood when it is taken without explanation.' A recent survey of the attitudes of certain teachers disclosed concern that 'refusal to answer pupil questions regarding any curricular activity is not educationally sound,' and that reading without comment might create in the minds of the pupils the impression that something was 'hidden or wrong.' Boles, The Bible, Religion, and the Public Schools (1961), 235-236. Compare the comment of a foreign observer: 'In no other field of learning would we expect a child to draw the full meaning from what he reads without accompanying explanatory comment. But comment by the teacher will inevitably reveal his own personal preferences; and the exhibition of preferences is what we are seeking to eliminate.' MacKinnon, Freedom?-or Tolerations? The Problem of Church and State in the United States, (1959) Pub.Law 374, 383.

It has been suggested that a tentative solution to these problems may lie in the fashioning of a 'common core' of theology tolerable to all creeds but preferential to none.[FN64] But as one commentator has recently observed, '(h) istory is not encouraging to' those who hope to fashion a 'common denominator of religion detached from its manifestation in any organized church.' Sutherland, Establishment According to Engel, 76 Harv.L.Rev. 25, 51 (1962). Thus, the notion of a 'common core' litany or supplication offends many deeply devout worshippers who do not find clearly sectarian practices objectionable.[FN65] Father Gustave Weigel has recently expressed *287 a widely shared view: 'The moral code held by each separate**1606 religious community can reductively be unified, but the consistent particular believer wants no such reduction.'[FN66] And, as the American Council on Education warned several years ago, 'The notion of a common core suggests a watering down of the several faiths to the point where common essentials appear. This might easily lead to a new sect-a public school seet-which would take its place alongside the existing faiths and compete with them.' [FN67] Engel is surely authority that nonsectarian religious practices, equally with sectarian exercises, violate the Establishment Clause. Moreover, even if the Establishment Clause were oblivious to nonsectarian religious practices, I think it quite likely that the 'common core' approach would be sufficiently objectionable to many groups to be foreclosed by the prohibitions of the Free Exercise Clause.

FN64. See Abbott, A Common Bible Reader for Public Schools, 56 Religious Education 20 (1961); Note, 22 Albany L.Rev. 156-157 (1958); 2 Stokes, Church and State in the United States (1950), 501-506 (describing the 'common denominator' or 'three faiths' plan and certain programs of instruction designed to implement the 'common core' approach). The attempts to evolve a universal, non-denominational prayer are by no means novel. See, e.g., Madison's letter to Edward Everett, March 19, 1823, commenting upon

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

a 'project of a prayer * * * intended to comprehend & conciliate College Students of every (Christian) denomination, by a Form composed wholly of texts & phrases of scripture.' 9 Writings of James Madison (Hunt ed. 1910), 126. For a fuller description of this and other attempts to fashion a 'common core' or nonsectarian exercise, see Engel v. Vitale, 18 Misc.2d 659, 660-662, 191 N.Y.S.2d 453, 459-460.

FN65. See the policy statement recently drafted by the National Council of the Churches of Christ: '* * * neither true religion nor good education is dependent upon the devotional use of the Bible in the public school program. * * * Apart from the constitutional questions involved, attempts to establish a 'common core' of religious beliefs to be taught in public schools for the purpose of indoctrination are unrealistic and unwise. Major faith groups have not agreed on a formulation of religious beliefs common to all. Even if they had done so, such a body of religious doctrine would tend to become a substitute for the more demanding commitments of historic faiths.' Washington Post, May 25, 1963, s A, p. 1, col. 4. See also Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 329, 341, 368-369 (1963). See also Hartford Moral Values in Public Education: Lessons from the Kentucky Experience (1958), 261-262; Moehlman, The Wall of Separation Between Church and State (1951), 158-159. Cf. Mosk, 'Establishment Clause' Clarified, 22 Law in Transition 231, 235-236 (1963).

FN66. Quoted in Kurland, The Regents' Prayer Case: 'Full of Sound and Fury, Signifying * * *,' 1962 Supreme Court Review (1962), 1, 31.

FN67. Quoted in Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 417 (1962). See also Dawson, America's Way in Church, State, and Society (1953), 54.

C.

A third element which is said to absolve the practices involved in these cases from the ban of the religious guarantees of the Constitution is the provision to excuse or exempt students who wish not to participate. Insofar as these practices are claimed to violate the Establishment ***288** Clause, I find the answer which the District Court gave after our remand of Schempp to be altogether dispositive:

'The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony * * *. The exercises are held in the school buildings and perforce are conducted by and under the authority of the local school authorities and during school sessions. Since the statute requires the reading of the 'Holy Bible', a Christian document, the practice, as we said in our first opinion, prefers the Christian religion. The record demonstrates that it was the intention of the General Assembly of the Commonwealth of Pennsylvania to introduce a religious ceremony into the public schools of the Commonwealth.' 201 F.Supp., at 819.

Thus the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question, if it is once found that these practices are essentially religious exercises designed at least in part to achieve religious aims through the use of public school facilities during the school day.

The more difficult question, however, is whether the availability of excusal for the dissenting child serves to refute challenges to these practices under the Free Exercise Clause. While it is enough to decide these cases to dispose of the establishment questions, questions of free exercise are so inextricably interwoven into the history and present status of these practices as to justify disposition of this second aspect of the excusal issue. The answer is that the excusal procedure itself necessarily operates in such a way as to infringe the rights of free exercise of those children who wish to be excused. We have held in Barnette and Torcaso, respectively, that a State may require neither public school students nor candidates ***289** for an office of public trust to profess beliefs offensive to religious principles. By the same token the State could not constitutionally require a student to profess publicly his disbelief as the prerequisite to the exercise of his constitutional right of abstention.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

And apart from Torcaso and Barnette, I think Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460, suggests a **1607 further answer. We held there that a State may not condition the grant of a tax exemption upon the willingness of those entitled to the exemption to affirm their loyalty to the Government, even though the exemption was itself a matter of grace rather than of constitutional right. We concluded that to impose upon the eligible taxpayers the affirmative burden of proving their loyalty impermissibly jeopardized the freedom to engage in constitutionally protected activities close to the area to which the loyalty oath related. Speiser v. Randall seems to me to dispose of two aspects of the excusal or exemption procedure now before us. First, by requiring what is tantamount in the eyes of teachers and schoolmates to a profession of disbelief, or at least of nonconformity, the procedure may well deter those children who do not wish to participate for any reason based upon the dictates of conscience from exercising an indisputably constitutional right to be excused.[FN68] Thus the excusal *290 provision in its operation subjects them to a cruel dilemma. In consequence, even devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or nonconformists simply on the basis of their request.

> FN68. See the testimony of Edward L. Schempp, the father of the children in the Abington schools and plaintiff-appellee in No. 142, concerning his reasons for not asking that his children be excused from the morning exercises after excusal was made available through amendment of the statute:
>
> 'We originally objected to our children being exposed to the reading of the King James version of the Bible * * * and under those conditions we would have theoretically liked to have had the children excused. But we felt that the penalty of having our children labelled as 'odd balls' before their teachers and classmates every day in the year was even less satisfactory than the other problem. * * *
>
> 'The children, the classmates of Roger and Donna are very liable to label and lump all particular religious difference or religious objections as atheism, particularly, today the word 'atheism' is so often tied to atheistic communism, and atheism has very bad connotations in the minds of children and many adults today.'
>
> A recent opinion of the Attorney General of California gave as one reason for finding devotional exercises unconstitutional the likelihood that '(c)hildren forced by conscience to leave the room during such exercises would be placed in a position inferior to that of students adhering to the State-endorsed religion.' 25 Cal.Op.Atty.Gen. 316, 319 (1955). Other views on this question, and possible effects of the excusal procedure, are summarized in Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt.L.Rev. 561, 581-585 (1961); Note, Separation of Church and State: Religious Exercises in the Schools, 31 U. of Cinc.L.Rev. 408, 416 (1962); Note, 62 W.Va.L.Rev. 353, 358 (1960).

Such reluctance to seek exemption seems all the more likely in view of the fact that children are disinclined at this age to step out of line or to flout 'peer-group norms.' Such is the widely held view of experts who have studied the behaviors and attitudes of children.[FN69] **1608 This is also *291 the basis of Mr. Justice Frankfurter's answer to a similar contention made in the McCollum case:

> FN69. Extensive testimony by behavioral scientists concerning the effect of similar practices upon children's attitudes and behaviors is discussed in Tudor v. Board of Education, 14 N.J. 31, 50-52, 100 A.2d 857, 867-868, 45 A.L.R.2d 729. See also Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 329, 344 (1963). There appear to be no reported experiments which bear directly upon the question under consideration. There have, however, been numerous experiments which indicate the susceptibility of school children to peer-group pressures, especially where important group norms and values are involved. See, e.g., Berenda, The Influence of the Group on the Judgments of Children (1950), 26-33; Argyle, Social Pressure in

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Public and Private Situations, 54 J. Abnormal & Social Psych. 172 (1957); cf. Rhine, The Effect of Peer Group Influence Upon Concept-Attitude Development and Change, 51 J. Social Psych. 173 (1960); French, Morrison and Levinger, Coercive Power and Forces Affecting Conformity, 61 J. Abnormal and Social Psych. 93 (1960). For a recent and important experimental study of the susceptibility of students to various factors in the school environment, see Zander, Curtis and Rosenfeld, The Influence of Teachers and Peers on Aspirations of Youth (U.S. Office of Education Cooperative Research Project No. 451, 1961), 24-25, 78-79. It is also apparent that the susceptibility of school children to prestige suggestion and social influence within the school environment varies inversely with the age, grade level, and consequent degree of sophistication of the child, see Patel and Gordon, Some Personal and Situational Determinants of Yielding to Influence, 61 J. Abnormal and Social Psych. 411, 417 (1960).

Experimental findings also shed some light upon the probable effectiveness of a provision for excusal when, as is usually the case, the percentage of the class wishing not to participate in the exercises is very small. It has been demonstrated, for example, that the inclination even of adults to depart or dissent overtly from strong group norms varies proportionately with the size of the dissenting group-that is, inversely with the apparent or perceived strength of the norm itself-and and is markedly slighter in the case of the sole or isolated dissenter. See, e.g., Asch, Studies of Independence and Conformity: a Unanimous Majority (Psych. Monographs No. 416, 1956), 69-70; Asch, Effects of Group Pressure upon the Modification and Distortion of Judgments, in Cartwright and Zander, Group Dynamics (2d ed. 1960), 189-199; Luchins and Luchins, On Conformity With True and False Communications, 42 J. Social Psych. 283 (1955). Recent important findings on these questions are summarized in Hare, Handbook of Small Group Research (1962), c. II.

'That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an ***292** outstanding characteristic of children. The result is an obvious pressure upon children to attend.' 333 U.S., at 227, 68 S.Ct., at 473.

Also apposite is the answer given more than 70 years ago by the Supreme Court of Wisconsin to the argument that an excusal provision saved a public school devotional exercise from constitutional invalidation:

'* * * the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. But it is a sufficient refutation of the argument that the practice in question tends to destroy the equality of the pupils which the constitution seeks to establish and protect, and puts a portion of them to serious disadvantage in many ways with respect to the others.' State ex rel. Weiss v. District Board of School District No. 8, 76 Wis. 177, 200, 44 N.W. 967, 975, 7 L.R.A. 330.

And 50 years ago a like answer was offered by the Louisiana Supreme Court:

'Under such circumstances, the children would be excused from the opening exercises * * * because of their religious beliefs. And excusing such children on religious grounds, although the number excused might be very small, would be a distinct preference in favor of the religious beliefs to the majority, and would work a discrimination against those who were excused. The exclusion of a pupil under such circumstances puts him in a class by himself; it subjects him to a religious stigma; and all because of his religious belief. Equality in public education would be destroyed by such act, under a Constitution which seeks to establish equality and freedom in religious matters.' Herold v. Parish Board of School Directors, 136 La. 1034, 1049-1050, 68 So. 116, 121, L.R.A.1915D, 941. See also ****1609** Tudor v. Board of Education, 14 N.J. 31, 48-52, 100 A.2d 857, 867-868, 45 A.L.R.2d 729; Brown v. Orange County Board of Public Instruction, 128 So.2d 181, 185 (Fla.App.).

***293** Speiser v. Randall also suggests the answer to a further argument based on the excusal procedure. It has been suggested by the School Board, in

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Schempp, that we ought not pass upon the appellees' constitutional challenge at least until the children have availed themselves of the excusal procedure and found it inadequate to redress their grievances. Were the right to be excused not itself of constitutional stature, I might have some doubt about this issue. But we held in Speiser that the constitutional vice of the loyalty oath procedure discharged any obligation to seek the exemption before challenging the constitutionality of the conditions upon which it might have been denied. 357 U.S., at 529, 78 S.Ct., at 1343. Similarly, we have held that one need not apply for a permit to distribute constitutionally protected literature, Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949, or to deliver a speech, Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430, before he may attack the constitutionality of a licensing system of which the defect is patent. Insofar as these cases implicate only questions of establishment, it seems to me that the availability of an excuse is constitutionally irrelevant. Moreover, the excusal procedure seems to me to operate in such a way as to discourage the free exercise of religion on the part of those who might wish to utilize it, thereby rendering it unconstitutional in an additional and quite distinct respect.

To summarize my views concerning the merits of these two cases: The history, the purpose and the operation of the daily prayer recital and Bible reading leave no doubt that these practices standing by themselves constitute an impermissible breach of the Establishment Clause. Such devotional exercises may well serve legitimate nonreligious purposes. To the extent, however, that such purposes***294** are really without religious significance, it has never been demonstrated that secular means would not suffice. Indeed, I would suggest that patriotic or other nonreligious materials might provide adequate substitutes-inadequate only to the extent that the purposes now served are indeed directly or indirectly religious. Under such circumstances, the States may not employ religious means to reach a secular goal unless secular means are wholly unavailing. I therefore agree with the Court that the judgment in Schempp, No. 142, must be affirmed, and that in Murray, No. 119, must be reversed.

V.

These considerations bring me to a final contention of the school officials in these cases: that the invalidation of the exercises at bar permits this Court no alternative but to declare unconstitutional every vestige, however slight, of cooperation or accommodation between religion and government. I cannot accept that contention. While it is not, of course, appropriate for this Court to decide questions not presently before it, I venture to suggest that religious exercises in the public schools present a unique problem. For not every involvement of religion in public life violates the Establishment Clause. Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions.

Specifically, I believe that the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden,***295** are those involvements ****1610** of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice. When the secular and religious institutions become involved in such a manner, there inhere in the relationship precisely those dangers-as much to church as to state-which the Framers feared would subvert religious liberty and the strength of a system of secular government. On the other hand, there may be myriad forms of involvements of government with religion which do not import such dangers and therefore should not, in my judgment, be deemed to violate the Establishment Clause. Nothing in the Constitution compels the organs of government to be blind to what everyone else perceives-that religious differences among Americans have important and pervasive implications for our society. Likewise nothing in the Establishment Clause forbids the application of legislation having purely secular ends in such a way as to alleviate burdens upon the free exercise of an individual's religious beliefs. Surely the Framers would never have understood that such a construction sanctions that involvement which violates the Establishment Clause. Such a conclusion can be reached, I would suggest, only by using the words of the First

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Amendment to defeat its very purpose.

The line between permissible and impermissible forms of involvement between government and religion has already been considered by the lower federal and state courts. I think a brief survey of certain of these forms of accommodation will reveal that the First Amendment commands not official hostility toward religion, but only a strict neutrality in matters of religion. Moreover, it may serve to suggest that the scope of our holding today ***296** is to be measured by the special circumstances under which these cases have arisen, and by the particular dangers to church and state which religious exercises in the public schools present. It may be helpful for purposes of analysis to group these other practices and forms of accommodation into several rough categories.

A. The Conflict Between Establishment and Free Exercise.-There are certain practices, conceivably violative of the Establishment Clause, the striking down of which might seriously interfere with certain religious liberties also protected by the First Amendment.[FN70] Provisions for churches and chaplains at military establishments for those in the armed services may afford one such example.[FN71] ***297** The like provision by state and ****1611** federal governments for chaplains in penal institutions may afford another example.[FN72] It is argued that such provisions may be assumed to contravene the Establishment Clause, yet be sustained on constitutional grounds as necessary to secure to the members of the Armed Forces and prisoners those rights of worship guaranteed under the Free Exercise Clause. Since government has deprived such persons of the opportunity***298** to practice their faith at places of their choice, the argument runs, government may, in order to avoid infringing the free exercise guarantees, provide substitutes where it requires such persons to be. Such a principle might support, for example, the constitutionality of draft exemptions for ministers and divinity students, [FN73] cf. Selective Draft Law Cases (Arver v. United States), 245 U.S. 366, 389-390, 38 S.Ct. 159, 165, 62 L.Ed. 349; of the excusal of children from school on their respective religious holidays; and of the allowance by government of temporary use of public buildings by religious organizations when their own churches have become unavailable because of a disaster or emergency. [FN74]

FN70. See, on the general problem of conflict and accommodation between the two clauses, Katz, Freedom of Religion and State Neutrality, 20 U. of Chi.L.Rev. 426, 429 (1953); Griswold, Absolute Is In the Dark, 8 Utah L.Rev. 167, 176-179 (1963); Kauper, Church, State, and Freedom: A Review, 52 Mich.L.Rev. 829, 833 (1954). One author has suggested that the Establishment and Free Exercise Clauses must be 'read as stating a single precept: that government cannot utilize religion as a standard for action or inaction because these clauses, read together as they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden.' Kurland, Religion and the Law (1962), 112. Compare the formula of accommodation embodied in the Australian Constitution, s 116:

'The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.' Essays on the Australian Constitution (Else-Mitchell ed. 1961), 15.

FN71. There has been much difference of opinion throughout American history concerning the advisability of furnishing chaplains at government expense. Compare, e.g., Washington's order regarding chaplains for the Continental Army, July 9, 1776, in 5 Writings of George Washington (Fitzpatrick ed. 1932), 244, with Madison's views on a very similar question, letter to Edward Livingston, July 10, 1822, 9 Writings of James Madison (Hunt ed. 1910), 100-103. Compare also this statement by the Armed Forces Chaplains Board concerning the chaplain's obligation:

'To us has been entrusted the spiritual and moral guidance of the young men and women in the Armed Services of this country. A chaplain has many duties-yet, first and foremost is that of presenting God to men and women wearing the military uniform. What happens to them while they are in military service has a profound effect on

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

what happens in the community as they resume civilian life. We, as chaplains, must take full cognizance of that fact and dedicate our work to making them finer, spiritually strengthened citizens.' Builders of Faith (U.S. Department of Defense 1955), ii.

It is interesting to compare in this regard an express provision, Article 140, of the Weimar Constitution: 'Necessary free time shall be accorded to the members of the armed forces for the fulfilment of their religious duties.' McBain and Rogers, The New Constitutions of Europe (1922), 203.

FN72. For a discussion of some recent and difficult problems in connection with chaplains and religious exercises in prisons, see, e.g., Pierce v. La Vallee, 2 Cir., 293 F.2d 233; In re Ferguson, 55 Cal.2d 663, 12 Cal.Rptr. 753, 361 P.2d 417; McBride v. McCorkle, 44 N.J.Super. 468, 130 A.2d 881; Brown v. McGinnis, 10 N.Y.2d 531, 225 N.Y.S.2d 497, 180 N.E.2d 791; discussed in Comment, 62 Col.L.Rev. 1488 (1962); 75 Harv.L.Rev. 837 (1962). Compare Article XVIII of the Hague Convention Regulations of 1899:

'Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.' Quoted in Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed. 1949), 313.

FN73. Compare generally Sibley and Jacob, Conscription of Conscience: The American State and the Conscientious Objector, 1940-1947 (1952), with Conklin, Conscientious Objector Provisions: A View in the Light of Torcaso v. Watkins, 51 Geo.L.J. 252 (1963).

FN74. See, e.g., Southside Estates Baptist Church v. Board of Trustees, 115 So.2d 697 (Fla.); Lewis v. Mandeville, 201 Misc. 120, 107 N.Y.S.2d 865; cf. School District No. 97 v. Schmidt, 128 Colo. 495, 263 P.2d 581 (temporary loan of school district's custodian to church). A different problem may be presented with respect to the regular use of public school property for religious activities, State ex rel. Gilbert v. Dilley, 95 Neb. 527, 145 N.W. 999, 50 N.R.A.,N.S., 1182; the erection on public property of a statute of or memorial to an essentially religious figure, State ex rel. Singelmann v. Morrison, 57 So.2d 238 (La.App.); seasonal displays of a religious character, Baer v. Kolmorgen, 14 Misc.2d 1015, 181 N.Y.S.2d 230; or the performance on public property of a drama or opera based on religious material or carrying a religious message, cf. County of Los Angeles v. Hollinger, 200 Cal.App.2d 877, 19 Cal.Rptr. 648.

**1612 Such activities and practices seem distinguishable from the sponsorship of daily Bible reading and prayer recital. For one thing, there is no element of coercion present in the appointment of military or prison chaplains; the soldier or convict who declines the opportunities for worship would not ordinarily subject himself to the suspicion or obloquy of his peers. Of special significance to this distinction is the fact that we are here usually dealing*299 with adults, not with impressionable children as in the public schools. Moreover, the school exercises are not designed to provide the pupils with general opportunities for worship denied them by the legal obligation to attend school. The student's compelled presence in school for five days a week in no way renders the regular religious facilities of the community less accessible to him than they are to others. The situation of the school child is therefore plainly unlike that of the isolated soldier or the prisoner.

The State must be steadfastly neutral in all matters of faith, and neither favor nor inhibit religion. In my view, government cannot sponsor religious exercises in the public schools without jeopardizing that neutrality. On the other hand, hostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion, the withholding of draft exemptions for ministers and conscientious objectors, or the denial of the temporary use of an empty public building to a congregation whose place of worship has been destroyed by fire or flood. I do not say that gov-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ernment must provide chaplains or draft exemptions, or that the courts should intercede if it fails to do so.

B. Establishment and Exercises in Legislative Bodies.-The saying of invocational prayers in legislative chambers, state or federal, and the appointment of legislative chaplains, might well represent no involvements of the kind prohibited by the Establishment Clause.[FN75] Legislators, federal and state, are mature adults who may presumably absent themselves from such public and ceremonial***300** exercises without incurring any penalty, direct or indirect. It may also be significant that, at least in the case of the Congress, Art. I, s 5, of the Constitution makes each House the monitor of the 'Rules of its Proceedings' so that it is at least arguable whether such matters present 'political questions' the resolution of which is exclusively confided to Congress. See Baker v. Carr, 369 U.S. 186, 232, 82 S.Ct. 691, 718, 7 L.Ed.2d 663. Finally, there is the difficult question of who may be heard to challenge such practices. See Elliott v. White, 57 App.D.C. 389, 23 F.2d 997.

FN75. Compare Moulton and Myers, Report on Appointing Chaplains to the Legislature of New York, in Blau, Cornerstones of Religious Freedom in America (1949), 141-156; Comment, 63 Col.L.Rev. 73, 97 (1963).

C. Non-Devotional Use of the Bible In the Public Schools.-The holding of the Court today plainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion.[FN76] To what ****1613** extent, and at what points in the curriculum, religious materials should be cited are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools. They are experts in such matters, and we are not. We should heed Mr. Justice Jackson's caveat that any attempt by this Court to announce curricular standards would be 'to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing***301** and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes.' Illinois ex rel. McCollum v. Board of Education, supra, at 237 of 333 U.S., at 478 of 68 S.Ct.

FN76. A comprehensive survey of the problems raised concerning the role of religion in the secular curriculum is contained in Brown, ed., The Study of Religion in the Public Schools: An Appraisal (1958). See also Katz, Religion and American Constitutions, Lecture at Northwestern University Law School, March 21, 1963, pp. 37-41; Educational Policies Comm'n of the National Education Assn., Moral and Spiritual Values in the Public Schools (1951), 49-80. Compare, for a consideration of similar problems in state-supported colleges and universities, Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal.L.Rev. 751 (1962).

We do not, however, in my view usurp the jurisdiction of school administrators by holding as we do today that morning devotional exercises in any form are constitutionally invalid. But there is no occasion now to go further and anticipate problems we cannot judge with the material now before us. Any attempt to impose rigid limits upon the mention of God or references to the Bible in the classroom would be fraught with dangers. If it should sometime hereafter be shown that in fact religion can play no part in the teaching of a given subject without resurrecting the ghost of the practices we strike down today, it will then be time enough to consider questions we must now defer.

D. Uniform Tax Exemptions Incidentally Available to Religious Institutions.-Nothing we hold today questions the propriety of certain tax deductions or exemptions which incidentally benefit churches and religious institutions, along with many secular charities and nonprofit organizations. If religious institutions benefit, it is in spite of rather than because of their religious character. For religious institutions simply share benefits which government makes generally available to educational, charitable, and eleemosynary groups. [FN77] There is no indication that taxing authorities have used such benefits in any way to subsidize worship or foster belief in God. And as ***302** among religious beneficiaries, the tax exemption or deduction can be truly nondiscriminatory, available on equal terms to small as well as large religious bodies, to popular and unpopular sects, and

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

to those organizations which reject as well as those which accept a belief in God.[FN78]

FN77. See generally Torpey, Judicial Doctrines of Religious Rights in America (1948), c. VI; Van Alstyne, Tax Exemption of Church Property, 20 Ohio State L.J. 461 (1959); Sutherland, Due Process and Disestablishment, 62 Harv.L.Rev. 1306, 1336-1338 (1949); Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal.L.Rev. 751, 773-780 (1962); 7 De Paul L.Rev. 206 (1958); 58 Col.L.Rev. 417 (1958); 9 Stan.L.Rev. 366 (1957).

FN78. See, e.g., Washington Ethical Society v. District of Columbia, 101 U.S.App.D.C. 371, 249 F.2d 127; Fellowship of Humanity v. County of Alameda, 153 Cal.App.2d 673, 315 P.2d 394.

E. Religious Considerations in Public Welfare Programs.-Since government may not support or directly aid religious activities without violating the Establishment Clause, there might be some doubt whether nondiscriminatory programs of governmental aid may constitutionally include individuals who become eligible wholly or partially for religious reasons. For example, it might be suggested that where a State provides unemployment compensation generally to those who are unable to find suitable work, it may not extend such benefits to persons who are unemployed by reason of religious beliefs or practices without thereby establishing the religion to which those persons belong. Therefore, the argument runs, the State may avoid an establishment only by singling out and excluding such persons on the ground that religious beliefs or practices have made them potential beneficiaries. Such a construction would, it seems to me, ****1614** require government to impose religious discriminations and disabilities, thereby jeopardizing the free exercise of religion, in order to avoid what is thought to constitute an establishment.

The inescapable flaw in the argument, I suggest, is its quite unrealistic view of the aims of the Establishment Clause. The Framers were not concerned with the effects of certain incidental aids to individual worshippers which come about as by-products of general and nondiscriminatory welfare programs. If such benefits serve to make ***303** easier or less expensive the practice of a particular creed, or of all religions, it can hardly be said that the purpose of the program is in any way religious, or that the consequence of its nondiscriminatory application is to create the forbidden degree of interdependence between secular and sectarian institutions. I cannot therefore accept the suggestion, which seems to me implicit in the argument outlined here, that every judicial or administrative construction which is designed to prevent a public welfare program from abridging the free exercise of religious beliefs, is for that reason ipso facto an establishment of religion.

F. Activities Which, Though Religious in Origin, Have Ceased to Have Religious Meaning.-As we noted in our Sunday Law decisions, nearly every criminal law on the books can be traced to some religious principle or inspiration. But that does not make the present enforcement of the criminal law in any sense an establishment of religion, simply because it accords with widely held religious principles. As we said in McGowan v. Maryland, 366 U.S. 420, 442, 81 S.Ct. 1101, 1113, 6 L.Ed.2d 393, 'the 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions.' This rationale suggests that the use of the motto 'In God We Trust' on currency, on documents and public buildings and the like may not offend the clause. It is not that the use of those four words can be dismissed as 'de minimis'-for I suspect there would be intense opposition to the abandonment of that motto. The truth is that we have simply interwoven the motto so deeply into the fabric of our civil polity that its present use may well not present that type of involvement which the First Amendment prohibits.

This general principle might also serve to insulate the various patriotic exercises and activities used in the public schools and elsewhere which, whatever may have been ***304** their origins, no longer have a religious purpose or meaning. The reference to divinity in the revised pledge of allegiance, for example, may merely recognize the historical fact that our Nation was believed to have been founded 'under God.' Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

The principles which we reaffirm and apply today can hardly be thought novel or radical. They are, in truth, as old as the Republic itself, and have always been as integral a part of the First Amendment as the very words of that charter of religious liberty. No less applicable today than they were when first pronounced a century ago, one year after the very first court decision involving religious exercises in the public schools, are the words of a distinguished Chief Justice of the Commonwealth of Pennsylvania, Jeremiah S. Black:

'The manifest object of the men who framed the institutions of this country, was to have a State without religion, and a Church without politics-that is to say, they meant that one should never be used as an engine for any purpose of the other, and that no man's rights in one should be tested by his opinions about the other. As the Church takes no note of men's political differences, so the State looks with equal eye on all the modes of religious**1615 faith. * * * Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate.' Essay on Religious Liberty, in Black, ed., Essays and Speeches of Jeremiah S. Black (1866), 53.

*305 Mr. Justice GOLDBERG, with whom Mr. Justice HARLAN joins, concurring.

As is apparent from the opinions filed today, delineation of the constitutionally permissible relationship between religion and government is a most difficult and sensitive task, calling for the careful exercise of both judicial and public judgment and restraint. The considerations which lead the Court today to interdict the clearly religious practices presented in these cases are to me wholly compelling; I have no doubt as to the propriety of the decision and therefore join the opinion and judgment of the Court. The singular sensitivity and concern which surround both the legal and practical judgments involved impel me, however, to add a few words in further explication, while at the same time avoiding repetition of the carefully and ably framed examination of history and authority by my Brethren.

The First Amendment's guarantees, as applied to the States through the Fourteenth Amendment, foreclose not only laws 'respecting an establishment of religion' but also those 'prohibiting the free exercise thereof.' These two proscriptions are to be read together, and in light of the single end which they are designed to serve. The basic purpose of the religion clause of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope of attainment of that end.

The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief. But devotion even to these simply stated objectives presents no easy course, for the unavoidable accommodations necessary to achieve the *306 maximum enjoyment of each and all of them are often difficult of discernment. There is for me no simple and clear measure which by precise application can readily and invariably demark the permissible from the impermissible.

It is said, and I agree, that the attitude of government toward religion must be one of neutrality. But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.

Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so. And it seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of providing military chaplains and of the teaching about religion, as distinguished from the teaching of religion, in the public schools. The examples could readily be multiplied, for both the required and the permissible accommodations between state and church frame the relation as one free of hostility or favor and productive of religious and political harmony, but without undue involvement of one in

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the concerns or practices of the other. To ****1616** be sure, the judgment in each case is a delicate one, but it must be made if we are to do loyal service as judges to the ultimate First Amendment objective of religious liberty.

***307** The practices here involved do not fall within any sensible or acceptable concept of compelled or permitted accommodation and involve the state so significantly and directly in the realm of the sectarian as to give rise to those very divisive influences and inhibitions of freedom which both religion clauses of the First Amendment preclude. The state has ordained and has utilized its facilities to engage in unmistakably religious exercises-the devotional reading and recitation of the Holy Bible-in a manner having substantial and significant import and impact. That it has selected, rather than written, a particular devotional liturgy seems to me without constitutional import. The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving young impressionable children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment. I find nothing in the opinion of the Court which says more than this. And, of course, today's decision does not mean that all incidents of government which import of the religious are therefore and without more banned by the strictures of the Establishment Clause. As the Court declared only last Term in Engel v. Vitale, 370 U.S. 421, 435, n. 21, 82 S.Ct. 1261, 1269, 8 L.Ed.2d 601:

'There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which imclude the composer's professions of faith in a Supreme Being, or ***308** with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State * * * has sponsored in this instance.'

The First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have meaningful and practical impact. It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.

Mr. Justice STEWART, dissenting.

I think the records in the two cases before us are so fundamentally deficient as to make impossible an informed or responsible determination of the constitutional issues presented. Specifically, I cannot agree that on these records we can say that the Establishment Clause has necessarily been violated. [FN1] But I think there exist serious questions under both that provision and the Free Exercise Clause-insofar as each is imbedded in the Fourteenth Amendment-which require the remand of these cases for the taking of additional evidence.

> FN1. It is instructive, in this connection, to examine the complaints in the two cases before us. Neither complaint attacks the challenged practices as 'establishments.' What both allege as the basis for their causes of actions are, rather, violations of religious liberty.

****1617** I.

The First Amendment declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.' It is, I ***309** think, a fallacious oversimplification to regard these two provisions as establishing a single constitutional standard of 'separation of church and state,' which can be mechanically applied in every case to delineate the required boundaries between government and religion. We err in the first place if we do not recognize, as a matter of history and as a matter of the imperatives of our free society, that religion and government must necessarily interact in countless ways. Secondly, the fact is that while in many contexts the Establishment Clause and the Free Exercise Clause fully complement each other, there are areas in which a doctrinaire reading of the Establishment Clause leads to irreconcilable conflict with the Free Exercise Clause.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

A single obvious example should suffice to make the point. Spending federal funds to employ chaplains for the armed forces might be said to violate the Establishment Clause. Yet a lonely soldier stationed at some far-away outpost could surely complain that a government which did not provide him the opportunity for pastoral guidance was affirmatively prohibiting the free exercise of his religion. And such examples could readily be multiplied. The short of the matter is simply that the two relevant clauses of the First Amendment cannot accurately be reflected in a sterile metaphor which by its very nature may distort rather than illumine the problems involved in a particular case. Cf. Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790.

II.

As a matter of history, the First Amendment was adopted solely as a limitation upon the newly created National Government. The events leading to its adoption strongly suggest that the Establishment Clause was primarily an attempt to insure that Congress not only would be powerless to establish a national church, but ***310** would also be unable to interfere with existing state establishments. See McGowan v. Maryland, 366 U.S. 420, 440-441, 81 S.Ct. 1101, 1112-1113, 6 L.Ed.2d 393. Each State was left free to go its own way and pursue its own policy with respect to religion. Thus Virginia from the beginning pursued a policy of disestablishmentarianism. Massachusetts, by contrast, had an established church until well into the nineteenth century.

So matters stood until the adoption of the Fourteenth Amendment, or more accurately, until this Court's decision in Cantwell v. Connecticut, in 1940.310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213. In that case the Court said: 'The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws.'[FN2]

> FN2. 310 U.S., at 303, 60 S.Ct., at 903, 84 L.Ed. 1213. The Court's statement as to the Establishment Clause in Cantwell was dictum. The case was decided on free exercise grounds.

I accept without question that the liberty guaranteed by the Fourteenth Amendment against impairment by the States embraces in full the right of free exercise of religion protected by the First Amendment, and I yield to no one in my conception of the breadth of that freedom. See Braunfeld v. Brown, 366 U.S. 599, 616, 81 S.Ct. 1144, 1152, 6 L.Ed.2d 563 (dissenting opinion). I accept too the proposition that the Fourteenth Amendment has somehow absorbed the Establishment Clause, although it is not without irony that a constitutional provision evidently designed to leave the States free to go their own way should now have become a restriction upon their ****1618** autonomy. But I cannot agree with what seems to me the insensitive definition of the Establishment Clause contained in the Court's opinion, nor with the different but, I think, equally mechanistic definitions contained in the separate opinions which have been filed.

***311** III.

Since the Cantwell pronouncement in 1940, this Court has only twice held invalid state laws on the ground that they were laws 'respecting an establishment of religion' in violation of the Fourteenth Amendment. Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649; Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601. On the other hand, the Court has upheld against such a challenge laws establishing Sunday as a compulsory day of rest, McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393, and a law authorizing reimbursement from public funds for the transportation of parochial school pupils. Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711.

Unlike other First Amendment guarantees, there is an inherent limitation upon the applicability of the Establishment Clause's ban on state support to religion. That limitation was succinctly put in Everson v. Board of Education, 330 U.S. 1, 18, 67 S.Ct. 504, 513, 91 L.Ed. 711: 'State power is no more to be used so as to handicap religions, than it is to favor them.' [FN3] And in a later case, this Court recognized that the limitation was one which was itself compelled by the free exercise guarantee. 'To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not * *

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

* manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free ***312** exercise of religion.' Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 211-212, 68 S.Ct. 461, 465, 92 L.Ed. 649.

> FN3. See also, in this connection, Zorach v. Clauson, 343 U.S. 306, 314, 72 S.Ct. 679, 684, 96 L.Ed. 954: 'Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.'

That the central value embodied in the First Amendment-and, more particularly, in the guarantee of 'liberty' contained in the Fourteenth-is the safeguarding of an individual's right to free exercise of his religion has been consistently recognized. Thus, in the case of Hamilton v. Regents, 293 U.S. 245, 265, 55 S.Ct. 197, 205, 79 L.Ed. 343, Mr. Justice Cardozo, concurring, assumed that it was '* * * the religious liberty protected by the First Amendment against invasion by the nation (which) is protected by the Fourteenth Amendment against invasion by the states.' (Emphasis added.) And in Cantwell v. Connecticut, supra, the purpose of those guarantees was described in the following terms: 'On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the closen form of religion.' 310 U.S., at 303, 60 S.Ct., at 903, 84 L.Ed. 1213.

It is this concept of constitutional protection embodied in our decisions which makes the cases before us such difficult ones for me. For there is involved in these cases a substantial free exercise ****1619** claim on the part of those who affirmatively desire to have their children's school day open with the reading of passages from the Bible.

It has become accepted that the decision in Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, upholding the right of parents to send their children to nonpublic schools, was ultimately based upon the recognition of the validity of the free exercise claim involved in that situation. It might be argued here that parents who wanted their children to be exposed to religious influences in school could, under Pierce, send their children to private or parochial ***313** schools. But the consideration which renders this contention too facile to be determinative has already been recognized by the Court: 'Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.' Murdock v. Commonwealth of Pennslyvania, 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87 L.Ed. 1292.

It might also be argued that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time. With all its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases. For a compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at the least, as government support of the beliefs of those who think that religious exercises should be conducted only in private.

What seems to me to be of paramount importance, then, is recognition of the fact that the claim advanced here in favor of Bible reading is sufficiently substantial to make simple reference to the constitutional phrase 'establishment of religion' as inadequate an analysis of the cases before us as the ritualistic invocation of the nonconstitutional phrase 'separation of church and state.' What these cases compel, rather, is an analysis of just what the 'neutrality' is which is required by the interplay of the Establishment and Free Exercise Clauses of the First

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Amendment, as imbedded in the Fourteenth.

***314** IV.

Our decisions make clear that there is no constitutional bar to the use of government property for religious purposes. On the contrary, this Court has consistently held that the discriminatory barring of religious groups from public property is itself a violation of First and Fourteenth Amendment guarantees. Fowler v. Rhode Island, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828; Niemotko v. Maryland, 340 U.S. 268, 71 S.Ct. 325, 95 L.Ed. 267. A different standard has been applied to public school property, because of the coercive effect which the use by religious sects of a compulsory school system would necessarily have upon the children involved. Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649. But insofar as the McCollum decision rests on the Establishment rather than the Free Exercise Clause, it is clear that its effect is limited to religious instruction-to government support of proselytizing activities of religious sects by throwing the weight of secular authority behind the dissemination of religious tenets. [FN4]

> FN4. 'This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith.' Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 210, 68 S.Ct. 461, 464, 92 L.Ed. 649. (Emphasis added.)

****1620** The dangers both to government and to religion inherent in official support of instruction in the tenets of various religious sects are absent in the present cases, which involve only a reading from the Bible unaccompanied by comments which might otherwise constitute instruction. Indeed, since, from all that appears in either record, any teacher who does not wish to do so is free not to participate,[FN5] it cannot even be contended that some ***315** infinitesimal part of the salaries paid by the State are made contingent upon the performance of a religious function.

> FN5. The Pennsylvania statute was specifically amended to remove the compulsion upon teachers. Act of December 17, 1959, P.L.1928, 24 Purdon's Pa.Stat.Ann. s 15-1516. Since the Maryland case is here on a demurrer, the issue of whether or not a teacher could be dismissed for refusal to participate seems, among many others, never to have been raised.

In the absence of evidence that the legislature or school board intended to prohibit local schools from substituting a different set of readings where parents requested such a change, we should not assume that the provisions before us-as actually administered-may not be construed simply as authorizing religious exercises, nor that the designations may not be treated simply as indications of the promulgating body's view as to the community's preference. We are under a duty to interpret these provisions so as to render them constitutional if reasonably possible. Compare Two Guys From Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582, 592-595, 81 S.Ct. 1135, 1140-1142, 6 L.Ed.2d 551; Everson v. Board of Education, 330 U.S. 1, 4, and n. 2, 67 S.Ct. 504, 505, 506, 91 L.Ed. 711. In the Schempp case there is evidence which indicates that variations were in fact permitted by the very school there involved, and that further variations were not introduced only because of the absence of requests from parents. And in the Murray case the Baltimore rule itself contains a provision permitting another version of the Bible to be substituted for the King James version.

If the provisions are not so construed, I think that their validity under the Establishment Clause would be extremely doubtful, because of the designation of a particular religious book and a denominational prayer. But since, even if the provisions are construed as I believe they must be, I think that the cases before us must be remanded for further evidence on other issues-thus affording the plaintiffs an opportunity to prove that local variations are not in fact permitted-I shall for the balance***316** of this dissenting opinion treat the provisions before us as making the variety and content of the exercises, as well as a choice as to their implementation, matters which ultimately reflect the consensus of each local school community. In the absence of coercion upon those who do not wish to participate-because they hold less strong beliefs, other beliefs, or no beliefs at all-such provisions cannot, in my view, be held to represent the type of support of religion barred by the Establishment Clause. For the only support which such rules provide for religion is the withholding of state hostility-a simple acknowledgment on the part of secular authorities that the Constitution does not require extir-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

pation of all expression of religious belief.

V.

I have said that these provisions authorizing religious exercises are properly to be regarded as measures making possible the free exercise of religion. But it is important to stress that, strictly speaking, what is at issue here is a privilege rather than a right. In other words, the question presented is not whether exercises such as those at issue here are constitutionally compelled, but rather whether they are constitutionally ****1621** invalid. And that issue, in my view, turns on the question of coercion.

It is clear that the dangers of coercion involved in the holding of religious exercises in a schoolroom differ qualitatively from those presented by the use of similar exercises or affirmations in ceremonies attended by adults. Even as to children, however, the duty laid upon government in connection with religious exercises in the public schools is that of refraining from so structuring the school environment as to put any kind of pressure on a child to participate in those exercises; it is not that of providing an atmosphere in which children are kept scrupulously insulated from any awareness that some of their fellows ***317** may want to open the school day with prayer, or of the fact that there exist in our pluralistic society differences of religious belief.

These are not, it must be stressed, cases like Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, in which this Court held that, in the sphere of public education, the Fourteenth Amendment's guarantee of equal protection of the laws required that race not be treated as a relevant factor. A segregated school system is not invalid because its operation is coercive; it is invalid simply because our Constitution presupposes that men are created equal, and that therefore racial differences cannot provide a valid basis for governmental action. Accommodation of religious differences on the part of the State, however, is not only permitted but required by that same Constitution.

The governmental neutrality which the First and Fourteenth Amendments require in the cases before us, in other words, is the extension of evehhanded treatment to all who believe, doubt, or disbelieve-a refusal on the part of the State to weight the scales of private choice. In these cases, therefore, what is involved is not state action based on impermissible categories, but rather an attempt by the State to accommodate those differences which the existence in our society of a variety of religious beliefs makes inevitable. The Constitution requires that such efforts be struck down only if they are proven to entail the use of the secular authority of government to coerce a preference among such beliefs.

It may well be, as has been argued to us, that even the supposed benefits to be derived from noncoercive religious exercises in public schools are incommensurate with the administrative problems which they would create. The choice involved, however, is one for each local community and its school board, and not for this Court. For, as I have said, religious exercises are not constitutionally invalid if they simply reflect differences which exist in the ***318** society from which the school draws its pupils. They become constitutionally invalid only if their administration places the sanction of secular authority behind one or more particular religious or irreligious beliefs.

To be specific, it seems to me clear that certain types of exercises would present situations in which no possibility of coercion on the part of secular officials could be claimed to exist. Thus, if such exercises were held either before or after the official school day, or if the school schedule were such that participation were merely one among a number of desirable alternatives, [FN6] it could hardly be contended that the exercises did anything more than to provide an opportunity for the voluntary expression of religious belief. On the other hand, a law which provided for religious exercises during the school day and which contained no excusal provision would obviously be unconstitutionally coercive upon those who ****1622** did not wish to participate. And even under a law containing an excusal provision, if the exercises where held during the school day, and no equally desirable alternative were provided by the school authorities, the likelihood that children might be under at least some psychological compulsion to participate would be great. In a case such as the latter, however, I think we would err if we assumed such coercion in the absence of any evidence.[FN7]

FN6. See, e.g., the description of a plan permitting religious instruction off school property contained in Illinois ex rel.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

McCollum v. Board of Education, 333 U.S. 203, 224, 68 S.Ct. 461, 478, 92 L.Ed. 649 (separate opinion of Mr. Justice Frankfurther).

FN7. Cf. 'The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine as demanded by complainant and apparently approved by the Court, applicable alike to all school boards of the nation, * * * is to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes. It seems to me that to do so is to allow zeal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation.' Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 237, 68 S.Ct. 461, 478, 92 L.Ed. 649 (concurring opinion of Mr. Justice Jackson).

***319** VI.

Viewed in this light, it seems to me clear that the records in both of the cases before us are wholly inadequate to support an informed or responsible decision. Both cases involve provisions which explicitly permit any student who wishes, to be excused from participation in the exercises. There is no evidence in either case as to whether there would exist any coercion of any kind upon a student who did not want to participate. No evidence at all was adduced in the Murray case, because it was decided upon a demurrer. All that we have in that case, therefore, is the conclusory language of a pleading. While such conclusory allegations are acceptable for procedural purposes, I think that the nature of the constitutional problem involved here clearly demands that no decision be made except upon evidence. In the Schempp case the record shows no more than a subjective prophecy by a parent of what he thought would happen if a request were made to be excused from participation in the exercises under the amended statute. No such request was ever made, and there is no evidence whatever as to what might or would actually happen, nor of what administrative arrangements the school actually might or could make to free from pressure of any kind those who do not want to participate in the exercises. There were no District Court findings on this issue, since the case under the amended statute was decided exclusively on Establishment Clause grounds. 201 F.Supp. 815.

What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or ***320** Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government. It is conceivable that these school boards, or even all school boards, might eventually find it impossible to administer a system of religious exercises during school hours in such a way as to meet this constitutional standard-in such a way as completely to free from any kind of official coercion those who do not affirmatively want to participate.[FN8] But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal.

FN8. For example, if the record in the Schempp case contained proof (rather than mere prophecy) that the timing of morning announcements by the school was such as to handicap children who did not want to listen to the Bible reading, or that the excusal provision was so administered as to carry any overtones of social inferiority, then impermissible coercion would clearly exist.

I would remand both cases for further hearing.

U.S.Md. 1963.
School Dist. of Abington Tp., Pa. v. Schempp
374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Supreme Court of the United States
EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF OREGON, et al., Petitioners
v.
Alfred L. SMITH et al.

No. 88-1213.
Argued Nov. 6, 1989.
Decided April 17, 1990.
Rehearing Denied June 4, 1990.
See 496 U.S. 913, 110 S.Ct. 2605.

Claimants sought review of determination that their religious use of peyote, which resulted in their dismissal from employment, was "misconduct" disqualifying them from receipt of Oregon unemployment compensation benefits. In one case, the Oregon Court of Appeals, 75 Or.App. 764, 709 P.2d 246, reversed and remanded. The Oregon Supreme Court, 301 Or. 209, 721 P.2d 445, affirmed as modified. In the second case, the Oregon Court of Appeals, 75 Or.App. 735, 707 P.2d 1274, reversed. The Oregon Supreme Court, 301 Or. 221, 721 P.2d 451, affirmed as modified and remanded. Petition for writ of certiorari was granted. The Supreme Court, Justice Stevens, 485 U.S. 660, 108 S.Ct. 1444, 99 L.Ed.2d 753, vacated judgment and remanded for determination whether sacramental peyote use was proscribed by state's controlled substance law. On remand, the Oregon Supreme Court, 307 Or. 68, 763 P.2d 146, held that sacramental peyote use violated state drug laws, but concluded that prohibition was nonetheless invalid under free exercise clause. The Supreme Court, Scalia, J., held that: (1) free exercise clause did not prohibit application of Oregon drug laws to ceremonial ingestion of peyote, and (2) thus state could, consistent with free exercise clause, deny claimants unemployment compensation for work-related misconduct based on use of drug.

Reversed.

Justice O'Connor filed opinion concurring in judgment, in which opinion Justices Brennan, Marshall and Blackmun joined as to Parts I and II only.

Justice Blackmun filed dissenting opinion, in which Justices Brennan and Marshall join.

Opinion on remand, 310 Or. 376, 799 P.2d 148.

West Headnotes

[1] Constitutional Law 92 ⚷1303

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1302 Free Exercise of Religion
92k1303 k. In General. Most Cited Cases
(Formerly 92k1305, 92k84.1, 92k84(1))

Free exercise of religion includes right to believe and profess whatever religious doctrine one desires. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚷1290

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1))

Government may not compel affirmation of religious belief, punish expression of religious doctrine it believes to be false, impose special disabilities on basis of religious views or religious status, or lend its power to one or other side in controversies over religious authority or dogma. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚷1310

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1310 k. In General. Most Cited Cases
(Formerly 92k84.5(1))

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Although state would be prohibiting free exercise of religion in violation of free exercise clause if it sought to ban religious acts or abstentions only when they were engaged in for religious reasons, or only because of religious belief that they displayed, right of free exercise does not relieve individual of obligation to comply with valid or neutral law of general applicability on ground that law proscribes, or requires, conduct that is contrary to his religious practice, as long as law does not violate other constitutional protections. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1310

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1310 k. In General. Most Cited Cases
(Formerly 92k84.5(1))

Constitutional Law 92 ⚿1320

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1319 Labor and Employment
92k1320 k. In General. Most Cited Cases
(Formerly 92k84.5(12))

Exemption from generally applicable, religion-neutral laws that have effect of burdening particular religious practice cannot be evaluated under balancing test of *Sherbert*, which was developed in unemployment compensation context and under which governmental actions that substantially burden religious practice must be justified by compelling governmental interest, nor is it possible to require "compelling governmental interest" only when conduct prohibited is essential to individual's religion, since such inquiry would require judges to determine "centrality" of religious beliefs in applying compelling interest test in free exercise field. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⚿1419

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1419 k. Controlled Substances. Most Cited Cases
(Formerly 92k84.5(1))

Although states may make nondiscriminatory religious practice exemption to drug law, such exemption is not constitutionally required. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⚿1419

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1419 k. Controlled Substances. Most Cited Cases
(Formerly 92k84.5(19))

Unemployment Compensation 392T ⚿83

392T Unemployment Compensation
392TIV Cause of Unemployment
392TIV(B) Fault or Misconduct
392Tk82 Dishonest or Criminal Acts
392Tk83 k. In General. Most Cited Cases
(Formerly 356Ak388.5)

Unemployment Compensation 392T ⚿89

392T Unemployment Compensation
392TIV Cause of Unemployment
392TIV(B) Fault or Misconduct
392Tk88 Alcohol or Drug Use or Impairment
392Tk89 k. In General. Most Cited Cases
(Formerly 356Ak388.5)

State of Oregon could, consistent with free exercise clause, deny claimants unemployment compensation benefits on ground of misconduct for dismissal from drug counseling positions resulting from their sacramental use of drug peyote at ceremony of Native American church, since ingestion of peyote was illegal under Oregon criminal laws and that prohibition was constitutional. U.S.C.A. Const.Amend. 1.

****1596** *Syllabus* [FN*]

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 237, 50 L.Ed. 499.

***872** Respondents Smith and Black were fired by a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug, for sacramental purposes at a ceremony of their Native American Church. Their applications for unemployment compensation were denied by the State of Oregon under a state law disqualifying employees discharged for work-related "misconduct." Holding that the denials violated respondents' First Amendment free exercise rights, the State Court of Appeals reversed. The State Supreme Court affirmed, but this Court vacated the judgment and remanded for a determination whether sacramental peyote use is proscribed by the State's controlled substance law, which makes it a felony to knowingly or intentionally possess the drug. Pending that determination, the Court refused to decide whether such use is protected by the Constitution. On remand, the State Supreme Court held that sacramental peyote use violated, and was not excepted from, the state-law prohibition, but concluded that that prohibition was invalid under the Free Exercise Clause.

Held: The Free Exercise Clause permits the State to prohibit sacramental peyote use and thus to deny unemployment benefits to persons discharged for such use. Pp. 1598-1606.

(a) Although a State would be "prohibiting the free exercise [of religion]" in violation of the Clause if it sought to ban the performance of (or abstention from) physical acts solely because of their religious motivation, the Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) if the law is not specifically directed to religious practice and is otherwise constitutional as applied to those who engage in the specified act for nonreligious reasons. See, *e.g.*, *Reynolds v. United States*, 98 U.S. 145, 166-167, 25 L.Ed. 244. The only decisions in which this Court has held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action are distinguished ****1597** on the ground that they involved not the Free Exercise Clause alone, but that Clause in conjunction with other constitutionalprotections. ***873** See, *e.g.*, *Cantwell v. Connecticut*, 310 U.S. 296, 304-307, 60 S.Ct. 900, 903-905, 84 L.Ed. 1213; *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15. Pp. 1598-1602.

(b) Respondents' claim for a religious exemption from the Oregon law cannot be evaluated under the balancing test set forth in the line of cases following *Sherbert v. Verner*, 374 U.S. 398, 402-403, 83 S.Ct. 1790, 1792-1794, 10 L.Ed.2d 965, whereby governmental actions that substantially burden a religious practice must be justified by a "compelling governmental interest." That test was developed in a context-unemployment compensation eligibility rules-that lent itself to individualized governmental assessment of the reasons for the relevant conduct. The test is inapplicable to an across-the-board criminal prohibition on a particular form of conduct. A holding to the contrary would create an extraordinary right to ignore generally applicable laws that are not supported by "compelling governmental interest" on the basis of religious belief. Nor could such a right be limited to situations in which the conduct prohibited is "central" to the individual's religion, since that would enmesh judges in an impermissible inquiry into the centrality of particular beliefs or practices to a faith. Cf. *Hernandez v. Commissioner*, 490 U.S. 680, 699, 109 S.Ct. 2136, 2148-2149, 104 L.Ed.2d 766. Thus, although it is constitutionally permissible to exempt sacramental peyote use from the operation of drug laws, it is not constitutionally required. Pp. 1602-1606.

307 Or. 68, 763 P.2d 146, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, STEVENS, and KENNEDY, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment, in Parts I and II of which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined without concurring in the judgment, *post*, p. 1606. BLACKMUN, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined, *post*, p. 1615.

Dave Frohnmayer, Attorney General of Oregon, argued the cause for petitioners. With him on the briefs were *James E. Mountain, Jr.*, Deputy Attorney Gen-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

eral, *Virginia L. Linder,* Solicitor General, and *Michael D. Reynolds,* Assistant Solicitor General.

Craig J. Dorsay argued the cause and filed briefs for respondents.*

* Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Steven R. Shapiro* and *John A. Powell;* for the American Jewish Congress by *Amy Adelson, Lois C. Waldman,* and *Marc D. Stern;* for the Association on American Indian Affairs et al. by *Steven C. Moore* and *Jack Trope;* and for the Council on Religious Freedom by *Lee Boothby* and *Robert W. Nixon.*

***874** Justice SCALIA delivered the opinion of the Court.

This case requires us to decide whether the Free Exercise Clause of the First Amendment permits the State of Oregon to include religiously inspired peyote use within the reach of its general criminal prohibition on use of that drug, and thus permits the State to deny unemployment benefits to persons dismissed from their jobs because of such religiously inspired use.

I

Oregon law prohibits the knowing or intentional possession of a "controlled substance" unless the substance has been prescribed by a medical practitioner. Ore.Rev.Stat. § 475.992(4) (1987). The law defines "controlled substance" as a drug classified in Schedules I through V of the Federal Controlled Substances Act, 21 U.S.C. §§ 811-812, as modified by the State Board of Pharmacy. Ore.Rev.Stat. § 475.005(6) (1987). Persons who violate this provision by possessing a controlled substance listed on Schedule I are "guilty of a Class B felony." § 475.992(4)(a). As compiled by the State Board of Pharmacy under its statutory authority, see, § 475.035, Schedule I contains the drug peyote, a hallucinogen derived from the plant *Lophophora williamsii Lemaire.* Ore.Admin.Rule 855-80-021(3)(s) (1988).

Respondents Alfred Smith and Galen Black (hereinafter respondents) were fired from their jobs with a private drug rehabilitation organization because they ingested peyote for sacramental purposes at a ceremony of the Native American Church, of which ****1598** both are members. When respondents applied to petitioner Employment Division (hereinafter petitioner) for unemployment compensation, they were determined to be ineligible for benefits because they had been discharged for work-related "misconduct." The Oregon Court of Appeals reversed that determination, holding that the denial of benefits violated respondents' free exercise rights under the First Amendment.

***875** On appeal to the Oregon Supreme Court, petitioner argued that the denial of benefits was permissible because respondents' consumption of peyote was a crime under Oregon law. The Oregon Supreme Court reasoned, however, that the criminality of respondents' peyote use was irrelevant to resolution of their constitutional claim-since the purpose of the "misconduct" provision under which respondents had been disqualified was not to enforce the State's criminal laws but to preserve the financial integrity of the compensation fund, and since that purpose was inadequate to justify the burden that disqualification imposed on respondents' religious practice. Citing our decisions in *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), and *Thomas v. Review Bd., Indiana Employment Security Div.,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981), the court concluded that respondents were entitled to payment of unemployment benefits. *Smith v. Employment Div., Dept. of Human Resources,* 301 Or. 209, 217-219, 721 P.2d 445, 449-450 (1986). We granted certiorari. 480 U.S. 916, 107 S.Ct. 1368, 94 L.Ed.2d 684 (1987).

Before this Court in 1987, petitioner continued to maintain that the illegality of respondents' peyote consumption was relevant to their constitutional claim. We agreed, concluding that "if a State has prohibited through its criminal laws certain kinds of religiously motivated conduct without violating the First Amendment, it certainly follows that it may impose the lesser burden of denying unemployment compensation benefits to persons who engage in that conduct." *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 485 U.S. 660, 670, 108 S.Ct. 1444, 1450, 99 L.Ed.2d 753 (1988) (*Smith I*). We noted, however, that the Oregon Supreme Court had not decided whether respondents' sacramental use of peyote was in fact proscribed by Oregon's controlled substance law, and that this issue was a matter of dispute between the parties. Being "uncertain about the legality of the religious use of peyote in

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Oregon," we determined that it would not be "appropriate for us to decide whether the practice is protected by the Federal Constitution." *Id.*, at 673, 108 S.Ct., at 1452. Accordingly, we ***876** vacated the judgment of the Oregon Supreme Court and remanded for further proceedings. *Id.*, at 674, 108 S.Ct., at 1452.

On remand, the Oregon Supreme Court held that respondents' religiously inspired use of peyote fell within the prohibition of the Oregon statute, which "makes no exception for the sacramental use" of the drug. 307 Or. 68, 72-73, 763 P.2d 146, 148 (1988). It then considered whether that prohibition was valid under the Free Exercise Clause, and concluded that it was not. The court therefore reaffirmed its previous ruling that the State could not deny unemployment benefits to respondents for having engaged in that practice.

We again granted certiorari. 489 U.S. 1077, 109 S.Ct. 1526, 103 L.Ed.2d 832 (1989).

II

Respondents' claim for relief rests on our decisions in *Sherbert v. Verner, supra, Thomas v. Review Bd. of Indiana Employment Security Div., supra,* and *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987), in which we held that a State could not condition the availability of unemployment insurance on an individual's willingness to forgo conduct required by his religion. As we observed in *Smith I,* however, the conduct at issue in those cases was not prohibited by law. We held that distinction to be critical, for "if Oregon does prohibit the religious****1599** use of peyote, and if that prohibition is consistent with the Federal Constitution, there is no federal right to engage in that conduct in Oregon," and "the State is free to withhold unemployment compensation from respondents for engaging in work-related misconduct, despite its religious motivation." 485 U.S., at 672, 108 S.Ct., at 1451. Now that the Oregon Supreme Court has confirmed that Oregon does prohibit the religious use of peyote, we proceed to consider whether that prohibition is permissible under the Free Exercise Clause.

A

[1][2] The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into ***877** the Fourteenth Amendment, see *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), provides that "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof....* " U.S. Const., Amdt. 1 (emphasis added.) The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious *beliefs* as such." *Sherbert v. Verner, supra*, 374 U.S., at 402, 83 S.Ct., at 1793. The government may not compel affirmation of religious belief, see *Torcaso v. Watkins*, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961), punish the expression of religious doctrines it believes to be false, *United States v. Ballard*, 322 U.S. 78, 86-88, 64 S.Ct. 882, 886-87, 88 L.Ed. 1148 (1944), impose special disabilities on the basis of religious views or religious status, see *McDaniel v. Paty*, 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978); *Fowler v. Rhode Island*, 345 U.S. 67, 69, 73 S.Ct. 526, 527, 97 L.Ed. 828 (1953); cf. *Larson v. Valente*, 456 U.S. 228, 245, 102 S.Ct. 1673, 1683-84, 72 L.Ed.2d 33 (1982), or lend its power to one or the other side in controversies over religious authority or dogma, see *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445 452, 89 S.Ct. 601, 604-608, 21 L.Ed.2d 658 (1969); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 95-119, 73 S.Ct. 143, 143-56, 97 L.Ed. 120 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-725, 96 S.Ct. 2372, 2380-2388, 49 L.Ed.2d 151 (1976).

[3] But the "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation. It would be true, we think (though no case of ours has involved the point), that a State would be "prohibiting the free exercise [of religion]" if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display. It would doubtless be unconstitutional, for example, to ban the casting of "statues that are to be used ***878** for worship purposes," or to prohibit bowing down before a golden calf.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Respondents in the present case, however, seek to carry the meaning of "prohibiting the free exercise [of religion]" one large step further. They contend that their religious motivation for using peyote places them beyond the reach of a criminal law that is not specifically directed at their religious practice, and that is concededly constitutional as applied to those who use the drug for other reasons. They assert, in other words, that "prohibiting the free exercise [of religion]" includes requiring any individual to observe a generally applicable law that requires (or forbids) the performance of an act that his religious belief forbids (or requires). As a textual matter, we do not think the words must be given that meaning. It is no more necessary to regard the collection of a general tax, for example, as "prohibiting the free exercise [of religion]" by those citizens who believe support of organized government to be sinful, than it is to regard the same tax as "abridging the freedom ... of the press" of ****1600** those publishing companies that must pay the tax as a condition of staying in business. It is a permissible reading of the text, in the one case as in the other, to say that if prohibiting the exercise of religion (or burdening the activity of printing) is not the object of the tax but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended. Compare *Citizen Publishing Co. v. United States*, 394 U.S. 131, 139, 89 S.Ct. 927, 931-32, 22 L.Ed.2d 148 (1969) (upholding application of antitrust laws to press), with *Grosjean v. American Press Co.*, 297 U.S. 233, 250-251, 56 S.Ct. 444, 449, 80 L.Ed. 660 (1936) (striking down license tax applied only to newspapers with weekly circulation above a specified level); see generally *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 581, 103 S.Ct. 1365, 1369-70, 75 L.Ed.2d 295 (1983).

Our decisions reveal that the latter reading is the correct one. We have never held that an individual's religious beliefs***879** excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition. As described succinctly by Justice Frankfurter in *Minersville School Dist. Bd. of Ed. v. Gobitis*, 310 U.S. 586, 594-595, 60 S.Ct. 1010, 1012-1013, 84 L.Ed. 1375 (1940): "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities (footnote omitted)." We first had occasion to assert that principle in *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1878), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. "Laws," we said, "are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.... Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.*, at 166-167.

Subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *United States v. Lee*, 455 U.S. 252, 263, n. 3, 102 S.Ct. 1051, 1058, n. 3, 71 L.Ed.2d 127 (1982) (STEVENS, J., concurring in judgment); see *Minersville School Dist. Bd. of Ed. v. Gobitis*, *supra*, 310 U.S., at 595, 60 S.Ct., at 1013 (collecting cases). In *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), we held that a mother could be prosecuted under the child labor laws ***880** for using her children to dispense literature in the streets, her religious motivation notwithstanding. We found no constitutional infirmity in "excluding [these children] from doing there what no other children may do." *Id.*, at 171, 64 S.Ct., at 444. In *Braunfeld v. Brown*, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961) (plurality opinion), we upheld Sunday-closing laws against the claim that they burdened the religious practices of persons whose religions compelled them to refrain from work on other days. In *Gillette v. United States*, 401 U.S. 437, 461, 91 S.Ct. 828, 842, 28 L.Ed.2d 168 (1971), we sustained the military Selective Service System against the claim that it violated free exercise by conscripting persons who opposed a particular war on religious grounds.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

**1601 Our most recent decision involving a neutral, generally applicable regulatory law that compelled activity forbidden by an individual's religion was *United States v. Lee*, 455 U.S., at 258-261, 102 S.Ct., at 1055-1057. There, an Amish employer, on behalf of himself and his employees, sought exemption from collection and payment of Social Security taxes on the ground that the Amish faith prohibited participation in governmental support programs. We rejected the claim that an exemption was constitutionally required. There would be no way, we observed, to distinguish the Amish believer's objection to Social Security taxes from the religious objections that others might have to the collection or use of other taxes. "If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." *Id.*, at 260, 102 S.Ct., at 1056-57. Cf. *Hernandez v. Commissioner*, 490 U.S. 680, 109 S.Ct. 2136, 104 L.Ed.2d 766 (1989) (rejecting free exercise challenge to payment of income taxes alleged to make religious activities more difficult).

*881 The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press, see *Cantwell v. Connecticut*, 310 U.S., at 304-307, 60 S.Ct., at 903-905 (invalidating a licensing system for religious and charitable solicitations under which the administrator had discretion to deny a license to any cause he deemed nonreligious); *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943) (invalidating a flat tax on solicitation as applied to the dissemination of religious ideas); *Follett v. McCormick*, 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed. 938 (1944) (same), or the right of parents, acknowledged in *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), to direct the education of their children, see *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (invalidating compulsory school-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school). [FN1] *882 Some of our cases prohibiting compelled expression, decided exclusively upon free speech grounds, have also involved freedom of religion, cf. *Wooley v. Maynard*, 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977) (invalidating compelled display of a license plate slogan that offended individual religious beliefs); *West Virginia Bd. of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (invalidating**1602 compulsory flag salute statute challenged by religious objectors). And it is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns. *Cf. Roberts v. United States Jaycees*, 468 U.S. 609, 622, 104 S.Ct. 3244, 3251-52, 82 L.Ed.2d 462 (1984) ("An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State [if] a correlative freedom to engage in group effort toward those ends were not also guaranteed").

FN1. Both lines of cases have specifically adverted to the non-free-exercise principle involved. *Cantwell*, for example, observed that "[t]he fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged." 310 U.S., at 307, 60 S.Ct., at 905. *Murdock* said:

> "We do not mean to say that religious groups and the press are free from all financial burdens of government.... We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon.... Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation." 319 U.S., at 112, 63 S.Ct., at 874.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> *Yoder* said that "the Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment." 406 U.S., at 233, 92 S.Ct., at 1542.

The present case does not present such a hybrid situation, but a free exercise claim unconnected with any communicative activity or parental right. Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now. There being no contention that Oregon's drug law represents an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs, the rule to which we have adhered ever since *Reynolds* plainly controls. "Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government." *Gillette v. United States, supra,* 401 U.S., at 461, 91 S.Ct., at 842.

B

[4] Respondents argue that even though exemption from generally applicable criminal laws need not automatically be extended to religiously motivated actors, at least the claim for a ***883** religious exemption must be evaluated under the balancing test set forth in *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). Under the *Sherbert* test, governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest. See *id.,* at 402-403, 83 S.Ct., at 1792-1794; see also *Hernandez v. Commissioner,* 490 U.S., at 699, 109 S.Ct., at 2148. Applying that test we have, on three occasions, invalidated state unemployment compensation rules that conditioned the availability of benefits upon an applicant's willingness to work under conditions forbidden by his religion. See *Sherbert v. Verner, supra; Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *Hobbie v. Unemployment Appeals Comm'n of Florida,* 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987). We have never invalidated any governmental action on the basis of the *Sherbert* test except the denial of unemployment compensation. Although we have sometimes purported to apply the *Sherbert* test in contexts other than that, we have always found the test satisfied, see *United States v. Lee,* 455 U.S. 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982); *Gillette v. United States,* 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971). In recent years we have abstained from applying the *Sherbert* test (outside the unemployment compensation field) at all. In *Bowen v. Roy,* 476 U.S. 693, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986), we declined to apply *Sherbert* analysis to a federal statutory scheme that required benefit applicants and recipients to provide their Social Security numbers. The plaintiffs in that case asserted that it would violate their religious beliefs to obtain and provide a Social Security number for their daughter. We held the statute's application to the plaintiffs valid regardless of whether it was necessary to effectuate a compelling interest. See 476 U.S., at 699-701, 106 S.Ct., at 2151-53. In *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988), we declined to apply *Sherbert* analysis to the Government's logging and road construction activities on lands used for religious purposes by several Native American Tribes, even though it was undisputed that the activities ****1603** "could have devastating effects on traditional Indian religious practices," 485 U.S., at 451, 108 S.Ct., at 1326. ***884** In *Goldman v. Weinberger,* 475 U.S. 503, 106 S.Ct. 1310, 89 L.Ed.2d 478 (1986), we rejected application of the *Sherbert* test to military dress regulations that forbade the wearing of yarmulkes. In *O'Lone v. Estate of Shabazz,* 482 U.S. 342, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987), we sustained, without mentioning the *Sherbert* test, a prison's refusal to excuse inmates from work requirements to attend worship services.

Even if we were inclined to breathe into *Sherbert* some life beyond the unemployment compensation field, we would not apply it to require exemptions from a generally applicable criminal law. The *Sherbert* test, it must be recalled, was developed in a context that lent itself to individualized governmental assessment of the reasons for the relevant conduct.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

As a plurality of the Court noted in *Roy,* a distinctive feature of unemployment compensation programs is that their eligibility criteria invite consideration of the particular circumstances behind an applicant's unemployment: "The statutory conditions [in *Sherbert* and *Thomas*] provided that a person was not eligible for unemployment compensation benefits if, 'without good cause,' he had quit work or refused available work. The 'good cause' standard created a mechanism for individualized exemptions." *Bowen v. Roy, supra,* 476 U.S., at 708, 106 S.Ct., at 2156 (opinion of Burger, C.J., joined by Powell and REHNQUIST, JJ.). See also *Sherbert, supra,* 374 U.S., at 401, n. 4, 83 S.Ct., at 1792, n. 4 (reading state unemployment compensation law as allowing benefits for unemployment caused by at least some "personal reasons"). As the plurality pointed out in *Roy,* our decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without compelling reason. *Bowen v. Roy, supra,* 476 U.S., at 708, 106 S.Ct., at 2156-57.

Whether or not the decisions are that limited, they at least have nothing to do with an across-the-board criminal prohibition on a particular form of conduct. Although, as noted earlier, we have sometimes used the *Sherbert* test to analyze free exercise challenges to such laws, see ***885***United States v. Lee, supra,* 455 U.S., at 257-260, 102 S.Ct., at 1055-1057; *Gillette v. United States, supra,* 401 U.S., at 462, 91 S.Ct., at 842-43, we have never applied the test to invalidate one. We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." *Lyng, supra,* 485 U.S., at 451, 108 S.Ct., at 1326. To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is "compelling"-permitting him, by virtue of his beliefs, "to become a law unto himself," *Reynolds v. United States,* 98 U.S., at 167-contradicts both constitutional tradition and common sense.[FN2]

FN2. Justice O'CONNOR seeks to distinguish *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988), and *Bowen v. Roy,* 476 U.S. 693, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986), on the ground that those cases involved the government's conduct of "its own internal affairs," which is different because, as Justice Douglas said in *Sherbert,* " 'the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.' " *Post,* at 1611-1612 (O'CONNOR, J., concurring in judgment), quoting *Sherbert v. Verner,* 374 U.S. 398, 412, 83 S.Ct. 1790, 1798, 10 L.Ed.2d 965 (1963) (Douglas, J., concurring). But since Justice Douglas voted with the majority in *Sherbert,* that quote obviously envisioned that what "the government cannot do to the individual" includes not just the prohibition of an individual's freedom of action through criminal laws but also the running of its programs (in *Sherbert,* state unemployment compensation) in such fashion as to harm the individual's religious interests. Moreover, it is hard to see any reason in principle or practicality why the government should have to tailor its health and safety laws to conform to the diversity of religious belief, but should not have to tailor its management of public lands, *Lyng, supra,* or its administration of welfare programs, *Roy, supra.*

****1604** The "compelling government interest" requirement seems benign, because it is familiar from other fields. But using it as the standard that must be met before the government may accord different treatment on the basis of race, see, *e.g.,* ****886*** *Palmore v. Sidoti,* 466 U.S. 429, 432, 104 S.Ct. 1879, 1881-82, 80 L.Ed.2d 421 (1984), or before the government may regulate the content of speech, see, *e.g., Sable Communications of California v. FCC,* 492 U.S. 115, 126, 109 S.Ct. 2829, 2836, 106 L.Ed.2d 93 (1989), is not remotely comparable to using it for the purpose asserted here. What it produces in those other fields-equality of treatment and an unrestricted flow of contending speech-are constitutional norms; what it would produce here-a private right to ignore generally applicable laws-is a constitutional anomaly.[FN3]

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

FN3. Justice O'CONNOR suggests that "[t]here is nothing talismanic about neutral laws of general applicability," and that all laws burdening religious practices should be subject to compelling-interest scrutiny because "the First Amendment unequivocally makes freedom of religion, like freedom from race discrimination and freedom of speech, a 'constitutional nor[m],' not an 'anomaly.' " *Post,* at 1612 (opinion concurring in judgment). But this comparison with other fields supports, rather than undermines, the conclusion we draw today. Just as we subject to the most exacting scrutiny laws that make classifications based on race, see *Palmore v. Sidoti,* 466 U.S. 429, 104 S.Ct. 1879, 80 L.Ed.2d 421 (1984), or on the content of speech, see *Sable Communications of California v. FCC,* 492 U.S. 115, 109 S.Ct. 2829, 106 L.Ed.2d 93 (1989), so too we strictly scrutinize governmental classifications based on religion, see *McDaniel v. Paty,* 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978); see also *Torcaso v. Watkins,* 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961). But we have held that race-neutral laws that have the *effect* of disproportionately disadvantaging a particular racial group do not thereby become subject to compelling-interest analysis under the Equal Protection Clause, see *Washington v. Davis,* 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976) (police employment examination); and we have held that generally applicable laws unconcerned with regulating speech that have the *effect* of interfering with speech do not thereby become subject to compelling-interest analysis under the First Amendment, see *Citizen Publishing Co. v. United States,* 394 U.S. 131, 139, 89 S.Ct. 927, 22 L.Ed.2d 148 (1969) (antitrust laws). Our conclusion that generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest is the only approach compatible with these precedents.

Nor is it possible to limit the impact of respondents' proposal by requiring a "compelling state interest" only when the conduct prohibited is "central" to the individual's religion. Cf. *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S., at 474-476, 108 S.Ct., at 1338-1339 (BRENNAN, J., dissenting). It is no ***887** more appropriate for judges to determine the "centrality" of religious beliefs before applying a "compelling interest" test in the free exercise field, than it would be for them to determine the "importance" of ideas before applying the "compelling interest" test in the free speech field. What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is "central" to his personal faith? Judging the centrality of different religious practices is akin to the unacceptable "business of evaluating the relative merits of differing religious claims." *United States v. Lee,* 455 U.S., at 263 n. 2, 102 S.Ct., at 1058 n. 2 (STEVENS, J., concurring). As we reaffirmed only last Term, "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez v. Commissioner,* 490 U.S., at 699, 109 S.Ct., at 2148. Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim. See, *e.g., Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S., at 716, 101 S.Ct., at 1431; ****1605***Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S., at 450, 89 S.Ct., at 606-07; *Jones v. Wolf,* 443 U.S. 595, 602-606, 99 S.Ct. 3020, 3024-3027, 61 L.Ed.2d 775 (1979); *United States v. Ballard,* 322 U.S. 78, 85-87, 64 S.Ct. 882, 885-87, 88 L.Ed. 1148 (1944).[FN4]

FN4. While arguing that we should apply the compelling interest test in this case, Justice O'CONNOR nonetheless agrees that "our determination of the constitutionality of Oregon's general criminal prohibition cannot, and should not, turn on the centrality of the particular religious practice at issue," *post,* at 1615 (opinion concurring in judgment). This means, presumably, that compelling interest scrutiny must be applied to generally applicable laws that regulate or prohibit *any* religiously motivated activity, no matter how unimportant to the claimant's religion. Earlier in her opinion, however, Justice O'CONNOR appears to contradict this, saying that the proper approach is "to

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> determine whether the burden on the specific plaintiffs before us is constitutionally significant and whether the particular criminal interest asserted by the State before us is compelling." *Post,* at 1611. "Constitutionally significant burden" would seem to be "centrality" under another name. In any case, dispensing with a "centrality" inquiry is utterly unworkable. It would require, for example, the same degree of "compelling state interest" to impede the practice of throwing rice at church weddings as to impede the practice of getting married in church. There is no way out of the difficulty that, if general laws are to be subjected to a "religious practice" exception, *both* the importance of the law at issue *and* the centrality of the practice at issue must reasonably be considered.
>
> Nor is this difficulty avoided by Justice BLACKMUN's assertion that "although ... courts should refrain from delving into questions whether, as a matter of religious doctrine, a particular practice is 'central' to the religion, ... I do not think this means that the courts must turn a blind eye to the severe impact of a State's restrictions on the adherents of a minority religion." *Post,* at 1621 (dissenting opinion). As Justice BLACKMUN's opinion proceeds to make clear, inquiry into "severe impact" is no different from inquiry into centrality. He has merely substituted for the question "How important is X to the religious adherent?" the question "How great will be the harm to the religious adherent if X is taken away?" There is no material difference.

***888** If the "compelling interest" test is to be applied at all, then, it must be applied across the board, to all actions thought to be religiously commanded. Moreover, if "compelling interest" really means what it says (and watering it down here would subvert its rigor in the other fields where it is applied), many laws will not meet the test. Any society adopting such a system would be courting anarchy, but that danger increases in direct proportion to the society's diversity of religious beliefs, and its determination to coerce or suppress none of them. Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," *Braunfeld v. Brown,* 366 U.S., at 606, 81 S.Ct., at 1147, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming *presumptively invalid,* as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind-ranging from ***889** compulsory military service, see, *e.g., Gillette v. United States,* 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971), to the payment of taxes, see, *e.g., United States v. Lee, supra;* to health and safety regulation such as manslaughter and child neglect laws, see, *e.g., Funkhouser v. State,* 763 P.2d 695 (Okla.Crim.App.1988), compulsory vaccination laws, see, *e.g., Cude v. State,* 237 Ark. 927, 377 S.W.2d 816 (1964), drug laws, see, *e.g., Olsen v. Drug Enforcement Administration,* 279 U.S.App.D.C. 1, 878 F.2d 1458 (1989), and traffic laws, see *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); to social welfare legislation such as minimum wage laws, see *Tony and Susan Alamo Foundation v. Secretary of Labor,* 471 U.S. 290, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985), child labor laws, see *Prince v. Massachusetts,* 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), animal cruelty laws, see, *e.g., Church of the Lukumi Babalu Aye Inc. v. City of Hialeah,* 723 F.Supp. 1467 (SD Fla.1989), cf. *State v. Massey,* 229 N.C. 734, 51 S.E.2d 179, appeal dism'd, 336 U.S. 942, 69 S.Ct. 813, 93 L.Ed. 1099 (1949), environmental protection laws, ****1606** see *United States v. Little,* 638 F.Supp. 337 (Mont.1986), and laws providing for equality of opportunity for the races, see, *e.g., Bob Jones University v. United States,* 461 U.S. 574, 603-604, 103 S.Ct. 2017, 2034-2035, 76 L.Ed.2d 157 (1983). The First Amendment's protection of religious liberty does not require this.[FN5]

> FN5. Justice O'CONNOR contends that the "parade of horribles" in the text only "demonstrates ... that courts have been quite capable of ... strik [ing] sensible balances between religious liberty and competing state interests." *Post,* at 1612-1613 (opinion concurring in judgment). But the cases we cite have struck "sensible balances" only because they have all applied the general laws, despite the claims for religious exemption.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> In any event, Justice O'CONNOR mistakes the purpose of our parade: it is not to suggest that courts would necessarily permit harmful exemptions from these laws (though they might), but to suggest that courts would constantly be in the business of determining whether the "severe impact" of various laws on religious practice (to use Justice BLACKMUN's terminology *post,* at 1621) or the "constitutiona[l] significan[ce]" of the "burden on the specific plaintiffs" (to use Justice O'CONNOR's terminology *post,* at 1611) suffices to permit us to confer an exemption. It is a parade of horribles because it is horrible to contemplate that federal judges will regularly balance against the importance of general laws the significance of religious practice.

[5] ***890** Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process. Just as a society that believes in the negative protection accorded to the press by the First Amendment is likely to enact laws that affirmatively foster the dissemination of the printed word, so also a society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation as well. It is therefore not surprising that a number of States have made an exception to their drug laws for sacramental peyote use. See, *e.g.,* Ariz.Rev.Stat.Ann. §§ 13-3402(B)(1)-(3) (1989); Colo.Rev.Stat. § 12-22-317(3) (1985); N.M.Stat.Ann. § 30-31-6(D) (Supp.1989). But to say that a nondiscriminatory religious-practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts. It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.

* * *

[6] Because respondents' ingestion of peyote was prohibited under Oregon law, and because that prohibition is constitutional, Oregon may, consistent with the Free Exercise Clause, deny respondents unemployment compensation when their dismissal results from use of the drug. The decision of the Oregon Supreme Court is accordingly reversed.

It is so ordered.

***891** Justice O'CONNOR, with whom Justice BRENNAN, Justice MARSHALL, and Justice BLACKMUN join as to Parts I and II, concurring in the judgment. [FN*]

> FN* Although Justice BRENNAN, Justice MARSHALL, and Justice BLACKMUN join Parts I and II of this opinion, they do not concur in the judgment.

Although I agree with the result the Court reaches in this case, I cannot join its opinion. In my view, today's holding dramatically departs from well-settled First Amendment jurisprudence, appears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual religious liberty.

I

At the outset, I note that I agree with the Court's implicit determination that the constitutional****1607** question upon which we granted review-whether the Free Exercise Clause protects a person's religiously motivated use of peyote from the reach of a State's general criminal law prohibition-is properly presented in this case. As the Court recounts, respondents Alfred Smith and Galen Black (hereinafter respondents) were denied unemployment compensation benefits because their sacramental use of peyote constituted work-related "misconduct," not because they violated Oregon's general criminal prohibition against possession of peyote. We held, however, in *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 485 U.S. 660, 108 S.Ct. 1444, 99 L.Ed.2d 753 (1988) (*Smith I*), that whether a State may, consistent with federal law, deny unemployment compensation benefits to persons for their religious use of peyote depends on whether the State, as a matter of state law, has criminalized the underlying conduct. See *id.,* at 670-672, 108 S.Ct., at 1450-51. The Oregon Supreme Court, on remand from this Court, concluded that "the Oregon statute against

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

possession of controlled substances, which include peyote, makes no exception for the sacramental use of peyote." 307 Or. 68, 72-73, 763 P.2d 146, 148 (1988) (footnote omitted).

***892** Respondents contend that, because the Oregon Supreme Court declined to decide whether the Oregon Constitution prohibits criminal prosecution for the religious use of peyote, see *id.*, at 73, n. 3, 763 P.2d, at 148, n. 3, any ruling on the federal constitutional question would be premature. Respondents are of course correct that the Oregon Supreme Court may eventually decide that the Oregon Constitution requires the State to provide an exemption from its general criminal prohibition for the religious use of peyote. Such a decision would then reopen the question whether a State may nevertheless deny unemployment compensation benefits to claimants who are discharged for engaging in such conduct. As the case comes to us today, however, the Oregon Supreme Court has plainly ruled that Oregon's prohibition against possession of controlled substances does not contain an exemption for the religious use of peyote. In light of our decision in *Smith I,* which makes this finding a "necessary predicate to a correct evaluation of respondents' federal claim," 485 U.S., at 672, 108 S.Ct., at 1451, the question presented and addressed is properly before the Court.

II

The Court today extracts from our long history of free exercise precedents the single categorical rule that "if prohibiting the exercise of religion ... is ... merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." *Ante,* at 1600 (citations omitted). Indeed, the Court holds that where the law is a generally applicable criminal prohibition, our usual free exercise jurisprudence does not even apply. *Ante,* at 1603. To reach this sweeping result, however, the Court must not only give a strained reading of the First Amendment but must also disregard our consistent application of free exercise doctrine to cases involving generally applicable regulations that burden religious conduct.

***893** A

The Free Exercise Clause of the First Amendment commands that "Congress shall make no law ... prohibiting the free exercise [of religion]." In *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), we held that this prohibition applies to the States by incorporation into the Fourteenth Amendment and that it categorically forbids government regulation of religious beliefs. *Id.,* at 303, 60 S.Ct., at 903. As the Court recognizes, however, the "free *exercise* " of religion often, if not invariably, requires the performance of (or abstention from) certain acts. *Ante,* at 1599; cf. 3 A New English Dictionary on Historical Principles 401-402 (J. Murray ed. 1897) (defining "exercise" to include "[t]he practice and performance of rites and ceremonies, worship, ****1608** etc.; the right or permission to celebrate the observances (of a religion)" and religious observances such as acts of public and private worship, preaching, and prophesying). "[B]elief and action cannot be neatly confined in logic-tight compartments." *Wisconsin v. Yoder,* 406 U.S. 205, 220, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). Because the First Amendment does not distinguish between religious belief and religious conduct, conduct motivated by sincere religious belief, like the belief itself, must be at least presumptively protected by the Free Exercise Clause.

The Court today, however, interprets the Clause to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as that prohibition is generally applicable. *Ante,* at 1599. But a law that prohibits certain conduct-conduct that happens to be an act of worship for someone-manifestly does prohibit that person's free exercise of his religion. A person who is barred from engaging in religiously motivated conduct is barred from freely exercising his religion. Moreover, that person is barred from freely exercising his religion regardless of whether the law prohibits the conduct only when engaged in for religious reasons, only by members of that religion, or by all persons. It is difficult to deny that a law that prohibits***894** religiously motivated conduct, even if the law is generally applicable, does not at least implicate First Amendment concerns.

The Court responds that generally applicable laws are "one large step" removed from laws aimed at specific religious practices. *Ibid.* The First Amendment, however, does not distinguish between laws that are generally applicable and laws that target particular religious practices. Indeed, few States would be so naive as to enact a law directly prohibiting or burdening a religious practice as such. Our free

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

exercise cases have all concerned generally applicable laws that had the effect of significantly burdening a religious practice. If the First Amendment is to have any vitality, it ought not be construed to cover only the extreme and hypothetical situation in which a State directly targets a religious practice. As we have noted in a slightly different context, " '[s]uch a test has no basis in precedent and relegates a serious First Amendment value to the barest level of minimum scrutiny that the Equal Protection Clause already provides.' " *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 141-142, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190 (1987) (quoting *Bowen v. Roy*, 476 U.S. 693, 727, 106 S.Ct. 2147, 2166-67, 90 L.Ed.2d 735 (1986) (O'CONNOR, J., concurring in part and dissenting in part)).

To say that a person's right to free exercise has been burdened, of course, does not mean that he has an absolute right to engage in the conduct. Under our established First Amendment jurisprudence, we have recognized that the freedom to act, unlike the freedom to believe, cannot be absolute. See, *e.g.*, *Cantwell, supra*, 310 U.S., at 304, 60 S.Ct., at 903-04; *Reynolds v. United States*, 98 U.S. 145, 161-167, 25 L.Ed. 244 (1878). Instead, we have respected both the First Amendment's express textual mandate and the governmental interest in regulation of conduct by requiring the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest. See ***895***Hernandez v. Commissioner*, 490 U.S. 680, 699, 109 S.Ct. 2136, 2148, 104 L.Ed.2d 766 1989); *Hobbie, supra*, 480 U.S., at 141, 107 S.Ct., at 1049; *United States v. Lee*, 455 U.S. 252, 257-258 (1982); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981); *McDaniel v. Paty*, 435 U.S. 618, 626-629, 98 S.Ct. 1322, 1327-1329, 55 L.Ed.2d 593 (1978) (plurality opinion); *Yoder, supra*, 406 U.S., at 215, 92 S.Ct., at 1533; *Gillette v. United States*, 401 U.S. 437, 462, 91 S.Ct. 828, 842, 28 L.Ed.2d 168 (1971); *Sherbert v. Verner*, 374 U.S. 398, 403, 83 S.Ct. 1790, 1793-94, 10 L.Ed.2d 965 (1963); see also ****1609** *Bowen v. Roy, supra*, 476 U.S., at 732, 106 S.Ct., at 2169 (opinion concurring in part and dissenting in part); *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 639, 63 S.Ct. 1178, 1186, 87 L.Ed. 1628 (1943). The compelling interest test effectuates the First Amendment's command that religious liberty is an independent liberty, that it occupies a preferred position, and that the Court will not permit encroachments upon this liberty, whether direct or indirect, unless required by clear and compelling governmental interests "of the highest order," *Yoder, supra*, 406 U.S., at 215, 92 S.Ct., at 1533. "Only an especially important governmental interest pursued by narrowly tailored means can justify exacting a sacrifice of First Amendment freedoms as the price for an equal share of the rights, benefits, and privileges enjoyed by other citizens." *Roy, supra*, 476 U.S., at 728, 106 S.Ct., at 2167 (opinion concurring in part and dissenting in part).

The Court attempts to support its narrow reading of the Clause by claiming that "[w]e have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Ante*, at 1600. But as the Court later notes, as it must, in cases such as *Cantwell* and *Yoder* we have in fact interpreted the Free Exercise Clause to forbid application of a generally applicable prohibition to religiously motivated conduct. See *Cantwell*, 310 U.S., at 304-307, 60 S.Ct., at 903-905; *Yoder*, 406 U.S., at 214-234, 92 S.Ct., at 1532-1542. Indeed, in *Yoder* we expressly rejected the interpretation the Court now adopts:

> "[O]ur decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are often subject ***896** to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, *even under regulations of general applicability*....
>
> "... A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for government neutrality if it unduly burdens the free exercise of religion." *Id.*, at 219-220, 92 S.Ct., at 1535-36 (emphasis added; citations omitted).

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

The Court endeavors to escape from our decisions in *Cantwell* and *Yoder* by labeling them "hybrid" decisions, *ante,* at 1607, but there is no denying that both cases expressly relied on the Free Exercise Clause, see *Cantwell,* 310 U.S., at 303-307, 60 S.Ct., at 903-905; *Yoder, supra,* 406 U.S., at 219-229, 92 S.Ct., at 1535-1540, and that we have consistently regarded those cases as part of the mainstream of our free exercise jurisprudence. Moreover, in each of the other cases cited by the Court to support its categorical rule, *ante,* at 1600-1601, we rejected the particular constitutional claims before us only after carefully weighing the competing interests. See *Prince v. Massachusetts,* 321 U.S. 158, 168-170, 64 S.Ct. 438, 443-444, 88 L.Ed. 645 (1944) (state interest in regulating children's activities justifies denial of religious exemption from child labor laws); *Braunfeld v. Brown,* 366 U.S. 599, 608-609, 81 S.Ct. 1144, 1148-1149, 6 L.Ed.2d 563 (1961) (plurality opinion) (state interest in uniform day of rest justifies denial of religious exemption from Sunday closing law); *Gillette, supra,* 401 U.S., at 462, 91 S.Ct., at 842-43 (state interest in military affairs justifies denial of religious exemption from conscription laws); *Lee, supra,* 455 U.S., at 258-259, 102 S.Ct., at 1055-1056 (state interest in comprehensive Social Security system justifies denial of religious exemption from mandatory participation requirement). That we rejected the free exercise***897** claims in those cases hardly ****1610** calls into question the applicability of First Amendment doctrine in the first place. Indeed, it is surely unusual to judge the vitality of a constitutional doctrine by looking to the win-loss record of the plaintiffs who happen to come before us.

B

Respondents, of course, do not contend that their conduct is automatically immune from all governmental regulation simply because it is motivated by their sincere religious beliefs. The Court's rejection of that argument, *ante,* at 1602, might therefore be regarded as merely harmless dictum. Rather, respondents invoke our traditional compelling interest test to argue that the Free Exercise Clause requires the State to grant them a limited exemption from its general criminal prohibition against the possession of peyote. The Court today, however, denies them even the opportunity to make that argument, concluding that "the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the [compelling interest] test inapplicable to" challenges to general criminal prohibitions. *Ante,* at 1603.

In my view, however, the essence of a free exercise claim is relief from a burden imposed by government on religious practices or beliefs, whether the burden is imposed directly through laws that prohibit or compel specific religious practices, or indirectly through laws that, in effect, make abandonment of one's own religion or conformity to the religious beliefs of others the price of an equal place in the civil community. As we explained in *Thomas:*

> "Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists." 450 U.S., at 717-718, 101 S.Ct., at 1432.

***898** See also *Frazee v. Illinois Dept. of Employment Security,* 489 U.S. 829, 832, 109 S.Ct. 1514, 1516-1517, 103 L.Ed.2d 914 (1989); *Hobbie,* 480 U.S., at 141, 107 S.Ct., at 1049. A State that makes criminal an individual's religiously motivated conduct burdens that individual's free exercise of religion in the severest manner possible, for it "results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution." *Braunfeld, supra,* 366 U.S., at 605, 81 S.Ct., at 1147. I would have thought it beyond argument that such laws implicate free exercise concerns.

Indeed, we have never distinguished between cases in which a State conditions receipt of a benefit on conduct prohibited by religious beliefs and cases in which a State affirmatively prohibits such conduct. The *Sherbert* compelling interest test applies in both kinds of cases. See, *e.g., Lee,* 455 U.S., at 257-260, 102 S.Ct., at 1055-1057 (applying *Sherbert* to uphold Social Security tax liability); *Gillette,* 401 U.S., at 462, 91 S.Ct., at 842-43 (applying *Sherbert* to uphold military conscription requirement); *Yoder,* 406 U.S., at 215-234, 92 S.Ct., at 1533-1538 (applying *Sherbert* to strike down criminal convictions for violation of compulsory school attendance law). As I noted in *Bowen v. Roy* :

> "The fact that the underlying dispute involves an award of benefits rather than an exaction of penal-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ties does not grant the Government license to apply a different version of the Constitution....

"... The fact that appellees seek exemption from a precondition that the Government attaches to an award of benefits does not, therefore, generate a meaningful distinction between this case and one where appellees seek an exemption from the Government's imposition of penalties upon them." 476 U.S., at 731-732, 106 S.Ct., at 2168-2169 (opinion concurring in part and dissenting in part).

****1611** See also *Hobbie, supra*, 480 U.S., at 141-142, 107 S.Ct., at 1049-1050; *Sherbert*, 374 U.S., at 404, 83 S.Ct., at 1794. I would reaffirm that principle today: A neutral criminal law prohibiting conduct that a State may legitimately regulate is, if anything, *more* burdensome than a neutral civil ***899** statute placing legitimate conditions on the award of a state benefit.

Legislatures, of course, have always been "left free to reach actions which were in violation of social duties or subversive of good order." *Reynolds*, 98 U.S., at 164; see also *Yoder, supra*, at 219-220, 92 S.Ct., at 1535-1536; *Braunfeld*, 366 U.S., at 603-604, 81 S.Ct., at 1145-1146. Yet because of the close relationship between conduct and religious belief, "[i]n every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." *Cantwell*, 310 U.S., at 304, 60 S.Ct., at 903. Once it has been shown that a government regulation or criminal prohibition burdens the free exercise of religion, we have consistently asked the government to demonstrate that unbending application of its regulation to the religious objector "is essential to accomplish an overriding governmental interest," *Lee, supra*, 455 U.S., at 257-258, 102 S.Ct., at 1055, or represents "the least restrictive means of achieving some compelling state interest," *Thomas, supra*, 450 U.S., at 718, 101 S.Ct., at 1432. See, *e.g., Braunfeld, supra*, 366 U.S. at 607, 81 S.Ct., at 1148; *Sherbert, supra*, 374 U.S., at 406, 83 S.Ct., at 1795; *Yoder, supra*, 406 U.S., at 214-215, 92 S.Ct., at 1532-1533; *Roy*, 476 U.S., at 728-732, 106 S.Ct., at 2167-2169 (opinion concurring in part and dissenting in part). To me, the sounder approach-the approach more consistent with our role as judges to decide each case on its individual merits-is to apply this test in each case to determine whether the burden on the specific plaintiffs before us is constitutionally significant and whether the particular criminal interest asserted by the State before us is compelling. Even if, as an empirical matter, a government's criminal laws might usually serve a compelling interest in health, safety, or public order, the First Amendment at least requires a case-by-case determination of the question, sensitive to the facts of each particular claim. Cf. *McDaniel*, 435 U.S., at 628, n. 8, 98 S.Ct., at 1328, n. 8 (plurality opinion) (noting application of *Sherbert* to general criminal prohibitions and the "delicate balancing required by our decisions in" *Sherbert* and *Yoder*). Given the range of conduct that a State might legitimately make ***900** criminal, we cannot assume, merely because a law carries criminal sanctions and is generally applicable, that the First Amendment *never* requires the State to grant a limited exemption for religiously motivated conduct.

Moreover, we have not "rejected" or "declined to apply" the compelling interest test in our recent cases. *Ante*, at 1602-1603. Recent cases have instead affirmed that test as a fundamental part of our First Amendment doctrine. See, *e.g., Hernandez*, 490 U.S., at 699, 109 S.Ct., at 2148-2149; *Hobbie, supra*, 480 U.S., at 141-142, 107 S.Ct., at 1049-1050 (rejecting Chief Justice Burger's suggestion in *Roy, supra*, 476 U.S., at 707-708, 106 S.Ct., at 2156-2157, that free exercise claims be assessed under a less rigorous "reasonable means" standard). The cases cited by the Court signal no retreat from our consistent adherence to the compelling interest test. In both *Bowen v. Roy, supra*, and *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988), for example, we expressly distinguished *Sherbert* on the ground that the First Amendment does not "require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development.... The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens." *Roy, supra*, 476 U.S., at 699, 106 S.Ct., at 2152; see *Lyng, supra*, 485 U.S., at 449, 108 S.Ct., at 1325. This distinction makes sense because "the Free Exercise Clause is written in ****1612** terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government." *Sherbert, supra*, 374 U.S., at 412, 83 S.Ct., at 1798 (Douglas, J., concurring). Because the case *sub judice*, like the other cases in which we have applied *Sherbert*, plainly falls into the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

former category, I would apply those established precedents to the facts of this case.

Similarly, the other cases cited by the Court for the proposition that we have rejected application of the *Sherbert* test outside the unemployment compensation field, *ante,* at 1603, are distinguishable because they arose in the narrow, specialized contexts in which we have not traditionally required***901** the government to justify a burden on religious conduct by articulating a compelling interest. See *Goldman v. Weinberger,* 475 U.S. 503, 507, 106 S.Ct. 1310, 1313, 89 L.Ed.2d 478 (1986) ("Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society"); *O'Lone v. Estate of Shabazz,* 482 U.S. 342, 349, 107 S.Ct. 2400, 2404, 96 L.Ed.2d 282 (1987) ("[P]rison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights") (citation omitted). That we did not apply the compelling interest test in these cases says nothing about whether the test should continue to apply in paradigm free exercise cases such as the one presented here.

The Court today gives no convincing reason to depart from settled First Amendment jurisprudence. There is nothing talismanic about neutral laws of general applicability or general criminal prohibitions, for laws neutral toward religion can coerce a person to violate his religious conscience or intrude upon his religious duties just as effectively as laws aimed at religion. Although the Court suggests that the compelling interest test, as applied to generally applicable laws, would result in a "constitutional anomaly," *ante,* at 1604, the First Amendment unequivocally makes freedom of religion, like freedom from race discrimination and freedom of speech, a "constitutional nor [m]," not an "anomaly." *Ibid.* Nor would application of our established free exercise doctrine to this case necessarily be incompatible with our equal protection cases. Cf. *Rogers v. Lodge,* 458 U.S. 613, 618, 102 S.Ct. 3272, 3276, 73 L.Ed.2d 1012 (1982) (race-neutral law that " 'bears more heavily on one race than another' " may violate equal protection) (citation omitted); *Castaneda v. Partida,* 430 U.S. 482, 492-495, 97 S.Ct. 1272, 1278-1281, 51 L.Ed.2d 498 (1977) (grand jury selection). We have in any event recognized that the Free Exercise Clause protects values distinct from those protected by the Equal Protection Clause. See *Hobbie,* 480 U.S., at 141-142, 107 S.Ct., at 1049. As the language of the ***902** Clause itself makes clear, an individual's free exercise of religion is a preferred constitutional activity. See, *e.g.,* McConnell, Accommodation of Religion, 1985 S.Ct.Rev. 1, 9 ("[T]he text of the First Amendment itself 'singles out' religion for special protections"); P. Kauper, Religion and the Constitution 17 (1964). A law that makes criminal such an activity therefore triggers constitutional concern-and heightened judicial scrutiny-even if it does not target the particular religious conduct at issue. Our free speech cases similarly recognize that neutral regulations that affect free speech values are subject to a balancing, rather than categorical, approach. See, *e.g., United States v. O'Brien,* 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968); *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 46-47, 106 S.Ct. 925, 928-929, 89 L.Ed.2d 29 (1986); cf. *Anderson v. Celebrezze,* 460 U.S. 780, 792-794, 103 S.Ct. 1564, 1571-1573, 75 L.Ed.2d 547 (1983) (generally applicable laws may impinge on free association concerns). The Court's parade of horribles, *ante,* at 1605-1606, not only fails as a reason for discarding the compelling interest ****1613** test, it instead demonstrates just the opposite: that courts have been quite capable of applying our free exercise jurisprudence to strike sensible balances between religious liberty and competing state interests.

Finally, the Court today suggests that the disfavoring of minority religions is an "unavoidable consequence" under our system of government and that accommodation of such religions must be left to the political process. *Ante,* at 1606. In my view, however, the First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility. The history of our free exercise doctrine amply demonstrates the harsh impact majoritarian rule has had on unpopular or emerging religious groups such as the Jehovah's Witnesses and the Amish. Indeed, the words of Justice Jackson in *West Virginia State Bd. of Ed. v. Barnette* (overruling *Minersville School Dist. v. Gobitis,* 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375 (1940)) are apt:

> ***903** "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." 319 U.S., at 638, 63 S.Ct., at 1185.

See also *United States v. Ballard*, 322 U.S. 78, 87, 64 S.Ct. 882, 886-87, 88 L.Ed. 1148 (1944) ("The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views"). The compelling interest test reflects the First Amendment's mandate of preserving religious liberty to the fullest extent possible in a pluralistic society. For the Court to deem this command a "luxury," *ante*, at 1605, is to denigrate "[t]he very purpose of a Bill of Rights."

III

The Court's holding today not only misreads settled First Amendment precedent; it appears to be unnecessary to this case. I would reach the same result applying our established free exercise jurisprudence.

A

There is no dispute that Oregon's criminal prohibition of peyote places a severe burden on the ability of respondents to freely exercise their religion. Peyote is a sacrament of the Native American Church and is regarded as vital to respondents' ability to practice their religion. See O. Stewart, Peyote Religion: A History 327-336 (1987) (describing modern status of peyotism); E. Anderson, Peyote: The Divine Cactus 41-65 (1980) (describing peyote ceremonies); Teachings from ***904** the American Earth: Indian Religion and Philosophy 96-104 (D. Tedlock & B. Tedlock eds. 1975) (same); see also *People v. Woody*, 61 Cal.2d 716, 721-722, 40 Cal.Rptr. 69, 73-74, 394 P.2d 813, 817-818 (1964). As we noted in *Smith I*, the Oregon Supreme Court concluded that "the Native American Church is a recognized religion, that peyote is a sacrament of that church, and that respondent's beliefs were sincerely held." 485 U.S., at 667, 108 S.Ct., at 1449. Under Oregon law, as construed by that State's highest court, members of the Native American Church must choose between carrying out the ritual embodying their religious beliefs and avoidance of criminal prosecution. That choice is, in my view, more than sufficient to trigger First Amendment scrutiny.

There is also no dispute that Oregon has a significant interest in enforcing laws that ****1614** control the possession and use of controlled substances by its citizens. See, *e.g.*, *Sherbert*, 374 U.S., at 403, 83 S.Ct., at 1793-94 (religiously motivated conduct may be regulated where such conduct "pose[s] some substantial threat to public safety, peace or order"); *Yoder*, 406 U.S., at 220, 92 S.Ct., at 1535 ("[A]ctivities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare"). As we recently noted, drug abuse is "one of the greatest problems affecting the health and welfare of our population" and thus "one of the most serious problems confronting our society today." *Treasury Employees v. Von Raab*, 489 U.S. 656, 668, 674, 109 S.Ct. 1384, 1395, 103 L.Ed.2d 685 (1989). Indeed, under federal law (incorporated by Oregon law in relevant part, see Ore.Rev.Stat. § 475.005(6) (1987)), peyote is specifically regulated as a Schedule I controlled substance, which means that Congress has found that it has a high potential for abuse, that there is no currently accepted medical use, and that there is a lack of accepted safety for use of the drug under medical supervision. See 21 U.S.C. § 812(b)(1). See generally R. Julien, A Primer of Drug Action 149 (3d ed. 1981). In light of our recent decisions holding that the governmental ***905** interests in the collection of income tax, *Hernandez*, 490 U.S., at 699-700, 109 S.Ct., at 2148-2149, a comprehensive Social Security system, see *Lee*, 455 U.S., at 258-259, 102 S.Ct., at 1055-1056, and military conscription, see *Gillette*, 401 U.S., at 460, 91 S.Ct., at 841, are compelling, respondents do not seriously dispute that Oregon has a compelling interest in prohibiting the possession of peyote by its citizens.

B

Thus, the critical question in this case is whether exempting respondents from the State's general criminal prohibition "will unduly interfere with fulfillment of the governmental interest." *Lee, supra*, 455 U.S. at 259, 102 S.Ct., at 1056; see also *Roy*, 476 U.S., at 727, 106 S.Ct., at 2166 ("[T]he Government

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

must accommodate a legitimate free exercise claim unless pursuing an especially important interest by narrowly tailored means"); *Yoder, supra,* 406 U.S., at 221, 92 S.Ct., at 1536; *Braunfeld,* 366 U.S., at 605-607, 81 S.Ct., at 1146-1148. Although the question is close, I would conclude that uniform application of Oregon's criminal prohibition is "essential to accomplish," *Lee, supra,* at 455 U.S., at 257, 102 S.Ct., at 1055, its overriding interest in preventing the physical harm caused by the use of a Schedule I controlled substance. Oregon's criminal prohibition represents that State's judgment that the possession and use of controlled substances, even by only one person, is inherently harmful and dangerous. Because the health effects caused by the use of controlled substances exist regardless of the motivation of the user, the use of such substances, even for religious purposes, violates the very purpose of the laws that prohibit them. Cf. *State v. Massey,* 229 N.C. 734, 51 S.E.2d 179 (denying religious exemption to municipal ordinance prohibiting handling of poisonous reptiles), appeal dism'd *sub nom. Bunn v. North Carolina,* 336 U.S. 942, 69 S.Ct. 813, 93 L.Ed. 1099 (1949). Moreover, in view of the societal interest in preventing trafficking in controlled substances, uniform application of the criminal prohibition at issue is essential to the effectiveness of Oregon's stated interest in preventing any possession of peyote. Cf. ***906***Jacobson v. Massachusetts,* 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905) (denying exemption from small pox vaccination requirement).

For these reasons, I believe that granting a selective exemption in this case would seriously impair Oregon's compelling interest in prohibiting possession of peyote by its citizens. Under such circumstances, the Free Exercise Clause does not require the State to accommodate respondents' religiously motivated conduct. See, *e.g., Thomas,* 450 U.S., at 719, 101 S.Ct., at 1432-33. Unlike in *Yoder,* where we noted that "[t]he record strongly indicates that accommodating the ****1615** religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society," 406 U.S., at 234, 92 S.Ct., at 1542; see also *id.,* at 238-240, 92 S.Ct., at 1544-1545 (WHITE, J., concurring), a religious exemption in this case would be incompatible with the State's interest in controlling use and possession of illegal drugs.

Respondents contend that any incompatibility is belied by the fact that the Federal Government and several States provide exemptions for the religious use of peyote, see 21 CFR § 1307.31 (1989); 307 Or., at 73, n. 2, 763 P.2d, at 148, n. 2 (citing 11 state statutes that expressly exempt sacramental peyote use from criminal proscription). But other governments may surely choose to grant an exemption without Oregon, with its specific asserted interest in uniform application of its drug laws, being *required* to do so by the First Amendment. Respondents also note that the sacramental use of peyote is central to the tenets of the Native American Church, but I agree with the Court, *ante,* at 1604, that because " '[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith,' " quoting *Hernandez, supra,* at 699, 109 S.Ct., at 2148, our determination of the constitutionality of Oregon's general criminal prohibition cannot, and should not, turn on the centrality of the particular ***907** religious practice at issue. This does not mean, of course, that courts may not make factual findings as to whether a claimant holds a sincerely held religious belief that conflicts with, and thus is burdened by, the challenged law. The distinction between questions of centrality and questions of sincerity and burden is admittedly fine, but it is one that is an established part of our free exercise doctrine, see *Ballard,* 322 U.S., at 85-88, 64 S.Ct., at 885-87, and one that courts are capable of making. See *Tony and Susan Alamo Foundation v. Secretary of Labor,* 471 U.S. 290, 303-305, 105 S.Ct.1953, 1962-1963, 85 L.Ed.2d 278 (1985).

I would therefore adhere to our established free exercise jurisprudence and hold that the State in this case has a compelling interest in regulating peyote use by its citizens and that accommodating respondents' religiously motivated conduct "will unduly interfere with fulfillment of the governmental interest." *Lee, supra,* 455 U.S., at 259, 102 S.Ct., at 1056. Accordingly, I concur in the judgment of the Court.

Justice BLACKMUN, with whom Justice BRENNAN and Justice MARSHALL join, dissenting.

This Court over the years painstakingly has developed a consistent and exacting standard to test the constitutionality of a state statute that burdens the free exercise of religion. Such a statute may stand only if the law in general, and the State's refusal to

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

allow a religious exemption in particular, are justified by a compelling interest that cannot be served by less restrictive means.[FN1]

FN1. See *Hernandez v. Commissioner*, 490 U.S. 680, 699, 109 S.Ct. 2136, 2149, 104 L.Ed.2d 766 (1989) ("The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden"); *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190 (1987) (state laws burdening religions "must be subjected to strict scrutiny and could be justified only by proof by the State of a compelling interest"); *Bowen v. Roy*, 476 U.S. 693, 732, 106 S.Ct. 2147, 2169, 90 L.Ed.2d 735 (1986) (O'CONNOR, J., concurring in part and dissenting in part) ("Our precedents have long required the Government to show that a compelling state interest is served by its refusal to grant a religious exemption"); *United States v. Lee*, 455 U.S. 252, 257-258, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982) ("The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest"); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981) ("The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest"); *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972) ("[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion"); *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963) (question is "whether some compelling state interest ... justifies the substantial infringement of appellant's First Amendment right").

****1616 *908** Until today, I thought this was a settled and inviolate principle of this Court's First Amendment jurisprudence. The majority, however, perfunctorily dismisses it as a "constitutional anomaly." *Ante,* at 1604. As carefully detailed in Justice O'CONNOR's concurring opinion, *ante,* p. 1606, the majority is able to arrive at this view only by mischaracterizing this Court's precedents. The Court discards leading free exercise cases such as *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), and *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), as "hybrid." *Ante,* at 1602. The Court views traditional free exercise analysis as somehow inapplicable to criminal prohibitions (as opposed to conditions on the receipt of benefits), and to state laws of general applicability (as opposed, presumably, to laws that expressly single out religious practices). *Ante,* at 1603-1604. The Court cites cases in which, due to various exceptional circumstances, we found strict scrutiny inapposite, to hint that the Court has repudiated that standard altogether. *Ante,* at 1602-1603. In short, it effectuates a wholesale overturning of settled law concerning the Religion Clauses of our Constitution. One hopes that the Court is aware of the consequences, and that its result is not a product of overreaction to the serious problems the country's drug crisis has generated.

This distorted view of our precedents leads the majority to conclude that strict scrutiny of a state law burdening the free exercise of religion is a "luxury" that a well-ordered society ***909** cannot afford, *ante,* at 1605, and that the repression of minority religions is an "unavoidable consequence of democratic government." *Ante,* at 1606. I do not believe the Founders thought their dearly bought freedom from religious persecution a "luxury," but an essential element of liberty-and they could not have thought religious intolerance "unavoidable," for they drafted the Religion Clauses precisely in order to avoid that intolerance.

For these reasons, I agree with Justice O'CONNOR's analysis of the applicable free exercise doctrine, and I join parts I and II of her opinion.[FN2] As she points out, "the critical question in this case is whether exempting respondents from the State's general criminal prohibition 'will unduly interfere with fulfillment of the governmental interest.' " *Ante,* at 1614, quoting *United States v. Lee*, 455 U.S. 252, 259, 102 S.Ct. 1051, 1056, 71 L.Ed.2d 127 (1982). I do disagree, however, with her specific answer to that question.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

FN2. I reluctantly agree that, in light of this Court's decision in *Employment Division, Dept. of Human Resources of Ore. v. Smith*, 485 U.S. 660, 108 S.Ct. 1444, 99 L.Ed.2d 753 (1988), the question on which certiorari was granted is properly presented in this case. I have grave doubts, however, as to the wisdom or propriety of deciding the constitutionality of a criminal prohibition which the State has not sought to enforce, which the State did not rely on in defending its denial of unemployment benefits before the state courts, and which the Oregon courts could, on remand, either invalidate on state constitutional grounds, or conclude that it remains irrelevant to Oregon's interest in administering its unemployment benefits program.

> It is surprising, to say the least, that this Court which so often prides itself about principles of judicial restraint and reduction of federal control over matters of state law would stretch its jurisdiction to the limit in order to reach, in this abstract setting, the constitutionality of Oregon's criminal prohibition of peyote use.

I

In weighing the clear interest of respondents Smith and Black (hereinafter respondents) in the free exercise of their religion ****1617** against Oregon's asserted interest in enforcing its drug laws, it is important to articulate in precise terms the state interest involved. It is not the State's broad interest ***910** in fighting the critical "war on drugs" that must be weighed against respondents' claim, but the State's narrow interest in refusing to make an exception for the religious, ceremonial use of peyote. See *Bowen v. Roy*, 476 U.S. 693, 728, 106 S.Ct. 2147, 2167, 90 L.Ed.2d 735 (1986) (O'CONNOR, J., concurring in part and dissenting in part) ("This Court has consistently asked the Government to demonstrate that unbending application of its regulation to the religious objector 'is essential to accomplish an overriding governmental interest,' " quoting *Lee*, 455 U.S., at 257-258, 102 S.Ct., at 1055); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 719, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981) ("focus of the inquiry" concerning State's asserted interest must be "properly narrowed"); *Yoder*, 406 U.S., at 221, 92 S.Ct., at 1536 ("Where fundamental claims of religious freedom are at stake," the Court will not accept a State's "sweeping claim" that its interest in compulsory education is compelling; despite the validity of this interest "in the generality of cases, we must searchingly examine the interests that the State seeks to promote ... and the impediment to those objectives that would flow from recognizing the claimed Amish exemption"). Failure to reduce the competing interests to the same plane of generality tends to distort the weighing process in the State's favor. See Clark, Guidelines for the Free Exercise Clause, 83 Harv.L.Rev. 327, 330-331 (1969) ("The purpose of almost any law can be traced back to one or another of the fundamental concerns of government: public health and safety, public peace and order, defense, revenue. To measure an individual interest directly against one of these rarified values inevitably makes the individual interest appear the less significant"); Pound, A Survey of Social Interests, 57 Harv.L.Rev. 1, 2 (1943) ("When it comes to weighing or valuing claims or demands with respect to other claims or demands, we must be careful to compare them on the same plane ... [or else] we may decide the question in advance in our very way of putting it").

The State's interest in enforcing its prohibition, in order to be sufficiently compelling to outweigh a free exercise claim, ***911** cannot be merely abstract or symbolic. The State cannot plausibly assert that unbending application of a criminal prohibition is essential to fulfill any compelling interest, if it does not, in fact, attempt to enforce that prohibition. In this case, the State actually has not evinced any concrete interest in enforcing its drug laws against religious users of peyote. Oregon has never sought to prosecute respondents, and does not claim that it has made significant enforcement efforts against other religious users of peyote. [FN3] The State's asserted interest thus amounts only to the symbolic preservation of an unenforced prohibition. But a government interest in "symbolism, even symbolism for so worthy a cause as the abolition of unlawful drugs," *Treasury Employees v. Von Raab*, 489 U.S. 656, 687, 109 S.Ct. 1384, 1402, 103 L.Ed.2d 685 (1989) (SCALIA, J., dissenting), cannot suffice to abrogate the constitutional rights of individuals.

FN3. The only reported case in which the State of Oregon has sought to prosecute a

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

person for religious peyote use is *State v. Soto*, 21 Ore.App. 794, 537 P.2d 142 (1975), cert. denied, 424 U.S. 955, 96 S.Ct. 1431, 47 L.Ed.2d 361 (1976).

Similarly, this Court's prior decisions have not allowed a government to rely on mere speculation about potential harms, but have demanded evidentiary support for a refusal to allow a religious exception. See *Thomas*, 450 U.S., at 719, 101 S.Ct., at 1432 (rejecting State's reasons for refusing religious exemption, for lack of "evidence in the record"); *Yoder*, 406 U.S., at 224-229, 92 S.Ct., at 1537-38 (rejecting State's argument concerning the dangers of a religious exemption as speculative, and unsupported by the record); *Sherbert v. Verner*, 374 U.S. 398, 407, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963) ****1618** ("[T]here is no proof whatever to warrant such fears ... as those which the [State] now advance[s]"). In this case, the State's justification for refusing to recognize an exception to its criminal laws for religious peyote use is entirely speculative.

The State proclaims an interest in protecting the health and safety of its citizens from the dangers of unlawful drugs. It offers, however, no evidence that the religious use of peyote***912** has ever harmed anyone.[FN4] The factual findings of other courts cast doubt on the State's assumption that religious use of peyote is harmful. See *State v. Whittingham*, 19 Ariz.App. 27, 30, 504 P.2d 950, 953 (1973) ("[T]he State failed to prove that the quantities of peyote used in the sacraments of the Native American Church are sufficiently harmful to the health and welfare of the participants so as to permit a legitimate intrusion under the State's police power"); *People v. Woody*, 61 Cal.2d 716, 722-723, 40 Cal.Rptr. 69, 74, 394 P.2d 813, 818 (1964) ("[A]s the Attorney General ... admits, ... the opinion of scientists and other experts is 'that peyote ... works no permanent deleterious injury to the Indian' ").

FN4. This dearth of evidence is not surprising, since the State never asserted this health and safety interest before the Oregon courts; thus, there was no opportunity for factfinding concerning the alleged dangers of peyote use. What has now become the State's principal argument for its view that the criminal prohibition is enforceable against religious use of peyote rests on no evidentiary foundation at all.

The fact that peyote is classified as a Schedule I controlled substance does not, by itself, show that any and all uses of peyote, in any circumstance, are inherently harmful and dangerous. The Federal Government, which created the classifications of unlawful drugs from which Oregon's drug laws are derived, apparently does not find peyote so dangerous as to preclude an exemption for religious use.[FN5] Moreover, ***913** other Schedule I drugs have lawful uses. See *Olsen v. Drug Enforcement Admin.*, 279 U.S.App.D.C. 1, 6, n. 4, 878 F.2d 1458, 1463, n. 4 (medical and research uses of marijuana).

FN5. See 21 CFR § 1307.31 (1989) ("The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law"); see *Olsen v. Drug Enforcement Admin.*, 279 U.S.App.D.C. 1, 6-7, 878 F.2d 1458, 1463-1464 (1989) (explaining DEA's rationale for the exception).

Moreover, 23 States, including many that have significant Native American populations, have statutory or judicially crafted exemptions in their drug laws for religious use of peyote. See 307 Ore. 68, 73, n. 2, 763 P.2d 146, 148, n. 2 (1988) (case below). Although this does not prove that Oregon must have such an exception too, it is significant that these States, and the Federal Government, all find their (presumably compelling) interests in controlling the use of dangerous drugs compatible with an exemption for religious use of peyote. Cf. *Boos v. Barry*, 485 U.S. 312, 329, 108 S.Ct. 1157, 1168, 99 L.Ed.2d 333 (1988) (finding that an ordinance restricting picketing near a foreign embassy was not the least restrictive means of serving the asserted government interest; existence of an analogous, but more narrowly

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

drawn, federal statute showed that "a less restrictive alternative is readily available").

The carefully circumscribed ritual context in which respondents used peyote is far removed from the irresponsible and unrestricted recreational use of unlawful drugs.[FN6] The Native American Church's internal restrictions on, and supervision of, its members' use of peyote substantially obviate the State's health and safety concerns. See *Olsen*, *id.*, at 10, 878 F.2d, at 1467 (" 'The Administrator [of the Drug Enforcement Administration **1619 (DEA)] finds that ... the Native American Church's use of peyote is isolated to specific ceremonial occasions,' " and so " 'an accommodation can be made for a religious organization which uses peyote in circumscribed ceremonies' " (quoting DEA Final Order)); *id.*, at 7, 878 F.2d, at 1464 ("[F]or members of the Native American Church, use of peyote outside the ritual is sacrilegious"); *Woody*, 61 Cal.2d, at 721, 394 P.2d, at 817 ("[T]o use peyote for nonreligious purposes is sacrilegious"); R. Julien, A Primer of Drug Action 148 (3d ed. 1981) ("[P]eyote is seldom abused by members of the Native American **914 Church"); Slotkin, The Peyote Way, in Teachings from the American Earth 96, 104 (D. Tedlock & B. Tedlock eds. 1975) ("[T]he Native American Church ... refuses to permit the presence of curiosity seekers at its rites, and vigorously opposes the sale or use of Peyote for nonsacramental purposes"); Bergman, Navajo Peyote Use: Its Apparent Safety, 128 Am.J. Psychiatry 695 (1971) (Bergman).[FN7]

FN6. In this respect, respondents' use of peyote seems closely analogous to the sacramental use of wine by the Roman Catholic Church. During Prohibition, the Federal Government exempted such use of wine from its general ban on possession and use of alcohol. See National Prohibition Act, Title II, § 3, 41 Stat. 308. However compelling the Government's then general interest in prohibiting the use of alcohol may have been, it could not plausibly have asserted an interest sufficiently compelling to outweigh Catholics' right to take communion.

FN7. The use of peyote is, to some degree, self-limiting. The peyote plant is extremely bitter, and eating it is an unpleasant experience, which would tend to discourage casual or recreational use. See *State v. Whittingham*, 19 Ariz.App. 27, 30, 504 P.2d 950, 953 (1973) (" '[P]eyote can cause vomiting by reason of its bitter taste' "); E. Anderson, Peyote: The Divine Cactus 161 (1980) ("[T]he eating of peyote usually is a difficult ordeal in that nausea and other unpleasant physical manifestations occur regularly. Repeated use is likely, therefore, only if one is a serious researcher or is devoutly involved in taking peyote as part of a religious ceremony"); Slotkin, The Peyote Way, in Teachings from the American Earth 96, 98 (D. Tedlock & B. Tedlock eds. 1975) ("[M]any find it bitter, inducing indigestion or nausea").

Moreover, just as in *Yoder*, the values and interests of those seeking a religious exemption in this case are congruent, to a great degree, with those the State seeks to promote through its drug laws. See *Yoder*, 406 U.S., at 224, 228-229, 92 S.Ct., at 1540 (since the Amish accept formal schooling up to 8th grade, and then provide "ideal" vocational education, State's interest in enforcing its law against the Amish is "less substantial than ... for children generally"); *id.*, at 238, 92 S.Ct., at 1544 (WHITE, J., concurring). Not only does the church's doctrine forbid nonreligious use of peyote; it also generally advocates self-reliance, familial responsibility, and abstinence from alcohol. See Brief for Association on American Indian Affairs et al. as *Amici Curiae* 33-34 (the church's "ethical code" has four parts: brotherly love, care of family, self-reliance, and avoidance of alcohol (quoting from the church membership card)); *Olsen*, 279 U.S.App.D.C., at 7, 878 F.2d, at 1464 (the Native American Church, "for all purposes other than the special, stylized ceremony, reinforced the state's prohibition"); ***915** *Woody*, 61 Cal.2d, at 721-722, n. 3, 394 P.2d, at 818, n. 3 ("[M]ost anthropological authorities hold Peyotism to be a positive, rather than negative, force in the lives of its adherents ... the church forbids the use of alcohol ..."). There is considerable evidence that the spiritual and social support provided by the church has been effective in combating the tragic effects of alcoholism on the Native American population. Two noted experts on peyotism, Dr. Omer C. Stewart and Dr. Robert Bergman, testified by affidavit to this effect on behalf of respondent Smith before the Employment Appeal Board. Smith Tr., Exh. 7; see also E. Anderson, Pe-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

yote: The Divine Cactus 165-166 (1980) (research by Dr. Bergman suggests "that the religious use of peyote seemed to be directed in an ego-strengthening direction with an emphasis on interpersonal relationships where each individual is assured of his own significance as well as the support of the group"; many people have " 'come through difficult crises with the help of this religion.... It provides real help in seeing themselves not as people whose place and way in the world is gone, but as people whose way can be strong enough to change and meet new challenges' " (quoting Bergman 698)); Pascarosa & Futterman, Ethnopsychedelic Therapy for Alcoholics: Observations in the Peyote Ritual of the Native American Church, 8 J. of Psychedelic Drugs, No. 3, p. 215 (1976) (religious peyote use has been helpful in overcoming alcoholism); Albaugh & Anderson, Peyote in the Treatment of Alcoholism among American Indians, 131 Am.J. Psychiatry 1247, 1249 (1974) ("[T]he ****1620** philosophy, teachings, and format of the [Native American Church] can be of great benefit to the Indian alcoholic"); see generally O. Stewart, Peyote Religion 75 *et seq.* (1987) (noting frequent observations, across many tribes and periods in history, of correlation between peyotist religion and abstinence from alcohol). Far from promoting the lawless and irresponsible use of drugs, Native American Church members' spiritual***916** code exemplifies values that Oregon's drug laws are presumably intended to foster.

The State also seeks to support its refusal to make an exception for religious use of peyote by invoking its interest in abolishing drug trafficking. There is, however, practically no illegal traffic in peyote. See *Olsen*, 279 U.S.App.D.C., at 6, 7, 878 F.2d, at 1463, 1467 (quoting DEA Final Order to the effect that total amount of peyote seized and analyzed by federal authorities between 1980 and 1987 was 19.4 pounds; in contrast, total amount of marijuana seized during that period was over 15 million pounds). Also, the availability of peyote for religious use, even if Oregon were to allow an exemption from its criminal laws, would still be strictly controlled by federal regulations, see 21 U.S.C. §§ 821-823 (registration requirements for distribution of controlled substances); 21 CFR § 1307.31 (1989) (distribution of peyote to Native American Church subject to registration requirements), and by the State of Texas, the only State in which peyote grows in significant quantities. See Texas Health & Safety Code Ann. § 481.111 (1990 pamphlet); Texas Admin.Code, Tit. 37, pt. 1, ch. 13, Controlled Substances Regulations, §§ 13.35-13.41 (1989); *Woody*, 61 Cal.2d, at 720, 394 P.2d, at 816 (peyote is "found in the Rio Grande Valley of Texas and northern Mexico"). Peyote simply is not a popular drug; its distribution for use in religious rituals has nothing to do with the vast and violent traffic in illegal narcotics that plagues this country.

Finally, the State argues that granting an exception for religious peyote use would erode its interest in the uniform, fair, and certain enforcement of its drug laws. The State fears that, if it grants an exemption for religious peyote use, a flood of other claims to religious exemptions will follow. It would then be placed in a dilemma, it says, between allowing a patchwork of exemptions that would hinder its law enforcement efforts, and risking a violation of the Establishment Clause by arbitrarily limiting its religious exemptions. This ***917** argument, however, could be made in almost any free exercise case. See Lupu, Where Rights Begin: The Problem of Burdens on the Free Exercise of Religion, 102 Harv.L.Rev. 933, 947 (1989) ("Behind every free exercise claim is a spectral march; grant this one, a voice whispers to each judge, and you will be confronted with an endless chain of exemption demands from religious deviants of every stripe"). This Court, however, consistently has rejected similar arguments in past free exercise cases, and it should do so here as well. See *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 835, 109 S.Ct. 1514, 1518, 103 L.Ed.2d 914 (1989) (rejecting State's speculation concerning cumulative effect of many similar claims); *Thomas*, 450 U.S., at 719, 101 S.Ct., at 1432 (same); *Sherbert*, 374 U.S., at 407, 83 S.Ct., at 1795.

The State's apprehension of a flood of other religious claims is purely speculative. Almost half the States, and the Federal Government, have maintained an exemption for religious peyote use for many years, and apparently have not found themselves overwhelmed by claims to other religious exemptions. [FN8] Allowing an exemption for religious ****1621** peyote use ***918** would not necessarily oblige the State to grant a similar exemption to other religious groups. The unusual circumstances that make the religious use of peyote compatible with the State's interests in health and safety and in preventing drug trafficking would not apply to other religious claims. Some religions, for example, might not restrict drug use to a

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

limited ceremonial context, as does the Native American Church. See, *e.g.*, *Olsen*, 279 U.S.App.D.C., at 7, 878 F.2d, at 1464 ("[T]he Ethiopian Zion Coptic Church ... teaches that marijuana is properly smoked 'continually all day' "). Some religious claims, see n. 8, *supra,* involve drugs such as marijuana and heroin, in which there is significant illegal traffic, with its attendant greed and violence, so that it would be difficult to grant a religious exemption without seriously compromising law enforcement efforts.[FN9] That the State might grant an exemption for religious peyote use, but deny other religious claims arising in different circumstances, would not violate the Establishment Clause. Though the State must treat all religions equally, and not favor one over another, this obligation is fulfilled by the uniform application of the "compelling interest" *test* to all free exercise claims, not by reaching uniform *results* as to all claims. A showing that religious peyote use does not unduly interfere with the State's interests is "one that probably few other religious groups or sects could make," *Yoder*, 406 U.S., at 236, 92 S.Ct., at 1543; this does not mean that an exemption limited to peyote use is tantamount to an establishment of religion. See *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144-145, 107 S.Ct. 1046, 1051, 94 L.Ed.2d 190 (1987) ("[T]he government may (and ***919** sometimes must) accommodate religious practices and ... may do so without violating the Establishment Clause"); *Yoder*, 406 U.S., at 220-221, 92 S.Ct., at 1536 ("Court must not ignore the danger that an exception from a general [law] ... may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise"); *id.*, at 234, n. 22, 92 S.Ct., at 1542, n. 22.

FN8. Over the years, various sects have raised free exercise claims regarding drug use. In no reported case, except those involving claims of religious peyote use, has the claimant prevailed. See, *e.g.*, *Olsen v. Iowa*, 808 F.2d 652 (CA8 1986) (marijuana use by Ethiopian Zion Coptic Church); *United States v. Rush*, 738 F.2d 497 (CA1 1984) (same), cert. denied, 470 U.S. 1004, 105 S.Ct. 1355, 84 L.Ed.2d 378 (1985); *United States v. Middleton*, 690 F.2d 820 (CA11 1982) (same), cert. denied, 460 U.S. 1051, 103 S.Ct. 1497, 75 L.Ed.2d 929 (1983) (same); *United States v. Hudson*, 431 F.2d 468 (CA5 1970) (marijuana and heroin use by Moslems), cert. denied, 400 U.S. 1011, 91 S.Ct. 575, 577, 27 L.Ed.2d 624 (1971); *Leary v. United States*, 383 F.2d 851 (CA5 1967) (marijuana use by Hindu), rev'd on other grounds, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969); *Commonwealth v. Nissenbaum*, 404 Mass. 575, 536 N.E.2d 592 (1989) (marijuana use by Ethiopian Zion Coptic Church); *State v. Blake*, 5 Haw.App. 411, 695 P.2d 336 (1985) (marijuana use in practice of Hindu Tantrism); *Whyte v. United States*, 471 A.2d 1018 (D.C.App.1984) (marijuana use by Rastafarian); *State v. Rocheleau*, 142 Vt. 61, 451 A.2d 1144 (1982) (marijuana use by Tantric Buddhist); *State v. Brashear*, 92 N.M. 622, 593 P.2d 63 (1979) (marijuana use by nondenominational Christian); *State v. Randall*, 540 S.W.2d 156 (Mo.App.1976) (marijuana, LSD, and hashish use by Aquarian Brotherhood Church). See generally Annotation, Free Exercise of Religion as Defense to Prosecution for Narcotic or Psychedelic Drug Offense, 35 A.L.R.3d 939 (1971 and Supp.1989).

FN9. Thus, this case is distinguishable from *United States v. Lee*, 455 U.S. 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982), in which the Court concluded that there was "no principled way" to distinguish other exemption claims, and the "tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." *Id.*, at 260, 102 S.Ct., at 1056.

II

Finally, although I agree with Justice O'CONNOR that courts should refrain from delving into questions whether, as a matter of religious doctrine, a particular practice is "central" to the religion, *ante,* at 1614, I do not think this means that the courts must turn a blind eye to the severe impact of a State's restrictions on the adherents of a minority religion. Cf. *Yoder*, 406 U.S., at 219, 92 S.Ct., at 1535 (since "education is inseparable from and a part of the basic tenets of their religion ... [, just as] baptism,****1622** the confessional, or a sabbath may be for others,"

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

enforcement of State's compulsory education law would "gravely endanger if not destroy the free exercise of respondents' religious beliefs").

Respondents believe, and their sincerity has *never* been at issue, that the peyote plant embodies their deity, and eating it is an act of worship and communion. Without peyote, they could not enact the essential ritual of their religion. See Brief for Association on American Indian Affairs et al. as *Amici Curiae* 5-6 ("To the members, peyote is consecrated with powers to heal body, mind and spirit. It is a teacher; it teaches the way to spiritual life through living in harmony and balance with the forces of the Creation. The rituals are an integral part of the life process. They embody a form of worship in which the sacrament Peyote is the means for communicating with the Great Spirit"). See also O. Stewart, Peyote Religion 327-330 (1987) (description of peyote ritual); ***920** T. Hillerman, People of Darkness 153 (1980) (description of Navajo peyote ritual).

If Oregon can constitutionally prosecute them for this act of worship, they, like the Amish, may be "forced to migrate to some other and more tolerant region." *Yoder*, 406 U.S., at 218, 92 S.Ct., at 1534-1535. This potentially devastating impact must be viewed in light of the federal policy-reached in reaction to many years of religious persecution and intolerance-of protecting the religious freedom of Native Americans. See American Indian Religious Freedom Act, 92 Stat. 469, 42 U.S.C. § 1996 (1982 ed.) ("[I]t shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions ..., including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites").[FN10] Congress recognized that certain substances, such as peyote, "have religious significance because they are sacred, they have power, they heal, they are necessary to the exercise of ***921** the rites of the religion, they are necessary to the cultural integrity of the tribe, and, therefore, religious survival." H.R.Rep. No. 95-1308, p. 2 (1978), U.S.Code Cong. & Admin.News 1978, pp. 1262, 1263.

> FN10. See Federal Agencies Task Force, Report to Congress on American Indian Religious Freedom Act of 1978, pp. 1-8 (Aug. 1979) (history of religious persecution); Barsh, The Illusion of Religious Freedom for Indigenous Americans, 65 Ore.L.Rev. 363, 369-374 (1986).
>
> Indeed, Oregon's attitude toward respondents' religious peyote use harkens back to the repressive federal policies pursued a century ago:
>
> "In the government's view, traditional practices were not only morally degrading, but unhealthy. 'Indians are fond of gatherings of every description,' a 1913 public health study complained, advocating the restriction of dances and 'sings' to stem contagious diseases. In 1921, Commissioner of Indian Affairs Charles Burke reminded his staff to punish any Indian engaged in 'any dance which involves ... the reckless giving away of property ... frequent or prolonged periods of celebration ... in fact, any disorderly or plainly excessive performance that promotes superstitious cruelty, licentiousness, idleness, danger to health, and shiftless indifference to family welfare.' Two years later, he forbid Indians under the age of 50 from participating in any dances of any kind, and directed federal employees 'to educate public opinion' against them." *Id.*, at 370-371 (footnotes omitted).

The American Indian Religious Freedom Act, in itself, may not create rights enforceable against government action restricting religious freedom, but this Court must scrupulously apply its free exercise analysis to the religious claims of Native Americans, however unorthodox they may be. Otherwise, both the First Amendment and the stated policy of Congress will offer to Native Americans merely an unfulfilled and hollow promise.

III

For these reasons, I conclude that Oregon's interest in enforcing its drug laws against religious use of peyote is not sufficiently compelling to outweigh respondents' right to the free exercise of their religion. Since the State could not constitutionally enforce its criminal prohibition against respondents,****1623** the interests underlying the State's drug laws cannot justify its denial of unemployment benefits. Absent

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

such justification, the State's regulatory interest in denying benefits for religiously motivated "misconduct," see *ante,* at 1598, is indistinguishable from the state interests this Court has rejected in *Frazee, Hobbie, Thomas,* and *Sherbert.* The State of Oregon cannot, consistently with the Free Exercise Clause, deny respondents unemployment benefits.

I dissent.

U.S.Or.,1990.
Employment Div., Dept. of Human Resources of Oregon v. Smith
494 U.S. 872, 110 S.Ct. 1595, 52 Fair Empl.Prac.Cas. (BNA) 855, 53 Empl. Prac. Dec. P 39,826, 108 L.Ed.2d 876, 58 USLW 4433, Unempl.Ins.Rep. (CCH) P 21,933

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Supreme Court of the United States
Alton J. LEMON et al., Appellants,
v.
David H. KURTZMAN, as Superintendent as Public Instruction of the Commonwealth of Pennsylvania, et al.
John R. EARLEY et al., Appellants,
v.
John DiCENSO et al.
William P. ROBINSON, Jr., Commissioner of Education of the State of Rhode Island, et al., Appellants,
v.
John DiCENSO et al.

Nos. 89, 569, 570.
Argued March 3, 1971.
Decided June 28, 1971.

Actions challenging constitutionality of state aid to, or for the benefit of, nonpublic schools. A three-judge United States District Court for the District of Rhode Island, 316 F.Supp. 112, held the Rhode Island statute unconstitutional, while a three-judge United States District Court for the Eastern District of Pennsylvania, 310 F.Supp. 35, dismissed the complaint challenging the Pennsylvania statute, and appeals were taken. The Supreme Court, Mr. Chief Justice Burger, held that both statutes were unconstitutional under the religion clauses of the First Amendment, though promoting secular legislative purposes, since both involved excessive entanglement of state with church, where the Rhode Island program, consisting of salary supplements paid to teachers of secular subjects in nonpublic schools, operated to the benefit of parochial schools constituting integral part of the religious mission of the church and in which the recipient teachers were under religious control and discipline, and involved necessity of comprehensive and continuing state surveillance to insure obedience to restrictions as to the courses which could be taught, the materials which could be used, where the Pennsylvania program, involving reimbursement of nonpublic schools for teachers' salaries, taxtbooks, and instructional materials used in the teaching of specific secular subjects, provided direct aid to church schools and intimate and continuing relationship arising from state's postaudit power to inspect and evaluate schools' financial records and to determine which expenditures were religious and which were secular, and where both posed danger of divisive political activity and possibility of progression leading toward the establishment of state churches and state religion.

Judgment in Rhode Island cases affirmed; judgment in Pennsylvania case reversed and case remanded.

Mr. Justice Douglas filed concurring opinion in which Mr. Justice Black joined and in which Mr. Justice Marshall joined as to the Rhode Island cases; Mr. Justice Brennan filed a concurring opinion and would reverse outright the judgment in the Pennsylvania case; Mr. Justice White filed an opinion concurring in the judgment in the Pennsylvania case and dissenting in the Rhode Island cases; Mr. Justice Marshall took no part in the consideration or decision of the Pennsylvania case.

For the concurring opinion of Mr. Justice Brennan see 91 S.Ct. 2125.

For the concurring and dissenting opinion of Mr. Justice White see 91 S.Ct. 2135.

West Headnotes

[1] Constitutional Law 92 ⇐1295

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1), 92k84)

Establishment clause of the First Amendment was intended to afford protection against sponsorship, financial support, and active involvement of the sovereign in religious activity. U.S.C.A.Const. Amend. 1.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

[2] Constitutional Law 92 ⚿1290

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1), 92k84)

To avoid conflict with the religion clauses of the First Amendment, statute must have secular legislative purpose, its principal or primary effect must be one that neither advances nor inhibits religion, and it must not foster excessive government entanglement with religion. U.S.C.A.Const. Amend. 1.

[3] Constitutional Law 92 ⚿1368(2)

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1362 Private Education
92k1368 Employees
92k1368(2) k. Compensation. Most Cited Cases
(Formerly 92k84.5(4.1), 92k84.5(4), 92k84, 92k84.5(3), 92k84)

Schools 345 ⚿7

345 Schools
345I Private Schools and Academies
345k7 k. Teachers and Other Instructors. Most Cited Cases

Rhode Island statutes providing salary supplement to teachers of secular subjects in nonpublic, elementary schools, though derived from a secular legislative purpose, involved impermissible degree of entanglement of the state with religion, since, inter alia, the church schools benefited by the program constituted an integral part of the religious mission of the church, since teachers under religious control and discipline, even acting with good faith, would inevitably experience great difficulty in remaining religiously neutral, and since, to avoid impermissible fostering of religion and to secure compliance with statutory requirements, comprehensive, discriminating and continuing state surveillance would be required. Gen.Laws R.I.1956, § 16-51-1 et seq.; U.S.C.A.Const. Amend. 1.

[4] Constitutional Law 92 ⚿1365

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1362 Private Education
92k1365 k. Textbooks and Classroom Materials. Most Cited Cases
(Formerly 92k84.5(4.1), 92k84.5(4), 92k84, 92k84.5(3))

Constitutional Law 92 ⚿1368(2)

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1362 Private Education
92k1368 Employees
92k1368(2) k. Compensation. Most Cited Cases
(Formerly 92k84.5(4.1), 92k84.5(4), 92k84.5(3), 92k84)

Schools 345 ⚿7

345 Schools
345I Private Schools and Academies
345k7 k. Teachers and Other Instructors. Most Cited Cases

Schools 345 ⚿8

345 Schools
345I Private Schools and Academies
345k8 k. Pupils, Tuition, and Discipline. Most Cited Cases

Pennsylvania statutes providing direct aid to nonpublic elementary and secondary schools in the form of reimbursement to those schools for teachers' salaries, textbooks, and instructional materials in connection with the teaching of specific secular subjects involved, despite the secular legislative purpose therein, excessive entanglement of the state with religion where, inter alia, recipient schools were controlled by religious organizations having the purpose of promulgating and promoting particular religious faith and conducting their operations to fulfill that purpose, and state had postaudit power to inspect and

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

evaluate church-related schools' financial records to determine which expenditures were religious and which were secular. 24 P.S.Pa. §§ 5601-5609; U.S.C.A.Const. Amend. 1.

[5] Constitutional Law 92 ⚿1363

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1362 Private Education
92k1363 k. In General. Most Cited Cases
(Formerly 92k84.5(4.1), 92k84.5(4), 92k84, 92k84.5(3), 92k84)

Schools 345 ⚿3

345 Schools
345I Private Schools and Academies
345k3 k. Public Aid. Most Cited Cases

Both Pennsylvania and Rhode Island statutory programs of aid for nonpublic schools involved impermissible entanglement of church and state in that both involved need for continuing annual appropriations and likelihood of larger and larger demands, presenting hazard of divisive political activity. Gen.Laws R.I.1956, § 16-51-1 et seq.; 24 P.S.Pa. §§ 5601-5609; U.S.C.A.Const. Amend. 1.

[6] Constitutional Law 92 ⚿1290

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1), 92k84)

Political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. U.S.C.A.Const. Amend. 1.

[7] Constitutional Law 92 ⚿1363

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1362 Private Education
92k1363 k. In General. Most Cited Cases
(Formerly 92k84.5(4.1), 92k84.5(4), 92k84)

Innovative programs of state aid to nonpublic schools, having self-perpetuating and self-expanding propensities, present more danger that they will, contrary to the First Amendment, lead to the establishment of state churches and state religion than do the long established benefits involved in tax exemption for places of religious worship. U.S.C.A.Const. Amend. 1.

****2107 *602** Syllabus[FN*]

FN* NOTE: The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Rhode Island's 1969 Salary Supplement Act provides for a 15% salary supplement to be paid to teachers in nonpublic schools at which the average perpupil expenditure on secular education is below the average in public schools. Eligible teachers must teach only courses offered in the public schools, using only materials used in the public schools, and must agree not to teach courses in religion. A three-judge court found that about 25% of the State's elementary students attended nonpublic schools, about 95% of whom attended Roman Catholic affiliated schools, and that to date about 250 teachers at Roman Catholic schools are the sole beneficiaries under the Act. The court found that the parochial school system was 'an integral part of the religious mission of the Catholic Church,' and held that the Act fostered 'excessive entanglement' between government and religion, thus violating the Establishment Clause. Pennsylvania's Nonpublic Elementary and Secondary Education Act, passed in 1968, authorizes the state Superintendent of Public Instruction to 'purpose' certain 'secular educational services' from nonpublic schools, directly reimbursing those schools solely for teachers' salaries, textbooks, and instructional materials. Reimbursement is restricted to courses in specific secular subjects, the textbooks and materials must be approved by the Superintendent, and no payment is to be made for any course containing 'any subject matter expressing religious teaching, or the morals or

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

forms of worship of any sect.' Contracts were made with schools that have more than 20% of all the students in the State, most of which were affiliated with the Roman Catholic Church. The complaint challenging the constitutionality of ***603** the Act alleged that the church-affiliated schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose. A three-judge court granted the State's motion to dismiss the complaint for failure to state a claim for relief, finding no violation of the Establishment or Free Exercise Clause. Held: Both statutes are unconstitutional under the Religion Clauses of the First Amendment, as the cumulative impact of the entire relationship arising under the statutes involves excessive entanglement between government and religion. Pp. 2110-2117.

(a) The entanglement in the Rhode Island program arises because of the religious activity, and purpose of the church-affiliated schools, especially with respect to children of impressionable age in the primary grades, and the dangers that a teacher under religious control and discipline poses to the separation of religious from purely secular aspect of elementary education in such schools. These factors require continuing state surveillance to ensure that the statutory restrictions are obeyed and the First Amendment otherwise respected. Furthermore, under the Act the government must inspect school records to determine what part of the expenditures is attributable to secular education as opposed to religious activity, in the event a nonpublic school's expenditures per pupil exceed the comparable figures for public schools. Pp. 2112-2115.

(b) The entanglement in the Pennsylvania program also arises from the restrictions and surveillance necessary to ensure that teachers play a strictly nonideological role and the state supervision of nonpublic school accounting procedures required to establish the cost of secular as distinguished from religious education. In addition, the Pennsylvania statute has the further defect of providing continuing financial aid directly to the church-related schools. Historically**2108 governmental control and surveillance measures tend to follow cash grant programs, and here the government's post-audit power to inspect the financial records of church-related schools creates an intimate and continuing relationship between church and state. P. 2115.

(c) Political division along religious lines was one of the evils at which the First Amendment aimed, and in these programs, where successive and probably permanent annual appropriations that benefit relatively few religious groups are involved, political ***604** fragmentation and divisiveness on religious lines are likely to be intensified. Pp. 2115-2116.

(d) Unlike the tax exemption for places of religious worship, upheld in Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697, which was based on a practice of 200 years, these innovative programs have self-perpetuating and self-expanding propensities which provide a warning signal against entanglement between government and religion. Pp. 2116-2117.

No. 89, 310 F.Supp. 35, reversed and remanded; Nos. 569 and 570, 316 F.Supp. 112, affirmed.
Henry W. Sawyer, III, Philadelphia, Pa., for appellants.

J. Shane Creamer, Philadelphia, Pa., for appellees Kurtzman and Sloan.

William B. Ball, Harrisburg, Pa., for appellee Schools.

***605** Charles F. Cottam, Providence, R.I., for appellants Robinson and others.

Edward Bennett Williams, Washington, D.C., for appellants Earley and others.

Leo Pfeffer, New York City, and Milton Stanzler, Providence, R.I., for appellees Joan DiCenso and others.

***606** Mr. Chief Justice BURGER delivered the opinion of the Court.

These two appeals raise questions as to Pennsylvania and Rhode Island statutes providing state aid to church-related elementary and secondary schools. Both statutes are challenged as violative of the Establishment and Free Exercise Clauses of the First Amendment and the Due Process Clause of the Fourteenth Amendment.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Pennsylvania has adopted a statutory program that provides financial support to nonpublic elementary and ***607** secondary schools by way of reimbursement for the cost of teachers' salaries, textbooks, and instructional materials in specified secular subjects. Rhode Island has adopted a statute under which the State pays directly to teachers in nonpublic elementary schools a supplement of 15% of their annual salary. Under each statute state aid has been given to church-related educational institutions. We hold that both statutes are unconstitutional.

I

The Rhode Island Statute

The Rhode Island Salary Supplement Act[FN1] was enacted in 1969. It rests on the legislative finding that the quality of education available in nonpublic elementary schools has been jeopardized by the rapidly rising salaries needed to attract competent and dedicated teachers. The Act authorizes state officials to supplement the salaries of teachers of secular subjects in nonpublic elementary schools by paying directly to a teacher an amount not in excess of 15% of his current annual salary. As supplemented, however, a nonpublic school teacher's salary cannot exceed the maximum paid to teachers in the State's public schools, and the recipient must be certified by the state board of education in substantially the same manner as public school teachers.

FN1. R.I.Pen.Laws Ann. s 16-51-1 et seq. (Supp.1970).

In order to be eligible for the Rhode Island salary supplement, the recipient must teach in a nonpublic school at which ****2109** the average per-pupil expenditure on secular education is less than the average in the State's public schools during a specified period. Appellant State Commissioner of Education also requires eligible schools to submit financial data. If this information indicates a per-pupil expenditure in excess of the statutory limitation,***608** the records of the school in question must be examined in order to assess how much of the expenditure is attributable to secular education and how much to religious activity.[FN2]

FN2. The District Court found only one instance in which this breakdown between religious and secular expenses was necessary. The school in question was not affiliated with the Catholic church. The court found it unlikely that such determinations would be necessary with respect to Catholic schools because their heavy reliance on nuns kept their wage costs substantially below those of the public schools.

The Act also requires that teachers eligible for salary supplements must teach only those subjects that are offered in the State's public schools. They must use 'only teaching materials which are used in the public schools.' Finally, any teacher applying for a salary supplement must first agree in writing 'not to teach a course in religion for so long as or during such time as he or she receives any salary supplements' under the Act.

Appellees are citizens and taxpayers of Rhode Island. They brought this suit to have the Rhode Island Salary Supplement Act declared unconstitutional and its operation enjoined on the ground that it violates the Establishment and Free Exercise Clauses of the First Amendment. Appellants are state officials charged with administration of the Act, teachers eligible for salary supplements under the Act, and parents of children in church-related elementary schools whose teachers would receive state salary assistance.

A three-judge federal court was convened pursuant to 28 U.S.C. ss 2281, 2284. It found that Rhode Island's nonpublic elementary schools accommodated approximately 25% of the State's pupils. About 95% of these pupils attended schools affiliated with the Roman Catholic church. To date some 250 teachers have applied for benefits under the Act. All of them are employed by Roman Catholic schools.

***609** The court held a hearing at which extensive evidence was introduced concerning the nature of the secular instruction offered in the Roman Catholic schools whose teachers would be eligible for salary assistance under the Act. Although the court found that concern for religious values does not necessarily affect the content of secular subjects, it also found that the parochial school system was 'an integral part of the religious mission of the Catholic Church.'

The District Court concluded that the Act violated the Establishment Clause, holding that it fostered 'excessive entanglement' between government and religion. In addition two judges thought that the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Act had the impermissible effect of giving 'significant aid to a religious enterprise.' 316 F.Supp. 112. We affirm.

The Pennsylvania Statute

Pennsylvania has adopted a program that has some but not all of the features of the Rhode Island program. The Pennsylvania Nonpublic Elementary and Secondary Education Act[FN3] was passed in 1968 in response to a crisis that the Pennsylvania Legislature found existed in the State's nonpublic schools due to rapidly rising costs. The statute affirmatively reflects the legislative conclusion that the State's educational goals could appropriately be fulfilled by government support of 'those purely secular educational objectives achieved through nonpublic education * * *.'

FN3. Pa.Stat.Ann., Tit. 24, ss 5601-5609 (Supp.1971).

The statute authorizes appellee state Superintendent of Public Instruction to 'purchase' specified 'secular educational services' from nonpublic schools. Under the 'contracts' authorized by the statute,**2110 the State directly reimburses nonpublic schools solely for their actual expenditures for teachers' salaries, textbooks, and instructional materials. A school seeking reimbursement must *610 maintain prescribed accounting procedures that identify the 'separate' cost of the 'secular educational service.' These accounts are subject to state audit. The funds for this program were originally derived from a new tax on horse and harness racing, but the Act is now financed by a portion of the state tax on cigarettes.

There are several significant statutory restrictions on state aid. Reimbursement is limited to courses 'presented in the curricula of the public schools.' It is further limited 'solely' to courses in the following 'secular' subjects: mathematics, modern foreign languages,[FN4] physical science, and physical education. Textbooks and instructional materials included in the program must be approved by the state Superintendent of Public Instruction. Finally, the statute prohibits reimbursement for any course that contains 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.'

FN4. Latin, Hebrew, and classical Greek are excluded.

The Act went into effect on July 1, 1968, and the first reimbursement payments to schools were made on September 2, 1969. It appears that some $5 million has been expended annually under the Act. The State has now entered into contracts with some 1,181 nonpublic elementary and secondary schools with a student population of some 535,215 pupils-more than 20% of the total number of students in the State. More than 96% of these pupils attend church-related schools, and most of these schools are affiliated with the Roman Catholic church.

Appellants brought this action in the District Court to challenge the constitutionality of the Pennsylvania statute. The organizational plaintiffs-appellants are associations of persons resident in Pennsylvania declaring *611 belief in the separation of church and state; individual plaintiffs-appellants are citizens and taxpayers of Pennsylvania. Appellant Lemon, in addition to being a citizen and a taxpayer, is a parent of a child attending public school in Pennsylvania. Lemon also alleges that he purchased a ticket at a race track and thus had paid the specific tax that supports the expenditures under the Act. Appellees are state officials who have the responsibility for administering the Act. In addition seven church-related schools are defendants-appellees.

A three-judge federal court was convened pursuant to 28 U.S.C. ss 2281, 2284. The District Court held that the individual plaintiffs-appellants had standing to challenge the Act, 310 F.Supp. 42. The organizational plaintiffs-appellants were denied standing under Flast v. Cohen, 392 U.S. 83, 99, 101, 88 S.Ct. 1942, 1952, 1953, 20 L.Ed.2d 947 (1968).

The court granted appellees' motion to dismiss the complaint for failure to state a claim for relief.[FN5] 310 F.Supp. 35. It held that the Act violated neither the Establishment nor the Free Exercise Clause, Chief Judge Hastie dissenting. We reverse.

FN5. Plaintiffs-appellants also claimed that the Act violated the Equal Protection Clause of the Fourteenth Amendment by providing state assistance to private institutions that discriminated on racial and religious grounds in their admissions and hiring policies. The court unanimously held that no plaintiff had standing to raise this claim be-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

cause the complaint did not allege that the child of any plaintiff had been denied admission to any nonpublic school on racial or religious grounds. Our decision makes it unnecessary for us to reach this issue.

II

In Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), this Court upheld a state statute that reimbursed the parents of parochial school children for bus transportation **2111 *612 expenses. There Mr. Justice Black, writing for the majority, suggested that the decision carried to 'the verge' of forbidden territory under the Religion Clauses. Id., at 16, 67 S.Ct., at 511. Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.

[1] The language of the Religion Clauses of the First Amendment is at best opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they commanded that there should be 'no law respecting an establishment of religion.' A law may be one 'respecting' the forbidden objective while falling short of its total realization. A law 'respecting' the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not establish a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment.

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.' Walz v. Tax Commission, 397 U.S. 664, 668, 90 S.Ct. 1409, 1411, 25 L.Ed.2d 697 (1970).

[2] Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, Board of Education v. Allen, 392 U.S. 236, 243, 88 S.Ct. 1923, 1926, 20 L.Ed.2d 1060 (1968); *613 finally, the statute must not foster 'an excessive government entanglement with religion.' Walz, supra, at 674, 90 S.Ct., at 1414.

Inquiry into the legislative purposes of the Pennsylvania and Rhode Island statutes affords no basis for a conclusion that the legislative intent was to advance religion. On the contrary, the statutes themselves clearly state that they are intended to enhance the quality of the secular education in all schools covered by the compulsory attendance laws. There is no reason to believe the legislatures meant anything else. A State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate. As in Allen, we find nothing here that undermines the stated legislative intent; it must therefore be accorded appropriate deference.

In Allen the Court acknowledged that secular and religious teachings were not necessarily so intertwined that secular textbooks furnished to students by the State were in fact instrumental in the teaching of religion. 392 U.S., at 248, 88 S.Ct., at 1929. The legislatures of Rhode Island and Pennsylvania have concluded that secular and religious education are identifiable and separable. In the abstract we have no quarrel with this conclusion.

The two legislatures, however, have also recognized that church-related elementary and secondary schools have a significant religious mission and that a substantial portion of their activities is religiously oriented. They have therefore sought to create statutory restrictions designed to guarantee the separation between secular and religious educational functions and to ensure that State financial aid supports only the former. All these provisions are precautions taken in candid recognition that these programs approached, even if they did not intrude upon, the forbidden areas under the Religion Clauses. We need not decide whether these legislative precautions restrict the principal or primary effect of the programs to the point where they **2112 do not offend the Religion *614 Clauses, for we conclude that the cumulative impact of the entire relationship arising under the statutes in each State involves excessive entanglement between government and religion.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

III

In Walz v. Tax Commission, supra, the Court upheld state tax exemptions for real property owned by religious organizations and used for religious worship. That holding, however, tended to confine rather than enlarge the area of permissible state involvement with religious institutions by calling for close scrutiny of the degree of entanglement involved in the relationship. The objective is to prevent, as far as possible, the intrusion of either into the precincts of the other.

Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. Zorach v. Clauson, 343 U.S. 306, 312, 72 S.Ct. 679, 683, 96 L.Ed. 954 (1952); Sherbert v. Verner, 374 U.S. 398, 422, 83 S.Ct. 1790, 1803, 10 L.Ed.2d 965 (1963) (Harlan, J., dissenting). Fire inspections, building and zoning regulations, and state requirements under compulsory school-attendance laws are examples of necessary and permissible contacts. Indeed, under the statutory exemption before us in Walz, the State had a continuing burden to ascertain that the exempt property was in fact being used for religious worship. Judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.

This is not to suggest, however, that we are to engage in a legalistic minuet in which precise rules and forms must govern. A true minuet is a matter of pure form and style, the observance of which is itself the substantive end. Here we examine the form of the relationship for the light that it casts on the substance.

***615** In order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority. Mr. Justice Harlan, in a separate opinion in Walz, supra, echoed the classic warning as to 'programs, whose very nature is apt to entangle the state in details of administration. * * *' Id., at 695, 90 S.Ct., at 1425. Here we find that both statutes foster an impermissible degree of entanglement.

(a) Rhode Island program

[3] The District Court made extensive findings on the grave potential for excessive entanglement that inheres in the religious character and purpose of the Roman Catholic elementary schools of Rhode Island, to date the sole beneficiaries of the Rhode Island Salary Supplement Act.

The church schools involved in the program are located close to parish churches. This understandably permits convenient access for religious exercises since instruction in faith and morals is part of the total educational process. The school buildings contain identifying religious symbols such as crosses on the exterior and crucifixes, and religious paintings and statutes either in the classrooms or hallways. Although only approximately 30 minutes a day are devoted to direct religious instruction, there are religiously oriented extracurricular activities. Approximately two-thirds of the teachers in these schools are nuns of various religious orders. Their dedicated efforts provide an atmosphere in which religious instruction and religious vocations are natural and proper parts of life in such schools. Indeed, as the District Court found, the role of teaching nuns in enhancing the religious atmosphere has led the parochial school authorities****2113 *616** to attempt to maintain a one-to-one ratio between nuns and lay teachers in all schools rather than to permit some to be staffed almost entirely by lay teachers.

On the basis of these findings the District Court concluded that the parochial schools constituted 'an integral part of the religious mission of the Catholic Church.' The various characteristics of the schools make them 'a powerful vehicle for transmitting the Catholic faith to the next generation.' This process of inculcating religious doctrine is, of course, enhanced by the impressionable age of the pupils, in primary schools particularly. In short, parochial schools involve substantial religious activity and purpose.[FN6]

> FN6. See, e.g., J. Fichter, Parochial School: A Sociological Study 77-108 (1958); Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development, pt. II, The Nonestablishment Principle, 81 Harv.L.Rev. 513, 574 (1968).

The substantial religious character of these

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

church-related schools gives rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid. Although the District Court found that concern for religious values did not inevitably or necessarily intrude into the content of secular subjects, the considerable religious activities of these schools led the legislature to provide for careful governmental controls and surveillance by state authorities in order to ensure that state aid supports only secular education.

The dangers and corresponding entanglements are enhanced by the particular form of aid that the Rhode Island Act provides. Our decisions from Everson to Allen have permitted the States to provide church-related schools with secular, neutral, or nonideological services, facilities, or materials. Bus transportation, school lunches, public health services, and secular textbooks supplied in common to all students were not ***617** thought to offend the Establishment Clause. We note that the dissenters in Allen seemed chiefly concerned with the pragmatic difficulties involved in ensuring the truly secular content of the textbooks provided at state expense.

In Allen the Court refused to make assumptions, on a meager record, about the religious content of the textbooks that the State would be asked to provide. We cannot, however, refuse here to recognize that teachers have a substantially different ideological character from books. In terms of potential for involving some aspect of faith or morals in secular subjects, a textbook's content is ascertainable, but a teacher's handling of a subject is not. We cannot ignore the danger that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of precollege education. The conflict of functions inheres in the situation.

In our view the record shows these dangers are present to a substantial degree. The Rhode Island Roman Catholic elementary schools are under the general supervision of the Bishop of Providence and his appointed representative, the Diocesan Superintendent of Schools. In most cases, each individual parish, however, assumes the ultimate financial responsibility for the school, with the parish priest authorizing the allocation of parish funds. With only two exceptions, school principals are nuns appointed either by the Superintendent or the Mother Provincial of the order whose members staff the school. By 1969 lay teachers constituted more than a third of all teachers in the parochial elementary schools, and their number is growing. They are first interviewed by the superintendent's office and then by the school principal. The contracts are signed by the parish priest, and he retains some discretion in negotiating salary levels. Religious authority necessarily pervades the school system.

***618** The schools are governed by the standards set forth in a 'Handbook of School Regulations,' which has the force of ****2114** synodal law in the diocese. It emphasizes the role and importance of the teacher in parochial schools: 'The prime factor for the success or the failure of the school is the spirit and personality, as well as the professional competency, of the teacher * * *.' The Handbook also states that: 'Religious formation is not confined to formal courses; nor is it restricted to a single subject area.' Finally, the Handbook advises teachers to stimulate interest in religious vocations and missionary work. Given the mission of the church school, these instructions are consistent and logical.

Several teachers testified, however, that they did not inject religion into their secular classes. And the District Court found that religious values did not necessarily affect the content of the secular instruction. But what has been recounted suggests the potential if not actual hazards of this form of state aid. The teacher is employed by a religious organization, subject to the direction and discipline of religious authorities, and works in a system dedicated to rearing children in a particular faith. These controls are not lessened by the fact that most of the lay teachers are of the Catholic faith. Inevitably some of a teacher's responsibilities hover on the border between secular and religious orientation.

We need not and do not assume that teachers in parochial schools will be guilty of bad faith or any conscious design to evade the limitations imposed by the statute and the First Amendment. We simply recognize that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral. Doctrines and faith are not inculcated or advanced by neutrals. With the best of intentions such a teacher would find it hard to make ***619** a total separation between secular teaching and religious doctrine. What would ap-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

pear to some to be essential to good citizenship might well for others border on or constitute instruction in religion. Further difficulties are inherent in the combination of religious discipline and the possibility of disagreement between teacher and religious authorities over the meaning of the statutory restrictions.

We do not assume, however, that parochial school teachers will be unsuccessful in their attempts to segregate their religious beliefs from their secular educational responsibilities. But the potential for impermissible fostering of religion is present. The Rhode Island Legislature has not, and could not, provide state aid on the basis of a mere assumption that secular teachers under religious discipline can avoid conflicts. The State must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion-indeed the State here has undertaken to do so. To ensure that no trespass occurs, the State has therefore carefully conditioned its aid with pervasive restrictions. An eligible recipient must teach only those courses that are offered in the public schools and use only those texts and materials that are found in the public schools. In addition the teacher must not engage in teaching any course in religion.

A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment otherwise respected. Unlike a book, a teacher cannot be inspected once so as to determine the extent and intent of his or her personal beliefs and subjective acceptance of the limitations imposed by the First Amendment. These prophylactic contacts will involve excessive and enduring entanglement between state and church.

620** There is another area of entanglement in the Rhode Island program that gives concern. The statute excludes teachers employed by nonpublic schools whose average per-pupil expenditures on secular education equal or exceed the comparable figures for public schools. In the event that the total expenditures of an otherwise eligible school exceed this norm, the program requires the government to examine*2115** the school's records in order to determine how much of the total expenditures is attributable to secular education and how much to religious activity. This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction of church schools and hence of churches. The Court noted 'the hazards of government supporting churches' in Walz v. Tax Commission, supra, 397 U.S., at 675, 90 S.Ct., at 1414, and we cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion and thus conflict with the Religion Clauses.

(b) Pennsylvania program

[4] The Pennsylvania statute also provides state aid to church-related schools for teachers' salaries. The complaint describes an educational system that is very similar to the one existing in Rhode Island. According to the allegations, the church-related elementary and secondary schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose. Since this complaint was dismissed for failure to state a claim for relief, we must accept these allegations as true for purposes of our review.

As we noted earlier, the very restrictions and surveillance necessary to ensure that teachers play a strictly non-ideological role give rise to entanglements between ***621** church and state. The Pennsylvania statute, like that of Rhode Island, fosters this kind of relationship. Reimbursement is not only limited to courses offered in the public schools and materials approved by state officials, but the statute excludes 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' In addition, schools seeking reimbursement must maintain accounting procedures that require the State to establish the cost of the secular as distinguished from the religious instruction.

The Pennsylvania statute, moreover, has the further defect of providing state financial aid directly to the church-related schools. This factor distinguishes both Everson and Allen, for in both those cases the Court was careful to point out that state aid was provided to the student and his parents-not to the church-related school. Board of Education v. Allen, supra, 392 U.S., at 243-244, 88 S.Ct., at 1926-1927; Everson v. Board of Education, supra, 330 U.S., at 18, 67 S.Ct., at 512. In Walz v. Tax Commission, supra, 397 U.S., at 675, 90 S.Ct., at 1414, the Court warned of the dangers of direct payments to religious

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

organizations:

'Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *.'

The history of government grants of a continuing cash subsidy indicates that such programs have almost always been accompanied by varying measures of control and surveillance. The government cash grants before us now provide no basis for predicting that comprehensive measures of surveillance and controls will not follow. In particular the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and ***622** which are secular creates an intimate and continuing relationship between church and state.

IV

[5] A broader base of entanglement of yet a different character is presented by the devisive political potential of these state programs. In a community where such a large number of pupils are served by church-related schools, it can be assumed****2116** that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. Candidates will be forced to declare and voters to choose. It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.

[6] Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. Freund, Comment, Public Aid to Parochial Schools, 82 Harv.L.Rev. 1680, 1692 (1969). The potential divisiveness of such conflict is a threat to the normal political process. Walz v. Tax Commission, supra, at 695, 90 S.Ct., at 1424. (separate opinion of Harlan, J.). See also Board of Education v. Allen, 392 U.S., at 249, 88 S.Ct., at 1929 (Harlan, J., concurring); Abington School District v. Schempp, 374 U.S. 203, 307, 83 S.Ct. 1560, 1616, 10 L.Ed.2d 844 (1963) (Goldberg, J., concurring). To have States or communities divide on the issues presented by state aid to parochial schools would tend to confuse ***623** and obscure other issues of great urgency. We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.

Of course, as the Court noted in Walz, '(a)dherents of particular faiths and individual churches frequently take strong positions on public issues.' Walz v. Tax Commission, supra, at 670, 90 S.Ct., at 1412. We could not expect otherwise, for religious values pervade the fabric of our national life. But in Walz we dealt with a status under state tax laws for the benefit of all religious groups. Here we are confronted with successive and very likely permanent annual appropriations that benefit relatively few religious groups. Political fragmentation and divisiveness on religious lines are thus likely to be intensified.

The potential for political divisiveness related to religious belief and practice is aggravated in these two statutory programs by the need for continuing annual appropriations and the likelihood of larger and larger demands as costs and populations grow. The Rhode Island District Court found that the parochial school system's 'monumental and deepening financial crisis' would 'inescapably' require larger annual appropriations subsidizing greater percentages of the salaries of lay teachers. Although no facts have been developed in this respect ***624** in the Pennsylvania

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

case, it appears that such pressures for expanding aid have already required the state legislature to include a portion of the state revenues from cigarette taxes in the program.

V

[7] In Walz it was argued that a tax exemption for places of religious worship would prove to be the first step in an inevitable progression leading to the **2117 establishment of state churches and state religion. That claim could not stand up against more than 200 years of virtually universal practice imbedded in our colonial experience and continuing into the present.

The progression argument, however, is more persuasive here. We have no long history of state aid to church-related educational institutions comparable to 200 years of tax exemption for churches. Indeed, the state programs before us today represent something of an innovation. We have already noted that modern governmental programs have self-perpetuating and self-expanding propensities. These internal pressures are only enhanced when the schemes involve institutions whose legitimate needs are growing and whose interests have substantial political support. Nor can we fail to see that in constitutional adjudication some steps, which when taken were thought to approach 'the verge,' have become the platform for yet further steps. A certain momentum develops in constitutional theory and it can be a 'downhill thrust' easily set in motion but difficult to retard or stop. Development by momentum is not invariably bad; indeed, it is the way the common law has grown, but it is a force to be recognized and reckoned with. The dangers are increased by the difficulty of perceiving in advance exactly where the 'verge' of the precipice lies. As well as constituting an independent evil against which the Religion Clauses were intended to protect, involvement*625 or entanglement between government and religion serves as a warning signal.

Finally, nothing we have said can be construed to disparage the role of church-related elementary and secondary schools in our national life. Their contribution has been and is enormous. Nor do we ignore their economic plight in a period of rising costs and expanding need. Taxpayers generally have been spared vast sums by the maintenance of these educational institutions by religious organizations, largely by the gifts of faithful adherents.

The merit and benefits of these schools, however, are not the issue before us in these cases. The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn.

The judgment of the Rhode Island District Court in No. 569 and No. 570 is affirmed. The judgment of the Pennsylvania District Court in No. 89 is reversed, and the case is remanded for further proceedings consistent with this opinion.

Mr. Justice MARSHALL took no part in the consideration or decision of No. 89.

Mr. Justice DOUGLAS, whom Mr. Justice BLACK joins, concurring.

While I join the opinion of the Court, I have expressed at some length my views as to the rationale of today's decision in these three cases.

*626 They involve two different statutory schemes for providing aid to parochial schools. Lemon deals with the Pennsylvania Nonpublic Elementary and Secondary Education Act, Laws 1968, Act No. 109. By its terms the Pennsylvania Act allows the State to provide funds directly to private schools to purchase 'secular educational service' such as teachers' salaries, textbooks, and educational materials. Pa.Stat.Ann., Tit. 24, s 5604 (Supp.1971). Reimbursement for these services may be made only for courses in mathematics, modern foreign languages, physical science, and physical education. Reimbursement is prohibited for any course containing subject matter 'expressing religious teaching, or the morals or forms of worship of any sect.' s 5603 (Supp.1971). To qualify, a school must demonstrate that its pupils achieve a satisfactory level of performance in standardized tests approved by the Superintendent of Public Instruction, **2118 and that the textbooks and other instructional materials used in these courses have been approved by the Superintendent of Public Instruction. The three-judge District

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Court below upheld this statute against the argument that it violates the Establishment Clause. We noted probable jurisdiction. 397 U.S. 1034, 91 S.Ct. 1354, 25 L.Ed.2d 646.

The DiCenso cases involve the Rhode Island Salary Supplement Act, Laws 1969, c. 246. The Rhode Island Act authorizes supplementing the salaries of teachers of secular subjects in nonprofit private schools. The supplement is not more than 15% of an eligible teacher's current salary but cannot exceed the maximum salary paid to teachers in the State's public schools. To be eligible a teacher must teach only those subjects offered in public schools in the State, must be certified in substantially the same manner as teachers in public schools, and may use only teaching materials which are used in the public schools. Also the teacher must agree in writing ***627** 'not to teach a course in religion for so long as or during such time as he or she receives any salary supplements.' R.I.Gen.Laws Ann. s 16-51-3 (Supp.1970). The schools themselves must not be operated for profit, must meet state educational standards, and the annual per-student expenditure for secular education must not equal or exceed 'the average annual per student expenditure in the public schools in the state at the same grade level in the second preceding fiscal year.' s 16-51-2 (Supp. 1970). While the Rhode Island Act, unlike the Pennsylvania Act, provides for direct payments to the teacher, the three-judge District Court below found it unconstitutional because it 'results in excessive government entanglement with religion.' Probable jurisdiction was noted and the cases were set for oral argument with the other school cases. 400 U.S. 901, 91 S.Ct. 142, 27 L.Ed.2d 137.

In Walz v. Tax Commission, 397 U.S. 664, 674, 90 S.Ct. 1409, 1414, 25 L.Ed.2d 697, the Court in approving a tax exemption for church property said:

'Determining that the legislative purpose of tax exemption is not aimed at establishing, sponsoring, or supporting religion does not end the inquiry, however. We must also be sure that the end result-the effect-is not an excessive government entanglement with religion.'

There is in my view such an entanglement here. The surveillance or supervision of the States needed to police grants involved in these three cases, if performed, puts a public investigator into every classroom and entails a pervasive monitoring of these church agencies by the secular authorities. Yet if that surveillance or supervision does not occur the zeal of religious proselytizers promises to carry the day and make a shambles of the Establishment Clause. Moreover, when taxpayers of ***628** many faiths are required to contribute money for the propagation of one faith, the Free Exercise Clause is infringed.

The analysis of the constitutional objections to these two state systems of grants to parochial or sectarian schools must start with the admitted and obvious fact that the raison d'e tre of parochial schools is the propagation of a religious faith. They also teach secular subjects; but they came into existence in this country because Protestant groups were perverting the public schools by using them to propagate their faith. The Catholics naturally rebelled. If schools were to be used to propagate a particular creed or religion, then Catholic ideals should also be served. Hence the advent of parochial schools.

By 1840 there were 200 Catholic parish schools in the United States.[FN1] By 1964 there were 60 times as many.[FN2] Today 57% of the 9,000 Catholic parishes in the country have their church schools. '(E)very diocesan chancery has its school department, and it enjoys a primacy****2119** of status.' [FN3] The parish schools indeed consume 40% to 65% of the parish's total income.[FN4] The parish is so 'school centered' that '(t)he school almost becomes the very reason for being.[FN5]

FN1. A. Stokes & L. Pfeffer, Church and State in the United States, 229 (1964).

FN2. Ibid.

FN3. Deedy, Should Catholic Schools Survive?, New Republic, Mar. 13, 1971, pp. 15, 16.

FN4. Id., at 17.

FN5. Ibid.

Early in the 19th century the Protestants obtained control of the New York school system and used it to promote reading and teaching of the Scriptures as

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

revealed in the King James version of the Bible.[FN6] The contests ***629** between Protestants and Catholics, often erupting into violence including the burning of Catholic churches, are a twice-told tale;[FN7] the Know-Nothing Party, which included in its platform 'daily Bible reading in the schools,'[FN8] carried three States in 1854-Massachusetts, Pennsylvania, and Delaware.[FN9] Parochial schools grew, but not Catholic schools alone. Other dissenting sects established their own schools-Lutherans, Methodists, Presbyterians, and others.[FN10] But the major force in shaping the pattern of education in this country was the conflict between Protestants and Catholics. The Catholics logically argued that a public school was sectarian when it taught the King James version of the Bible. They therefore wanted it removed from the public schools; and in time they tried to get public funds for their own parochial schools.[FN11]

FN6. Stokes & Pfeffer, supra, n. 1, at 231.

FN7. Id., at 231-239.

FN8. Id., at 237.

FN9. Ibid.

FN10. R. Butts, The American Tradition in Religion and Education 115 (1950).

FN11. Id., at 118. And see R. Finney, A Brief History of the American Public School 44-45 (1924).

The constitutional right of dissenters to substitute their parochial schools for public schools was sustained by the Court in Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070.

The story of conflict and dissension is long and well known. The result was a state of so-called equilibrium where religious instruction was eliminated from public schools and the use of public funds to support religious schools was deemed to be banned.[FN12]

FN12. See E. Knight, Education in the United States 3, 314 (3d rev. ed. 1951); E. Cubberley, Public Education in the United States 164 et seq. (1919).

But the hydraulic pressures created by political forces and by economic stress were great and they began to ***630** change the situation. Laws were passed-state and federal-that dispensed public funds to sustain religious schools and the plea was always in the educational frame of reference: education in all sectors was needed, from languages to calculus to nuclear physics. And it was forcefully argued that a linguist or mathematician or physicist trained in religious schools was just as competent as one trained in secular schools.

And so we have gradually edged into a situation where vast amounts of public funds are supplied each year to sectarian schools.[FN13]

FN13. In 1960 the Federal Government provided $500 million to private colleges and universities. Amounts contributed by state and local governments to private schools at any level were negligible. Just one decade later federal aid to private colleges and universities had grown to. $2.1 billion. State aid had begun and reached $100 million. Statistical Abstract of the United States 105 (1970). As the present cases demonstrate, we are now reaching a point where state aid is being given to private elementary and secondary schools as well as colleges and universities.

And the argument is made that the private parochial school system takes about $9 billion a year off the back of government[FN14]-as if that were enough to justify violating the Establishment Clause.

FN14. Deedy, supra, n. 3, at 16.

****2120** While the evolution of the public school system in this country marked an escape from denominational control and was therefore admirable as seen through the eyes of those who think like Madison and Jefferson, it has disadvantages. The main one is that a state system may attempt to mold all students alike according to the views of the dominant group and to discourage the emergence of individual idiosyncrasies.

Sectarian education, however, does not remedy

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

that condition. The advantages of sectarian education relate solely to religious or doctrinal matters. They give the ***631** church the opportunity to indoctrinate its creed delicately and indirectly, or massively through doctrinal courses.

Many nations follow that course: Moslem nations teach the Koran in their schools; Sweden vests its elementary education in the parish; Newfoundland puts its school system under three superintendents-one from the Church of England, one from the Catholic church, one from the United Church. In Ireland the public schools are under denominational managership-Catholic, Episcopalian, Presbyterian, and Hebrew.

England puts sectarian schools under the umbrella of its school system. It finances sectarian education; it exerts control by prescribing standards; it requires some free scholarships; it provides nondenominational membership on the board of directors.[FN15]

> FN15. S. Curtis, History of Education in Great Britain 316-383 (5th ed. 1963); W. Alexander, Education in England, c II (2d ed. 1964).

The British system is, in other words, one of surveillance over sectarian schools. We too have surveillance over sectarian schools but only to the extent of making sure that minimum educational standards are met, viz., competent teachers, accreditation of the school for diplomas, the number of hours of work and credits allowed, and so on.

But we have never faced, until recently, the problem of policing sectarian schools. Any surveillance to date has been minor and has related only to the consistently unchallenged matters of accreditation of the sectarian school in the State's school system.[FN16]

> FN16. See Pierce v. Society of Sisters, 268 U.S. 510, 534, 45 S.Ct. 571, 573, 69 L.Ed. 1070; Meyer v. Nebraska, 262 U.S. 390, 402, 43 S.Ct. 625, 627, 67 L.Ed. 1042.

The Rhode Island Act allows a supplementary salary to a teacher in a sectarian school if he or she 'does not teach a course in religion.'

***632** The Pennsylvania Act provides for state financing of instruction in mathematics, modern foreign languages, physical science, and physical education, provided that the instruction in those courses 'shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.'

Public financial support of parochial schools puts those schools under disabilities with which they were not previously burdened. For, as we held in Cooper v. Aaron, 358 U.S. 1, 19, 78 S.Ct. 1401, 1410, 3 L.Ed.2d 5, governmental activities relating to schools 'must be exercised consistently with federal constitutional requirements.' There we were concerned with equal protection; here we are faced with issues of Establishment of religion and its Free Exercise as those concepts are used in the First Amendment.

Where the governmental activity is the financing of the private school, the various limitations or restraints imposed by the Constitution on state governments come into play. Thus, Arkansas, as part of its attempt to avoid the consequences of Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083, withdrew its financial support from some public schools and sent the funds instead to private schools. That state action was held to violate the Equal Protection Clause. Aaron v. McKinley, D.C., 173 F.Supp. 944, 952. We affirmed, sub nom. ****2121**Faubus v. Aaron, 361 U.S. 197, 80 S.Ct. 291, 4 L.Ed.2d 237. Louisiana tried a like tactic and it too was invalidated. Poindexter v. Louisiana Financial Assistance Commission, D.C., 296 F.Supp. 686. Again we affirmed. Louisiana Ed. Commission for Needy Children v. Poindexter, 393 U.S. 17, 89 S.Ct. 48, 21 L.Ed.2d 16. Whatever might be the result in case of grants to students,[FN17] it is clear that once ***633** one of the States finances a private school, it is duty-bound to make certain that the school stays within secular bounds and does not use the public funds to promote sectarian causes.

> FN17. Grants to students in the context of the problems of desegregated public schools have without exception been stricken down as tools of the forbidden discrimination. See Griffin v. County School Board of Prince

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Edward County, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256; Hall v. St. Helena Parish School Bd., D.C., 197 F.Supp. 649, aff'd, 368 U.S. 515, 82 S.Ct. 529, 7 L.Ed.2d 521; Lee v. Macon County Bd., D.C., 267 F.Supp. 458, aff'd sub nom. Wallace v. United States, 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed.2d 422; Poindexter v. Louisiana Financial Assistance Commission, D.C., 275 F.Supp. 833, aff'd, 389 U.S. 571, 88 S.Ct. 693, 19 L.Ed.2d 780; Brown v. South Carolina State Bd., 296 F.Supp. 199, aff'd, 393 U.S. 222, 89 S.Ct. 449, 21 L.Ed.2d 391; Coffey v. State Educ. Finance Commission, D.C., 296 F.Supp. 1389; Lee v. Macon County Bd., D.C., 231 F.Supp. 743.

The government may, of course, finance a hospital though it is run by a religious order, provided it is open to people of all races and creeds. Bradfield v. Roberts, 175 U.S. 291, 20 S.Ct. 121, 44 L.Ed. 168. The government itself could enter the hospital business; and it would, of course, make no difference if its agents who ran its hospitals were Catholics, Methodists, agnostics, or whatnot. For the hospital is not indulging in religious instruction or guidance or indoctrination. As Mr. Justice Jackson said in Everson v. Board of Education, 330 U.S. 1, 26, 67 S.Ct. 504, 516, 91 L.Ed. 711 (dissenting):

'(Each State has) great latitude in deciding for itself, in the light of its own conditions, what shall be public purposes in its scheme of things. It may socialize utilities and economic enterprises and make taxpayers' business out of what conventionally had been private business. It may make public business of individual welfare, health, education, entertainment or security. But it cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character.'

The reason is that given by Madison in his Remonstrance:[FN18]

FN18. Remonstrance 3. The Memorial and Remonstrance Against Religious Assessments has been reproduced in appendices to the opinion of Rutledge, J., in Everson, 330 U.S., at 63, 67 S.Ct., at 534, and to that of Douglas, J., in Walz, 397 U.S., at 719, 90 S.Ct., at 1437.

'(T)he same authority which can force a citizen to contribute three pence only of his property for ***634** the support of any one establishment, may force him to conform to any other establishment * * *.'

When Madison in his Remonstrance attacked a taxing measure to support religious activities, he advanced a series of reasons for opposing it. One that is extremely relevant here was phrased as follows:[FN19] '(I)t will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects.' Intermeddling, to use Madison's word, or 'entanglement,' to use what was said in Watz, has two aspects. The intrusion of government into religious schools through grants, supervision, or surveillance may result in establishment of religion in the constitutional sense when what the State does enthrones a particular sect for overt or subtle propagation of its faith. Those activities of the State may also intrude on the Free Exercise Clause by depriving a teacher, under threats of reprisals, ****2122** of the right to give sectarian construction or interpretation of, say, history and literature, or to use the teaching of such subjects to inculcate a religious creed or dogma.

FN19. Remonstrance 11.

Under these laws there will be vast governmental suppression, surveillance, or meddling in church affairs. As I indicated in Tilton v. Richardson, 403 U.S. 672, 91 S.Ct. 2091, 29 L.Ed.2d 790, decided this day, school prayers, the daily routine of parochial schools, must go if our decision in Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601, is honored. If it is not honored, then the state has established a religious sect. Elimination of prayers is only part of the problem. The curriculum presents subtle and difficult problems. The constitutional mandate can in part be carried out by censoring the curricula. What is palpably a sectarian course can be marked for ***635** deletion. But the problem only starts there. Sectarian instruction, in which, of course, a State may not indulge, can take place in a course on Shakespeare or in one on mathematics. No matters what the curriculum offers, the question is, what is taught? We deal not with evil teachers but with zealous ones who may use any opportunity to indoctrinate a class.[FN20]

FN20. 'In the parochial schools Roman

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> Catholic indoctrination is included in every subject. History, literature, geography, civics, and science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, not to teach Scripture truths and Americanism, but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think.' L. Boettner, Roman Catholicism 360 (1962).

It is well known that everything taught in most parochial schools is taught with the ultimate goal of religious education in mind. Rev. Joseph H. Fichter, S.J., stated in Parochial School: A Sociological Study 86 (1958):

'It is a commonplace observation that in the parochial school religion permeates the whole curriculum, and is not confined to a single half-hour period of the day. Even arithmetic can be used as an instrument of pious thoughts, as in the case of the teacher who gave this problem to her class: 'If it takes forty thousand priests and a hundred and forty thousand sisters to care for forty million Catholics in the United States, how many more priests and sisters will be needed to convert and care for the hundred million non-Catholics in the United States?''

One can imagine what a religious zealot, as contrasted to a civil libertarian, can do with the Reformation***636** or with the Inquisition. Much history can be given the gloss of a particular religion. I would think that policing these grants to detect sectarian instruction would be insufferable to religious partisans and would breed division and dissension between church and state.

This problem looms large where the church controls the hiring and firing of teachers:

'(I)n the public school the selection of a faculty and the administration of the school usually rests with a school board which is subject to election and recall by the voters, but in the parochial school the selection of a faculty and the administration of the school is in the hands of the bishop alone, and usually is administered through the local priest. If a faculty member in the public school believes that he has been treated unjustly in being disciplined or dismissed, he can seek redress through the civil court and he is guaranteed a hearing. But if a faculty member in a parochial school is disciplined or dismissed he has no recourse whatsoever. The word of the bishop or priest is final, even without explanation if he so chooses. The tax payers have a voice in the way their money is used in the ****2123** public school, but the people who support a parochial school have no voice at all in such affairs.' L. Boettner, Roman Catholicism 375 (1962).

Board of Education v. Allen, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060, dealt only with textbooks. Even so, some had difficulty giving approval. Yet books can be easily examined independently of other aspects of the teaching process. In the present cases we deal with the totality of instruction destined to be sectarian, at least in part, if the religious character of the school is to be maintained. A school which operates to commingle religion with other instruction plainly cannot completely secularize its instruction. ***637** Parochial schools, in large measure, do not accept the assumption that secular subjects should be unrelated to religious teaching.

Lemon involves a state statute that prescribes that courses in mathematics, modern foreign languages, physical science, and physical education 'shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' The subtleties involved in applying this standard are obvious. It places the State astride a sectarian school and gives it power to dictate what is or is not secular, what is or is not religious. I can think of no more disrupting influence apt to promote rancor and ill-will between church and state than this kind of surveillance and control. They are the very opposite of the 'moderation and harmony' between church and state which Madison thought was the aim and purpose of the Establishment Clause.

The DiCenso cases have all the vices which are in Lemon, because the supplementary salary payable to the teacher is conditioned on his or her not teaching 'a course in religion.'

Moreover the DiCenso cases reveal another, but

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

related, knotty problem presented when church and state launch one of these educational programs. The Bishop of Rhode Island has a Handbook of School Regulations for the Diocese of Providence.[FN21]

FN21. It was said on oral argument that the handbook shown as an exhibit in the record had been superseded. The provisions hereinafter quoted are from the handbook as it reads after all the deletions to which we were referred.

The school board supervises 'the education, both spiritual and secular, in the parochial schools and diocesan high schools.'

The superintendent is an agent of the bishop and he interprets and makes 'effective state and diocesan educational directives.'

***638** The pastors visit the schools and 'give their assistance in promoting spiritual and intellectual discipline.'

Community supervisors 'assist the teacher in the problems of instruction' and these duties are:

'I. To become well enough acquainted with the teachers of their communities so as to be able to advise the community superiors on matters of placement and reassignment.

II. To act as liaison between the provincialate and the religious teacher in the school.

'III. To cooperate with the superintendent by studying the diocesan school regulations and to encourage the teachers of their community to observe these regulations.

'IV. To avoid giving any orders or directions to the teachers of their community that may be in conflict with diocesan regulations or policy regarding curriculum, testing, textbooks, method, or administrative matters.

'V. To refer questions concerning school administration beyond the scope of their own authority to the proper diocesan school authorities, namely, the superintendent of schools or the pastor.'

****2124** The length of the school day includes Mass:

'A full day session for Catholic schools at the elementary level consists of five and one-half hours, exclusive of lunch and Mass,[FN22] but inclusive of recess for pupils in grades 1-3.'

FN22. 'The use of school time to participate in the Holy Sacrifice of the Mass on the feasts of All Saints, Ascension, and the patronal saint of the parish or school, as well as during the 40 Hours Devotion, is proper and commendable.'

A course of study or syllabus prescribed for an elementary or secondary school is 'mandatory.'

***639** Religious instruction is provided as follows:

'A. Systematic religious instructions must be provided in all schools of the diocese.

'B. Modern catechetics requires a teacher with unusual aptitudes, specialized training, and such unction of the spirit that his words possess the force of a personal call. He should be so filled with his subject that he can freely improvize in discussion, dramatization, drawing, song, and prayer. A teacher so gifted and so permeated by the message of the Gospel is rare. Perhaps no teacher in a given school attains that ideal. But some teachers come nearer it than others. If our pupils are to hear the Good News so that their minds are enlightened and their hearts respond to the love of God and His Christ, if they are to be formed into vital, twentieth-century Christians, they should receive their religious instructions only from the very best teachers.

'C. Inasmuch as the textbooks employed in religious instruction above the fifth grade require a high degree of catechetical preparation, religion should be a departmentalized subject in grade six through twelve.'

Religious activities are provided, through observance of specified holy days and participation in Mass.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

'Religious formation' is not restricted to courses but is achieved 'through the example of the faculty, the tone of the school * * * and religious activities.'

No unauthorized priest may address the students.

'Retreats and days of recollection form an integral part of our religious program in the Catholic schools.'

Religious factors are used in the selection of students:

'Although wealth should never serve as a criterion for accepting a pupil into a Catholic school, all other ***640** things being equal, it would seem fair to give preference to a child whose parents support the parish. Regular use of the budget, rather than the size of the contributions, would appear equitable. It indicates whether parents regularly attend Mass.'

These are only highlights of the handbook. But they indicate how pervasive is the religious control over the school and how remote this type of school is from the secular school. Public funds supporting that structure are used to perpetuate a doctrine and creed in innumerable and in pervasive ways. Those who man these schools are good people, zealous people, dedicated people. But they are dedicated to ideas that the Framers of our Constitution placed beyond the reach of government.

If the government closed its eyes to the manner in which these grants are actually used it would be allowing public funds to promote sectarian education. If it did not close its eyes but undertook the surveillance needed, it would, I fear, intermeddle in parochial affairs in a way that would breed only rancor and dissension.

We have announced over and over again that the use of taxpayers' money to support parochial schools violates the First Amendment, applicable to the States by virtue of the Fourteenth.

****2125** We said in unequivocal words in Everson v. Board of Education, 330 U.S. 1, 16, 67 S.Ct. 504, 511, 91 L.Ed. 711, 'No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.' We reiterated the same idea in Zorach v. Clauson, 343 U.S. 306, 314, 72 S.Ct. 679, 684, 96 L.Ed. 954, and in McGowan v. Maryland, 366 U.S. 420, 443, 8u S.Ct. 1101, 1114, 6 L.Ed.2d 393, and in Torcaso v. Watkins, 367 U.S. 488, 493, 81 S.Ct. 1680, 1682, 6 L.Ed.2d 982. We repeated the same idea in McCollum v. Board of Education, 333 U.S. 203, 210, 68 S.Ct. 461, 464, 92 L.Ed. 648, and added that a State's ***641** tax-supported public schools could not be used 'for the dissemination of religious doctrines' nor could a State provide the church 'pupils for their religious classes through use of the state's compulsory public school machinery.' Id., at 212, 68 S.Ct., at 466.

Yet in spite of this long and consistent history there are those who have the courage to announce that a State may nonetheless finance the secular part of a sectarian school's educational program. That, however, makes a grave constitutional decision turn merely on cost accounting and bookkeeping entries. A history class, a literature class, or a science class in a parochial school is not a separate institute; it is part of the organic whole which the State subsidizes. The funds are used in these cases to pay or help pay the salaries of teachers in parochial schools; and the presence of teachers is critical to the essential purpose of the parochial school, viz., to advance the religious endeavors of the particular church. It matters not that the teacher receiving taxpayers' money only teaches religion a fraction of the time. Nor does it matter that he or she teaches no religion. The school is an organism living on one budget. What the taxpayers give for salaries of those who teach only the humanities or science without any trace of proseletyzing enables the school to use all of its own funds for religious training. As Judge Coffin said, 316 F.Supp. 112, 120, we would be blind to realities if we let 'sophisticated bookkeeping' sanction 'almost total subsidy of a religious institution by assigning the bulk of the institution's expenses to 'secular' activities.' And sophisticated attempts to avoid the Constitution are just as invalid as simple-minded ones. Lane v. Wilson, 307 U.S. 268, 275, 59 S.Ct. 872, 876, 83 L.Ed. 1281.

In my view the taxpayers' forced contribution to the ***642** parochial schools in the present cases violates the First Amendment.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Mr. Justice MARSHALL, who took no part in the consideration or decision of No. 89, see ante, p. 2117, while intimating no view as to the continuing vitality of Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), concurs in MR. JUSTICE DOUGLAS' opinion covering Nos. 569 and 570.

U.S.Pa. 1971.
Lemon v. Kurtzman
403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Supreme Court of the United States
NATIONAL ASSOCIATION FOR the ADVANCEMENT OF COLORED PEOPLE, a Corporation, Petitioner,
v.
STATE OF ALABAMA, ex rel. John PATTERSON, Attorney General.

No. 91.
Argued Jan. 15, 1958.
Decided June 30, 1958.

Suit against association to oust it from state and enjoin it from conducting further activities, wherein the association was adjudged in contempt for noncompliance with order requiring it to produce records including names of its members. The Supreme Court of Alabama denied certiorari to review the adjudication, 265 Ala. 349, 91 So.2d 214, and the association brought certiorari. The Supreme Court, Mr. Justice Harlan, held that order requiring association to produce records including names and addresses of all members and agents was a denial of due process as entailing likelihood of a substantial restraint upon members' exercise of their right to freedom of association.

Reversed and remanded.

West Headnotes

[1] Pretrial Procedure 307A ⚿434

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(E) Production of Documents and Things and Entry on Land
307AII(E)6 Failure to Comply; Sanctions
307Ak434 k. In general. Most Cited Cases
(Formerly 127k107 Discovery)

Under Alabama law, effect of contempt adjudication based on violation of order to produce records in suit for ouster of association from state was to foreclose association from obtaining a hearing on merits of the underlying ouster action, or from taking any steps to dissolve temporary restraining order which had been issued ex parte, until it purged itself of contempt.

[2] Federal Courts 170B ⚿504.1

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk504 Nature of Decisions or Questions Involved
170Bk504.1 k. In general. Most Cited Cases
(Formerly 170Bk504, 106k3971/2, 106k397)

The United States Supreme Court granted certiorari to review contempt judgment against association, because of importance of questions presented concerning right to compel association to produce records including membership lists. U.S.C.A.Const. Amend. 14.

[3] Federal Courts 170B ⚿502

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk502 k. Federal question as essential to decisions. Most Cited Cases
(Formerly 106k391(4))

Jurisdiction of United States Supreme Court to review by certiorari the denial of certiorari by state supreme court is not defeated, on theory that state court's decision rests on an independent nonfederal ground, if such nonfederal ground is without any fair or substantial support.

[4] Federal Courts 170B ⚿502

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

170Bk502 k. Federal question as essential to decisions. Most Cited Cases
(Formerly 106k391(4))

In certiorari attacking judgment of state court on constitutional grounds, wherein jurisdiction of United States Supreme Court is denied on theory that state court's decision rests on an independent nonfederal ground, Supreme Court must ascertain, in order that constitutional guarantees may appropriately be enforced, whether the asserted nonfederal ground independently and adequately supports the judgment.

[5] Federal Courts 170B ⚿502

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk502 k. Federal question as essential to decisions. Most Cited Cases
(Formerly 106k391(4))

State court's refusal to review federal constitutional questions in certiorari proceeding on ground that mandamus was proper mode of obtaining review was without fair or substantial support, in view of inconsistency with prior holdings of same court, and hence was not such an independent nonfederal ground as would deprive United States Supreme Court of jurisdiction to review the constitutional questions.

[6] Contempt 93 ⚿67

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k67 k. Certiorari. Most Cited Cases

Mandamus 250 ⚿54

250 Mandamus
250II Subjects and Purposes of Relief
250II(A) Acts and Proceedings of Courts, Judges, and Judicial Officers
250k54 k. Enforcement of judgment or order in general. Most Cited Cases

Under Alabama law, as indicated by Alabama decisions, an order requiring production of evidence may be reviewed on petition for mandamus, but mandamus is not exclusive remedy for reviewing court orders after disobedience of them has led to contempt judgments, and review thereof by certiorari is not restricted to instances where defendant had no opportunity to apply for mandamus.

[7] Federal Courts 170B ⚿502

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk502 k. Federal question as essential to decisions. Most Cited Cases
(Formerly 106k391(4))

A local procedural rule, although appearing in retrospect to form part of a consistent pattern of procedures to obtain appellate review in state court, could not avail the state as ground for avoiding review of constitutional question by United States Supreme Court on theory that such local rule was an independent nonfederal ground for state court's decision, where petitioner for certiorari could not fairly be deemed to have been apprised of existence of such rule.

[8] Federal Courts 170B ⚿502

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk502 k. Federal question as essential to decisions. Most Cited Cases
(Formerly 106k391(4))

Novelty in procedural requirements cannot be permitted to thwart review in United States Supreme Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights.

[9] Federal Courts 170B ⚿502

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

170Bk502 k. Federal question as essential to decisions. Most Cited Cases
(Formerly 106k391(4))

Where state supreme court, in denying motion for stay of contempt judgment, stated in opinion that proper method of reviewing judgment for contempt of the kind involved was by certiorari, and prior decisions of same court indicated that certiorari was available mode of review, contemnor was justified in relying thereon by bringing certiorari in state court, and hence United States Supreme Court did not lack jurisdiction to review constitutional questions involved on theory that state court's denial of certiorari rested on independent nonfederal ground that certiorari was the wrong remedy.

[10] Constitutional Law 92 ⚿695

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)3 Particular Questions or Grounds of Attack in General
92k695 k. In general. Most Cited Cases
(Formerly 92k42.3(1), 92k42)

In certiorari to review adjudication of contempt against association, nexus of association with its members was sufficient to enable association to assert constitutional rights pertaining to the members, against compelled disclosure of membership lists, though members were not parties to the litigation.

[11] Constitutional Law 92 ⚿665

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)1 In General
92k665 k. In general. Most Cited Cases
(Formerly 92k42(1), 92k42)

Constitutional Law 92 ⚿667

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)1 In General
92k667 k. Third-party standing in general. Most Cited Cases
(Formerly 92k42(1), 92k42)

The general rule that parties must rely only on constitutional rights which are personal to themselves is related to the broader doctrine that constitutional adjudication should where possible be avoided, and is not disrespected where constitutional rights of persons who are not immediately before the court cannot be effectively vindicated except through an appropriate representative before the court.

[12] Pretrial Procedure 307A ⚿412

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(E) Production of Documents and Things and Entry on Land
307AII(E)4 Proceedings
307Ak412 k. Order. Most Cited Cases
(Formerly 127k101 Discovery)

Reasonable likelihood that association itself, through diminished financial support and membership, might be adversely affected if production of membership list were compelled, tends to give association standing to complain of the production order on behalf of its members.

[13] Constitutional Law 92 ⚿1430

92 Constitutional Law
92XIV Right of Assembly
92k1430 k. In general. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ⚿1545

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1545 k. In general. Most Cited Cases
(Formerly 92k90.1(1), 92k90)

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

As affecting the close nexus between freedoms of speech and assembly, effective advocacy of both public and private points of view, particularly controversial ones, is enhanced by group association.

[14] Constitutional Law 92 ⚿4035

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)1 In General
92k4035 k. Association. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

Freedom to engage in association for advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by due process clause, which embraces freedom of speech. U.S.C.A.Const. Amend. 14.

[15] Constitutional Law 92 ⚿4035

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)1 In General
92k4035 k. Association. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

Under due process clause, it is immaterial whether beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters. U.S.C.A.Const. Amend. 14.

[16] Constitutional Law 92 ⚿4035

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)1 In General
92k4035 k. Association. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

State action which may have effect of curtailing freedom to associate is subject to the closest scrutiny under due process clause. U.S.C.A.Const. Amend. 14.

[17] Constitutional Law 92 ⚿975

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)2 Necessity of Determination
92k975 k. In general. Most Cited Cases
(Formerly 92k46(1))

The fact that state had taken no direct action to restrict rights of association's members to associate freely did not end inquiry into effect of order requiring production of membership lists under due process clause. U.S.C.A.Const. Amend. 14.

[18] Constitutional Law 92 ⚿1440

92 Constitutional Law
92XVI Freedom of Association
92k1440 k. In general. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ⚿1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In general. Most Cited Cases
(Formerly 92k90.1(1), 92k90)

Constitutional Law 92 ⚿2070

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(U) Press in General
92k2070 k. In general. Most Cited Cases
(Formerly 92k90.1(1), 92k90)

Abridgment of indispensable liberties of speech, press or association, though unintended, may inevita-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

bly follow from varied forms of governmental action. U.S.C.A.Const. Amend. 14.

[19] Constitutional Law 92 ⚿1440

92 Constitutional Law
92XVI Freedom of Association
92k1440 k. In general. Most Cited Cases
(Formerly 92k91)

Vital relationship exists between freedom to associate and privacy in one's associations. U.S.C.A.Const. Amend. 14.

[20] Constitutional Law 92 ⚿1430

92 Constitutional Law
92XIV Right of Assembly
92k1430 k. In general. Most Cited Cases
(Formerly 92k91)

Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs constitutes interference with freedom of assembly. U.S.C.A.Const. Amend. 14.

[21] Constitutional Law 92 ⚿1440

92 Constitutional Law
92XVI Freedom of Association
92k1440 k. In general. Most Cited Cases
(Formerly 92k91)

Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where group espouses dissident beliefs.

[22] Constitutional Law 92 ⚿4446

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)21 Private Organizations
92k4446 k. Corporations and limited liability companies. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

In suit to oust from state of Alabama, a New York nonprofit membership corporation, order requiring association to produce records including names and addresses of all members and agents was a denial of due process as entailing likelihood of a substantial restraint upon exercise by members of their right to freedom of association. Code Ala. 1940, Tit. 10, §§ 192-198; U.S.C.A.Const. Amend. 14.

[23] Constitutional Law 92 ⚿4445

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)21 Private Organizations
92k4445 k. In general. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

That repressive effect of compulsory disclosure of names of association's members upon members' right to associate would allegedly follow from private community pressures rather than state action would not prevent such disclosure from being denial of due process. U.S.C.A.Const. Amend. 14.

[24] Constitutional Law 92 ⚿3942

92 Constitutional Law
92XXVII Due Process
92XXVII(D) Applicability to Governmental or Private Conduct; State Action
92k3942 k. Government approval of or acquiescence in private conduct. Most Cited Cases
(Formerly 92k253(1), 92k253)

In determining whether due process of law has been denied by private community pressures subsequent to state action, the crucial factor is interplay of governmental and private action. U.S.C.A.Const. Amend. 14.

[25] Constitutional Law 92 ⚿1440

92 Constitutional Law
92XVI Freedom of Association
92k1440 k. In general. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

In determining whether state's interest in obtaining disclosure of names of association's members was sufficient to justify restriction of constitutionally protected right of association, it was not of moment that state had acted solely through its judicial branch. U.S.C.A.Const. Amend. 14.

[26] Constitutional Law 92 ⚿1440

92 Constitutional Law
92XVI Freedom of Association
92k1440 k. In general. Most Cited Cases
(Formerly 92k274.1(1), 92k274)

State's interest in obtaining names of ordinary rank-and-file members of association incorporated in another state, as distinguished from members employed by or holding official positions with association, was insufficient to justify resulting restriction on freedom of association, where association was willing to furnish other information concerning its purposes and activities, and to comply with state qualification statute, although preserving contention that statute was inapplicable to it. Code Ala.1940, Tit. 10, §§ 192-198; U.S.C.A.Const. Amend. 14.

[27] Constitutional Law 92 ⚿4493

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)25 Other Particular Issues and Applications
92k4492 Contempt
92k4493 k. In general. Most Cited Cases
(Formerly 92k273)

Where order requiring association to produce records including names of its members was invalid as violating constitutional right of freedom of association, judgment of contempt and fine for noncompliance with such order were invalid.

[28] Federal Courts 170B ⚿509

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk509 k. Mode of review and proceedings. Most Cited Cases
(Formerly 106k3971/2, 106k397)

Where state supreme court noted in its denial of petition for certiorari to review contempt adjudication that such petition raised solely questions pertinent to the contempt adjudication, constitutionality of temporary restraining order preventing association from soliciting support in state was not properly before United States Supreme Court for review on certiorari.

[29] Federal Courts 170B ⚿504.1

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk504 Nature of Decisions or Questions Involved
170Bk504.1 k. In general. Most Cited Cases
(Formerly 170Bk504, 106k3971/2, 30k4)

The proper method for raising questions in Alabama appellate courts pertaining to suit for injunction against foreign association's continuing activities within the state would be by appeal, after hearing on merits and final judgment by lower state court, and only from disposition of such an appeal could review of restraining order in such suit be sought in United States Supreme Court.

****1166** ***450** Mr. Robert L. Carter, New York City, for petitioner.

Mr. Edmon L. Rinehart, Montgomery, Ala., for respondent.

***451** Mr. Justice HARLAN delivered the opinion of the Court.

We review from the standpoint of its validity under the Federal Constitution a judgment of civil contempt entered against petitioner, the National Association for the Advancement of Colored People, in the courts of Alabama. The question presented is whether Alabama, consistently with the Due Process Clause of the Fourteenth Amendment, can compel petitioner to reveal to the State's Attorney General the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

names and addresses of all its Alabama members and agents, without regard to their positions or functions in the Association. The judgment of contempt was based upon petitioner's refusal to comply fully with a court order requiring in part the production of membership lists. Petitioner's claim is that the order, in the circumstances shown by this record, violated rights assured to petitioner and its members under the Constitution.

Alabama has a statute similar to those of many other States which requires a foreign corporation, except as exempted, to qualify before doing business by filing its corporate charter with the Secretary of State and designating a place of business and an agent to receive service of process. The statute imposes a fine on a corporation transacting intrastate business before qualifying and provides for criminal prosecution of officers of such a corporation. Ala.Code, 1940, Tit. 10, ss 192-198. The National Association for the Advancement of Colored People is a nonprofit membership corporation organized under the laws of New York. Its purposes, fostered on a nationwide basis, are those indicated by its name,[FN*] and it operates***452** through chartered affiliates which are independent unincorporated associations, with membership therein equivalent to membership in petitioner. The first Alabama affiliates were chartered in 1918. Since that time the aims of the Association have been advanced through activities of its affiliates, and in 1951 the Association itself opened a regional office in Alabama, at which it employed two supervisory persons and one clerical worker. The Association has never complied with the qualification statute, from which it considered itself exempt.

> FN* The Certificate of Incorporation of the Association provides that its '* * * principal objects * * * are voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.'

In 1956 the Attorney General of Alabama brought an equity suit in the State Circuit Court, Montgomery County, to ****1167** enjoin the Association from conducting further activities within, and to oust it from, the State. Among other things the bill in equity alleged that the Association had opened a regional office and had organized various affiliates in Alabama; had recruited members and solicited contributions within the State; had given financial support and furnished legal assistance to Negro students seeking admission to the state university; and had supported a Negro boycott of the bus lines in Montgomery to compel the seating of passengers without regard to race. The bill recited that the Association, by continuing to do business in Alabama without complying with the qualification statute, was '* * * causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama for which criminal prosecution and civil actions at law afford no adequate relief * * *.' On the day the complaint was filed, the Circuit Court issued ex parte an order restraining the Association, pendente lite, from engaging in ***453** further activities within the State and forbidding it to take any steps to qualify itself to do business therein.

Petitioner demurred to the allegations of the bill and moved to dissolve the restraining order. It contended that its activities did not subject it to the qualification requirements of the statute and that in any event what the State sought to accomplish by its suit would violate rights to freedom of speech and assembly guaranteed under the Fourteenth Amendment to the Constitution of the United States. Before the date set for a hearing on this motion, the State moved for the production of a large number of the Association's records and papers, including bank statements, leases, deeds, and records containing the names and addresses of all Alabama 'members' and 'agents' of the Association. It alleged that all such documents were necessary for adequate preparation for the hearing, in view of petitioner's denial of the conduct of intrastate business within the meaning of the qualification statute. Over petitioner's objections, the court ordered the production of a substantial part of the requested records, including the membership lists, and postponed the hearing on the restraining order to a date later than the time ordered for production.

Thereafter petitioner filed its answer to the bill in equity. It admitted its Alabama activities substantially as alleged in the complaint and that it had not quali-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

fied to do business in the State. Although still disclaiming the statute's application to it, petitioner offered to qualify if the bar from qualification made part of the restraining order were lifted, and it submitted with the answer an executed set of the forms required by the statute. However petitioner did not comply with the production order, and for this failure was adjudged in civil contempt and fined $10,000. The contempt judgment provided that the fine would be subject to reduction or remission if compliance ***454** were forthcoming within five days but otherwise would be increased to $100,000.

[1] At the end of the five-day period petitioner produced substantially all the data called for by the production order except its membership lists, as to which it contended that Alabama could not constitutionally compel disclosure, and moved to modify or vacate the contempt judgment, or stay it execution pending appellate review. This motion was denied. While a similar stay application, which was later denied, was pending before the Supreme Court of Alabama, the Circuit Court made a further order adjudging petitioner in continuing contempt and increasing the fine already imposed to $100,000. Under Alabama law, see Jacoby v. Goetter, Weil & Co., 74 Ala. 427, the effect of the contempt adjudication was to foreclose petitioner from obtaining a hearing on the merits of the underlying ouster action, or from taking any steps to dissolve the temporary restraining order which had been issued ex ****1168** parte, until it purged itself of contempt. But cf. Harrison v. St. Louis & S.F.R. Co., 232 U.S. 318, 34 S.Ct. 333, 58 L.Ed. 621; Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215.

[2] The State Supreme Court thereafter twice dismissed petitions for certiorari to review this final contempt judgment, the first time, 265 Ala. 699, 91 So.2d 221, for insufficiency of the petition's allegations and the second time on procedural grounds. 265 Ala. 349, 91 So.2d 214. We granted certiorari because of the importance of the constitutional questions presented. 353 U.S. 972, 77 S.Ct. 1056, 1 L.Ed.2d 1135.

I.

[3][4] We address ourselves first to respondent's contention that we lack jurisdiction because the denial of certiorari by the Supreme Court of Alabama rests on an independent nonfederal ground, namely, that petitioner in applying for certiorari had pursued the wrong appellate ***455** remedy under state law. Respondent recognizes that our jurisdiction is not defeated if the nonfederal ground relied on by the state court is 'without any fair or substantial support,' Ward v. Board of County Commissioners, 253 U.S. 17, 22, 40 S.Ct. 419, 421, 64 L.Ed. 751. It thus becomes our duty to ascertain, '* * * in order that constitutional guaranties may appropriately be enforced, whether the asserted non-federal ground independently and adequately supports the judgment.' Abie State Bank v. Bryan, 282 U.S. 765, 773, 51 S.Ct. 252, 255, 75 L.Ed. 690.

The Alabama Supreme Court held that it could not consider the constitutional issues underlying the contempt judgment which related to the power of the State to order production of membership lists because review by certiorari was limited to instances '* * * where the court lacked jurisdiction of the proceeding, or where on the face of it the order disobeyed was void, or where procedural requirements with respect to citation for contempt and the like were not observed, or where the fact of contempt is not sustained * * *.' 265 Ala. at page 353, 91 So.2d at page 217. The proper means for petitioner to obtain review of the judgment in light of its constitutional claims, said the court, was by way of mandamus to quash the discovery order prior to the contempt adjudication. Because of petitioner's failure to pursue this remedy, its challenge to the contempt order was restricted to the above grounds. Apparently not deeming the constitutional objections to draw into question whether 'on the face of it the order disobeyed was void,' the court found no infirmity in the contempt judgment under this limited scope of review. At the same time it did go on to consider petitioner's constitutional challenge to the order to produce membership lists but found it untenable since membership lists were not privileged against disclosure pursuant to reasonable state demands and since the privilege against self-incrimination was not available to corporations.

***456** [5] We are unable to reconcile the procedural holding of the Alabama Supreme Court in the present case with its past unambiguous holdings as to the scope of review available upon a writ of certiorari addressed to a contempt judgment. As early as 1909 that court said in such a case, Ex parte Dickens, 162 Ala. 272, at pages 276, 279-280, 50 So. 218, at pages 220, 221:

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

'Originally, on certiorari, only the question of jurisdiction was inquired into; but this limit has been removed, and now the court 'examines the law questions involved in the case which may affect its merits.' * * * (T)he judgment of this court is that the proper way to review the action of the court in cases of this kind is by certiorari, and not by appeal.

'We think that certiorari is a better remedy than mandamus, because **1169 the office of a 'mandamus' is to require the lower court or judge to act, and not 'to correct error or to reverse judicial action,' * * * whereas, in a proceeding by certiorari, errors of law in the judicial action of the lower court may be inquired into and corrected.'

This statement was in full accord with the earlier case of Ex parte Boscowitz, 84 Ala. 463, 4 So. 279, and the practice in the later Alabama cases, until we reach the present one, appears to have been entirely consistent with this rule. See Ex parte Wheeler, 231 Ala. 356, 357, 165 So. 74, 75-76; Ex parte Blakey, 240 Ala. 517, 199 So. 857; Ex parte Sellers, 250 Ala. 87, 88, 33 So.2d 349, 350. For example, in Ex parte Morris, 252 Ala. 551, 42 So.2d 17, decided as late as 1949, the petitioner had been held in contempt for his refusal to obey a court order to produce names of members of the Ku Klux Klan. On writ of certiorari, constitutional grounds were urged in part for *457 reversal of the contempt conviction. In denying the writ of certiorari, the Supreme Court concluded that petitioner had been accorded due process, and in explaining its denial the court considered and rejected various constitutional claims relating to the validity of the order. There was no intimation that the petitioner had selected an inappropriate form of appellate review to obtain consideration of all questions of law raised by a contempt judgment.

[6][7][8] The Alabama cases do indicate, as was said in the opinion below, that an order requiring production of evidence '* * * may be reviewed on petition for mandamus.' 265 Ala. at page 353, 91 So.2d at page 217. (Italics added.) See Ex parte Hart, 240 Ala. 642, 200 So. 783; cf. Ex parte Driver, 255 Ala. 118, 50 So.2d 413. But we can discover nothing in the prior state cases which suggests that mandamus is the exclusive remedy for reviewing court orders after disobedience of them has led to contempt judgments. Nor, so far as we can find, do any of these prior decisions indicate that the validity of such orders can be drawn in question by way of certiorari only in instances where a defendant had no opportunity to apply for mandamus. Although the opinion below suggests no such distinction, the State now argues that this was in fact the situation in all of the earlier certiorari cases, because there the contempt adjudications, unlike here, had followed almost immediately the disobedience to the court orders. Even if that is indeed the rationale of the Alabama Supreme Court's present decision, such a local procedural rule, although it may now appear in retrospect to form part of a consistent pattern of procedures to obtain appellate review, cannot avail the State here, because petitioner could not fairly be deemed to have been apprised of its existence. Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional*458 rights. Cf. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 S.Ct. 451, 74 L.Ed. 1107.

[9] That there was justified reliance here is further indicated by what the Alabama Supreme Court said in disposing of petitioner's motion for a stay of the first contempt judgment in this case. This motion, which was filed prior to the final contempt judgment and which stressed constitutional issues, recited that '(t)he only way in which the (Association) can seek a review of the validity of the order upon which the adjudication of contempt is based (is) by filing a petition for Writ of Certiorari in this Court.' In denying the motion, 265 Ala. 356, 357, 91 So.2d 220, 221, the Supreme Court stated:

'It is the established rule of this Court that the proper method of reviewing a judgment for civil contempt of the kind here involved is **1170 by a petition for common law writ of certiorari * * *.

'But the petitioner here has not applied for writ of certiorari, and we do not feel that the petition (for a stay) presently before us warrants our interference with the judgment of the Circuit Court of Montgomery County here sought to be stayed.'

We hold that this Court has jurisdiction to entertain petitioner's federal claims.

II.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

[10] The Association both urges that it is constitutionally entitled to resist official inquiry into its membership lists, and that it may assert, on behalf of its members, a right personal to them to be protected from compelled disclosure by the State of their affiliation with the Association as revealed by the membership lists. We think that petitioner argues more appropriately the rights of its members, and that its nexus with them is sufficient to permit that it act as their representative before this ***459** Court. In so concluding, we reject respondent's argument that the Association lacks standing to assert here constitutional rights pertaining to the members, who are not of course parties to the litigation.

[11] To limit the breadth of issues which must be dealt with in particular litigation, this Court has generally insisted that parties rely only on constitutional rights which are personal to themselves. Tileston v. Ullman, 318 U.S. 44, 63 S.Ct. 493, 87 L.Ed. 603; Robertson and Kirkham, Jurisdiction of the Supreme Court (1951 ed.) s 293. This rule is related to the broader doctrine that constitutional adjudication should where possible be avoided. See Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-348, 56 S.Ct. 466, 482-483, 80 L.Ed. 688 (concurring opinion). The principle is not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court. See Barrows v. Jackson, 346 U.S. 249, 255-259, 73 S.Ct. 1031, 1034-1036, 97 L.Ed. 1586; Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 183-187, 71 S.Ct. 624, 654-656, 95 L.Ed. 817 (concurring opinion).

[12] If petitioner's rank-and-file members are constitutionally entitled to withhold their connection with the Association despite the production order, it is manifest that this right is properly assertable by the Association. To require that it be claimed by the members themselves would result in nullification of the right at the very moment of its assertion. Petitioner is the appropriate party to assert that rights, because it and its members are in every practical sense identical. The Association, which provides in its constitution that '(a)ny person who is in accordance with (its) principles and policies * * *' may become a member, is but the medium through which its individual members seek to make more effective the expression of their own views. The reasonable likelihood that the Association itself through diminished financial support and membership may be adversely ***460** affected if production is compelled is a further factor pointing towards our holding that petitioner has standing to complain of the production order on behalf of its members. Cf. Pierce v. Society of Sisters, 268 U.S. 510, 534-536, 45 S.Ct. 571, 573-574, 69 L.Ed. 1070.

III.

We thus reach petitioner's claim that the production order in the state litigation trespasses upon fundamental freedoms protected by the Due Process Clause of the Fourteenth Amendment. Petitioner argues that in view of the facts and circumstances shown in the record, the effect of compelled disclosure of the membership lists will be to abridge the rights of its rank-and-file members to engage in lawful association in support****1171** of their common beliefs. It contends that governmental action which, although not directly suppressing association, nevertheless carries this consequence, can be justified only upon some overriding valid interest of the State.

[13][14][15][16] Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. De Jonge v. Oregon, 299 U.S. 353, 364, 57 S.Ct. 255, 259, 81 L.Ed. 278; Thomas v. Collins, 323 U.S. 516, 530, 65 S.Ct. 315, 322, 89 L.Ed. 430. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. See Gitlow v. New York, 268 U.S. 652, 666, 45 S.Ct. 625, 629, 69 L.Ed. 1138; Palko v. Connecticut, 302 U.S. 319, 324, 58 S.Ct. 149, 151, 82 L.Ed. 288; Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213; Staub v. City of Baxley, 355 U.S. 313, 321, 78 S.Ct. 277, 281, 2 L.Ed.2d 302. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the ***461** effect of curtailing the freedom to associate is subject to the closest scrutiny.

[17][18] The fact that Alabama, so far as is relevant to the validity of the contempt judgment pres-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ently under review, has taken no direct action, cf. De Jonge v. Oregon, supra; Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357, to restrict the right of petitioner's members to associate freely, does not end inquiry into the effect of the production order. See American Communications Ass'n v. Douds, 339 U.S. 382, 402, 70 S.Ct. 674, 685, 94 L.Ed. 925. In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action. Thus in Douds, the Court stressed that the legislation there challenged, which on its face sought to regulate labor unions and to secure stability in interstate commerce, would have the practical effect 'of discouraging' the exercise of constitutionally protected political rights, 339 U.S. at page 393, 70 S.Ct. at page 681, and it upheld that statute only after concluding that the reasons advanced for its enactment were constitutionally sufficient to justify its possible deterrent effect upon such freedoms. Similar recognition of possible unconstitutional intimidation of the free exercise of the right to advocate underlay this Court's narrow construction of the authority of a congressional committee investigating lobbying and of an Act regulating lobbying, although in neither case was there an effort to suppress speech. United States v. Rumely, 345 U.S. 41, 46-47, 73 S.Ct. 543, 546, 97 L.Ed. 770; United States v. Harriss, 347 U.S. 612, 625-626, 74 S.Ct. 808, 815-816, 98 L.Ed. 989. The governmental action challenged may appear to be totally unrelated to protected liberties. Statutes imposing taxes upon rather than prohibiting particular activity have been struck down when perceived to have the consequence of unduly curtailing the liberty of freedom of press assured under the Fourteenth Amendment. ***462**Grosjean v. American Press Co., 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660; Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 891, 87 L.Ed. 1292.

[19][20][21] It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the ****1172** vital relationship between freedom to associate and privacy in one's associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in American Communications Ass'n v. Douds, supra, 339 U.S. at page 402, 70 S.Ct. at page 686: 'A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature.' Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs. Cf. United States v. Rumely, supra, 345 U.S. at pages 56-58, 73 S.Ct. at pages 550-551 (concurring opinion).

[22] We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and ***463** its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.

[23][24] It is not sufficient to answer, as the State does here, that whatever repressive effect compulsory disclosure of names of petitioner's members may have upon participation by Alabama citizens in petitioner's activities follows not from state action but from private community pressures. The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power represented by the production order that private action takes hold.

[25] We turn to the final question whether Alabama has demonstrated an interest in obtaining the disclosures it seeks from petitioner which is sufficient to justify the deterrent effect which we have concluded these disclosures may well have on the free

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

exercise by petitioner's members of their constitutionally protected right of association. See American Communications Ass'n v. Douds, supra, 339 U.S. at page 400, 70 S.Ct. at page 684; Schneider v. State,308 U.S. 147, 161, 60 S.Ct. 146, 150, 84 L.Ed. 155. Such a '* * * subordinating interest of the State must be compelling.' Sweezy v. New Hampshire, 354 U.S. 234, 265, 77 S.Ct. 1203, 1219, 1 L.Ed.2d 1311 (concurring opinion). It is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize.

[26] It is important to bear in mind that petitioner asserts no right to absolute immunity from state investigation, and no right to disregard Alabama's laws. As shown by its substantial compliance with the production order, petitioner does not deny Alabama's right to obtain from it such information as the State desires concerning the purposes***464** of the Association and its activities within the State. Petitioner has not objected to divulging the identity of its members who are employed by or hold official positions with it. ****1173** It has urged the rights solely of its ordinary rank-and-file members. This is therefore not analogous to a case involving the interest of a State in protecting its citizens in their dealings with paid solicitors or agents of foreign corporations by requiring identifications. See Cantwell v. Connecticut, supra, 310 U.S. at page 306, 60 S.Ct. at page 904; Thomas v. Collins, supra, 323 U.S. at page 538, 65 S.Ct. at page 326.

Whether there was 'justification' in this instance turns solely on the substantiality of Alabama's interest in obtaining the membership lists. During the course of a hearing before the Alabama Circuit Court on a motion of petitioner to set aside the production order, the State Attorney General presented at length, under examination by petitioner, the State's reason for requesting the membership lists. The exclusive purpose was to determine whether petitioner was conducting intrastate business in violation of the Alabama foreign corporation registration statute, and the membership lists were expected to help resolve this question. The issues in the litigation commenced by Alabama by its bill in equity were whether the character of petitioner and its activities in Alabama had been such as to make petitioner subject to the registration statute, and whether the extent of petitioner's activities without qualifying suggested its permanent ouster from the State. Without intimating the slightest view upon the merits of these issues, we are unable to perceive that the disclosure of the names of petitioner's rank-and-file members has a substantial bearing on either of them. As matters stand in the state court, petitioner (1) has admitted its presence and conduct of activities in Alabama since 1918; (2) has offered to comply in all respects with the state qualification statute, although preserving***465** its contention that the statute does not apply to it; and (3) has apparently complied satisfactorily with the production order, except for the membership lists, by furnishing the Attorney General with varied business records, its charter and statement of purposes, the names of all of its directors and officers, and with the total number of its Alabama members and the amount of their dues. These last items would not on this record appear subject to constitutional challenge and have been furnished, but whatever interest the State may have in obtaining names of ordinary members has not been shown to be sufficient to overcome petitioner's constitutional objections to the production order.

From what has already been said, we think it apparent that People of State of New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 49 S.Ct. 61, 73 L.Ed. 184, cannot be relied on in support of the State's position, for that case involved markedly different considerations in terms of the interest of the State in obtaining disclosure. There, this Court upheld as applied to a member of a local chapter of the Ku Klux Klan, a New York statute requiring any unincorporated association which demanded an oath as a condition to membership to file with state officials copies of its '* * * constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year.' N.Y. Laws 1923, c. 664, ss 53, 56. In its opinion, the Court took care to emphasize the nature of the organization which New York sought to regulate. The decision was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence, which the Court assumed was before the state legislature when it enacted the statute, and of which the Court itself took judicial notice. Furthermore, the situation before us is significantly different from that in Bryant, because the organization there had made no effort to comply with ***466** any of the requirements of New York's statute but rather had refused to furnish the State with

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

any information as to its local activities.

**1174 [27] We hold that the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment. And we conclude that Alabama has fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have. Accordingly, the judgment of civil contempt and the $100,000 fine which resulted from petitioner's refusal to comply with the production order in this respect must fall.

IV.

[28][29] Petitioner joins with its attack upon the production order a challenge to the constitutionality of the State's ex parte temporary restraining order preventing it from soliciting support in Alabama, and it asserts that the Fourteenth Amendment precludes such state action. But as noted above, petitioner has never received a hearing on the merits of the ouster suit, and we do not consider these questions properly here. The Supreme Court of Alabama noted in its denial of the petition for certiorari that such petition raised solely a question pertinent to the contempt adjudication. 'The ultimate aim and purpose of the litigation is to determine the right of the state to enjoin petitioners from doing business in Alabama. That question, however, is not before us in this proceeding.' 265 Ala. at page 352, 91 So.2d at page 216. The proper method for raising questions in the state appellate courts pertinent to the underlying suit for an injunction appears *467 to be by appeal, after a hearing on the merits and final judgment by the lower state court. Only from the disposition of such an appeal can review be sought here.

For the reasons stated, the judgment of the Supreme Court of Alabama must be reversed and the case remanded for proceedings not inconsistent with this opinion.

Reversed.

U.S. 1958.
National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson

357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Supreme Court of the United States
SHELLEY et ux.
v.
KRAEMER et ux.
McGHEE et ux.
v.
SIPES et al.

Nos. 72, 87.
Argued Jan. 15, 16, 1948.
Decided May 3, 1948.

Suit by Louis Kraemer and wife against J. D. Shelley and wife to enforce restrictive covenants against occupancy or ownership of property by people of the Negro race. A judgment for defendants was reversed by the Supreme Court of Missouri, 355 Mo. 814, 198 S.W.2d 679, and the defendants bring certiorari.

Reversed.

Suit by Benjamin J. Sipes and others against Orsel McGhee and wife to enforce a covenant that property should not be used or occupied by any person except those of the Caucasian race. A judgment for plaintiffs was affirmed by the Supreme Court of Michigan, 316 Mich. 614, 25 N.W.2d 638, and the defendants bring certiorari.

Reversed.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

West Headnotes

[1] Federal Courts 170B 613

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk612 Nature or Subject-Matter of Issues or Questions
170Bk613 k. Constitutional Questions. Most Cited Cases
(Formerly 30k170(2))

The court on appeal will not consider constitutional questions not raised below.

[2] Constitutional Law 92 3495

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)3 Property in General
92k3495 k. In General. Most Cited Cases
(Formerly 92k225.1, 92k209)

The civil rights protected from discriminatory state action by the Fourteenth Amendment include rights to acquire, enjoy, own, and dispose of property. U.S.C.A.Const. Amend. 14.

[3] Constitutional Law 92 3027

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)4 Applicability to Governmental or Private Action; State Action
92k3027 k. Private Persons and Entities. Most Cited Cases
(Formerly 92k213(4), 92k209, 92k213(2))

The action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the state and the Amendment erects no shield against merely private contracts, however discriminatory or wrongful. U.S.C.A.Const. Amend. 14.

[4] Constitutional Law 92 3259

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)8 Race, National Origin, or Ethnicity
92k3257 Property in General
92k3259 k. Covenants and Restrictions. Most Cited Cases
(Formerly 92k220.5(2), 92k215)

Restrictive covenants based on race or color standing alone do not violate any rights guaranteed by the Fourteenth Amendment, and so long as purpose of covenants are effectuated by voluntary adherence to their terms there has been no action by state and provisions of Fourteenth Amendment have not been violated. U.S.C.A.Const. Amend. 14.

[5] Constitutional Law 92 ⚿3021

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)4 Applicability to Governmental or Private Action; State Action
92k3021 k. Branches of State Government Involved. Most Cited Cases
(Formerly 92k213(1), 92k211)

The action of state courts and of judicial officers in their official capacities is to be regarded as action of the state within the Fourteenth Amendment. U.S.C.A.Const. Amend. 14.

[6] Constitutional Law 92 ⚿3020

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)4 Applicability to Governmental or Private Action; State Action
92k3020 k. In General. Most Cited Cases
(Formerly 92k213(1), 92k211)

State action in violation of the Fourteenth Amendment is equally repugnant to the constitutional commands whether directed by state statute or taken by a judicial official in absence of statute. U.S.C.A.Const. Amend. 14.

[7] Constitutional Law 92 ⚿3953

92 Constitutional Law
92XXVII Due Process
92XXVII(E) Civil Actions and Proceedings
92k3953 k. Notice and Hearing in General. Most Cited Cases
(Formerly 92k309(1))

Constitutional Law 92 ⚿4426

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)19 Tort or Financial Liabilities
92k4426 k. Penalties, Fines, and Sanctions in General. Most Cited Cases
(Formerly 92k309(1))

The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend is a denial of due process of law guaranteed by the Fourteenth Amendment. U.S.C.A.Const. Amend. 14.

[8] Federal Courts 170B ⚿381

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk381 k. State Court Decisions in General. Most Cited Cases
(Formerly 106k365(1))

In applying rule of Erie v. Tompkins, common-law rules enunciated by state courts in judicial opinions are part of state law.

[9] Constitutional Law 92 ⚿3259

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)8 Race, National Origin, or Ethnicity

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

92k3257 Property in General
92k3259 k. Covenants and Restrictions. Most Cited Cases
(Formerly 92k220.5(2), 92k215)

Where owners of properties covered by restrictive covenants having for their purpose exclusion of persons of designated race or color from ownership or occupancy of real property were willing to sell to colored purchasers who were willing purchasers of properties on which they desired to establish homes and but for active intervention of state courts purchasers would have been free to occupy properties without restraint, action of state courts in enforcement of the restrictive covenants constituted acts of the states within the Fourteenth Amendment, and in granting judicial enforcements of the covenants, the states denied purchasers equal protection of the laws. U.S.C.A.Const. Amend. 14.

[10] Constitutional Law 92 ⚿3020

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)4 Applicability to Governmental or Private Action; State Action
92k3020 k. In General. Most Cited Cases
(Formerly 92k213(1), 92k211)

State judicial action is not immunized from operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. U.S.C.A.Const. Amend. 14.

[11] Constitutional Law 92 ⚿3020

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)4 Applicability to Governmental or Private Action; State Action
92k3020 k. In General. Most Cited Cases
(Formerly 92k213(1), 92k211)

Federal Courts 170B ⚿502

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk502 k. Federal Question as Essential to Decisions. Most Cited Cases
(Formerly 106k394(10))

State action within the Fourteenth Amendment refers to exertions of state power in all forms and when the effect of that action is to deny rights subject to protection of the Fourteenth Amendment it is the obligation of the United States Supreme Court to enforce the constitutional commands. U.S.C.A.Const. Amend. 14.

[12] Constitutional Law 92 ⚿3027

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)4 Applicability to Governmental or Private Action; State Action
92k3027 k. Private Persons and Entities. Most Cited Cases
(Formerly 92k213(4), 92k211)

The equal protection clause of the Fourteenth Amendment is not ineffective simply because the particular pattern of discrimination which state enforced was defined initially by terms of a private agreement. U.S.C.A.Const. Amend. 14.

[13] Constitutional Law 92 ⚿3259

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)8 Race, National Origin, or Ethnicity
92k3257 Property in General
92k3259 k. Covenants and Restrictions. Most Cited Cases
(Formerly 92k220.5(2), 92k212)

State court enforcement of restrictive covenants which have for their purpose the exclusion of persons of designated race or color from ownership or occupancy of real property could not be justified as proper exertion of state police power. U.S.C.A.Const. Amend. 14.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

[14] Constitutional Law 92 ⚿3259

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)8 Race, National Origin, or Ethnicity
92k3257 Property in General
92k3259 k. Covenants and Restrictions. Most Cited Cases
(Formerly 92k220.5(2), 92k215)

State court enforcement of restrictive covenants which have as their purpose the exclusion of persons of designated race or color from ownership or occupancy of real property could not be justified on ground that there was no denial of equal protection of law because state courts stand ready to enforce restrictive covenants excluding white persons from ownership or occupancy of property covered by such agreements. U.S.C.A.Const. Amend. 14.

[15] Constitutional Law 92 ⚿3010

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)3 Persons or Entities Protected
92k3010 k. In General. Most Cited Cases
(Formerly 92k210(2), 92k210)

Constitutional Law 92 ⚿3920

92 Constitutional Law
92XXVII Due Process
92XXVII(C) Persons and Entities Protected
92k3920 k. In General. Most Cited Cases
(Formerly 92k252)

The rights created by the due process and equal protection clauses of the Fourteenth Amendment are guaranteed to the individual and the rights established are personal rights. U.S.C.A.Const. Amend. 14.

[16] Constitutional Law 92 ⚿3000

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)1 In General
92k3000 k. In General. Most Cited Cases
(Formerly 92k209, 92k211)

Equal protection of laws is not achieved through indiscriminate imposition of inequalities. U.S.C.A.Const. Amend. 14.

[17] Constitutional Law 92 ⚿3259

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)8 Race, National Origin, or Ethnicity
92k3257 Property in General
92k3259 k. Covenants and Restrictions. Most Cited Cases
(Formerly 92k225.5, 92k249)

Covenants 108 ⚿104

108 Covenants
108IV Actions for Breach
108k104 k. Nature and Form of Remedy. Most Cited Cases
(Formerly 92k225.5, 92k249)

Denial of access to state courts to enforce restrictive covenants which have for their purpose exclusion of persons of designated race or color from ownership or occupancy of real property does not deny property owners who are parties to restrictive agreement equal protection of laws, since the constitution confers on no individual the right to demand action by state which results in denial of equal protection of laws to other individuals. U.S.C.A.Const. Amend. 14.

[18] Constitutional Law 92 ⚿3495

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)3 Property in General
92k3495 k. In General. Most Cited Cases
(Formerly 92k225.5, 92k211)

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

The power of state to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment. U.S.C.A.Const. Amend. 14.

[19] Constitutional Law 92 ⚿961

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)1 In General
92k960 Judicial Authority and Duty in General
92k961 k. In General. Most Cited Cases
(Formerly 92k45)

Where it is clear that action of state violates terms of the Federal Constitution, it is the obligation of the United States Supreme Court so to declare.

[20] Constitutional Law 92 ⚿3250

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)8 Race, National Origin, or Ethnicity
92k3250 k. In General. Most Cited Cases
(Formerly 92k215)

The matter of primary concern of framers of the Fourteenth Amendment was establishment of equality in enjoyment of basic civil and political rights and preservation of those rights from discriminatory action on part of States based on considerations of race and color, and the provisions of the amendment are to be construed with such fundamental purpose in mind. U.S.C.A.Const. Amend. 14.

**837 *2 Messrs. George L. Vaughn and Herman Willer, both of St. Louis, Mo., for petitioners Shelley.

*3 Mr. Gerald L. Seegers, of St. Louis, Mo., for respondents Kraemer.

Messrs. Thurgood Marshall, of New York City, Loren Miller, for petitioners McGhee.

**838 Messrs. Henry Gilligan and James A. Crooks, both of Washington, D.C. for respondents Sipes and others.

Mr. Philip B. Perlman, Sol. Gen., of Washington, D.C., for the United States, as amicus curiae, by special leave of Court.

*4 Mr. Chief Justice VINSON delivered the opinion of the Court.

These cases present for our consideration questions relating to the validity of court enforcement of private agreements, generally described as restrictive covenants, which have as their purpose the exclusion of persons of designated race or color from the ownership or occupancy of real property. Basic constitutional issues of obvious importance have been raised.

The first of these cases comes to this Court on certiorari to the Supreme Court of Missouri. On February 16, 1911, thirty out of a total of thirty-nine owners of property fronting both sides of Labadie Avenue between Taylor Avenue and Cora Avenue in the city of St. Louis, signed an agreement, which was subsequently recorded, providing in part:

'* * * the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition all the time and whether recited and referred to as (sic) not in subsequent conveyances and shall attach to the land, as a condition precedent to the sale of the same, that hereafter no part of said property or any *5 portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race.'

The entire district described in the agreement included fifty-seven parcels of lamd. The thirty owners who signed the agreement held title to forty-seven parcels, including the particular parcel involved in this case. At the time the agreement was signed, five of the parcels in the district were owned by Negroes. One of those had been occupied by Negro families since 1882, nearly thirty years before the restrictive

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

agreement was executed. The trial court found that owners of seven out of nine homes on the south side of Labadie Avenue, within the restricted district and 'in the immediate vicinity' of the premises in question, had failed to sign the restrictive agreement in 1911. At the time this action was brought, four of the premises were occupied by Negroes, and had been so occupied for periods ranging from twenty-three to sixty-three years. A fifth parcel had been occupied by Negroes until a year before this suit was instituted.

On August 11, 1945, pursuant to a contract of sale, petitioners Shelley, who are Negroes, for valuable consideration received from one Fitzgerald a warranty deed to the parcel in question.[FN1] The trial court found that petitioners had no actual knowledge of the restrictive agreement at the time of the purchase.

FN1 The trial court found that title to the property which petitioners Shelley sought to purchase was held by one Bishop, a real estate dealer, who placed the property in the name of Josephine Fitzgerald. Bishop, who acted as agent for petitioners in the purchase, concealed the fact of his ownership.

***6** On October 9, 1945, respondents, as owners of other property subject to the terms of the restrictive covenant, brought suit in Circuit Court of the city of St. Louis praying that petitioners Shelley be restrained from taking possession of the property and that judgment be entered divesting title out of petitioners Shelley and revesting title in the immediate grantor or in such other person as the court should direct. The trial court denied the requested relief on the ground that the restrictive agreement, upon which respondents based their action, had never become final and complete because it was the intention of the parties to that agreement that it was not to become effective until signed by all property owners in the district, and signatures of all the owners had never been obtained.

****839** The Supreme Court of Missouri sitting en banc reversed and directed the trial court to grant the relief for which respondents had prayed. That court held the agreement effective and concluded that enforcement of its provisions violated no rights guaranteed to petitioners by the Federal Constitution.[FN2] At the time the court rendered its decision, petitioners were occupying the property in question.

FN2 Kraemer v. Shelley, 1946, 355 Mo. 814, 198 S.W.2d 679.

The second of the cases under consideration comes to this Court from the Supreme Court of Michigan. The circumstances presented do not differ materially from the Missouri case. In June, 1934, one Ferguson and his wife, who then owned the property located in the city of Detroit which is involved in this case, executed a contract providing in part:

'This property shall not be used or occupied by any person or persons except those of the Caucasian race.

*7 'It is further agreed that this restriction shall not be effective unless at least eighty percent of the property fronting on both sides of the street in the block where our land is located is subjected to this or a similar restriction.'

The agreement provided that the restrictions were to remain in effect until January 1, 1960. The contract was subsequently recorded; and similar agreements were executed with respect to eighty percent of the lots in the block in which the property in question is situated.

By deed dated November 30, 1944, petitioners, who were found by the trial court to be Negroes, acquired title to the property and thereupon entered into its occupancy. On January 30, 1945, respondents, as owners of property subject to the terms of the restrictive agreement, brought suit against petitioners in the Circuit Court of Wayne County. After a hearing, the court entered a decree directing petitioners to move from the property within ninety days. Petitioners were further enjoined and restrained from using or occupying the premises in the future. On appeal, the Supreme Court of Michigan affirmed, deciding adversely to petitioners' contentions that they had been denied rights protected by the Fourteenth Amendment.[FN3]

FN3 Sipes v. McGhee, 1947, 316 Mich. 614, 25 N.W.2d 638.

Petitioners have placed primary reliance on their

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

contentions, first raised in the state courts, that judicial enforcement of the restrictive agreements in these cases has violated rights guaranteed to petitioners by the Fourteenth Amendment of the Federal Constitution and Acts of Congress passed pursuant to that Amendment.[FN4] Specifically,*8 petitioners urge that they have been denied the equal protection of the laws, deprived of property without due process of law, and have been denied privileges and immunities of citizens of the United States. We pass to a consideration of those issues.

FN4 The first section of the Fourteenth Amendment provides: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

I.

[1] Whether the equal protection clause of the Fourteenth Amendment inhibits judicial enforcement by state courts of restrictive covenants based on race or color is a question which this Court has not heretofore been called upon to consider. Only two cases have been decided by this Court which in any way have involved the enforcement of such agreements. The first of these was the case of Corrigan v. Buckley, 1926, 271 U.S. 323, 46 S.Ct. 521, 70 L.Ed. 969. There, suit was brought in the courts of the District of Columbia to enjoin a threatened violation of certain restrictive covenants relating to lands situated in the city of Washington. Relief was granted, and the case was brought here **840 on appeal. It is apparent that that case, which had originated in the federal courts and involved the enforcement of covenants on land located in the District of Columbia, could present no issues under the Fourteenth Amendment; for that Amendment by its terms applies only to the States. Nor was the question of the validity of court enforcement of the restrictive covenants under the Fifth Amendment properly before the Court, as the opinion of this Court specifically recognizes.[FN5] The only constitutional issue which the appellants had raised in the lower courts, and hence the only constitutional issue *9 before this Court on appeal, was the validity of the covenant agreements as such. This Court concluded that since the inhibitions of the constitutional provisions invoked, apply only to governmental action, as contrasted to action of private individuals, there was no showing that the covenants, which were simply agreements between private property owners, were invalid. Accordingly, the appeal was dismissed for want of a substantial question. Nothing in the opinion of this Court, therefore, may properly be regarded as an adjudication on the merits of the constitutional issues presented by these cases, which raise the question of the validity, not of the private agreements as such, but of the judicial enforcement of those agreements.

FN5 Corrigan v. Buckley, 1926, 271 U.S. 323, 330, 331, 46 S.Ct. 521, 523, 524, 70 L.Ed. 969.

The second of the cases involving racial restrictive covenants was Hansberry v. Lee, 1940, 311 U.S. 32, 61 S.Ct. 115, 85 L.Ed. 22, 132 A.L.R. 741. In that case, petitioners, white property owners, were enjoined by the state courts from violating the terms of a restrictive agreement. The state Supreme Court had held petitioners bound by an earlier judicial determination, in litigation in which petitioners were not parties, upholding the validity of the restrictive agreement, although, in fact, the agreement had not been signed by the number of owners necessary to make it effective under state law. This Court reversed the judgment of the state Supreme Court upon the ground that petitioners had been denied due process of law in being held estopped to challenge the validity of the agreement on the theory, accepted by the state court, that the earlier litigation, in which petitioners did not participate, was in the nature of a class suit. In arriving at its result, this Court did not reach the issues presented by the cases now under consideration.

It is well, at the outset, to scrutinize the terms of the restrictive agreemens involved in these cases. In the Missouri case, the covenant declares that no part of the *10 affected property shall be (355 Mo. 814, 198 S.W.2d 681) 'occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property * * * against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

or Mongolian Race.' Not only does the restricton seek to proscribe use and occupancy of the affected properties by members of the excluded class, but as construed by the Missouri courts, the agreement requires that title of any person who uses his property in violation of the restriction shall be divested. The restriction of the covenant in the Michigan case seeks to bar occupancy by persons of the excluded class. It provides that (316 Mich. 614, 25 N.W.2d 642) 'This property shall not be used or occupied by any person or persons except those of the Caucasian race.'

It should be observed that these covenants do not seek to proscribe any particular use of the affected properties. Use of the properties for residential occupancy, as such, is not forbidden. The restrictions of these agreements, rather, are directed toward a designated class of persons and seek to determine who may and who may not own or make use of the properties for residential purposes. The excluded class is defined wholly in terms of race or color.; 'simply that and nothing more.'[FN6]

FN6 Buchanan v. Warley, 1917, 245 U.S. 60, 73, 38 S.Ct. 16, 18, 62 L.Ed. 149, L.R.A.1918C, 210, Ann.Cas.1918A, 1201.

****841** [2] It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.[FN7] Thus, ***11** s 1978 of the Revised Statutes, derived from s 1 of the Civil Rights Act of 1866 which was enacted by Congress while the Fourteenth Amendment was also under consideration,[FN8] provides:

FN7. Slaughter-House Cases, 1873, 16 Wall. 36, 70, 81, 21 L.Ed. 394. See Flack, The Adoption of the Fourteenth Amendment.

FN8 In Oyama v. California, 1948, 332 U.S. 633, 640, 68 S.Ct. 269, 272, the section of the Civil Rights Act herein considered is described as the federal statute, 'enacted before the Fourteenth Amendment but vindicated by it.' The Civil Rights Act of 1866 was reenacted in s 18 of the Act of May 31, 1870, subsequent to the adoption of the Fourteenth Amendment. 16 Stat. 144.

'All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.'[FN9]

FN9 14 Stat. 27, 8 U.S.C. s 42, 8 U.S.C.A. s 42.

This Court has given specific recognition to the same principle. Buchanan v. Warley, 1917, 245 U.S. 60, 38 S.Ct. 16, 62 L.Ed. 149, L.R.A.1918C, 210, Ann.Cas.1918A, 1201.

It is likewise clear that restrictions on the right of occupancy of the sort sought to be created by the private agreements in these cases could not be squared with the requirements of the Fourteenth Amendment if imposed by state statute or local ordinance. We do not understand respondents to urge the contrary. In the case of Buchanan v. Warley, supa, a unanimous Court declared unconstitutional the provisions of a city ordinance which denied to colored persons the right to occupy houses in blocks in which the greater number of houses were occupied by white persons, and imposed similar restrictions on white persons with respect to blocks in which the greater number of houses were occupied by colored persons. During the course of the opinion in that case, this Court stated: 'The Fourteenth Amendment and these statutes enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire ***12** property without state legislation discriminating against him solely because of color.'[FN10]

FN10 Buchanan v. Warley, 1917, 245 U.S. 60, 79, 38 S.Ct. 16, 62 L.Ed. 149, L.R.A. 1918C, 210, Ann.Cas.1918A, 1201.

In Harmon v. Tyler, 1927, 273 U.S. 668, 47 S.Ct. 471, 71 L.Ed. 831, a unanimous court, on the authority of Buchanan v. Warley, supra, declared invalid an ordinance which forbade any Negro to establish a home on any property in a white community or any white person to establish a home in a Negro community, 'except on the written consent of a majority of the persons of the opposite race inhabit-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

ing such community or portion of the City to be affected.'

The precise question before this Court in both the Buchanan and Harmon cases, involved the rights of white sellers to dispose of their properties free from restrictions as to potential purchasers based on considerations of race or color. But that such legislation is also offensive to the rights of those desiring to acquire and occupy property and barred on grounds of race or color, is clear, not only from the language of the opinion in Buchanan v. Warley, supra, but from this Court's disposition of the case of City of Richmond v. Deans, 1930, 281 U.S. 704, 50 S.Ct. 407, 74 L.Ed. 1128. There, a Negro, barred from the occupancy of certain property by the terms of an ordinance similar to that in the Buchanan case, sought injunctive relief in the federal courts to enjoin the enforcement of the ordinance on the grounds that its provisions violated the terms of the Fourteenth Amendment. Such relief was granted, and this Court affirmed, finding the ****842** citation of Buchanan v. Warley, supra, and Harmon v. Tyler, supra, sufficient to support its judgment. [FN11]

FN11 Courts of Georgia, Maryland, North Carolina, Oklahoma, Texas, and Virginia have also declared similar statutes invalid discussed, do not involve action by state Amendment. Glover v. Atlanta, 1918, 148 Ga. 285, 96 S.E. 562; Jackson v. State, 1918, 132 Md. 311, 103 A. 910; Clinard v. Winston-Salem, 1940, 217 N.C. 119, 6 S.E.2d 867, 126 A.L.R. 634; Allen v. Oklahoma City, 1936, 175 Okl. 421, 52 P.2d 1054; Liberty Annex Corp. v. Dallas, Tex.Civ.App. 1927, 289 S.W. 1067; Irvine v. Clifton Forge, 1918, 124 Va. 781, 97 S.E. 310.

But the present cases, unlike those just discussed, do not involve actionby state legislatures or city councils. ***13** Here the particular patterns of discrimination and the areas in which the restrictions are to operate, are determined, in tne first instance, by the terms of agreements among private individuals. Participation of the State consists in the enforcement of the restrictions so defined. The crucial issue with which we are here confronted is whether this distinction removes these cases from the operation of the prohibitory provisions of the Fourteenth Amendment.

[3] Since the decision of this Court in the Civil Rights Cases, 1883, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835, the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.[FN12]

FN12 And see United States v. Harris, 1883, 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290; United States v. Cruikshank, 1876, 92 U.S. 542, 23 L.Ed. 588.

[4] We conclude, therefore, that the restrictive agreements standing alone cannot be regarded as a violation of any rights guaranteed to petitioners by the Fourteenth Amendment. So long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated. Cf. Corrigan v. Buckley, supra.

But here there was more. These are cases in which the purposes of the agreements were secured only by judicial enforcement by state courts of the restrictive ***14** terms of the agreements. The respondents urge that jjdicial enforcement of private agreements does not amount to state action; or, in any event, the participation of the State is so attenuated in character as not to amount to state action within the meaning of the Fourteenth Amendment. Finally, it is suggested, even if the States in these cases may be deemed to have acted in the constitutional sense, their action did not deprive petitioners of rights guaranteed by the Fourteenth Amendment. We move to a consideration of these matters.

II.

[5] That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cases involving the construction of the terms of the Fourteenth Amendment. Thus, in Commonwealth of Virginia v. Rives, 1880, 100 U.S. 313, 318, 25 L.Ed.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

667, this Court stated: 'It is doubtless true that a State may act through different agencies,-either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another.' In Ex parte Commonwealth of Virginia, 1880, 100 U.S. 339, 347, 25 L.Ed. 676, the Court observed: 'A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way.' In the Civil Rights Cases, 1883, 109 U.S. 3, 11, 17, 3 S.Ct. 18, 21, 27 L.Ed. 835, this Court pointed out that the Amendment makes void 'state action of every kind' which is inconsistent with the guaranties therein contained, and extends to manifestations of 'state authority ****843** in the shape of laws, customs, or judicial or executive proceedings.' Language to like effect is employed***15** no less than eighteen times during the course of that opinion. [FN13]

FN13 Among the phrases appearing in the opinion are the following: 'the operation of state laws, and the action of state officers, executive or judicial'; 'state laws and state proceedings'; 'state law * * * or some state action through its officers or agents'; 'state laws and acts done under state authority'; 'state laws or state action of some kind'; 'such laws as the states may adopt or enforce'; 'such acts and proceedings as the states may commit or take'; 'state legislation or action'; 'state law or state authority.'

Similar expressions, giving specific recognition to the fact that judicial action is to be regarded as action on the State for the purposes of the Fourteenth Amendment, are to be found in numerous cases which have been more recently decided. In Twining v. New Jersey, 1908, 211 U.S. 78, 90, 91, 29 S.Ct. 14, 16, 53 L.Ed. 97, the Court said: 'The judicial act of the highest court of the state, in authoritatively construing and enforcing its laws, is the act of the state.' In Brinkerhoff-Faris Trust & Savings Co. v. Hill, 1930, 281 U.S. 673, 680, 50 S.Ct. 451, 454, 74 L.Ed. 1107, the Court, through Mr. Justice Brandeis, stated: 'The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive, or administrative branch of government.' Further examples of such declarations in the opinions of this Court are not lacking.[FN14]

FN14 Neal v. Delaware, 1881, 103 U.S. 370, 397, 26 L.Ed. 567; Scott v. McNeal, 1894, 154 U.S. 34, 45, 14 S.Ct. 1108, 1112, 38 L.Ed. 896; Chicago, B. & Q.R. Co. v. Chicago, 1897, 166 U.S. 226, 233-235, 17 S.Ct. 581, 583, 584, 41 L.Ed. 979; Hovey v. Elliott, 1897, 167 U.S. 409, 417, 418, 17 S.Ct. 841, 844, 42 L.Ed. 215; Carter v. Texas, 1900, 177 U.S. 442, 447, 20 S.Ct. 687, 689, 44 L.Ed. 839; Martin v. Texas, 1906, 200 U.S. 316, 319, 26 S.Ct. 338, 50 L.Ed. 497; Raymond v. Chicago Union Traction Co., 1907, 207 U.S. 20, 35, 36, 28 S.Ct. 7, 12, 52 L.Ed. 78, 12 Ann.Cas. 757; Home Telephone and Telegraph Co. v. Los Angeles, 1913, 227 U.S. 278, 286, 287, 33 S.Ct. 312, 314, 57 L.Ed. 510; Prudential Ins. Co. v. Cheek, 1922, 259 U.S. 530, 548, 42 S.Ct. 516, 524, 66 L.Ed. 1044, 27 A.L.R. 27; American Ry. Exp. Co. v. Kentucky, 1927, 273 U.S. 269, 274, 47 S.Ct. 353, 355, 71 L.Ed. 639; Mooney v. Holohan, 1935, 294 U.S. 103, 112, 113, 55 S.Ct. 340, 341, 342, 79 L.Ed. 791, 98 A.L.R. 406; Hansberry v. Lee, 1940, 311 U.S. 32, 41, 61 S.Ct. 115, 117, 85 L.Ed. 22, 132 A.L.R. 741.

[6] One of the earliest applications of the prohibitions contained in the Fourteenth Amendment to action of state ***16** judicial officials occurred in cases in which Negroes had been excluded from jury service in criminal prosecutions by reason of their race or color. These cases demonstrate, also, the early recognition by this Court that state action in violation of the Amendment's provisions is equally repugnant to the constitutional commands whether directed by state statute or taken by a judicial official in the absence of statute. Thus, in Strauder v. West Virginia, 1880, 100 U.S. 303, 25 L.Ed. 664, this Court declared invalid a state statute restricting jury service to white persons as amounting to a denial of the equal protection of the laws to the colored defendant in that case. In the notice and opportunity to defend, has, Ex parte Virginia, supra, held that a similar discrimination imposed by the action of a state judge denied rights protected by the Amendment, despite the fact that the language of the state statute relating to jury service contained no such restrictions.

[7] The action of state courts in imposing penalties or depriving parties of other substantive rights

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

without providing adequate notice and opportunity to defen, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment. Brinkerhoff-Faris Trust & Savings Co. v. Hill, supra. Cf. Pennoyer v. Neff, 1878, 95 U.S. 714, 24 L.Ed. 565.[FN15]

FN15 And see Standard Oil Co. v. Missouri, 1912, 224 U.S. 270, 281, 282, 32 S.Ct. 406, 409, 56 L.Ed. 760, Ann.Cas.1913D, 936; Hansberry v. Lee, 1940, 311 U.S. 32, 61 S.Ct. 115, 85 L.Ed. 22, 132 A.L.R. 741.

In numerous cases, this Court has reversed criminal convictions in state courts for failure of those courts to provide the **844 essential ingredients of a fair hearing. Thus it has been held that convictions obtained in state courts under the domination of a mob are void. Moore v. Dempsey, 1923, 261 U.S. 86, 43 S.Ct. 265, 67 L.Ed. 543. And see Frank v. Mangum, 1915, 237 U.S. 309, 35 S.Ct. 582, 59 L.Ed. 969. Convictions obtained by *17 coerced confessions,[FN16] by the use of perjured testimony known by the prosecution to be such,[FN17] or without the effective assistance of counsel,[FN18] have also been held to be exertions of state authority in conflict with the fundamental rights protected by the Fourteenth Amendment.

FN16 Brown v. Mississippi, 1936, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682; Chambers v. Florida, 1940, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716; Ashcraft v. Tennessee, 1944, 322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192; Lee v. Mississippi, 1948, 332 U.S. 742, 68 S.Ct. 300.

FN17 See Mooney v. Holohan, 1935, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791, 98 A.L.R. 406; Pyle v. Kansas, 1942, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214.

FN18 Powell v. Alabama, 1932, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158, 84 A.L.R. 527; Williams v. Kaiser, 1945, 323 U.S. 471, 65 S.Ct. 363, 89 L.Ed. 398; Tomkins v. Missouri, 1945, 323 U.S. 485, 65 S.Ct. 370, 89 L.Ed. 407; DeMeerleer v. Michigan, 1947, 329 U.S. 663, 67 S.Ct. 596.

[8] But the examples of state judicial action which have been held by this Court to violate the Amendment's commands are not restricted to situations in which the judicial proceedings were found in some manner to be procedurally unfair. It has been recognized that the action of state courts in enforcing a substantive common-law rule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process.[FN19] Thus, in American Federation of Labor v. Swing, 1941, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855, enforcement by state courts of the common-law policy of the State, which resulted in the restraining of peaceful picketing, was held to be state action of the sort prohibited by the Amendment's guaranties of freedom of discussion.[FN20] In Cantwell v. Connecticut, 1940, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352, *18 a conviction in a state court of the common-law crime of breach of the peace was, under the circumstances of the case, found to be a violation of the Amendment's commonds relating to freedom of religion. In Bridges v. California, 1941, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192, 159 A.L.R. 1346, enforcement of the state's common-law rule relating to contempts by publication was held to be state action inconsistent with the prohibitions of the Fourteenth Amendment.[FN21] And cf. Chicago, B. & Q.R. Co. v. Chicago, 1897, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979.

FN19 In applying the rule of Erie R. Co. v. Tompkins, 1938, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 144 A.L.R. 1487, it is clear that the common-law rules enunciated by state courts in judicial opinions are to be regarded as a part of the law of the State.

FN20 And see Bakery Drivers Local v. Wohl, 1942, 315 U.S. 769, 62 S.Ct. 816, 86 L.Ed. 1178; Cafeteria Employees Union v. Angelos, 1943, 320 U.S. 293, 64 S.Ct. 126, 88 L.Ed. 58.

FN21 And see Pennekamp v. Florida, 1946, 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed. 1295; Craig v. Harney, 1947, 331 U.S. 367, 67 S.Ct. 1249.

The short of the matter is that from the time of

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the adoption of the Fourteenth Amendment until the present, it has been the consistent ruling of this Court that the action of the States to which the Amendment has reference, includes action of state courts and state judicial officials. Although, in construing the terms of the Fourteenth Amendment, differences have from time to time been expressed as to whether particular types of state action may be said to offend the Amendment's prohibitory provisions, it has never been suggested that state court action is immunized from the operation of those provisions simply because the act is that of the judicial branch of the state government.

III.

[9] Against this background of judicial construction, extending over a period of some three-quarters of a century, we are called upon to consider whether enforcement by state courts of the restrictive agreements****845** in these cases may be deemed to be the acts of those States; and, if so, whether that action has denied these petitioners the equal protection of the laws which the Amendment was intended to insure.

***19** We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers; and contracts of sale were accordingly consummated. It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.

These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.

[10][11][12] The enforcement of the restrictive agreements by the state courts courts in these cases was directed pursuant to the common-law policy of the States as formulated by those courts in earlier decisions. [FN22] In the Missouri case, enforcement of the covenant was directed in the first instance by the highest court of the State after the trial court had determined the agreement to be invalid for ***20** want of the requisite number of signatures. In the Michigan case, the order of enforcement by the trial court was affirmed by the highest state court.[FN23] The judicial action in each case bears the clear and unmistakable imprimatur of the State. We have noted that previous decisions of this Court have established the proposition that judicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. [FN24] Nor is the Amendment ineffective simply because the particular pattern of discrimination, which the State has enforced, was defined initially by the terms of a private agreement. State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands.

FN22 See Swain v. Maxwell, 1946, 355 Mo. 448, 196 S.W.2d 780; Koehler v. Rowland, 1913, 275 Mo. 573, 205 S.W. 217, 9 A.L.R. 107. See also Parmalee v. Morris, 1922, 218 Mich. 625, 188 N.W. 330, 38 A.L.R. 1180. Cf. Porter v. Barrett, 1925, 233 Mich. 373, 206 N.W. 532, 42 A.L.R. 1267.

FN23 Cf. Home Telephone and Telegraph Co. v. Los Angeles, 1913, 227 U.S. 278, 33 S.Ct. 312, 57 L.Ed. 510; Raymond v. Chicago Union Traction Co., 1907, 207 U.S. 20, 28 S.Ct. 7, 52 L.Ed. 78, 12 Ann.Cas. 757.

FN24 Bridges v. California, 1941, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192, 159 A.L.R. 1346; American Federation of Labor v. Swing, 1941, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

[13] We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand. We have noted that freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of theFourteenth Amendment. That such discrimination has occurred in these cases is clear. Because of the race or color of these petitioners they have been denied rights of ownership or occupancy enjoyed as a matter of course by ****846** other citizens of different race or ***21** color.[FN25] The Fourteenth Amendment declares 'that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.'[FN26] Strauder v. West Virginia, supra, 100 U.S. at 307, 25 L.Ed. 664. Only recently this Court has had occasion to declare that a state law which denied equal enjoyment of property rights to a designated class of citizens of specified race and ancestry, was not a legitimate exercise of the state's police power but violated the guaranty of the equal protection of the laws. Oyama v. California, 1948, 332 U.S. 633, 68 S.Ct. 269. Nor may the discriminations imposed by the state courts in these cases be justified as proper exertions of state police power.[FN27] Cf. Buchanan v. Warley, supra.

FN25 See Yick Wo v. Hopkins, 1886, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220; Strauder v. West Virginia, 1880, 100 U.S. 303, 25 L.Ed. 664; Truax v. Raich, 1915, 239 U.S. 33, 36 S.Ct. 7, 60 L.Ed. 131, L.R.A.1916D, 545, Ann.Cas.1917B, 283.

FN26 Restrictive agreements of the sort involved in these case have been used to exclude other than Negroes from the ownership or occupancy of real property. We are informed that such agreements have been directed against Indians, Jews, Chinese, Japanese, Mexicans, Hawaiians, Puerto Ricans, and Filipinos, among others.

FN27 See Bridges v. California, 1941, 314 U.S. 252, 261, 62 S.Ct. 190, 193, 86 L.Ed. 192, 159 A.L.R. 1346; Cantwell v. Connecticut, 1940, 310 U.S. 296, 307, 308, 60 S.Ct. 900, 905, 84 L.Ed. 1213, 128 A.L.R. 1352.

[14][15][16] Respondents urge, however, that since the state courts stand ready to enforce restrictive covenants excluding white persons from the ownership or occupancy of property covered by such agreements, enforcement of covenants excluding colored persons may not be deemed a denial of equal protection of the laws to the colored persons who are thereby affected.[FN28] This contention does ***22** not bear scrutiny. The parties have directed our attention to no case in which a court, state or federal, has been called upon to enforce a covenant excluding members of the white majority from ownership or occupancy of real property on grounds of race or color. But there are more fundamental considerations. The rights ceated by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights.[FN29] It is, therefore, no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.

FN28 It should be observed that the restrictions relating to residential occupancy contained in ordinances involved in the Buchanan, Harmon and Deans cases, cited supra, and declared by this Court to be inconsistent with the requirements of the Fourteenth Amendment, applied equally to white persons and Negroes.

FN29 McCabe v. Atchison, Topeka & Santa Fe R. Co., 1914, 235 U.S. 151, 161-162, 35 S.Ct. 69, 71, 59 L.Ed. 169; Missouri ex rel. Gaines v. Canada, 1938, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208; Oyama v. California, 1948, 332 U.S. 633, 68 S.Ct. 269.

[17][18] Nor do we find merit in the suggestion that property owners who are parties to these agreements are denied equal protection of the laws if denied access to the courts to enforce the terms of restrictive covenants and to assert property rights which the state courts have held to be created by such agreements. The Constitution confers upon no indi-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

vidual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals. And it would appear beyond question that the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment. Cf. Marsh v. Alabama, 1946, 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265.

[19] The problem of defining the scope of the restrictions which the Federal Constitution**847 imposes upon exertions of power by the States has given rise to many of the most persistent and fundamental issues which this Court has been called upon to consider. That problem was foremost in the minds of the framers of the Constitution, *23 and since that early day, has arisen in a multitude of forms. The task of determining whether the action of a State offends constitutional provisions is one which may not be undertaken lightly. Where, however, it is clear that the action of the State violates the terms of the fundamental charter, it is the obligation of this Court so to declare.

[20] The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color. Seventy-five years ago this Court announced that the provisions of the Amendment are to be construed with this fundamental purpose in mind.[FN30] Upon full consideration, we have concluded that in these cases the States have acted to deny petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment. Having so decided, we find it unnecessary to consider whether petitioners have also been deprived of property without due process of law or denied privileges and immunities of citizens of the United States.

FN30 Slaughter-House Cases, 1873, 16 Wall 36, 81, 21 L.Ed. 394; Strauder v. West Virginia, 1880, 100 U.S. 303, 25 L.Ed. 664. See Flack, The Adoption of the Fourteenth Amendment.

For the reasons stated, the judgment of the Supreme Court of Missuri and the judgment of the Supreme Court of Michigan must be reversed.

Reversed.

Mr. Justice REED, Mr. Justice JACKSON, and Mr. Justice RUTLEDGE took no part in the consideration or decision of these cases.

U.S. 1948.
Shelley v. Kraemer
334 U.S. 1, 68 S.Ct. 836, 3 A.L.R.2d 441, 92 L.Ed. 1161

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Supreme Court of the United States.
WEST VIRGINIA STATE BOARD OF EDUCATION et al.
v.
BARNETTE et al.

No. 591.
Argued March 11, 1943.
Decided June 14, 1943.

Suit by Walter Barnette and others against the West Virginia State Board of Education, etc., and others for an injunction to restrain enforcement of a regulation requiring children in public schools to salute the American flag. From a decree, 47 F.Supp. 251, granting an injunction, the defendants appeal.

Affirmed.

Mr. Justice FRANKFURTER, Mr. Justice ROBERTS, and Mr Justice REED dissenting.

West Headnotes

[1] Schools 345 ⚿164

345 Schools
345II Public Schools
345II(L) Pupils
345k164 k. Curriculum and Courses of Study. Most Cited Cases

A state may require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country.

[2] Constitutional Law 92 ⚿3937

92 Constitutional Law
92XXVII Due Process
92XXVII(D) Applicability to Governmental or Private Conduct; State Action
92k3937 k. State Government. Most Cited Cases
(Formerly 92k254(2), 92k254)

The Fourteenth Amendment as applied to the states protects the citizen against the state itself and all of its creatures, including boards of education. U.S.C.A.Const. Amend. 14.

[3] Constitutional Law 92 ⚿1067

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1067 k. Bill of Rights or Declaration of Rights. Most Cited Cases
(Formerly 92k82(2), 92k82)

The purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of the political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. U.S.C.A.Const. Amend. 1 et seq.

[4] Constitutional Law 92 ⚿1065

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1065 k. In General. Most Cited Cases
(Formerly 92k83(1))

Constitutional Law 92 ⚿1109

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1108 Right to Property
92k1109 k. In General. Most Cited Cases
(Formerly 92k87)

Constitutional Law 92 ⚿1290

92 Constitutional Law
92XIII Freedom of Religion and Conscience

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

92XIII(A) In General
92k1290 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1), 92k84)

Constitutional Law 92 ⚿1430

92 Constitutional Law
92XIV Right of Assembly
92k1430 k. In General. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ⚿1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited Cases
(Formerly 92k90(1), 92k90)

Constitutional Law 92 ⚿2070

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(U) Press in General
92k2070 k. In General. Most Cited Cases
(Formerly 92k90(1), 92k90)

One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote, and they depend on the outcome of no election. U.S.C.A.Const. Amends. 1 et seq.

[5] Constitutional Law 92 ⚿4034

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)1 In General
92k4034 k. Speech, Press, Assembly, and Petition. Most Cited Cases
(Formerly 92k251)

The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First Amendment, is much more definite than the test when only the Fourteenth Amendment is involved, and much of the vagueness of the "due process of law" clause disappears when the specific prohibitions of the First Amendment become its standard. U.S.C.A.Const. Amends. 1, 14.

[6] Constitutional Law 92 ⚿1290

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1), 92k84)

Constitutional Law 92 ⚿1430

92 Constitutional Law
92XIV Right of Assembly
92k1430 k. In General. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ⚿1529

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1529 k. Clear and Present Danger Test. Most Cited Cases
(Formerly 92k1504, 92k90(3), 92k90)

Constitutional Law 92 ⚿2070

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(U) Press in General
92k2070 k. In General. Most Cited Cases
(Formerly 92k90(3), 92k90)

"Freedom of speech", "freedom of press", "freedom of assembly" and "freedom of worship" are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. U.S.C.A.Const. Amends. 1, 14.

[7] Constitutional Law 92 ⚿2450

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)1 In General
92k2450 k. Nature and Scope in General. Most Cited Cases
(Formerly 92k67)

The duty of the Supreme Court to apply the Bill of Rights to assertions of official authority does not depend upon the court's possession of marked competence in field where invasion of rights occurs, and court cannot, because of modest estimates of its competence in such specialties as public education, withhold the judgment that history authenticates as the function of the court when liberty is infringed. U.S.C.A.Const. Amend. 1 et seq.

[8] Constitutional Law 92 ⚿1067

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1067 k. Bill of Rights or Declaration of Rights. Most Cited Cases
(Formerly 92k82(2), 92k82)

The United States Government was set up by the consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. U.S.C.A.Const. Amend. 1 et seq.

[9] Constitutional Law 92 ⚿1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited Cases
(Formerly 92k274(1), 92k274)

"Freedom" to differ is not limited, under the Constitution, to things that do not matter much, but the test of its substance is the right to differ as to things which touch the heart of the existing order. U.S.C.A.Const. Amends. 1, 14.

[10] Constitutional Law 92 ⚿1290

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 k. In General. Most Cited Cases
(Formerly 92k274(1), 92k274)

Constitutional Law 92 ⚿1460

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1460 k. In General. Most Cited Cases
(Formerly 92k274(1), 92k274)

Constitutional Law 92 ⚿1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited Cases
(Formerly 92k274(1), 92k274)

No official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein. U.S.C.A.Const. Amends. 1, 14.

[11] Constitutional Law 92 ⚿1353

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1341 Public Education
92k1353 k. Flag Salutes. Most Cited Cases
(Formerly 92k274(4), 92k274)

Constitutional Law 92 ⚿1977

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(Q) Education
92XVIII(Q)1 In General

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

92k1975 Student Speech or Conduct
92k1977 k. Discipline in General. Most Cited Cases
(Formerly 92k274(4), 92k274)

Schools 345 ⚿165

345 Schools
345II Public Schools
345II(L) Pupils
345k165 k. Religious Instruction and Reading of Scriptures. Most Cited Cases
(Formerly 92k274(4))

Resolution of state board of education requiring children, as prerequisite to continued attendance at public school, to salute American flag and give pledge, is invalid as applied to children of Jehovah Witnesses since it denies "freedom of speech" and "freedom of worship" in that it transcends constitutional limitations on board's power and invades sphere of intellect and spirit which it is the purpose of the Constitution to reserve from official control. Code Supp.W.Va.1941, § 1734; U.S.C.A.Const. Amends. 1, 14.

****1179 *625** On Appeal from the District Court of the United States for the Southern District of West Virginia.Mr. W. Holt Wooddell, of Webster Springs, W. Va., for appellants.

Mr. Hayden C. Covington, of Brooklyn, N.Y., for appellees.

Mr. Justice JACKSON delivered the opinion of the Court.

Following the decision by this Court on June 3, 1940, in Minersville School District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375, 127 A.L.R. 1493, the West Virginia legislature amended its statutes to require all schools therein to conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the State 'for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government.' Appellant***626** Board of Education was directed, with advice of the State Superintendent of Schools, to 'prescribe the courses of study covering these subjects' for public schools. The Act made it the duty of private, parochial and denominational schools to prescribe courses of study 'similar to those required for the public schools.'[FN1]

FN1 s 1734, West Virginia Code (1941 Supp.):

'In all public, private, parochial and denominational schools located within this state there shall be given regular courses of instruction in history of the United States, in civics, and in the constitutions of the United States and of the state of West Virginia, for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government of the United States and of the state of West Virginia. The state board of education shall, with the advice of the state superintendent of schools, prescribe the courses of study covering these subjects for the public elementary and grammar schools, public high schools and state normal schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools.'

The Board of Education on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's Gobitis opinion and ordering that the salute to the flag become 'a regular part of the program of activities in the public schools,' that all teachers and pupils 'shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an Act of insubordination, and shall be dealt with accordingly.'[FN2]

FN2 The text is as follows:

'WHEREAS, The West Virginia State Board of Education holds in highest regard those rights and privileges guaranteed by the Bill of Rights in the Constitution of the United States of America and in the Constitution of West Virginia, specifically, the first amendment to the Constitution of the United

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

States as restated in the fourteenth amendment to the same document and in the guarantee of religious freedom in Article III of the Constitution of this States, and

'WHEREAS, The West Virginia State Board of Education honors the broad principle that one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law; that the propagation of belief is protected whether in church or chapel, mosque or synagogue, tabernacle or meeting house; that the Constitutions of the United States and of the State of West Virginia assure generous immunity to the individual from imposition of penalty for offending, in the course of his own religious activities, the religious views of others, be they a minority or those who are dominant in the government, but

'WHEREAS, The West Virginia State Board of Education recognizes that the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellowman; that conscientious scruples have not in the course of the long struggle for religious toleration relieved the individual from obedience to the general law not aimed at the promotion or restriction of the religious beliefs; that the mere possession of convictions which contradict the relevant concerns of political society does not relieve the citizen from the discharge of political responsibility, and

'WHEREAS, The West Virginia State Board of Education holds that national unity is the basis of national security; that the flag of our Nation is the symbol of our National Unity transcending all internal differences, however large within the framework of the Constitution; that the Flag is the symbol of the Nation's power; that emblem of freedom in its truest, best sense; that it signifies government resting on the consent of the governed, liberty regulated by law, protection of the weak against the strong, security against the exercise of arbitrary power, and absolute safety for free institutions against foreign aggression, and

'WHEREAS, The West Virginia State Board of Education maintains that the public schools, established by the legislature of the State of West Virginia under the authority of the Constitution of the State of West Virginia and supported by taxes imposed by legally constituted measures, are dealing with the formative period in the development in citizenship that the Flag is an allowable portion of the program of schools thus publicly supported.

'Therefore, be it RESOLVED, That the West Virginia Board of Education does hereby recognize and order that the commonly accepted salute to the Flag of the United States-the right hand is placed upon the breast and the following pledge repeated in unison: 'I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all'-now becomes a regular part of the program of activities in the public schools, supported in whole or in part by public funds, and that all teachers as defined by law in West Virginia and pupils in such schools shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly.'

***627** The resolution originally required the ****1180** 'commonly accepted salute to the Flag' which it defined. Objections to the salute as 'being too much like Hitler's' were raised by the Parent and Teachers Association, the Boy and Girl ***628** Scouts, the Red Cross, and the Federation of Women's Clubs. [FN3] Some modification appears to have been made in deference to these objections, but no concession was made to Jehovah's Witnesses.[FN4] What is now required is the 'stiff-arm' salute, the saluter to keep the right hand raised with palm turned up ****1181** while the following is repeated: 'I pledge allegiance to the Flag of the United States of ***629** America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all.'

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

FN3 The National Headquarters of the United States Flag Association takes the position that the extension of the right arm in this salute to the flag is not the Nazi-Fascist salute, 'although quite similar to it. In the Pledge to the Flag the right arm is extended and raised, palm Upward, whereas the Nazis extend the arm practically straight to the front (the finger tips being about even with the eyes), palm Downward, and the Fascists do the same except they raise the arm slightly higher.' James A. Moss, The Flag of the United States: Its History and Symbolism (1914) 108.

FN4 They have offered in lieu of participating in the flag salute ceremony 'periodically and publicly' to give the following pledge:

'I have pledged my unqualified allegiance and devotion to Jehovah, the Almighty God, and to His Kingdom, for which Jesus commands all Christians to pray.

'I respect the flag of the United States and acknowledge it as a symbol of freedom and justice to all.

'I pledge allegiance and obedience to all the laws of the United States that are consistent with God's law, as set forth in the Bible.'

Failure to conform is 'insubordination' dealt with by expulsion. Readmission is denied by statute until compliance. Meanwhile the expelled child is 'unlawfully absent'[FN5] and may be proceeded against as a delinquent. [FN6] His parents or guardians are liable to prosecution,[FN7] and if convicted are subject to fine not exceeding $50 and jail term not exceeding thirty days.[FN8]

FN5 s 1851(1), West Virginia Code (1941 Supp.):

'If a child be dismissed, suspended, or expelled from school because of refusal of such child to meet the legal and lawful requirements of the school and the established regulations of the county and/or state board of education, further admission of the child to school shall be refused until such requirements and regulations be complied with. Any such child shall be treated as being unlawfully absent from the school during the time he refuses to comply with such requirements and regulations, and any person having legal or actual control of such child shall be liable to prosecution under the provisions of this article for the absence of such child from school.'

FN6 s 4904(4), West Virginia Code (1941 Supp.).

FN7 See Note 5, supra.

FN8 ss 1847, 1851, West Virginia Code (1941 Supp.).

Appellees, citizens of the United States and of West Virginia, brought suit in the United States District Court for themselves and others similarly situated asking its injunction to restrain enforcement of these laws and regulations against Jehovah's Witnesses. The Witnesses are an unincorporated body teaching that the obligation imposed by law of God is superiod to that of laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, Chapter 20, verses 4 and 5, which says: 'Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them.' They consider that the flag is an 'image' within this command. For this reason they refuse to salute it.

***630** Children of this faith have been expelled from school and are threatened with exclusion for no other cause. Officials threaten to send them to reformatories maintained for criminally inclined juveniles. Parents of such children have been prosecuted and are threatened with prosecutions for causing delinquency.

The Board of Education moved to dismiss the complaint setting forth these facts and alleging that the law and regulations are an unconstitutional denial of religious freedom, and of freedom of speech, and are invalid under the 'due process' and 'equal protection' clauses of the Fourteenth Amendment to the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Federal Constitution. The cause was submitted on the pleadings to a District Court of three judges. It restrained enforcement as to the plaintiffs and those of that class. The Board of Education brought the case here by direct appeal.[FN9]

FN9 s 266 of the Judicial Code, 28 U.S.C. s 380, 28 U.S.C.A. s 380.

This case calls upon us to reconsider a precedent decision, as the Court throughout its history often has been required to do.[FN10] Before turning to the Gobitis case, however, it is desirable to notice certain characteristics by which this controversy is distinguished.

FN10 See authorities cited in Helvering v. Griffiths, 318 U.S. 371, 63 S.Ct. 636, at page 652, 87 L.Ed. 843, note 52, decided March 1, 1943.

The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behavior is peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce ***631** attendance by punishing both parent and child. The latter stand on a right ****1182** of self-determination in matters that touch individual opinion and personal attitude.

[1] As the present Chief Justice said in dissent in the Gobitis case, the State may 'require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty which tend to inspire patriotism and love of country.' 310 U.S. at page 604, 60 S.Ct. at page 1017, 84 L.Ed. 1375, 127 A.L.R. 1493. Here, however, we are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means. The issue here is whether this slow and easily neglected[FN11] route to aroused loyalties constitutionally may be short-cut by substituting a compulsory salute and slogan.[FN12] This issue is not prejudiced by ***632** the Court's previous holding that where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution. It was held that those who take advantage of its opportunities may not on ground of conscience refuse compliance with such conditions. Hamilton v. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343. In the present case attendance is not optional. That case is also to be distinguished from the present one because, independently of college privileges or requirements, the State has power to raise militia and impose the duties of service therein upon its citizens.

FN11 See the nation-wide survey of the study of American history conducted by the New York Times, the results of which are published in the issue of June 21, 1942, and are there summarized on p. 1, col. 1, as follows:

'82 per cent of the institutions of higher learning in the United States do not require the study of United States history for the undergraduate degree. Eighteen per cent of the colleges and universities require such history courses before a degree is awarded. It was found that many students complete their four years in college without taking any history courses dealing with this country.

'Seventy-two per cent of the colleges and universities do not require United States history for admission, while 28 per cent require it. As a result, the survey revealed, many students go through high school, college and then to the professional or graduate institution without having explored courses in the history of their country.

'Less than 10 per cent of the total undergraduate body was enrolled in United States history classes during the Spring semester just ended. Only 8 per cent of the freshman class took courses in United States history, although 30 per cent was enrolled in European or world history courses.'

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

FN12 The Resolution of the Board of Education did not adopt the flag salute because it was claimed to have educational value. It seems to have been concerned with promotion of national unity (see footnote 2), which justification is considered later in this opinion. No information as to its educational aspect is called to our attention except Olander, Children's Knowledge of the Flag Salute, 35 Journal of Educational Research, 300, 305, which sets forth a study of the ability of a large and representative number of children to remember and state the meaning of the flag salute which they recited each day in school. His conclusion was that it revealed 'a rather pathetic picture of our attempts to teach children not only the words but the meaning of our Flag Salute'.

There is no doubt that, in connection with the pledges, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design. The State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical reiment. Symbols of State often convey political ideas just as religious symbols come to convey theological ones. Associated with many of these symbols are appropriate gestures of acceptance or respect: a salute, a bowed or bared head, a bended knee. A person gets from a ***633** symbol the meaning he puts into it, and ****1183** what is one man's comfort and inspiration is another's jest and scorn.

Over a decade ago Chief Justice Hughes led this Court in holding that the display of a red flag as a symbol of opposition by peaceful and legal means to organized government was protected by the free speech guaranties of the Constitution. Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117, 73 A.L.R. 1484. Here it is the State that employs a flag as a symbol of adherence to government as presently organized. It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks. Objection to this form of communication when coerced is an old one, well known to the framers of the Bill of Rights.[FN13]

FN13 Early Christians were frequently persecuted for their refusal to participate in ceremonies before the statue of the emperor or other symbol of imperial authority. The story of William Tell's sentence to shoot an apple off his son's head for refusal to salute a bailiff's hat is an ancient one. 21 Encyclopedia Britannica, 14th Ed., 911, 912. The Quakers, William Penn included, suffered punishment rather than uncover their heads in deference to any civil authority. Braithwaite, The Beginnings of Quakerism (1912) 200, 229-230, 232, 233, 447, 451; Fox, Quakers Courageous (1941) 113.

It is also to be noted that the compulsory flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates that pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony or whether it will be acceptable if they simulate assent by words without belief and by a gesture barren of meaning. It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here the power of compulsion***634** is invoked without any allegation that remaining passive during a flag salute ritual creates a clear and present danger that would justify an effort even to muffle expression. To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind.

Whether the First Amendment to the Constitution will permit officials to order observance of ritual of this nature does not depend upon whether as a voluntary exercise we would think it to be good, bad or merely innocuous. Any credo of nationalism is likely to include what some disapprove or to omit what others think essential, and to give off different overtones as it takes on different accents or interpretations.[FN14] If official power exists to coerce acceptance

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority, whose power to prescribe would no doubt include power to amend. Hence validity of the asserted power to force an American citizen publicly to profess any statement of belief or to engage in any ceremony of assent to one presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question.

> FN14 For example: Use of 'Republic,' if rendered to distinguish our government from a 'democracy,' or the words 'one Nation,' if intended to distinguish it from a 'federation,' open up old and bitter controversies in our political history; 'liberty and justice for all,' if it must be accepted as descriptive of the present order rather than an ideal, might to some seem an overstatement.

Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views ***635** hold such a compulsory rite to infringe constitutional liberty of the individual. [FN15] It is not necessary to inquire whether non-conformist beliefs will exempt****1184** from the duty to salute unless we first find power to make the salute a legal duty.

> FN15 Cushman, Constitutional Law in 1939-40, 35 American Political Science Review 250, 271, observes: 'All of the eloquence by which the majority extol the ceremony of flag saluting as a free expression of patriotism turns sour when used to describe the brutal compulsion which requires a sensitive and conscientious child to stultify himself in public.' For further criticism of the opinion in the Gobitis case by persons who do not share the faith of the Witnesses see: Powell, Conscience and the Constitution, in Democracy and National Unity (University of Chicago Press, 1941) 1; Wilkinson, Some Aspects of the Constitutional Guarantees of Civil Liberty, 11 Fordham Law Review 50; Fennell, The 'Reconstructed Court' and Religious Freedom: The Gobitis Case in Retrospect, 19 New York University Law Quarterly Review 31; Green, Liberty under the Fourteenth Amendment, 27 Washington University Law Quarterly 497; 9 International Juridical Association Bulletin 1; 39 Michigan Law Review 149; 15 St. John's Law Review 95.

The Gobitis decision, however, assumed, as did the argument in that case and in this, that power exists in the State to impose the flag salute discipline upon school children in general. The Court only examined and rejected a claim based on religious beliefs of immunity from an unquestioned general rule.[FN16] The question which underlies the ***636** flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be imposed upon the individual by official authority under powers committed to any political organization under our Constitution. We examine rather than assume existence of this power and, against this broader definition of issues in this case, re-examine specific grounds assigned for the Gobitis decision.

> FN16 The opinion says 'The the flagsalute is an allowable portion of a school program for those who do not invoke conscientious scruples is surely not debatable. But for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effect of the exercise.' (Italics ours.) 310 U.S. at pages 599, 600, 60 S.Ct. at page 1015, 84 L.Ed. 1375, 127 A.L.R. 1493. And elsewhere the question under consideration was stated, 'When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good?' (Italics ours.) Id., 310 U.S. at page 593, 60 S.Ct. at page 1012, 84 L.Ed. 1375, 127 A.L.R. 1493. And again, '* * * whether school children, like the Gobitis children, must be excused from conduct required of all the other children in

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> the promotion of national cohesion. * * *' (Italics ours.) Id., 310 U.S. at page 595, 60 S.Ct. at page 1013, 84 L.Ed. 1375, 127 A.L.R. 1493.

1. It was said that the flag-salute controversy confronted the Court with 'the problem which Lincoln cast in memorable dilemma: 'Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?" and that the answer must be in favor of strength. Minersville School District v. Gobitis, supra, 310 U.S. at page 596, 60 S.Ct. at page 1013, 84 L.Ed. 1375, 127 A.L.R. 1493.

We think these issues may be examined free of pressure or restraint growing out of such considerations.

It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the state to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning. If validly applied to this problem, the utterance cited would resolve every issue of power in favor of those in authority and would require us to override every liberty thought to weaken or delay execution of their policies.

Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by **1185 making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is *637 doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.

The subject now before us exemplifies this principle. Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or failing that, to weaken the influence of the educational system. Observance of the limitations of the Constitution will not weaken government in the field appropriate for its exercise.

2. It was also considered in the Gobitis case that functions of educational officers in states, counties and school districts were such that to interfere with their authority 'would in effect make us the school board for the country.' Id., 310 U.S. at page 598, 60 S.Ct. at page 1015, 84 L.Ed. 1375, 127 A.L.R. 1493.

[2] The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures-Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilent in calling it to account.*638 The action of Congress in making flag observance voluntary [FN17] and respecting the conscience of the objector in a matter so vital as raising the Army[FN18] contrasts sharply with these local regulations in matters relatively trivial to the welfare of the nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution.

> FN17 s 7 of House Joint Resolution 359, approved December 22, 1942, 56 Stat. 1074, 36 U.S.C. (1942 Supp.) s 172, 36 U.S.C.A. s 172, prescribes no penalties for nonconformity but provides:
>
> 'That the pledge of allegiance to the flag, 'I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all', is rendered by standing with the right hand over the heart.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

> However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. * * *'
>
> FN18 s 5(a) of the Selective Training and Service Act of 1940, 50 U.S.C. (App.) s 305(g), 50 U.S.C.A.Appendix, s 305(g).

3. The Gobitis opinion reasoned that this is a field 'where courts possess no marked and certainly no controlling competence,' that it is committed to the legislatures as well as the courts to guard cherished liberties and that it is constitutionally appropriate to 'fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies rather than to transfer such a contest to the judicial arena,' since all the 'effective means of inducing political changes are left free.' Id., 310 U.S. at page 597, 598, 600, 60 S.Ct. at pages 1014, 1016, 84 L.Ed. 1375, 127 A.L.R. 1493.

[3][4] The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted **1186 to vote; they depend on the outcome of no elections.

*639 [5][6] In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case.

[7] Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision*640 over men's affairs. We must transplant these rights to a soil in which the laissez-faire concept or principle of non-interference has withered at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls. These changed conditions often deprive precedents of reliability and cast us more than we would choose upon our own judgment. But we act in these matters not by authority of our competence but by force of our commissions. We cannot, because of modest estimates of our competence in such specialties as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

4. Lastly, and this is the very heart of the Gobitis opinion, it reasons that 'National unity is the basis of national security,' that the authorities have 'the right to select appropriate means for its attainment,' and hence reaches the conclusion that such compulsory measures toward 'national unity' are constitutional. Id., 310 U.S. at page 595, 60 S.Ct. at page 1013, 84 L.Ed. 1375, 127 A.L.R. 1493. Upon the verity of this assumption depends our answer in this case.

National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compul-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

sion as here employed is a permissible means for its achievement.

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. ***641** As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson ****1187** of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

[8] It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

[9] The case is made difficult not b ecause the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism ***642** and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

[10] If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.[FN19]

> FN19 The Nation may raise armies and compel citizens to give military service. Selective Draft Law Cases (Arver v. United States), 245 U.S. 366, 38 S.Ct. 159, 62 L.Ed. 349, L.R.A.1918C, 361, Ann.Cas.1918B, 856. It follows, of course, that those subject to military discipline are under many duties and may not claim many freedoms that we hold inviolable as to those in civilian life.

[11] We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

The decision of this Court in Minersville School District v. Gobitis and the holdings of those few per curiam decisions which preceded and foreshadowed it are overruled, and the judgment enjoining enforcement of the West Virginia Regulation is affirmed.

Affirmed.

Mr. Justice ROBERTS and Mr. Justice REED adhere to the views expressed by the Court in ***643**Minersville School District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375, 127 A.L.R. 1493, and are of the opinion that the judgment below

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

should be reversed.

Mr. Justice BLACK and Mr. Justice DOUGLAS, concurring.

We are substantially in agreement with the opinion just read, but since we originally joined with the Court in the Gobitis case, it is appropriate that we make a brief statement of reasons for our change of view.

Reluctance to make the Federal Constitution a rigid bar against state regulation of conduct thought inimical to the public welfare was the controlling influence which moved us to consent to the Gobitis decision. Long reflection convinced us that although the principle is sound, its application**1188 in the particular case was wrong. Jones v. Opelika, 316 U.S. 584, 623, 62 S.Ct. 1231, 1251, 86 L.Ed. 1691, 141 A.L.R. 514. We believe that the statute before us fails to accord full scope to the freedom of religion secured to the appellees by the First and Fourteenth Amendments.

The statute requires the appellees to participate in a ceremony aimed at inculcating respect for the flag and for this country. The Jehovah's Witnesses, without any desire to show disrespect for either the flag or the country, interpret the Bible as commanding, at the risk of God's displeasure, that they not go through the form of a pledge of allegiance to any flag. The devoutness of their belief is evidenced by their willingness to suffer persecution and punishment, rather than make the pledge.

No well-ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will not do. The First Amendment does not go so far. Religious faiths, honestly held, do not free individuals from responsibility to conduct themselves obediently to laws which are either imperatively necessary to protect society as a whole from grave *644 and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity. Decision as to the constitutionality of particular laws which strike at the substance of religious tenets and practices must be made be this Court. The duty is a solemn one, and in meeting it we cannot say that a failure, because of religious scruples, to assume a particular physical position and to repeat the words of a patriotic formula creates a grave danger to the nation. Such a statutory exaction is a form of test oath, and the test oath has always been abhorrent in the United States.

Words uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men.

Neither our domestic tranquillity in peace nor our martial effort in war depend on compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation. If, as we think, their fears are groundless, time and reason are the proper antidotes for their errors. The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose.

Mr. Justice MURPHY, concurring.

I agree with the opinion of the Court and join in it.

The complaint challenges an order of the State Board of Education which requires teachers and pupils to participate in the prescribed salute to the flag. For refusal to conform with the requirement the State law prescribes expulsion.*645 The offender is required by law to be treated as unlawfully absent from school and the parent or guardian is made liable to prosecution and punishment for such absence. Thus not only is the privilege of public education conditioned on compliance with the requirement, but noncompliance is virtually made unlawful. In effect compliance is compulsory and not optional. It is the claim of appellees that the regulation is invalid as a restriction on religious freedom and freedom of speech, secured to them against State infringement by the First and Fourteenth Amendments to the Constitution of the United States. DP A reluctance to interfere with considered state action, the fact that the end sought is a desirable one, the emotion aroused by the flag as a symbol for which we have fought and are now fighting again,-all of these are understandable. But there is before us the right of freedom to believe, freedom to worship one's Maker according to

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.

The right of freedom of thought and of religion as guaranteed by the Constitution ****1189** against State action includes both the right to speak freely and the right to refrain from speaking at all, except in so far as essential operations of government may require it for the preservation of an orderly society,-as in the case of compulsion to give evidence in court. Without wishing to disparage the purposes and intentions of those who hope to inculcate sentiments of loyalty nd patriotism by requiring a declaration of allegiance as a feature of public education, or unduly belittle the benefits that may accrue therefrom, I am impelled to conclude that such a requirement is not essential to the maintenance of effective government and orderly society. To many it is deeply distasteful to join in a public chorus of affirmation of private belief. By some, including***646** the members of this sect, it is apparently regarded as incompatible with a primary religious obligation and therefore a restriction on religious freedom. Official compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship which, it is well to recall, was achieved in this country only after what Jefferson characterized as the 'severest contests in which I have ever been engaged.' FN20

FN20 See Jefferson, Autobiography, vol. 1, pp. 53-59.

I am unable to agree that the benefits that may accrue to society from the compulsory flag salute are sufficiently definite and tangible to justify the invasion of freedom and privacy that it entailed or to compensate for a restraint on the freedom of the individual to be vocal or silent according to his conscience or personal inclination. The trenchant words in the preamble to the Virginia Statute for Religious Freedom remain unanswerable: '* * * all attempts to influence (the mind) by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, * * *.' Code Va.1919, s 34. Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words wrung from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.

Mr. Justice FRANKFURTER, dissenting.

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and ***647** action of a lifetime. But as judges we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard. They duty of a judge who must decide which of two claims before the Court shall prevail, that of a State to enact and enforce laws within its general competence or that of an individual to refuse obedience because of the demands of his conscience, is not that of the ordinary person. It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could in reason have enacted such a law. In the light of all the circumstances, including the history of this question in this Court, it would require more daring than I possess to deny that reasonable legislators could have taken the action which is before us for review. Most unwillingly, therefore, I must differ from my brethren with regard to legislation like this. I cannot bring my mind to believe that the 'liberty' secured by the Due Process Clause gives this Court authority to deny to the State of West Virginia the attainment of that which we all recognize as a legitimate legislative end, ****1190** namely, the promotion of good citizenship, by employment of the means here chosen.

Not so long ago we were admonished that 'the only check upon our own exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books appeal lies, not to the

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

courts, but to the ballot and to the processes of democratic government.' ***648** United States v. Butler, 297 U.S. 1, 79, 56 S.Ct. 312, 325, 80 L.Ed. 477, 102 A.L.R. 914 (dissent). We have been told that generalities do not decide concrete cases. But the intensity with which a general principle is held may determine a particular issue, and whether we put first things first may decide a specific controversy.

The admonition that judicial self-restraint alone limits arbitrary exercise of our authority is relevant every time we are asked to nullify legislation. The Constitution does not give us greater veto power when dealing with one phase of 'liberty' than with another, or when dealing with grade school regulations than with college regulations that offend conscience, as was the case in Hamilton v. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343. In neither situation is our function comparable to that of a legislature or are we free to act as though we were a superlegislature. Judicial self-restraint is equally necessary whenever an exercise of political or legislative power is challenged. There is no warrant in the constitutional basis of this Court's authority for attributing different ro les to it depending upon the nature of the challenge to the legislation. Our power does not vary according to the particular provision of the Bill of Rights which is invoked. The right not to have property taken without just compensation has, so far as the scope of judicial power is concerned, the same constitutional dignity as the right to be protected against unreasonable searches and seizures, and the latter has no less claim than freedom of the press or freedom of speech or religious freedom. In no instance is this Court the primary protector of the particular liberty that is invoked. This Court has recognized, what hardly could be denied, that all the provisions of the first ten Amendments are 'specific' prohibitions, United States v. Carolene Products Co., 304 U.S. 144, 152, 58 S.Ct. 778, 783, 82 L.Ed. 1234, note 4. But each specific Amendment, in so far as embraced within the Fourteenth Amendment, must be equally respected, and the function of this ***649** Court does not differ in passing on the constitutionality of legislation challenged under different Amendments.

When Mr. Justice Holmes, speaking for this Court, wrote that 'it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts', Missouri, Kansas & Texas R. Co. v. May, 194 U.S. 267, 270, 24 S.Ct. 638, 639, 48 L.Ed. 971, he went to the very essence of our constitutional system and the democratic conception of our society. He did not mean that for only some phases of civil government this Court was not to supplant legislatures and sit in judgment upon the right or wrong of a challenged measure. He was stating the comprehensive judicial duty and ro le of this Court in our constitutional scheme whenever legislation is sought to be nullified on any ground, namely, that responsibility for legislation lies with legislatures, answerable as they are directly to the people, and this Court's only and very narrow function is to determine whether within the broad grant of authority vested in legislatures they have exercised a judgment for which reasonable justification can be offered.

The framers of the federal Constitution might have chosen to assign an active share in the process of legislation to this Court. They had before them the well-known example of New York's Council of Revision, which had been functioning since 1777. After stating that 'laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed', the state constitution made the judges of New York part of the legislative process by providing that 'all bills which have passed the senate and assembly shall, before they become laws', be presented to a Council of which the judges constituted a majority, 'for their revisal and consideration'. Art. III, New York Constitution of 1777. Judges exercised this legislative function in New York ***650** for nearly fifty years. See Art. I, s 12, New York Constitution of 1821. But the framers of the Constitution denied such legislative powers to the federal judiciary. ****1191** They chose instead to insulate the judiciary from the legislative function. They did not grant to this Court supervision over legislation.

The reason why from the beginning even the narrow judicial authority to nullify legislation has been viewed with a jealous eye is that it serves to prevent the full play of the democratic process. The fact that it may be an undemocratic aspect of our scheme of government does not call for its rejection or its disuse. But it is the best of reasons, as this Court has frequently recognized, for the greatest caution in its use.

The precise scope of the question before us defines the limits of the constitutional power that is in

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

issue. The State of West Virginia requires all pupils to share in the salute to the flag as part of school training in citizenship. The present action is one to enjoin the enforcement of this requirement by those in school attendance. We have not before us any attempt by the State to punish disobedient children or visit penal consequences on their parents. All that is in question is the right of the state to compel participation in this exercise by those who choose to attend the public schools.

We are not reviewing merely the action of a local school board. The flag salute requirement in this case comes before us with the full authority of the State of West Virginia. We are in fact passing judgment on 'the power of the State as a whole'. Rippey v. Texas, 193 U.S. 504, 509, 24 S.Ct. 516, 517, 48 L.Ed. 767; Skiriotes v. Florida, 313 U.S. 69, 79, 61 S.Ct. 924, 930, 85 L.Ed. 1193. Practically we are passing upon the political power of each of the forty-eight states. Moreover, since the First Amendment has been read into the Fourteenth, our problem is precisely the same is it would be if we had before us an Act of Congress for the District of Columbia. To suggest that we are here concerned*651 with the heedless action of some village tyrants is to distort the augustness of the constitutional issue and the reach of the consequences of our decision.

Under our constitutional system the legislature is charged solely with civil concerns of society. If the avowed or intrinsic legislative purpose is either to promote or to discourage some religious community or creed, it is clearly within the constitutional restrictions imposed on legislatures and cannot stand. But it by no means follows that legislative power is wanting whenever a general non-discriminatory civil regulation in fact touches conscientious scruples or religious beliefs of an individual or a group. Regard for such scruples or beliefs undoubtedly presents one of the most reasonable claims for the exertion of legislative accommodation. It is, of course, beyond our power to rewrite the state's requirement, by providing exemptions for those who do not wish to participate in the flag salute or by making some other accommodations to meet their scruples. That wisdom might suggest the making of such accommodations and that school administration would not find it too difficult to make them and yet maintain the ceremony for those not refusing to conform, is outside our province to suggest. Tact, respect, and generosity toward variant views will always commend themselves to those charged with the duties of legislation so as to achieve a maximum of good will and to require a minimum of unwilling submission to a general law. But the real question is, who is to make such accommodations, the courts or the legislature?

This is no dry, technical matter. It cuts deep into one's conception of the democratic process-it concerns no less the practical differences between the means for making these accommodations that are open to courts and to legislatures. A court can only strike down. It can only say 'This or that law is void.' It cannot modify or qualify, it cannot make exceptions to a general requirement.*652 And it strikes down not merely for a day. At least the finding of unconstitutionality ought not to have ephemeral significance unless the Constitution is to be reduced to the fugitive importance of mere legislation. When we are dealing with the Constitution of the United States, and more particularly with the great safeguards of the Bill of Rights, we are dealing with principles of liberty and justice 'so rooted in the traditions and conscience of our people as to be ranked as fundamental'-something without which 'a fair and enlightened system of justice would be impossible'. Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288; **1192Hurtado v. California, 110 U.S. 516, 530, 531, 4 S.Ct. 111, 118, 119, 292, 28 L.Ed. 232. If the function of this Court is to be essentially no different from that of a legislature, if the considerations governing constitutional construction are to be substantially those that underlie legislation, then indeed judges should not have life tenure and they should be made directly responsible to the electorate. There have been many but unsuccessful proposals in the last sixty years to amend the Constitution to that end. See Sen. Doc. No. 91, 75th Cong., 1st Sess., pp. 248-51.

Conscientious scruples, all would admit, cannot stand against every legislative compulsion to do positive acts in conflict with such scruples. We have been told that such compulsions override religious scruples only as to major concerns of the state. But the determination of what is major and what is minor itself raises questions of policy. For the way in which men equally guided by reason appraise importance goes to the very heart of policy. Judges should be very diffident in setting their judgment against that of a state in determining what is and what is not a major concern,

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

what means are appropriate to proper ends, and what is the total social cost in striking the balance of imponderables.

What one can say with assurance is that the history out of which grew constitutional provisions for religious equality*653 and the writings of the great exponents of religious freedom-Jefferson, Madison, John Adams, Benjamin Franklin-are totally wanting in justification for a claim by dissidents of exceptional immunity from civic measures of general applicability, measures not in fact disguised assaults upon such dissident views. The great leaders of the American Revolution were determined to remove political support from every religious establishment. They put on an equality the different religious sects-Episcopalians, Presbyterians, Catholics, Baptists, Methodists, Quakers, Huguenots-which, as dissenters, had been under the heel of the various orthodoxies that prevailed in different colonies. So far as the state was concerned, there was to be neither orthodoxy nor heterodoxy. And so Jefferson and those who followed him wrote guaranties of religious freedom into our constitutions. Religious minorities as well as religious majorities were to be equal in the eyes of the political state. But Jefferson and the others also knew that minorities may disrupt society. It never would have occurred to them to write into the Constitution the subordination of the general civil authority of the state to sectarian scruples.

The constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma. Religious loyalties may be exercised without hindrance from the state, not the state may not exercise that which except by leave of religious loyalties is within the domain of temporal power. Otherwise each individual could set up his own censor against obedience to laws conscientiously deemed for the public good by those whose business it is to make laws.

The prohibition against any religious establishment by the government placed denominations on an equal footing*654 -it assured freedom from support by the government to any mode of worship and the freedom of individuals to support any mode of worship. Any person may therefore believe or disbelieve what he pleases. He may practice what he will in his own house of worship or publicly within the limits of public order. But the lawmaking authority is not circumscribed by the variety of religious beliefs, otherwise the constitutional guaranty would be not a protection of the free exercise of religion but a denial of the exercise of legislation.

The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state's support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organizations or beliefs may pronounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the state on any matter deemed within the sovereignty of the religious conscience. Much that is the concern of temporal authority affects the spiritual interests of men. But it is not enough to strike down a non-discriminatory **1193 law that it may hurt or offend some dissident view. It would be too easy to cite numerous prohibitions and injunctions to which laws run counter if the variant interpretations of the Bible were made the tests of obedience to law. The validity of secular laws cannot be measured by their conformity to religious doctrines. It is only in a theocratic state that ecclesiastical doctrines measure legal right or wrong.

An act compelling profession of allegiance to a religion, no matter how subtly or tenuously promoted, is bad. But an act promoting good citizenship and national allegiance is within the domain of governmental authority and is therefore to be judged by the same considerations of power and of constitutionality as those involved in the many *655 claims of immunity from civil obedience because of religious scruples.

That claims are pressed on behalf of sincere religious convictions does not of itself establish their constitutional validity. Nor does waving the banner of religious fredom relieve us from examining into the power we are asked to deny the states. Otherwise the doctrine of separation of church and state, so cardinal in the history of this nation and for the liberty of our people, would mean not the disestablishment of a state church but the establishment of all churches and of all religious groups.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

The subjection of dissidents to the general requirement of saluting the flag, as a measure conducive to the training of children in good citizenship, is very far from being the first instance of exacting obedience to general laws that have offended deep religious scruples. Compulsory vaccination, see Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, 3 Ann.Cas. 765, food inspection regulations, see Shapiro v. Lyle, D.C., 30 F.2d 971, the obligation to bear arms, see Hamilton v. Regents, 293 U.S. 245, 267, 55 S.Ct. 197, 206, 79 L.Ed. 343, testimonial duties, see Stansbury v. Marks, 2 Dall. 213, 1 L.Ed. 353, compulsory medical treatment, see People v. Vogelgesang, 221 N.Y. 290, 116 N.E. 977-these are but illustrations of conduct that has ofteen been compelled in the enforcement of legislation of general applicability even though the religious consciences of particular individuals rebelled at the exaction.

Law is concerned with external behavior and not with the inner life of man. It rests in large measure upon compulsion. Socreates lives in history partly because he gave his life for the conviction that duty of obedience to secular law does not presuppose consent to its enactment or belief in its virtue. The consent upon which free government rests is the consent that comes from sharing in the process of making and unmaking laws. The state is not shut out from a domain because the individual conscience may deny the state's claim. The individual conscience***656** may profess what faith it chooses. It may affirm and promote that faith-in the language of the Constitution, it may 'exercise' it freely-but it cannot thereby restrict community action through political organs in matters of community concern, so long as the action is not asserted in a discriminatory way either openly or by stealth. One may have the right to practice one's religion and at the same time owe the duty of formal obedience to laws that run counter to one's beliefs. Compelling belief implies denial of opportunity to combat it and to assert dissident views. Such compulsion is one thing. Quite another matter is submission to conformity of action while denying its wisdom or virtue and with ample opportunity for seeking its change or abrogation.

In Hamilton v. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343, this Court unanimously held that one attending a state-maintained university cannot refuse attendance on courses that offend his religious scruples. That decision is not overruled today, but is distinguished on the ground that attendance at the institution for higher education was voluntary and therefore a student could not refuse compliance with its conditions and yet take advantage of its opportunities. But West Virginia does not compel the attendance at its public schools of the children here concerned. West Virginia does not so compel, for it cannot. This Court denied the right of a state to require its children to attend public schools. Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468. As to its public schools, West Virginia imposes conditions****1194** which it deems necessary in the development of future citizens precisely as California deemed necessary the requirements that offended the student's conscience in the Hamilton case. The need for higher education and the duty of the state to provide it as part of a public educational system, are part of the democratic faith of most of our states. The right to secure such education in institutions not maintained by public funds is unquestioned. ***657** But the practical opportunities for obtaining what is becoming in increasing measure the conventional equipment of American youth may be no less burdensome than that which parents are increasingly called upon to bear in sending their children to parochial schools because the education provided by public schools, though supported by their taxes, does not satisfy their ethical and educational necessities. I find it impossible, so far as constitutional power is concerned, to differentiate what was sanctioned in the Hamilton case from what is nullified in this case. And for me it still remains to be explained why the grounds of Mr. Justice Cardozo's opinion in Hamilton v. Regents, supra, are not sufficient to sustain the flag salute requirement. Such a requirement, like the requirement in the Hamilton case, 'is not an interference by the state with the free exercise of religion when the liberties of the Constitution are read in the light of a century and a half of history during days of peace and war.' 293 U.S. 245, 266, 55 S.Ct. 197, 206, 79 L.Ed. 343. The religious worshiper, 'if his liberties were to be thus extended, might refuse to contribute taxes * * * in furtherance of any other and condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government.' Id., 293 U.S. at page 268, 55 S.Ct. at page 206, 79 L.Ed. 343.

Parents have the privilege of choosing which

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

schools they wish their children to attend. And the question here is whether the state may make certain requirements that seem to it desirable or important for the proper education of those future citizens who go to schools maintained by the states, or whether the pupils in those schools may be relieved from those requirements if they run counter to the consciences of their parents. Not only have parents the right to send children to schools of their own choosing but the state has no right to bring such schools 'under a strict governmental control' or give 'affirmative direction ***658** concerning the intimate and essential details of such schools, intrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum and textbooks'. Farrington v. Tokushige, 273 U.S. 284, 298, 47 S.Ct. 406, 408, 409, 71 L.Ed. 646. Why should not the state likewise have constitutional power to make reasonable provisions for the proper instruction of children in schools maintained by it?

When dealing with religious scruples we are dealing with an almost numberless variety of doctrines and beliefs entertained with equal sincerity by the particular groups for which they satisfy man's needs in his relation to the mysteries of the universe. There are in the United States more than 250 distinctive established religious denominations. In the state of Pennsylvania there are 120 of these, and in West Virginia as many as 65. But if religious scruples afford immunity from civic obedience to laws, they may be invoked by the religious beliefs of any individual even though he holds no membership in any sect or organized denomination. Certainly this Court cannot be called upon to determine what claims of conscience should be recognized and what should be rejected as satisfying the 'religion' which the Constitution protects. That would indeed resurrect the very discriminatory treatment of religion which the Constitution sought forever to forbid. And so, when confronted with the task of considering the claims of immunity from obedience to a law dealing with civil affairs because of religious scruples, we cannot conceive religion more narrowly than in the terms in which Judge Augustus N. Hand recently characterized it:

'It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason***659** as a means of relating the individual to his fellow-men ****1195** and to his universe. * * * (It) may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse.' United States v. Kauten, 2 Cir., 133 F.2d 703, 708.

Consider the controversial issue of compulsory Bible-reading in public schools. The educational policies of the states are in great conflict over this, and the state courts are divided in their decisions on the issue whether the requirement of Bible-reading offends constitutional provisions dealing with religious freedom. The requirement of Bible-reading has been justified by various state courts as an appropriate means of inculcating ethical precepts and familiarizing pupils with the most lasting expression of great English literature. Is this Court to overthrow such variant state educational policies by denying states the right to entertain such convictions in regard to their school systems because of a belief that the King James version is in fact a sectarian text to which parents of the Catholic and Jewish faiths and of some Protestant persuasions may rightly object to having their children exposed? On the other hand the religious consciences of some parents may rebel at the absence of any Bible-reading in the schools. See State of Washington ex rel. Clithero v. Showalter, 284 U.S. 573, 52 S.Ct. 15, 76 L.Ed. 498. Or is this Court to enter the old controversy between science and religion by unduly defining the limits within which a state may experiment with its school curricula? The religious consciences of some parents may be offended by subjecting their children to the Biblical account of creation, while another state may offend parents by prohibiting a teaching of biology that contradicts such Biblical account. Compare Scopes v. State, 154 Tenn. 105, 289 S.W. 363, 53 A.L.R. 821. What of conscientious***660** objections to what is devoutly felt by parents to be the poisoning of impressionable minds of children by chauvinistic teaching of history? This is very far from a fanciful suggestion for in the belief of many thoughtful people nationalism is the seed-bed of war.

There are other issues in the offing which admonish us of the difficulties and complexities that confront states in the duty of administering their local school systems. All citizens are taxed for the support

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

of public schools although this Court has denied the right of a state to compel all children to go to such schools and has recognized the right of parents to send children to privately maintained schools. Parents who are dissatisfied with the public schools thus carry a double educational burden. Children who go to public school enjoy in many states derivative advantages such as free text books, free lunch, and free transportation in going to and from school. What of the claims for equity of treatment of those parents who, because of religious scruples, cannot send their children to public schools? What of the claim that if the right to send children to privately maintained schools is partly an exercise of religious conviction, to render effective this right it should be accompanied by a quality of treatment by the state in supplying free textbooks, free lunch, and free transportation to children who go to private schools? What of the claim that such grants are offensive to the cardinal constitutional doctrine of separation of church and state?

These questions assume increasing importance in view of the steady growth of parochial schools both in number and in population. I am not borrowing trouble by adumbrating these issues nor am I parading horrible examples of the consequences of today's decision. I am aware that we must decide the case before us and not some other case. But that does not mean that a case is dissociated from the past and unrelated to the future. We must decide this ***661** case with due regard for what went before and no less regard for what may come after. Is it really a fair construction of such a fundamental concept as the right freely to exercise one's religion that a state cannot choose to require all children who attend public school to make the same gesture of allegiance to the symbol of our national life because it may offend the conscience of some children, but that it may compel all children to attend public school to listen to the King James version although it may offend the consciences of their parents? And what of the larger issue of claiming immunity from obedience to a general civil regulation that has a reasonable****1196** relation to a public purpose within the general competence of the state? See Pierce v. Society of Sisters, 268 U.S. 510, 535, 45 S.Ct. 571, 573, 69 L.Ed. 1070, 39 A.L.R. 468. Another member of the sect now before us insisted that in forbidding her two little girls, aged nine and twelve, to distribute pamphlets Oregon infringed her and their freedom of religion in that the children were engaged in 'preaching the gospel of God's Kingdom'. A procedural technicality led to the dismissal of the case, but the problem remains. McSparran v. City of Portland, 318 U.S. 768, 63 S.Ct. 759, 87 L.Ed. 1139.

These questions are not lightly stirred. They touch the most delicate issues and their solution challenges the best wisdom of political and religious statesmen. But it presents awful possibilities to try to encase the solution of these problems within the rigid prohibitions of unconstitutionality.

We are told that a flag salute is a doubtful substitute for adequate understanding of our institutions. The states that require such a school exercise do not have to justify it as the only means for promoting good citizenship in children, but merely as one of diverse means for accomplishing a worthy end. We may deem it a foolish measure, but the point is that this Court is not the organ of government to resolve doubts as to whether it will fulfill its purpose. Only if there be no doubt that any reasonable***662** mind could entertain can we deny to the states the right to resolve doubts their way and not ours.

That which to the majority may seem essential for the welfare of the state may offend the consciences of a minority. But, so long as no inroads are made upon the actual exercise of religion by the minority, to deny the political power of the majority to enact laws concerned with civil matters, simply because they may offend the consciences of a minority, really means that the consciences of a minority are more sacred and more enshrined in the Constitution than the consciences of a majority.

We are told that symbolism is a dramatic but primitive way of communicating ideas. Symbolism is inescapable. Even the most sophisticated live by symbols. But it is not for this Court to make psychological judgments as to the effectiveness of a particular symbol in inculcating concededly indispensable feelings, particularly if the state happens to see fit to utilize the symbol that represents our heritage and our hopes. And surely only flippancy could be responsible for the suggestion that constitutional validity of a requirement to salute our flag implies equal validity of a requirement to salute a dictator. The significance of a symbol lies in what it represents. To reject the swastika does not imply rejection of the Cross. And so it bears repetition to say that it mocks reason and

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

denies our whole history to find in the allowance of a requirement to salute our flag on fitting occasions the seeds of sanction for obeisance to a leader. To deny the power to employ educational symbols is to say that the state's educational system may not stimulate the imagination because this may lead to unwise stimulation.

The right of West Virginia to utilize the flag salute as part of its educational process is denied because, so it is argued, it cannot be justified as a means of meeting a 'clear and present danger' to national unity. In passing it deserves to be noted that the four cases which unanimously***663** sustained the power of states to utilize such an educational measure arose and were all decided before the present World War. But to measure the state's power to make such regulations as are here resisted by the imminence of national danger is wholly to misconceive the origin and purpose of the concept of 'clear and present danger'. To apply such a test is for the Court to assume, however unwittingly, a legislative responsibility that does not belong to it. To talk about 'clear and present danger' as the touchstone of allowable educational policy by the states whenever school curricula may impinge upon the boundaries of individual conscience, is to take a felicitous phrase out of the context of the particular situation where it arose and for which it was adapted. Mr. Justice Holmes used the phrase 'clear and present danger' in a case involving mere speech as a means by which alone to accomplish sedition in time of war. By that phrase he meant merely to indicate that, in view of the protection given to utterance by the First Amendment, in order that mere utterance may ****1197** not be proscribed, 'the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.' Schenck v. United States, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470. The 'substantive evils' about which he was speaking were inducement of insubordination in the military and naval forces of the United States and obstruction of enlistment while the country was at war. He was not enunciating a formal rule that there can be no restriction upon speech and, still less, no compulsion where conscience balks, unless imminent danger would thereby be wrought 'to our institutions or our government'.

The flag salute exercise has no kinship whatever to the oath tests so odious in history. For the oath test was one of the instruments for suppressing heretical beliefs. ***664** Saluting the flag suppresses no belief nor curbs it. Children and their parents may believe what they please, avow their belief and practice it. It is not even remotely suggested that the requirement for saluting the flag involves the slightest restriction against the fullest opportunity on the part both of the children and of their parents to disavow as publicly as they choose to do so the meaning that others attach to the gesture of salute. All channels of affirmative free expression are open to both children and parents. Had we before us any act of the state putting the slightest curbs upon such free expression, I should not lag behind any member of this Court in striking down such an invasion of the right to freedom of thought and freedom of speech protected by the Constitution.

I am fortified in my view of this case by the history of the flag salute controversy in this Court. Five times has the precise question now before us been adjudicated. Four times the Court unanimously found that the requirement of such a school exercise was not beyond the powers of the states. Indeed in the first three cases to come before the Court the constitutional claim now sustained was deemed so clearly unmeritorious that this Court dismissed the appeals for want of a substantial federal question. Leoles v. Landers, 302 U.S. 656, 58 S.Ct. 364, 82 L.Ed. 507; Hering v. State Board of Education, 303 U.S. 624, 58 S.Ct. 752, 82 L.Ed. 1087; Gabrielli v. Knickerbocker, 306 U.S. 621, 59 S.Ct. 786, 83 L.Ed. 1026. In the fourth case the judgment of the district court upholding the state law was summarily affirmed on the authority of the earlier cases. Johnson v. Deerfield, 306 U.S. 621, 59 S.Ct. 791, 83 L.Ed. 1027. The fifth case, Minersville District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375, 127 A.L.R. 1493, was brought here because the decision of the Circuit Court of Appeals for the Third Circuit ran counter to our rulings. They were reaffirmed after full consideration, with one Justice dissenting.

What may be even more significant than this uniform recognition of state authority is the fact that every Justice***665** -thirteen in all-who has hitherto participated in judging this matter has at one or more times found no constitutional infirmity in what is now condemned. Only the two Justices sitting for the first time on this matter have not heretofore found this legislation inoffensive to the 'liberty' guaranteed

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

by the Constitution. And among the Justice who sustained this measure were outstanding judicial leaders in the zealous enforcement of constitutional safeguards of civil liberties-men like Chief Justice Hughes, Mr. Justice Brandeis, and Mr. Justice Cardozo, to mention only those no longer on the Court.

One's conception of the Constitution cannot be severed from one's conception of a judge's function in applying it. The Court has no reason for existence if it merely reflects the pressures of the day. Our system is built on the faith that men set apart for this special function, freed from the influences of immediacy and form the deflections of worldly ambition, will become able to take a view of longer range than the period of responsibility entrusted to Congress and legislatures. We are dealing with matters as to which legislators and voters have conflicting views. Are we as judges to impose our strong convictions on where wisdom lies? That which three years ago had seemed to five successive Courts to lie within permissible areas of legislation is now outlawed by the deciding shift of opinion of two Justice. What reason is there to believe that they or their successors may not have another view a few years hence? Is that which was ****1198** deemed to be of so fundamental a nature as to be written into the Constitution to endure for all times to be the sport of shifting winds of doctrine? Of course, judicial opinions, even as to questions of constitutionality, are not immuntable. As has been true in the past, the Court will from time to time reverse its position. But I believe that never before these Jehovah's Witnesses ***666** cases (except for minor deviations subsequently retraced) has this Court overruled decisions so as to restrict the powers of democratic government. Always heretofore, it has withdrawn narrow views of legislative authority so as to authorize what formerly it had denied.

In view of this history it must be plain that what thirteen Justices found to be within the constitutional authority of a state, legislators can not be deemed unreasonable in enacting. Therefore, in denying to the states what heretofore has received such impressive judicial sanction, some other tests of unconstitutionality must surely be guiding the Court than the absence of a rational justification for the legislation. But I know of no other test which this Court is authorized to apply in nullifying legislation.

In the past this Court has from time to time set its views of policy against that embodied in legislation by finding laws in conflict with what was called the 'spirit of the Constitution'. Such undefined destructive power was not conferred on this Court by the Constitution. Before a duly enacted law can be judicially nullified, it must be forbidden by some explicit restriction upon political authority in the Constitution. Equally inadmissible is the claim to strike down legislation because to us as individuals it seems opposed to the 'plan and purpose' of the Constitution. That is too tempting a basis for finding in one's personal views the purposes of the Founders.

The uncontrollable power wielded by this Court brings it very close to the most sensitive areas of public affairs. As appeal from legislation to adjudication becomes more frequent, and its consequences more far-reaching, judicial self-restraint becomes more and not less important, lest we unwarrantably enter social and political domains wholly outside our concern. I think I appreciate fully the objections to the law before us. But to deny that it presents a question upon which men might reasonably ***667** differ appears to me to be intolerance. And since men may so reasonably differ, I deem it beyond my constitutional power to assert my view of the wisdom of this law against the view of the State of West Virginia.

Jefferson's opposition to judicial review has not been accepted by history, but it still serves as an admonition against confusion between judicial and political functions. As a rule of judicial self-restraint, it is still as valid as Lincoln's admonition. For those who pass laws not only are under duty to pass laws. They are also under duty to observe the Constitution. And even though legislation relates to civil liberties, our duty of deference to those who have the responsibility for making the laws is no less relevant or less exacting. And this is so especially when we consider the accidental contingencies by which one man may determine constitutionality and thereby confine the political power of the Congress of the United States and the legislatures of forty-eight states. The attitude of judicial humility which thse considerations enjoin is not an abdication of the judicial function. It is a due observance of its limits. Moreover, it is to be borne in mind that in a question like this we are not passing on the proper distribution of political power as between the states and the central government. We are not discharging the basic function of this Court as the mediator of powers within the federal system. To

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

strike down a law like this is to deny a power to all government.

The whole Court is conscious that this case reaches ultimate questions of judicial power and its relation to our scheme of government. It is appropriate, therefore, to recall an utterance as wise as any that I knew in analyzing what is really involved when the theory of this Court's function is put to the test of practice. The analysis is that of James Bradley Thayer:

'* * * there has developed a vast and growing increase of judicial interference with legislation. This is a very different***668** state of things from what our fathers contemplated, a century and more ago, in framing the new system. Seldom, indeed, as they imagined, under our system, ****1199** would this great, novel, tremendous power of the courts be exerted,-would this sacred ark of the covenant be taken from within the veil. Marshall himself expressed truly one aspect of the matter, when he said in one of the later years of his life: 'No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of legislative acts. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other grounds, a just respect for the legislature requires that the obligation of its laws should not be unnecessarily and wantonly assailed.' And again, a little earlier than this, he laid down the one true rule of duty for the courts. When he went to Philadelphia at the end of September, in 1831, on that painful errand of which I have spoken, in answering a cordial tribute from the bar of that city he remarked that if he might be permitted to claim for himself and his associates any part of the kind things they had said, it would be this, that they had 'never sought to enlarge the judicial power beyond its proper bounds, nor feared to carry it to the fullest extent that duty required.'

'That is the safe twofold rule; nor is the first part of it any whit less important than the second; nay, more; to-day it is the part which most requires to be emphasized. For just here comes in a consideration of very great weight. Great and, indeed, inestimable as are the advantages in a popular government of this conservative influence,-the power of the judiciary to disregard unconstitutional legislation,-it should be remembered that the exercise of it, even when unavoidable, is always attended with a serious evil, namely, that the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that come from fighting the question out in the ordinary way, and correcting their own errors. If the decision in Munn v. Illinois and the 'Granger Cases,' twenty-five years ago, and in the 'Legal Tender Cases,' nearly thirty years ***669** ago, had been different; and the legislation there in question, thought by many to be unconstitutional and by many more to be ill-advised, had been set aside, we should have been saved some trouble and some harm. But I venture to think that the good which came to the country and its people from the vigorous thinking that had to be done in the political debates that followed, from the infiltration through every part of the population of sound ideas and sentiments, from the rousing into activity of opposite elements, the enlargement of ideas, the strengthening of moral fibre, and the growth of political experience that came out of it all,-that all this far more than outweighed any evil which ever flowed from the refusal of the court to interfere with the work of the legislature.

'The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility. It is no light thing to do that.

'What can be done? It is the courts that can do most to cure the evil; and the opportunity is a very great one. Let them resolutely adhere to first principles. Let them consider how narrow is the function which the constitutions have conferred on them,-the office merely of deciding litigated cases; how large, therefore, is the duty intrusted to others, and above all to the legislature. It is that body which is charged, primarily, with the duty of judging of the constitutionality of its work. The constitutions generally give them no authority to call upon a court for advice; they must decide for themselves, and the courts may never be able to say a word. Such a body, charged, in every State, with almost all the legislative power of the people, is entitled to the most entire and real respect; is entitled, as among all rationally permissible opinions as to what the constitution allows, to its own choice. Courts, as has often been said, are not to think of the legislators, but of the legislature,-the great, continuous body itself, abstracted from all the transi-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

tory individuals who may happen to hold its power. It is this majestic representative of the people whose action is in question, a coo rdinate department of the government ***670** charged with the greatest functions, and invested, in contemplation of law, with whatsoever wisdom, virtue, and knowledge the exercise of such functions requires.

****1200** 'To set aside the acts of such a body, representing in its own field, which is the very highest of all, the ultimate sovereign, should be a solemn, unusual, and painful act. Something is wrong when it can ever be other than that. And if it be true that the holders of legislative power are careless or evil, yet the constitutional duty of the court remains untouched; it cannot rightly attempt to protect the people, by undertaking a function not its own. On the other hand, by adhering rigidly to its own duty, the court will help, as nothing else can, to fix the spot where responsibility lies, and to bring down on that precise locality the thunderbolt of popular condemnation. The judiciary, to-day, in dealing with the acts of their coo rdinate legislators, owe to the country no greater or clearer duty than that of keeping their hands off these acts wherever it is possible to do it. For that course-the true course of judicial duty always-will powerfully help to bring the people and their representatives to a sense of their own responsibility. There will still remain to the judiciary an ample field for the determinations of this remarkable jurisdiction, of which our American law has so much reason to be proud; a jurisdiction which has had some of its chief illustrations and its greatest triumphs as in Marshall's time, so in ours, while the courts were refusing to exercise it.' J. B. Thayer, John Marshall, (1901) 104-10.

Of course patriotism cannot be enforced by the flag salute. But neither can the liberal spirit be enforced by judicial invalidation of illiberal legislation. Our constant preoccupation with the constitutionality of legislation rather than with its wisdom tends to preoccupation of the American mind with a false value. The tendency of focusing attention on constitutionality is to make constitutionality synonymous with wisdom, to regard a law as all right if it is constitutional. Such an attitude is a great enemy of liberalism. Particularly in legislation affecting freedom of thought and freedom of speech much which should offend a free-spirited society is constitutional. Reliance***671** for the most precious interests of civilization, therefore, must be found outside of their vindication in courts of law. Only a persistent positive translation of the faith of a free society into the convictions and habits and actions of a community is the ultimate reliance against unabated temptations to fetter the human spirit.

U.S. 1943.
West Virginia State Board of Education v. Barnette
319 U.S. 624, 63 S.Ct. 1178, 147 A.L.R. 674, 87 L.Ed. 1628

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

9439241

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

TO ALL PARTIES TO THE ABOVE-ENTITLED ACTION AND TO THE ATTORNEYS OF RECORD FOR SAME:

PLEASE TAKE NOTICE that on September 29, 2011, at 3:00 p.m. in Department 22 of the above-entitled Court, plaintiff JANE DOE will move for an Order Compelling defendant North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) Elder GARY ABRAHAMSON to answer those deposition questions set forth in the Separate Statement in Support of this Motion, filed herewith, and reasonable follow-up questions related thereto.

Please further take notice that at the time and place set forth above, plaintiff will request that sanctions in the amount of $1,440.00 be awarded against said defendant Northern Congregation of Jehovah's Witnesses, Fremont, California, and its counsel.

Said motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities and Separate Statement in Support, and the Meet and Confer Declaration of Richard J. Simons filed herewith.

Dated: September 6, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

9439245

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By [illegible] Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	**9/29/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1212207**

STATEMENT OF FACTS

In this action, plaintiff Jane Doe seeks damages against the local and national entities of the Jehovah's Witnesses Church for the consequences of childhood sexual abuse committed by Jonathan Kendrick in the mid-1990s. Plaintiff noticed and took the deposition of Gary Abrahamson, an Elder of her former North Fremont Congregation. Relevant excerpts of the deposition, attached as Exhibit "1" to the Declaration of Richard Simons in Support of this Motion, elicited the following facts:

1. Gary Abrahamson is an elder of the North Congregation of Fremont, where the abuse occurred. (Depo. 11:2-5);

2. Mr. Abrahamson has been an Elder in Fremont since 1986 (Depo. 13:15-18);

3. Elders have the primary administrative responsibilities within the Congregation (14:15-24);

4. Elders serve together with other Elders in a Body of Elders (15:9-13);

5. Elders are selected by the local Body of Elders, but must be approved by the "Branch Office", a separate entity located at the Corporate Headquarters of Jehovah's Witnesses in New York (17:17-18:8);

6. Jehovah's Witnesses also have "Ministerial Servants", who hold positions of administrative responsibility within the Congregation (26:2-27:2);

7. The appointment of a Ministerial Servant requires Corporate approval by the Watchtower New York Corporation Service Branch (22:2-13; 27:3-10);

8. A Ministerial Servant can be Removed by recommendation by the Body of Elders, and approval of the Service Branch (56:12-25);

9. The Board of Elders recommends Removal of a Ministerial Servant in a narrative letter communicated to the Service Branch (57:1-13);

10. Jonathan Kendrick was a Ministerial Servant of the Jehovah's Witnesses North Fremont Congregation (54:5-13);

11. Jonathan Kendrick was removed as a Ministerial Servant from the Fremont North Congregation, which means he was determined to be no longer qualified to serve (56:16-20);

12. The Body of Elders determines that a Ministerial Servant is no longer qualified to serve, but the determination must be approved by the Corporate Service Branch of Watchtower New York (56:18-25);

13. The recommendation of the Body of Elders that a Ministerial Servant be Removed is communicated to the Service Branch in New York by a narrative letter, and that process was followed in the removal of Mr. Kendrick (56:1-7);

14. The Jehovah's Witnesses has a Judicial Investigating Committee (Depo. 58:15-59:1);

15. The existence of the Judicial Investigating Committee is contained in Jehovah's Witnesses publications. (59:24:60:5);

16. Jehovah's Witnesses members expect the Judicial Investigating Committee to investigate allegations of serious wrongdoing, including sexual abuse of a child (60:6-18);

17. Mr. Kendrick married Evelyn Kendrick in approximately 1988 (54:23-55:14);

18. Evelyn Kendrick had a daughter, Andrea, from a prior marriage (56:2-11).

During Mr. Abrahamson's deposition, he was asked questions about Administrative actions and information involving Mr. Kendrick.

The questions all were objected to on the grounds of Clergy-Penitent privilege and Mr. Abrahamson instructed not to answer. Seven questions are before the Court in this Motion. They were directed to Mr. Kendrick's Administrative record, Administrative Communications, and actions involving Mr. Kendrick, his Judicial Investigation history, to reports from members of sexual abuse of children, and to specific reports of sexual abuse of children by Mr. Kendrick.

As shown below, the statutory Clergy-Penitent privilege does not apply to any of the questions. The Motion to Compel should be granted, and the questions answers, together with responses to reasonable follow-up questions.

I. THE COURT HAS THE AUTHORITY TO COMPEL FURTHER ANSWERS TO DEPOSITION QUESTIONS.

If a deponent fails to answer any question at deposition, the party seeking discovery may move the Court for an Order compelling an answer. (C.C.P. §2025.480(a)). Such a Motion must be accompanied by a Meet and Confer Declaration and this Motion is accompanied by such a Declaration from plaintiff's counsel. (2025.480(b)). Plaintiff is required to file a Separate Statement by California Rule of Court 3.1345, and the Separate Statement is filed with this Motion.

A party or attorney who unsuccessfully opposes a Motion to Compel an answer, without substantial justification, shall be sanctioned. (2025.480(f)).

In this matter, plaintiff has lodged an advance copy of the transcript of the deposition. Plaintiff will, not less than five days prior to the hearing on this Motion, lodge with the Court a Certified Copy of the stenographic transcript and of the video recording, as required by §2025.480(d).

II. GOOD CAUSE EXISTS FOR DISCOVERY OF THE INFORMATION SOUGHT IN THE RELEVANT DEPOSITION QUESTIONS.

The deposition questions concern issues arising from the notice to Jehovah's Witness administrative management, both at the local and national level, of sexual misconduct with minors by Jonathan Kendrick. The subject questions also address specific managerial actions taken with regard to Mr. Kendrick, including his removal as a "Ministerial Servant" in 1993, prior to the sexual abuse of plaintiff. The information contained in the questions at issue also are relevant to the policies, practices, and procedures of the Jehovah's Witnesses Corporations with regard to the protection of minors, including plaintiff, from sexual abuse, and the apparent corporate policy of maintaining complete secrecy from its members of reports and findings concerning perpetrators of childhood sexual abuse. While the information specifically addressing Mr. Kendrick prior to his sexual abuse of plaintiff is relevant on the issue of notice, information obtained subsequently is also relevant to establish the corporate policies, procedures, and practices of defendants, both as to issues of negligence, and as to possible amendment of the pleadings to claim punitive damages, which in actions against religious corporations requires a specific Motion. (C.C.P. §425.14). Section 425.14 specifically states "nothing in this section is intended to affect the plaintiff's right to discover evidence on the issue of punitive or exemplary damages."

III. THE SCOPE OF CLERGY COMMUNICATION PRIVILEGE IS LIMITED BY STATUTE.

A penitential communication "means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, organization, is authorized or accustomed to hear those communications and, under the discipline or tenants of his or her church, denomination, or organization, has a duty to keep those communications secret." (Evid. Code 1032).

The key elements of a penitential communication are that no third person is aware of the communication, and the clergy member has a duty to keep those communications secret. The party claiming a privilege normally has the burden of showing that the evidence it seeks to suppress is within the terms of the statute (*Roman Catholic Archbishop of Los Angeles v. Superior Court*, (2005) 131 Cal.App.4th 417, at 441).

Not every statement made to a clergy member is within the definition of "Confidential Communications" of Evidence Code Section 1032. The statements must be intended to be made in confidence, and made to one who has a duty to keep them secret. (*Roman Catholic Archbishop,* supra., 131 Cal. App. 4th at 443-4). The knowledge or expectation that the communication will be shared with a third party- including other clergy or church administrators- defeats the claim of privilege because such communications are not meant to be kept secret, and are expected to be shared with third persons. (*Roman Catholic Archbishop,* supra, 131 Cal.App.4th at 444-5).

In this case, the only communications from members asked about were reports of sexual abuse of minors by Jonathan Kendrick or others generally. Mr. Abrahamson specifically testified that such communications would be expected by members to be passed on to third persons in a Judicial Committee for investigation, (Depo. 57:15-58:1; 58:24-59:18), and are therefore not "kept secret" from any and all third persons. The balance of the questions involved Administrative matters, not communications to clergy at all.

IV. NONE OF THE QUESTIONS AT ISSUE INVADE ANY CONFIDENTIAL COMMUNCIATIONS.

The questions sought do not invade any confidential communication privilege. The questions call for information about administrative actions (or non-confidential reports) regarding Mr. Kendrick. Question I asks the reason for his removal as a Ministerial Servant. Question II asks the reason for a judicial investigation of Mr. Kendrick. Question III inquired about specific reports of sexual abuse made against Mr. Kendrick which a member would expect to be followed-up on by a Judicial Investigation Committee. Question IV asks about the existence of a Judicial Investigation. Question V asks about all reports of sexual abuse of children at North Fremont which is relevant to the policies,

procedures, information, and prior reports of sexual abuse, without disclosure of individual identities, of the Congregation. Question VI asks about communications between Congregations about Mr. Kendrick. Question VII asks about the individuals serving on the Judicial Committee.

V. SANCTIONS ARE APPROPRIATE IN THIS CASE.

The Court "shall impose a monetary sanction" against any party who unsuccessfully opposes a Motion to Compel, unless it finds that one subject of the sanction acted with substantial justification or other circumstances making the imposition of the sanction unjust (2031.310(h)). In this case, communications which are clearly not between a clergy and penitent are objected to as clergy penitent privilege. Questions which do not call for any communication content were objected to under the privilege. Administrative matters regarding Jonathan Kendrick which did not ask for any communications at all between members and administration were objected to under the privilege. Previous court rulings on this subject have advised the defendants that their position is not well taken or supported in law. (Simons Dec., Ex. 2). Plaintiff's counsel has been required to expend both time and filing fees to obtain discovery to which plaintiff is legitimately entitled (See Simons Dec.¶). Sanctions in the amount of $1441 are appropriate.

Dated: September 7, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

9439249

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEET AND CONFER DECLARATION OF COUNSEL RICHARD SIMONS IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

I, Richard J. Simons, hereby declare:

1. That I am an attorney at law licensed to practice before all Courts of the State of California and am the attorney for the plaintiff in the above-entitled action.

2. That the Complaint in this matter alleges that plaintiff Jane Doe, now an adult under the age of 26, was sexually molested and abused during the time that she was a child by defendant Jonathan Kendrick. Mr. Kendrick is alleged to have been a volunteer leader, and member of the Jehovah's Witnesses North Congregation in Fremont. In the course of discovery, I noticed and took the deposition of Gary Abrahamson on August 23, 2011. Mr. Abrahamson had been identified as, and confirmed when he testified that he was, an Elder at the North Congregation in Fremont during all of the relevant time periods, including to the present time. Elders are the individuals entrusted

with the administration of the congregation. A true and correct copy of the preliminary transcript of the deposition of Mr. Abrahamson, as to those portions at issue in this Motion, is attached as Exhibit "1" to this Declaration. A Certified Copy of the transcript will be lodged at or prior to the time of hearing, but has not yet been prepared by the CSR.

3. This Motion concerns issues of the knowledge of sexual abuse of minors by Jonathan Kendrick on the part of the administrators and persons in responsibility at both the local Jehovah's Witness Congregation in Fremont, and at the National Corporate Offices of the defendant Watchtower Bible and Tract Society of New York. Good cause exists for the discovery of information concerning the notice and knowledge of individuals in positions of responsibility at both the local congregation and the Watchtower New York Corporation as to Mr. Kendrick's history of sexual abuse of other minor girls, prior to plaintiff, as it directly affects the issue of "notice" and defendants' negligent supervision of Mr. Kendrick, as well as a violation of the duty to protect minors, including plaintiff Jane Doe, from sexual abuse by adults, including Mr. Kendrick. The existence of information communicated to these persons of responsibility, the actions taken, and the affect on the failure of Jane Doe to be protected from the sexual abuse she received from Mr. Kendrick, are all relevant issues on liability. Additionally, although no punitive damage claim is pled at this time, as such a pleading requires a subsequent Motion to Amend the Complaint where religious corporations are defendants, the information sought with regard to the policies and practices followed with Mr. Kendrick, both before and after the sexual abuse of Jane Doe, is relevant information to the issue of whether the defendant religious corporations, through their corporate policy and managing agents, demonstrated a conscious disregard for the safety of minors through a policy of secrecy for, and protection of, known childhood sexual abusers within their ranks and leadership.

4. I have had extensive discussions, both written and oral, with Mr. McCabe, counsel for defendants. All such discussions have been civil, courteous, and gracious. These discussions have centered on whether or not the statutory clergy-penitent privilege is applicable to the internal administrative proceedings involving childhood sexual abusers within the Jehovah's Witnesses

Church. Mr. McCabe has repeatedly advised me that he is not authorized to waive the claim of privilege. Mr. McCabe has also advised that he is not authorized to disclose any information regarding the communication and information sought in the deposition of Mr. Abrahamson absent a Court Order, as a matter of church policy. There is no further room for negotiation on this issue, and the information plaintiff believes is fully discoverable can only be obtained with a Court Order. In addition, the deposition of Mr. Abrahamson was attended by Francis McNamara, Associate General Counsel of the Watchtower Bible and Tract Society of New York, Inc. Mr. McNamara was present for all of the discussions on and off the record concerning the issue of privilege and provided no authorization to Mr. McCabe to allow for disclosure of the information sought in the questioning of witness Abrahamson.

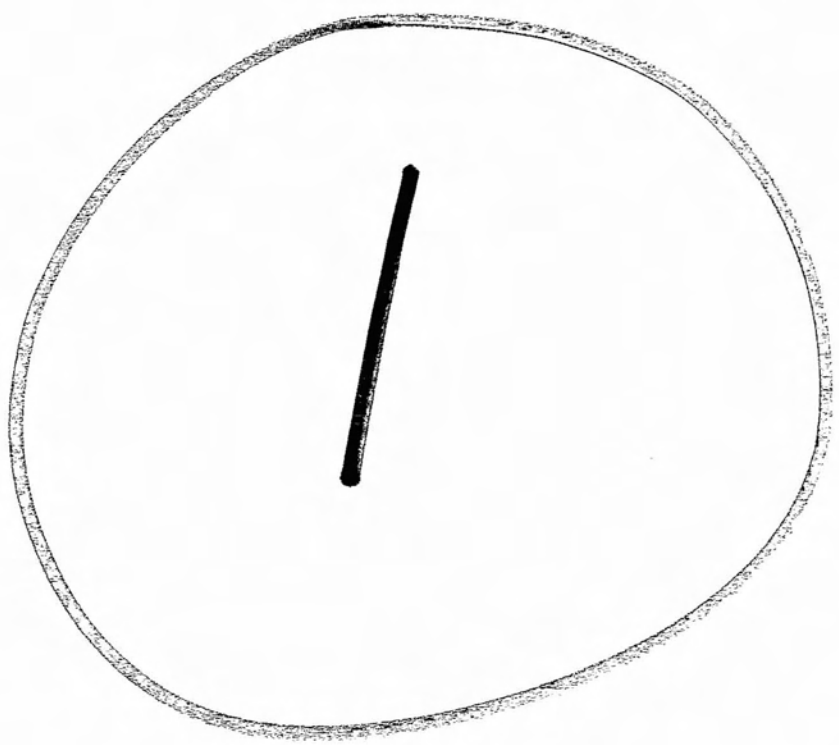
5. This issue has previously arisen and been litigated within the First District Court of Appeal of California by the Jehovah's Witnesses. A prior Napa County Superior Court ruling held the statutory privilege of Evidence Code §1032 was not applicable to communications regarding sexual abuse of a minor in a civil case. The ruling specifically addresses privilege, and the First District Court of Appeal summarily denied a Petition for Writ. A copy of a prior ruling in the Napa County Superior Court and Petition for Writ of Mandate Denial from the First District Court of Appeal, for which Judicial Notice is requested, is attached as Exhibit "2" to this Declaration.

6. Based upon the refusal of defendants, without legal authority, and with prior knowledge of rulings holding the statutory privilege of Evidence Code §1032 inapplicable, sanctions are appropriate in this case. I have personally spent three hours in negotiation, in the preparation of this Motion, including the review of the deposition transcript, the preparation of this Meet and Confer Declaration, and the Separate Statement, and the other documents, and will spend an additional one hour for oral argument in this case. In addition, the filing fee for this Motion is $40.00. Based upon a reasonable rate of attorney's fees of $350.00 per hour, sanctions in the amount of $1,490.00 is requested.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 7th day of September, 2011, at Hayward, California.

RICHARD J. SIMONS



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

-oOo-

JANE DOE, Plaintiff, -vs- THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	)	No. HG11558324

DEPOSITION OF GARY A. ABRAHAMSON

Tuesday, August 23, 2011

Taken Before Karen Scott
Certified Shorthand Reporter
State of California
C.S.R. No. 4027

A Sure.

Q First of all, I understand that you are an elder in the Jehovah's Witnesses Congregation in Fremont; is that correct?

A That is correct.

Q And I am going to be asking you some questions today related to both the events involving the people involved in this case and some organizational questions to help me understand the structure of your religious institution; all right?

A Okay. Fine.

Q If I ask you any question that you don't understand, either because I used words that aren't familiar to you or I garbled the question or you didn't hear it, or if for any reason you are unsure of the question, please ask me to rephrase it or repeat it so that it's clear to you; okay?

A Uh-huh.

Q In a normal conversation we would say uh-huh --

A Yeah. Okay.

Q -- and huh-uh and make those kinds of affirmative or negative sounds and understand each other. In a deposition, because the court reporter on my right is taking down all of our words, we have to

Unit.

Do you know whether or not that is the official title of the corporation that you call the Fremont North?

A Yes. We used to use that term "unit," probably back when these bylaws were established, so it probably would be very accurate back then.

Q All right. Do you know what the official name of the corporation is now if it's different?

A I would think it's the same.

Q The corporation was incorporated in 1975, according to the documents that I have received. Does that sound correct to your knowledge?

A That sounds correct.

Q How long have you been an elder in the -- in this congregation?

A Since I moved into the congregation, and I believe it was 1986.

Q Before that time, 1986, did you serve as an elder in any other congregation?

A Yes. Before that time I served in the congregation -- I believe it would be called the Mountain View Congregation and perhaps Central, Central Mountain View.

Q Can you tell me approximately the year in

which you first became an elder?

A Approximately 1978.

Q And have you been an elder continuously up to the present time?

A Yes, I have.

Q Is there a general description you can provide me as to the role of the elders in the Jehovah's Witnesses Congregations?

A Yes. I would probably refer you to some Scriptures; for example, Second Peter, Chapter 5, Verse 2, that we would shepherd the flock and we would do it willingly, not grudgingly, not for love of dishonest gain, but eagerly, and neither lording it over those who are God's inheritance.

Q Do you have administrative responsibilities as an elder?

A Could you please explain what you mean by "administrative responsibilities"?

Q Yes. Do you have to perform various jobs or functions that have to do with either keeping records involving dispute resolution between members, other kinds of tasks involving the status or role of members in the congregation?

A By that term, I think I would say yes.

Q Can you give me a description of what

responsibilities you have in that general area?

A In that general area the responsibilities I have are as what we call a service overseer. So I would be concerned with the literature that comes into the congregation and its distribution as well as the coverage of our territory in the preaching work, also be concerned about the different Bible studies that are being conducted in the congregation.

Q Are there other elders in the Fremont North Congregation at present?

A Yes.

Q Approximately how many?

A I would say 12.

Q And what is the approximate size of the congregation today?

A About 110.

Q If we were to go back in time to the mid-1990s, do you have an estimate then as to the number of elders, approximately?

A I would estimate eight, but it's just an estimation.

Q And the size of the congregation at that time, approximately 15 to 20 years ago.

A I'm sure those records might be available, but I would hesitate to guess.

Q Do you have a general impression as to whether the membership has grown larger in that specific congregation since the mid-1990s, smaller or is about the same?

A There have certainly been a lot of new ones that have come in but others have moved away, so it might be fair to say that it was around the same.

Q You mentioned the term "service overseer." What is a service overseer?

A A service overseer is a -- an appointment as an -- he must be an elder, and it's an appointment to oversee the departments that I mentioned to you, literature, and we call our -- preaching work is our service to God. So anything that involves the preaching work would be something that I would be quite interested in.

Q To become an elder, is there a process of, I'll call it like a ladder, steps in a ladder that one must go through in preparation for assuming that title and position?

A Well, what we use are the Bible requirements. All of Jehovah's Witnesses, before they're baptized, must take a knowledge, repent, act upon the knowledge, obey what they find from the Scriptures. But in addition to that, elders would be

those that reach out for additional responsibilities, and these are outlined -- these qualifications for elders are outlined in First Timothy, Chapter 3.

Q Can you tell me what they are?

A Some of them are, sure.

Qualifications are that they would, first of all, be desirous of a fine work, so it is work-involved. We're not paid for the effort that we put forth, but we do it freely and willingly. And we would not be irreprehensible -- or we would need to be irreprehensible. We would need to be a husband and one wife. We would need to be orderly. We would need to be not given to a lot of wine, not -- and if I had the Bible I could do a little bit more justice to the -- but they're found there in First Timothy, Chapter 3, Verses 1 through, say, 10.

Q Who selects elders?

A The local Body of Elders observes individuals and then we will discuss them as a body, and ultimately we will send a recommendation into the branch office and the traveling brother that assists us at this time would be the circuit overseer, and so we would submit a request for this recommendation to be approved.

Q All right. You used the word "branch

office," and I'm not sure what that refers to. Please tell me.

A Okay. Yes. It's -- the worldwide organization of Jehovah's Witnesses has a headquarters which is in New York, and there is where the United States branch happens to be, but also they oversee the entire work, the global work of Jehovah's Witnesses.

Q Is that organization The Watchtower Bible and Tract Society of New York?

Actually let me -- I see you are puzzled. Let me withdraw the question and ask you, back in the mid-1990s, was that organization The Watchtower Bible and Tract Society of New York?

A I -- it might be New York or it might be Pennsylvania. I think it was -- I'm not sure.

Q Fair enough.

A Yeah.

Q Do you as an elder -- strike that. Let me start over.

Have you as an elder recommended other persons to be nominated to the position of elder during your years of service?

A Yes. I have been on the body that has recommended others.

Q And to whom is such a recommendation directed?

A To the branch office.

Q And is the branch office located somewhere other than New York or is it in New York to your understanding?

A It's in New York.

Q Has that process changed during the many years that you have been an elder?

A No.

Q You mentioned the term "circuit overseer," and can you describe for me what a circuit overseer is?

A Yes. He is a traveling elder. He visits -- generally he has a circuit of 20 congregations, and so he would like to visit these twice a year, and we look forward to these visits, and during this time he gives counsel from the branch to the elders, to the ministerial servants, and this counsel is appreciated.

He -- he agrees to travel to the various congregations, and in some cases they house him in maybe a room that they have, and if he has a wife, he and his wife. And in some cases they may have an apartment attached to a Kingdom Hall that they could use, and he does not get any reimburse -- well, he

in the branch office.

Q When you use that term "service department," can you tell me what you are referring to?

A Well, just as you asked me service overseer, so I would be concerned about the field service, the ministry in our local congregation. So the branch office would be concerned with the field ministry in the branch that they're overseeing, and in this case it would be the United States branch.

Q Do you understand that the service department back in the mid-1990s was administered by the Watchtower New York corporation?

A That sounds accurate.

Q What do you understand to be the role of the Watchtower Pennsylvania corporation?

A Yeah, that's -- I believe that would be more of the legal corporation of Jehovah's Witnesses. It would be a worldwide organization, different from New York, which would be the branch office that oversees the United States branch.

Q Are there some organizational documents, which would be anything from charts to letters, which explain to elders such as yourself the organizational structure of the various components of the Jehovah's Witnesses in the United States and the world?

A Yes. And they're available basically to the public because we have had articles in our Watchtower magazine that outlines that which are available.

Q One of the services that you perform, as I understand it, is the distribution of various religious literature and tracts; is that correct?

A Yeah, that we produce. Yeah.

Q When you say "we produce," are those produced and supplied to the congregation from some other source than the congregation itself, or are they produced within the congregation?

A By "congregation," do you mean the local congregation?

Q Yes, I do. I'm sorry. Yes. Thank you.

A Yes. We do no printing locally.

Q Who supplies the local congregation with the literature that is distributed in service?

A It would be the branch office.

Q There is an organization that I have received some documents from, through your counsel, called the Christian Congregation of Jehovah's Witnesses, also located in New York State.

Are you familiar with that organization?

A Yes.

Q Is it correct that that organization was

formed after you already had become an elder?

A Yes.

Q What do you understand to be the purpose of the Christian Congregation of Jehovah's Witnesses organization?

A I think that term denotes more of an accurate description than The Watchtower Bible and Tract Society for those that are looking out -- looking over Jehovah's people throughout the United States branch.

Q Is it the same organization as The Watchtower Bible and Tract Society with a different name, to your understanding, or is it a separate organization, corporation?

A To my understanding, it replaces the name of The Watchtower Bible and Tract Society of New York.

Q To your understanding, do both organizations, The Watchtower Bible and Tract Society of New York and the Christian Congregation of Jehovah's Witnesses, continue to exist at present?

A What was the first one? Watchtower --

Q Of New York.

A Of New York.

Q Bible and Tract Society of New York and Christian Congregation.

A I don't know.

Q Fair enough. Thank you. We talked about the branch office. As you understand it, is the branch office now administered by the Christian Congregation of Jehovah's Witnesses or by The Watchtower Bible and Tract Society of New York?

A Could you rephrase that question?

Q Yes. As you understand it, is the branch office that we talked about --

A The Christian Congregation of Jehovah's Witnesses you're referring to?

Q Yes.

A Okay.

Q Does -- is the branch office a function administered by the Christian Congregation or by Watchtower Bible and Tract of New York at present?

A I -- it seems like you're ask -- not asking the question correctly.

Q All right. Explain, then, how the -- the interplay of these corporations as regards to the branch office works for me.

A Yes. It's my understanding that The Watchtower Bible and Tract Society of Pennsylvania would be the worldwide oversight of the branch office, which is the Christian Congregation of Jehovah's

Witnesses New York.

Q Are you familiar with the term ministerial servant?

A Yes.

Q Did you act as a ministerial servant before you were an elder?

A Yes.

Q Is it customary for an individual before becoming an elder to serve as a ministerial servant?

A Yes.

Q How do the responsibilities of ministerial servant differ from those of elder?

A The duties of a ministerial servant would be more nonteaching, non -- they would be more of a service -- not field service but of a -- a service-oriented, such as maybe bookkeeping, keeping track of the inventory of literature that comes in and goes out, the maps that we have to work our territory locally. They would assist in helping make sure that the coverage was done systematically and in an orderly fashion.

They also may be used as attendants in the congregation to seat different ones or maybe sometimes we have like microphones that in some congregations we use, which is the case in ours, so they'd be used to

pass the microphones and other nonteaching, non-shepherding duties in the congregation.

Q Are ministerial servants appointed?

A They are.

Q By whom?

A The recommendation for their appointment is sent in by the local Body of Elders, and they explain why they feel this man qualifies for such a position, and then it is approved by the branch office service department.

Q Pardon me for asking what might seem like a very obvious question, but are women allowed to serve as elders?

A No.

Q Are women allowed to serve as ministerial servants?

A No. Well, can I qualify that?

Q Please.

A Let's say there were no qualified males to serve in that position. Then a sister could do the duties of that, but she would wear a head covering as a sign that she is doing something that normally would be done by a brother, but they're not appointed as ministerial servants or elders.

Q Are there other administrative or service

A We moved into the Kingdom Hall in 1986, and I would estimate two years from that point Jonathan Kendrick came to the Kingdom Hall. I am just guessing.

Q Did Mr. Kendrick ever serve as a ministerial servant?

A Yes, he did.

Q And do you recall whether or not you were involved in the decision to have Mr. Kendrick appointed as a ministerial servant?

A At that time I was on the Body of Elders. We reviewed it as a body, and I was part of the body that sent in a recommendation that he serve.

Q Do you recall, again, the approximate time frame?

A No, I don't -- I don't know.

Q Had Mr. Kendrick been a member of the congregation for a year or two before he became a ministerial servant, or something in that neighborhood?

A Yes. It seems longer than that even. It should be.

Q Do you recall, when Mr. Kendrick first became a member of the congregation, whether or not he was married?

A When he was first studying the Bible, he was not married. He was living with a woman.

Q All right. Did he become married during the time that he was a member of the Fremont North Congregation?

A No. He got married and cleaned up his life before he was baptized.

Q And when you say "cleaned up his life," what are you referring to?

A To the fact that he was living immorally with a woman and then he legalized that by getting married.

Q Was the woman that he married Evelyn?

A Yes.

Q And do you recall the approximate year that they would have been married?

A Well, I would think, if my years -- I'd say '88, '89, something around there.

Q Am I correct that Mr. Kendrick would have had to have been married to Evelyn before he was eligible to become a ministerial servant?

A Or break off the relationship with her. And even be baptized. Even before he could be baptized, he had to do that.

Q Okay.

A Yeah.

Q Did Evelyn have any children to your knowledge?

A Yes. She had a daughter.

Q Do you remember the daughter's name?

A Andrea.

Q Do you recall Andrea's approximate age during the time that Mr. Kendrick and Evelyn were married, or the range of ages?

A It would be a guess, but I would say in her early teens to probably high school.

Q Did Mr. Kendrick continue to serve as a ministerial servant during the remainder of the time that he was a member of the Fremont North Congregation?

A I believe he was removed as a ministerial servant from the Fremont North Congregation.

Q And what does it mean to be removed as a ministerial servant?

A No longer qualified to serve.

Q Who makes that determination?

A The Body of Elders.

Q And is that a determination that must be approved by the service branch?

A Yes.

Q How is the recommendation of the Body of Elders that a ministerial servant be removed communicated to the service branch?

A Generally by letter.

Q Do you know whether or not that was the case involving Mr. Kendrick?

A I believe it was, yes.

Q Did you participate in the drafting of that letter?

A No.

Q Is the letter a form letter or is it a narrative, if you will?

A Narrative.

Q Why was Mr. Kendrick removed?

MR. McCABE: Object to that. Calls for privileged information. I'll instruct the witness not to answer the question.

MR. SIMONS: What specific privilege?

MR. McCABE: The clergy-communicant privilege.

MR. SIMONS: Any others?

MR. McCABE: Well, that whole section. Confidentiality of the clergy-penitent privilege.

MR. SIMONS: All right.

Q I'm going to ask you a series of some

additional questions related to the removal of Mr. Kendrick as a ministerial servant, and it may very well be that counsel has some objections to some or all of these questions, so pause before answering to give him an opportunity to make any objections he might have; all right?

A Uh-huh.

Q Was the decision to remove Mr. Kendrick -- I'm sorry -- to recommend the removal of Mr. Kendrick as a ministerial servant made by more than one individual?

MR. McCABE: I'm going to object to that question. Same grounds.

MR. SIMONS: All right.

Q Is there a process within the Jehovah's Witnesses in which there is an investigatory or judicial type of committee?

A Yes.

Q Does that committee have a name or that process have a name?

A It has a name. Let's say it would be an investigating committee of two brothers.

Q And has that been part of the procedural practices of the congregations during the entire time that you have been an elder?

A Yes.

Q And during your years of service in Fremont, has such an investigation committee existed?

A The investigative committee is developed based on the circumstances. So maybe an individual felt comfortable coming to me and confessing a sin, or that they were party to a sin or that they heard of a sin. So it might be good for me to be on that investigating committee because they spoke to me. I would be a natural choice, but I wouldn't do it by myself. There would be another brother with me.

Q All right. Is the existence of such an investigation committee something that is communicated to all the members of the congregation?

A No.

Q And let me make my question clear. I don't think it was.

Without regard to a specific investigation, is generally the ability of the elders to have an investigation committee under certain circumstances something that is taught to all of the members or explained to the members?

A Could you rephrase that question, please?

Q Yes. Were members customarily told that the Body of Elders can under certain circumstances convene

an investigation committee? In other words, was the process known to the members that a judicial committee could be or investigation committee could be convened if circumstances so required?

A I believe that's in our publications.

Q So would I be correct in saying that an individual member who brought to an elder's attention a specific situation that would be of such a serious nature that an investigation would follow would customarily be aware of the power of the elders to convene an investigation?

A I believe I understand your question, so to answer that question, the congregation would expect the elders to investigate an allegation of serious wrongdoing.

Q And certainly sexual abuse of a child would fall under that category of serious wrongdoing?

A Yes.

Q Hold on one second for the --

A Okay.

Q -- siren there. All right.

It's not meant to be a hint on any specific question or answer.

THE VIDEOGRAPHER: I need to repair a microphone real quick.

MR. SIMONS: There is a technical issue here.

THE VIDEOGRAPHER: We're good. You're still on.

BY MR. SIMONS:

Q What was it that led to the judicial investigation of Mr. Kendrick during the time that he was a ministerial servant?

MR. McCABE: I'm going to object to that question on the same basis.

MR. SIMONS: Can we stipulate that any questions that I might pose to Mr. Abrahamson regarding the subject of communications involving Mr. Kendrick related to the judicial investigation or related to the action to remove him would draw the same objection that you have posed to the first few questions?

MR. McCABE: Yes.

MR. SIMONS: May we further stipulate that pending some judicial determination of the propriety of those questions that I can reserve that subject matter for further proceedings?

MR. McCABE: Yes.

BY MR. SIMONS:

Q Again, these may fall under that same

category, so give your counsel time to object.

Did you speak to Evelyn Kendrick concerning any allegations involving sexual abuse of her daughter Andrea by Mr. Kendrick, Jonathan Kendrick?

MR. McCABE: Objection. Instruct the witness not to answer on the same basis.

MR. SIMONS: Again, can we agree that any questions involving reports or communications from Evelyn Kendrick would fall under the umbrella of your objections?

MR. McCABE: Yes.

BY MR. SIMONS:

Q Did you at any time notify any secular law enforcement agency of any information concerning possible sexual abuse of children by Mr. Kendrick?

A I did not.

Q Do you know whether anyone within the congregation Body of Elders did so?

A I am not aware of anybody doing so, no.

Q What was the policy that was in place in the mid-1990s regarding reporting possible sexual abuse of a child by an adult to secular law enforcement agencies?

A I'm -- I don't know for sure. I would have to look it up. I know currently we are to call the

communications -- but was there any communication between yourself and anyone from the legal department back in the 1990s concerning Mr. Jonathan Kendrick?

MR. McCABE: I'm going to object to that. Same basis. I'm going to object to all communications from him to New York.

MR. SIMONS: Okay. My question specifically excludes any content of any communications. I want to only ask the very specific question of whether or not there were any communications at that time concerning Mr. Kendrick.

MR. McCABE: Well, normally I wouldn't have an objection to that, but in this case I do have an objection to that because then it assumes that there was some investigatory committee involving Mr. Kendrick and that communication was a result of that, and I don't think that we have got that into evidence at this point in time, so I'm going to object.

MR. SIMONS: All right. Let me ask about the foundational matter.

Q Was a judicial investigation committee convened with regard to Mr. Jonathan Kendrick prior to his removal as a ministerial servant?

MR. McCABE: I'm going to object on the same

basis of communicant-clergy privilege and instruct the witness not to answer.

BY MR. SIMONS:

Q Without providing me any names or other identifying information as to individuals, has there been, during the time that you have served as an elder in the congregation in Fremont, any report received by the Body of Elders or any member thereof, to your knowledge, concerning sexual abuse of a child by an adult?

MR. McCABE: I'm going to object to that too on the basis of the clergy-communicant privilege.

MR. SIMONS: Okay. I have a number of additional follow-up questions regarding Mr. Kendrick during the time that he was a member of the North Congregation, Fremont North Congregation, that are related in varying degrees to this underlying subject matter that is the subject of your objection. I'd like to reserve that questioning, if you will so agree, until the determination of the issues that you have raised objection to.

Is that acceptable?

MR. McCABE: Yes. Can we take just a short break?

MR. SIMONS: We can.

congregation that he is reproved, he's been reproved by the congregation committee.

Q And what does the term "reproved" refer to as you are using it there?

A Disciplined.

Q When a person is removed from an office, such as ministerial servant, is the congregation advised that that individual -- and again, I'm talking about the membership advised -- that that individual no longer is serving as a ministerial servant?

A Yes.

Q Is the congregation told -- again, the members told -- why that individual is no longer serving as a ministerial servant?

A No.

Q During your many years of service as an elder, has there been any change in any of those processes that we have just discussed, the notification of disfellowship or reproval or of removal from an office and the fact that the reason for such action is not disclosed? Has that been the standard practice during all your years of service?

A Yes.

Q Was there any inquiry from a congregation in Oakley to the Fremont North Congregation concerning

Mr. Kendrick of which you are aware?

MR. McCABE: I'm going to object. It's going to call for or elicit testimony which could violate the patient -- I mean clergy-penitent privilege.

MR. SIMONS: Let me follow up on that objection, which I assume is accompanied by an instruction not to answer --

MR. McCABE: Yes.

MR. SIMONS: -- is it? All right.

Q Are the communications that one congregation receives concerning a new member from that member's former congregation considered to be confidential as you understand it? In other words, is it information that is available to the members or elders of both congregations?

A It would be considered confidential.

Q And such a communication, if it came from an elder of another congregation, would the information that is permitted to be disclosed to that new congregation, would that information include the reason for a disfellowshipping?

A It likely would.

Q Have you learned that Mr. Kendrick was convicted of felony child abuse and sent to a prison

earlier. This refers to chairman of the judicial committee. Is that a different role than coordinator of the Body of Elders?

A Yes.

Q Who is the chairman of a judicial committee?

A Once a judicial committee is formed by the Body of Elders, the Body of Elders will choose the chairman.

Q Might that chairman be a different individual for a different judicial committee?

A Absolutely. Yeah.

Q In other words, it's not a permanent role?

A No.

Q It's a role limited only to that individual judicial committee?

A Exactly.

Q Who do you recall being members of any judicial committee that may have heard any issues revolving around or related to Jonathan Kendrick?

A That would be confidential.

MR. McCABE: I'll object to that.

MR. SIMONS: And the objection is?

MR. McCABE: Clergy-penitent privilege.

MR. SIMONS: Okay. Is there an instruction not to answer?

MR. McCABE: Yes.

(Document referred to herein marked for identification Exhibit No. 5)

BY MR. SIMONS:

Q Let's take a look at Exhibit 5. Do you recall receiving this letter?

A I can't honestly say that I remember receiving this exact letter, but the reminder being confidential, I'm sure I read over the letter.

Q Was there some discussion within the Body of Elders in the North Fremont Congregation of this letter when it was received?

A That I would not know -- remember.

Q Do you remember any such discussion about avoiding lawsuits that may result from, as the correspondence states on page 2, paragraph 1, misuse of the tongue?

A Okay. So I thought this letter was regarding confidentiality. So I haven't had an opportunity to look through the letter, so some of my answers would maybe be erroneous.

Q Okay. Why don't we take a second and allow you to review the letter.

A Fine.

Q And let's first of all see if it causes a


2

FILED

SEP 2 9 2005

Clerk of the Napa Superior Court

By: Jean E. Pike
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al.

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Plaintiffs' Motion To Compel Production Of Documents came on for hearing on August 31, 2005. The court, having read and considered the papers and heard oral argument, took the matter under submission and now rules as follows:

Plaintiff's motion to compel production of documents is GRANTED in part and continued in part to allow for the production of an attorney-client privilege log.

Although defendants raised a number of objections when responding to plaintiffs' request for production of documents, they address only two of those objections in opposing plaintiffs' motion to compel: the penitential communication privilege and the attorney-client privilege, which the court will discuss in more detail below. As to the other objections not discussed by defendants, the court finds the objections are not well taken. The requested discovery requests

are not overbroad, are relevant, and are not barred by *Serbian East Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696.

1. Penitential Privilege

Evidence Code section 1032 provides:

> As used in this article, "penitential communication" means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

Defendants object to the production of a number of documents requested by plaintiffs on the ground that they are protected by the penitential communication privilege contained in Evidence Code section 1032. This court finds that the privilege does not apply to communications between the alleged abusers and the Judicial Committee. The evidence presented by both sides establishes that communications with the Judicial Committee do not fall within the scope of the privilege. First, it is clear that the Judicial Committee's purpose is to investigate sins for which disfellowship is a potential penalty. This is established not only by the deposition excerpts provided by plaintiffs, but by the Watchtower publication provided by defendants in connection with the objections to plaintiffs' evidence ("Judicial action is necessary only if a gross sin has been committed that could lead to disfellowshipping" p. 18.) Second, the privilege does not apply because the Judicial Committee was under no duty to keep the communications private. In fact, the evidence establishes that the Judicial Committee was required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters.

Because the penitential communication privilege does not apply, within 20 days defendants shall produce all documents for which it previously asserted this privilege.

2. Attorney-client privilege

Defendants have not produced a privilege log for those few documents they apparently claim are protected by the attorney client privilege. Neither the plaintiffs nor the court can adequately address the objection without a privilege log. Defendants shall serve a privilege log

on plaintiffs within 10 days. Plaintiffs may thereafter file and a supplemental brief addressing the log within 10 days. The court will then issue a written ruling on the matter.

Dated: 9/27/05

Raymond A. Guadagni

Raymond A. Guadagni, Judge

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED
Court of Appeal First Appellate District
JUL 06 2006
Diane Herbert, Clerk
By _____ Deputy Clerk

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK ET AL.,

Petitioners,

v.

THE SUPERIOR COURT OF NAPA COUNTY,

Respondents;

TIM W., ET AL.,

Real Parties in Interest.

A114329

(Judicial Council Coordination Proceeding No. 4374; Coordinated with Napa County Super. Ct. No. 26-22191)

BY THE COURT:*

The petition for a writ of mandate is denied.

Dated: JUL - 6 2006

McGUINESS, P.J.

* McGuiness, P.J., Parrilli, J., and Siggins, J.

9439257

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PROOF OF SERVICE OF NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; MEET AND CONFER DECLARATION OF RICHARD J. SIMONS; SEPARATE STATEMENT; and PROPOSED ORDER

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

///

///

///

///

///

///

///

///

///

///

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On September 7, 2011, I served the within **NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; MEET AND CONFER DECLARATION OF RICHARD J. SIMONS; SEPARATE STATEMENT; and PROPOSED ORDER** on interested parties in said action by the following means:

[ ] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[X] By Hand-Delivery By causing a true copy thereof to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 7, 2011, at Hayward, California.

Elaine Landro

ELAINE T. LANDRO

9439261

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

[PROPOSED] ORDER GRANTING MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

The Motion of Plaintiff JANE DOE for an Order Compelling Answers to Deposition of Gary Abrahamson and for Sanctions, having regularly come before the Court on September 29, 2011, at 3:00 p.m. in Department 22, notice having been duly given, the matter having been submitted on the papers and pleadings produced in support of the motion,

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel is GRANTED. Defendants and Mr. Abrahamson are ordered to respond to those questions set forth in plaintiff's Separate Statement, and all reasonable follow-up questions.

IT IS FURTHER ORDERED that sanctions in the amount of $1,440.00 are awarded in favor of plaintiff and her counsel, and against the defendants The Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) and their counsel, payable forthwith.

Dated: _____

_____
THE HONORABLE ROBERT McGUINESS
Judge of the Superior Court

9439253

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By Melissa R
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

SEPARATE STATEMENT IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

INTRODUCTION

Plaintiff Jane Doe presents the following specific questions as the subject of the Motion to Compel answers from witness Gary Abrahamson:

I. THE REMOVAL OF JONATHAN KENDRICK AS A MINISTERIAL SERVANT.

QUESTION:

Q. Why was Mr. Kendrick removed?

OBJECTION:

A. MR. McCABE: Object to that. Calls for privileged information. I'll instruct the witness not to answer the question.
Q. MR. SIMONS: What specific privilege?
A. MR: McCABE: The clergy-communicant privilege.
Q. MR. SIMONS: Any others?

A. MR. McCABE: Well, that whole section. Confidentiality of the clergy-penitent privilege.

(Deposition 57:14-23).

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication to a third party or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

The Removal of Mr. Kendrick as a Ministerial Servant is an administrative decision, made by corporate agents. (Depo. 56:1-7; 16-25). The process does not involve "confidential communications" as defined by Evidence Code §1032 as multiple third persons at both the Congregation and New York corporate level are involved in the entire process. (*Roman Catholic Archbishop*, supra, at 445-6). The decision making that is the subject of the question does not call for any content or 1032 communications, but rather on administrative decision making.

///

II. THE JUDICIAL INVESTIGATION OF JONATHAN KENDRICK.

QUESTION:

Q. What was it that led to the judicial investigation of Mr. Kendrick during the time that he was a ministerial servant?

OBJECTION:

A. MR. McCABE: I'm going to object to that question on the same basis.

(Deposition 61:6-10).

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

This question does not call for any "confidential communications" as defined in §1032. Mr. Abrahamson agreed that members reporting "serious wrongdoing", including a sexual abuse of a child, expected an investigation which involved third parties. (Depo. 58:15-59:1; 59:24-60:5; and

60:6-18). Such communications are not "confidential". (*Roman Catholic Archbishop of Los Angeles v. Superior Court*, supra, at 444-5).

III. THE EVELYN KENDRICK REPORT.

QUESTION:

Q. Did you speak to Evelyn Kendrick concerning any allegations involving sexual abuse of her daughter Andrea by Mr. Kendrick, Jonathan Kendrick?

OBJECTION:

A. MR. McCABE: Objection. Instruct the witness not to answer on the same basis.

(Deposition 62:2-6).

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

This question does not call for any "confidential communications" as defined in §1032. Mr. Abrahamson agreed that members reporting "serious wrongdoing", including sexual abuse of a child, expected an investigation which involved third parties. (Depo. 58-15-59:1; 59:24-60:5; and 60:6-18). Such communications are not "confidential". (*Roman Catholic Archbishop of Los Angeles v. Superior Court*, supra, at 444-5).

IV. JUDICIAL INVESTIGATION COMMITTEE RE KENDRICK REMOVAL.

QUESTION:

Q. Was a judicial investigation committee convened with regard to Mr. Jonathan Kendrick prior to his removal as a ministerial servant?

OBJECTION:

A. MR. McCABE: I'm going to object on the same basis of communicant-clergy privilege and instruct the witness not to answer.

(Deposition 64:22-65:2)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). The removal of Mr. Kendrick as a Ministerial Servant is an administrative decision, made by corporate agents. (56:1-7; 16-25). The process does not involve "confidential communications" as defined by Evidence Code §1032 as multiple third persons at both the Congregation and New York corporate level are involved in the entire process. (*Roman Catholic Archbishop* supra, at 445-6). The decision making that is the subject of the question does not call for any content or 1032 communications, but rather on administrative decision making.

V. REPORTS OF SEXUAL ABUSE.

QUESTION:

Q. Without providing me any names or other identifying information as to individuals, has there been, during the time that you have served as an elder in the congregation in Fremont, any report received by the Body of Elders or any member thereof, to your knowledge, concerning sexual abuse of a child by an adult?

OBJECTION:

A. MR. McCABE: I'm going to object to that too on the basis of the clergy-communicant privilege.

(Deposition 65:4-12)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

It is the doctrine of Jehovah's Witnesses, and the expectation of members, that reports of serious wrongdoing, including sexual abuse of a child will be investigated by a Judicial Committee, involving third persons. (Depo. 58-15-59:1; 59:24-60:5; and 60:6-18). Such conversations are not "confidential". (*Roman Catholic Archbishop*, supra, at 444-5).

VI. COMMUNICATIONS WITH OAKLEY RE JONATHAN KENDRICK.

QUESTION:

Q. Was there any inquiry from a congregation in Oakley to the Fremont North Congregation concerning Mr. Kendrick of which you are aware?

OBJECTION:

A. MR. McCABE: I'm going to object. It's going to call for or elicit testimony which could violate the patient – I mean clergy-penitent privilege.

(Deposition 85:24-86:5)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032).

The communications sought in this question are between congregations. No "confidential communication" between a penitent and clergy are included, as all the responsive answers would address third party administrative communications only.

VII. JUDICIAL COMMITTEE MAKEUP.

QUESTION:

Q. Who do you recall being members of any judicial committee that may have heard any issues revolving around or related to Jonathan Kendrick?

OBJECTION:

A. That would be confidential.
MR. McCABE: I'll object to that.
MR. SIMONS: And the objection is?
MR. McCABE: Clergy-penitent privilege.
MR. SIMONS: Okay. Is there an instruction not to answer?
MR. McCABE: Yes.

(Deposition 93:17-94:1)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032).

This question seeks identity of defendant's administrative personnel, not the content of any communications. Section 1032 does not apply to the identities of Administrative Persons.

Dated: September 7, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

This question does not call for any "confidential communications" as defined in §1032. Mr. Abrahamson agreed that members reporting "serious wrongdoing", including sexual abuse of a child, expected an investigation which involved third parties. (Depo. 58-15-59:1; 59:24-60:5; and 60:6-18). Such communications are not "confidential". (*Roman Catholic Archbishop of Los Angeles v. Superior Court*, supra, at 444-5).

IV. JUDICIAL INVESTIGATION COMMITTEE RE KENDRICK REMOVAL.

QUESTION:

Q. Was a judicial investigation committee convened with regard to Mr. Jonathan Kendrick prior to his removal as a ministerial servant?

OBJECTION:

A. MR. McCABE: I'm going to object on the same basis of communicant-clergy privilege and instruct the witness not to answer.

(Deposition 64:22-65:2)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). The removal of Mr. Kendrick as a Ministerial Servant is an administrative decision, made by corporate agents. (56:1-7; 16-25). The process does not involve "confidential communications" as defined by Evidence Code §1032 as multiple third persons at both the Congregation and New York corporate level are involved in the entire process. (*Roman Catholic Archbishop* supra, at 445-6). The decision making that is the subject of the question does not call for any content or 1032 communications, but rather on administrative decision making.

9439241

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

TO ALL PARTIES TO THE ABOVE-ENTITLED ACTION AND TO THE ATTORNEYS OF RECORD FOR SAME:

PLEASE TAKE NOTICE that on September 29, 2011, at 3:00 p.m. in Department 22 of the above-entitled Court, plaintiff JANE DOE will move for an Order Compelling defendant North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) Elder GARY ABRAHAMSON to answer those deposition questions set forth in the Separate Statement in Support of this Motion, filed herewith, and reasonable follow-up questions related thereto.

Please further take notice that at the time and place set forth above, plaintiff will request that sanctions in the amount of $1,440.00 be awarded against said defendant Northern Congregation of Jehovah's Witnesses, Fremont, California, and its counsel.

Said motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities and Separate Statement in Support, and the Meet and Confer Declaration of Richard J. Simons filed herewith.

Dated: September 6, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

9439245

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By [illegible] Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	**9/29/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1212207**

STATEMENT OF FACTS

In this action, plaintiff Jane Doe seeks damages against the local and national entities of the Jehovah's Witnesses Church for the consequences of childhood sexual abuse committed by Jonathan Kendrick in the mid-1990s. Plaintiff noticed and took the deposition of Gary Abrahamson, an Elder of her former North Fremont Congregation. Relevant excerpts of the deposition, attached as Exhibit "1" to the Declaration of Richard Simons in Support of this Motion, elicited the following facts:

1. Gary Abrahamson is an elder of the North Congregation of Fremont, where the abuse occurred. (Depo. 11:2-5);

2. Mr. Abrahamson has been an Elder in Fremont since 1986 (Depo. 13:15-18);

3. Elders have the primary administrative responsibilities within the Congregation (14:15-24);

4. Elders serve together with other Elders in a Body of Elders (15:9-13);

5. Elders are selected by the local Body of Elders, but must be approved by the "Branch Office", a separate entity located at the Corporate Headquarters of Jehovah's Witnesses in New York (17:17-18:8);

6. Jehovah's Witnesses also have "Ministerial Servants", who hold positions of administrative responsibility within the Congregation (26:2-27:2);

7. The appointment of a Ministerial Servant requires Corporate approval by the Watchtower New York Corporation Service Branch (22:2-13; 27:3-10);

8. A Ministerial Servant can be Removed by recommendation by the Body of Elders, and approval of the Service Branch (56:12-25);

9. The Board of Elders recommends Removal of a Ministerial Servant in a narrative letter communicated to the Service Branch (57:1-13);

10. Jonathan Kendrick was a Ministerial Servant of the Jehovah's Witnesses North Fremont Congregation (54:5-13);

11. Jonathan Kendrick was removed as a Ministerial Servant from the Fremont North Congregation, which means he was determined to be no longer qualified to serve (56:16-20);

12. The Body of Elders determines that a Ministerial Servant is no longer qualified to serve, but the determination must be approved by the Corporate Service Branch of Watchtower New York (56:18-25);

13. The recommendation of the Body of Elders that a Ministerial Servant be Removed is communicated to the Service Branch in New York by a narrative letter, and that process was followed in the removal of Mr. Kendrick (56:1-7);

14. The Jehovah's Witnesses has a Judicial Investigating Committee (Depo. 58:15-59:1);

15. The existence of the Judicial Investigating Committee is contained in Jehovah's Witnesses publications. (59:24:60:5);

16. Jehovah's Witnesses members expect the Judicial Investigating Committee to investigate allegations of serious wrongdoing, including sexual abuse of a child (60:6-18);

17. Mr. Kendrick married Evelyn Kendrick in approximately 1988 (54:23-55:14);

18. Evelyn Kendrick had a daughter, Andrea, from a prior marriage (56:2-11).

During Mr. Abrahamson's deposition, he was asked questions about Administrative actions and information involving Mr. Kendrick.

The questions all were objected to on the grounds of Clergy-Penitent privilege and Mr. Abrahamson instructed not to answer. Seven questions are before the Court in this Motion. They were directed to Mr. Kendrick's Administrative record, Administrative Communications, and actions involving Mr. Kendrick, his Judicial Investigation history, to reports from members of sexual abuse of children, and to specific reports of sexual abuse of children by Mr. Kendrick.

As shown below, the statutory Clergy-Penitent privilege does not apply to any of the questions. The Motion to Compel should be granted, and the questions answers, together with responses to reasonable follow-up questions.

I. THE COURT HAS THE AUTHORITY TO COMPEL FURTHER ANSWERS TO DEPOSITION QUESTIONS.

If a deponent fails to answer any question at deposition, the party seeking discovery may move the Court for an Order compelling an answer. (C.C.P. §2025.480(a)). Such a Motion must be accompanied by a Meet and Confer Declaration and this Motion is accompanied by such a Declaration from plaintiff's counsel. (2025.480(b)). Plaintiff is required to file a Separate Statement by California Rule of Court 3.1345, and the Separate Statement is filed with this Motion.

A party or attorney who unsuccessfully opposes a Motion to Compel an answer, without substantial justification, shall be sanctioned. (2025.480(f)).

In this matter, plaintiff has lodged an advance copy of the transcript of the deposition. Plaintiff will, not less than five days prior to the hearing on this Motion, lodge with the Court a Certified Copy of the stenographic transcript and of the video recording, as required by §2025.480(d).

II. GOOD CAUSE EXISTS FOR DISCOVERY OF THE INFORMATION SOUGHT IN THE RELEVANT DEPOSITION QUESTIONS.

The deposition questions concern issues arising from the notice to Jehovah's Witness administrative management, both at the local and national level, of sexual misconduct with minors by Jonathan Kendrick. The subject questions also address specific managerial actions taken with regard to Mr. Kendrick, including his removal as a "Ministerial Servant" in 1993, prior to the sexual abuse of plaintiff. The information contained in the questions at issue also are relevant to the policies, practices, and procedures of the Jehovah's Witnesses Corporations with regard to the protection of minors, including plaintiff, from sexual abuse, and the apparent corporate policy of maintaining complete secrecy from its members of reports and findings concerning perpetrators of childhood sexual abuse. While the information specifically addressing Mr. Kendrick prior to his sexual abuse of plaintiff is relevant on the issue of notice, information obtained subsequently is also relevant to establish the corporate policies, procedures, and practices of defendants, both as to issues of negligence, and as to possible amendment of the pleadings to claim punitive damages, which in actions against religious corporations requires a specific Motion. (C.C.P. §425.14). Section 425.14 specifically states "nothing in this section is intended to affect the plaintiff's right to discover evidence on the issue of punitive or exemplary damages."

III. THE SCOPE OF CLERGY COMMUNICATION PRIVILEGE IS LIMITED BY STATUTE.

A penitential communication "means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, organization, is authorized or accustomed to hear those communications and, under the discipline or tenants of his or her church, denomination, or organization, has a duty to keep those communications secret." (Evid. Code 1032).

The key elements of a penitential communication are that no third person is aware of the communication, and the clergy member has a duty to keep those communications secret. The party claiming a privilege normally has the burden of showing that the evidence it seeks to suppress is within the terms of the statute (*Roman Catholic Archbishop of Los Angeles v. Superior Court*, (2005) 131 Cal.App.4th 417, at 441).

Not every statement made to a clergy member is within the definition of "Confidential Communications" of Evidence Code Section 1032. The statements must be intended to be made in confidence, and made to one who has a duty to keep them secret. (*Roman Catholic Archbishop,* supra., 131 Cal. App. 4th at 443-4). The knowledge or expectation that the communication will be shared with a third party- including other clergy or church administrators- defeats the claim of privilege because such communications are not meant to be kept secret, and are expected to be shared with third persons. (*Roman Catholic Archbishop,* supra, 131 Cal.App.4th at 444-5).

In this case, the only communications from members asked about were reports of sexual abuse of minors by Jonathan Kendrick or others generally. Mr. Abrahamson specifically testified that such communications would be expected by members to be passed on to third persons in a Judicial Committee for investigation, (Depo. 57:15-58:1; 58:24-59:18), and are therefore not "kept secret" from any and all third persons. The balance of the questions involved Administrative matters, not communications to clergy at all.

IV. NONE OF THE QUESTIONS AT ISSUE INVADE ANY CONFIDENTIAL COMMUNCIATIONS.

The questions sought do not invade any confidential communication privilege. The questions call for information about administrative actions (or non-confidential reports) regarding Mr. Kendrick. Question I asks the reason for his removal as a Ministerial Servant. Question II asks the reason for a judicial investigation of Mr. Kendrick. Question III inquired about specific reports of sexual abuse made against Mr. Kendrick which a member would expect to be followed-up on by a Judicial Investigation Committee. Question IV asks about the existence of a Judicial Investigation. Question V asks about all reports of sexual abuse of children at North Fremont which is relevant to the policies,

procedures, information, and prior reports of sexual abuse, without disclosure of individual identities, of the Congregation. Question VI asks about communications between Congregations about Mr. Kendrick. Question VII asks about the individuals serving on the Judicial Committee.

V. SANCTIONS ARE APPROPRIATE IN THIS CASE.

The Court "shall impose a monetary sanction" against any party who unsuccessfully opposes a Motion to Compel, unless it finds that one subject of the sanction acted with substantial justification or other circumstances making the imposition of the sanction unjust (2031.310(h)). In this case, communications which are clearly not between a clergy and penitent are objected to as clergy penitent privilege. Questions which do not call for any communication content were objected to under the privilege. Administrative matters regarding Jonathan Kendrick which did not ask for any communications at all between members and administration were objected to under the privilege. Previous court rulings on this subject have advised the defendants that their position is not well taken or supported in law. (Simons Dec., Ex. 2). Plaintiff's counsel has been required to expend both time and filing fees to obtain discovery to which plaintiff is legitimately entitled (See Simons Dec.¶). Sanctions in the amount of $1441 are appropriate.

Dated: September 7, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

9439249

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEET AND CONFER DECLARATION OF COUNSEL RICHARD SIMONS IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

I, Richard J. Simons, hereby declare:

1. That I am an attorney at law licensed to practice before all Courts of the State of California and am the attorney for the plaintiff in the above-entitled action.

2. That the Complaint in this matter alleges that plaintiff Jane Doe, now an adult under the age of 26, was sexually molested and abused during the time that she was a child by defendant Jonathan Kendrick. Mr. Kendrick is alleged to have been a volunteer leader, and member of the Jehovah's Witnesses North Congregation in Fremont. In the course of discovery, I noticed and took the deposition of Gary Abrahamson on August 23, 2011. Mr. Abrahamson had been identified as, and confirmed when he testified that he was, an Elder at the North Congregation in Fremont during all of the relevant time periods, including to the present time. Elders are the individuals entrusted

with the administration of the congregation. A true and correct copy of the preliminary transcript of the deposition of Mr. Abrahamson, as to those portions at issue in this Motion, is attached as Exhibit "1" to this Declaration. A Certified Copy of the transcript will be lodged at or prior to the time of hearing, but has not yet been prepared by the CSR.

3. This Motion concerns issues of the knowledge of sexual abuse of minors by Jonathan Kendrick on the part of the administrators and persons in responsibility at both the local Jehovah's Witness Congregation in Fremont, and at the National Corporate Offices of the defendant Watchtower Bible and Tract Society of New York. Good cause exists for the discovery of information concerning the notice and knowledge of individuals in positions of responsibility at both the local congregation and the Watchtower New York Corporation as to Mr. Kendrick's history of sexual abuse of other minor girls, prior to plaintiff, as it directly affects the issue of "notice" and defendants' negligent supervision of Mr. Kendrick, as well as a violation of the duty to protect minors, including plaintiff Jane Doe, from sexual abuse by adults, including Mr. Kendrick. The existence of information communicated to these persons of responsibility, the actions taken, and the affect on the failure of Jane Doe to be protected from the sexual abuse she received from Mr. Kendrick, are all relevant issues on liability. Additionally, although no punitive damage claim is pled at this time, as such a pleading requires a subsequent Motion to Amend the Complaint where religious corporations are defendants, the information sought with regard to the policies and practices followed with Mr. Kendrick, both before and after the sexual abuse of Jane Doe, is relevant information to the issue of whether the defendant religious corporations, through their corporate policy and managing agents, demonstrated a conscious disregard for the safety of minors through a policy of secrecy for, and protection of, known childhood sexual abusers within their ranks and leadership.

4. I have had extensive discussions, both written and oral, with Mr. McCabe, counsel for defendants. All such discussions have been civil, courteous, and gracious. These discussions have centered on whether or not the statutory clergy-penitent privilege is applicable to the internal administrative proceedings involving childhood sexual abusers within the Jehovah's Witnesses

Church. Mr. McCabe has repeatedly advised me that he is not authorized to waive the claim of privilege. Mr. McCabe has also advised that he is not authorized to disclose any information regarding the communication and information sought in the deposition of Mr. Abrahamson absent a Court Order, as a matter of church policy. There is no further room for negotiation on this issue, and the information plaintiff believes is fully discoverable can only be obtained with a Court Order. In addition, the deposition of Mr. Abrahamson was attended by Francis McNamara, Associate General Counsel of the Watchtower Bible and Tract Society of New York, Inc. Mr. McNamara was present for all of the discussions on and off the record concerning the issue of privilege and provided no authorization to Mr. McCabe to allow for disclosure of the information sought in the questioning of witness Abrahamson.

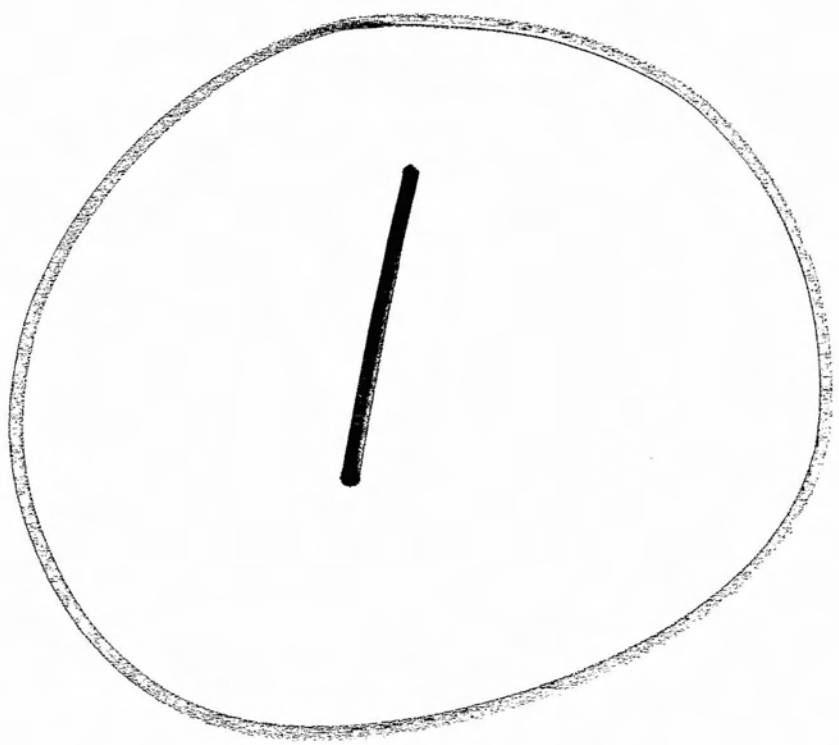
5. This issue has previously arisen and been litigated within the First District Court of Appeal of California by the Jehovah's Witnesses. A prior Napa County Superior Court ruling held the statutory privilege of Evidence Code §1032 was not applicable to communications regarding sexual abuse of a minor in a civil case. The ruling specifically addresses privilege, and the First District Court of Appeal summarily denied a Petition for Writ. A copy of a prior ruling in the Napa County Superior Court and Petition for Writ of Mandate Denial from the First District Court of Appeal, for which Judicial Notice is requested, is attached as Exhibit "2" to this Declaration.

6. Based upon the refusal of defendants, without legal authority, and with prior knowledge of rulings holding the statutory privilege of Evidence Code §1032 inapplicable, sanctions are appropriate in this case. I have personally spent three hours in negotiation, in the preparation of this Motion, including the review of the deposition transcript, the preparation of this Meet and Confer Declaration, and the Separate Statement, and the other documents, and will spend an additional one hour for oral argument in this case. In addition, the filing fee for this Motion is $40.00. Based upon a reasonable rate of attorney's fees of $350.00 per hour, sanctions in the amount of $1,490.00 is requested.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 7th day of September, 2011, at Hayward, California.

RICHARD J. SIMONS



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

-oOo-

JANE DOE, Plaintiff, -vs- THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	)	No. HG11558324

DEPOSITION OF GARY A. ABRAHAMSON

Tuesday, August 23, 2011

Taken Before Karen Scott
Certified Shorthand Reporter
State of California
C.S.R. No. 4027

A Sure.

Q First of all, I understand that you are an elder in the Jehovah's Witnesses Congregation in Fremont; is that correct?

A That is correct.

Q And I am going to be asking you some questions today related to both the events involving the people involved in this case and some organizational questions to help me understand the structure of your religious institution; all right?

A Okay. Fine.

Q If I ask you any question that you don't understand, either because I used words that aren't familiar to you or I garbled the question or you didn't hear it, or if for any reason you are unsure of the question, please ask me to rephrase it or repeat it so that it's clear to you; okay?

A Uh-huh.

Q In a normal conversation we would say uh-huh --

A Yeah. Okay.

Q -- and huh-uh and make those kinds of affirmative or negative sounds and understand each other. In a deposition, because the court reporter on my right is taking down all of our words, we have to

Unit.

Do you know whether or not that is the official title of the corporation that you call the Fremont North?

A Yes. We used to use that term "unit," probably back when these bylaws were established, so it probably would be very accurate back then.

Q All right. Do you know what the official name of the corporation is now if it's different?

A I would think it's the same.

Q The corporation was incorporated in 1975, according to the documents that I have received. Does that sound correct to your knowledge?

A That sounds correct.

Q How long have you been an elder in the -- in this congregation?

A Since I moved into the congregation, and I believe it was 1986.

Q Before that time, 1986, did you serve as an elder in any other congregation?

A Yes. Before that time I served in the congregation -- I believe it would be called the Mountain View Congregation and perhaps Central, Central Mountain View.

Q Can you tell me approximately the year in

which you first became an elder?

A Approximately 1978.

Q And have you been an elder continuously up to the present time?

A Yes, I have.

Q Is there a general description you can provide me as to the role of the elders in the Jehovah's Witnesses Congregations?

A Yes. I would probably refer you to some Scriptures; for example, Second Peter, Chapter 5, Verse 2, that we would shepherd the flock and we would do it willingly, not grudgingly, not for love of dishonest gain, but eagerly, and neither lording it over those who are God's inheritance.

Q Do you have administrative responsibilities as an elder?

A Could you please explain what you mean by "administrative responsibilities"?

Q Yes. Do you have to perform various jobs or functions that have to do with either keeping records involving dispute resolution between members, other kinds of tasks involving the status or role of members in the congregation?

A By that term, I think I would say yes.

Q Can you give me a description of what

responsibilities you have in that general area?

A In that general area the responsibilities I have are as what we call a service overseer. So I would be concerned with the literature that comes into the congregation and its distribution as well as the coverage of our territory in the preaching work, also be concerned about the different Bible studies that are being conducted in the congregation.

Q Are there other elders in the Fremont North Congregation at present?

A Yes.

Q Approximately how many?

A I would say 12.

Q And what is the approximate size of the congregation today?

A About 110.

Q If we were to go back in time to the mid-1990s, do you have an estimate then as to the number of elders, approximately?

A I would estimate eight, but it's just an estimation.

Q And the size of the congregation at that time, approximately 15 to 20 years ago.

A I'm sure those records might be available, but I would hesitate to guess.

Q Do you have a general impression as to whether the membership has grown larger in that specific congregation since the mid-1990s, smaller or is about the same?

A There have certainly been a lot of new ones that have come in but others have moved away, so it might be fair to say that it was around the same.

Q You mentioned the term "service overseer." What is a service overseer?

A A service overseer is a -- an appointment as an -- he must be an elder, and it's an appointment to oversee the departments that I mentioned to you, literature, and we call our -- preaching work is our service to God. So anything that involves the preaching work would be something that I would be quite interested in.

Q To become an elder, is there a process of, I'll call it like a ladder, steps in a ladder that one must go through in preparation for assuming that title and position?

A Well, what we use are the Bible requirements. All of Jehovah's Witnesses, before they're baptized, must take a knowledge, repent, act upon the knowledge, obey what they find from the Scriptures. But in addition to that, elders would be

those that reach out for additional responsibilities, and these are outlined -- these qualifications for elders are outlined in First Timothy, Chapter 3.

Q Can you tell me what they are?

A Some of them are, sure.

Qualifications are that they would, first of all, be desirous of a fine work, so it is work-involved. We're not paid for the effort that we put forth, but we do it freely and willingly. And we would not be irreprehensible -- or we would need to be irreprehensible. We would need to be a husband and one wife. We would need to be orderly. We would need to be not given to a lot of wine, not -- and if I had the Bible I could do a little bit more justice to the -- but they're found there in First Timothy, Chapter 3, Verses 1 through, say, 10.

Q Who selects elders?

A The local Body of Elders observes individuals and then we will discuss them as a body, and ultimately we will send a recommendation into the branch office and the traveling brother that assists us at this time would be the circuit overseer, and so we would submit a request for this recommendation to be approved.

Q All right. You used the word "branch

office," and I'm not sure what that refers to. Please tell me.

A Okay. Yes. It's -- the worldwide organization of Jehovah's Witnesses has a headquarters which is in New York, and there is where the United States branch happens to be, but also they oversee the entire work, the global work of Jehovah's Witnesses.

Q Is that organization The Watchtower Bible and Tract Society of New York?

Actually let me -- I see you are puzzled. Let me withdraw the question and ask you, back in the mid-1990s, was that organization The Watchtower Bible and Tract Society of New York?

A I -- it might be New York or it might be Pennsylvania. I think it was -- I'm not sure.

Q Fair enough.

A Yeah.

Q Do you as an elder -- strike that. Let me start over.

Have you as an elder recommended other persons to be nominated to the position of elder during your years of service?

A Yes. I have been on the body that has recommended others.

Q And to whom is such a recommendation directed?

A To the branch office.

Q And is the branch office located somewhere other than New York or is it in New York to your understanding?

A It's in New York.

Q Has that process changed during the many years that you have been an elder?

A No.

Q You mentioned the term "circuit overseer," and can you describe for me what a circuit overseer is?

A Yes. He is a traveling elder. He visits -- generally he has a circuit of 20 congregations, and so he would like to visit these twice a year, and we look forward to these visits, and during this time he gives counsel from the branch to the elders, to the ministerial servants, and this counsel is appreciated.

He -- he agrees to travel to the various congregations, and in some cases they house him in maybe a room that they have, and if he has a wife, he and his wife. And in some cases they may have an apartment attached to a Kingdom Hall that they could use, and he does not get any reimburse -- well, he

in the branch office.

Q When you use that term "service department," can you tell me what you are referring to?

A Well, just as you asked me service overseer, so I would be concerned about the field service, the ministry in our local congregation. So the branch office would be concerned with the field ministry in the branch that they're overseeing, and in this case it would be the United States branch.

Q Do you understand that the service department back in the mid-1990s was administered by the Watchtower New York corporation?

A That sounds accurate.

Q What do you understand to be the role of the Watchtower Pennsylvania corporation?

A Yeah, that's -- I believe that would be more of the legal corporation of Jehovah's Witnesses. It would be a worldwide organization, different from New York, which would be the branch office that oversees the United States branch.

Q Are there some organizational documents, which would be anything from charts to letters, which explain to elders such as yourself the organizational structure of the various components of the Jehovah's Witnesses in the United States and the world?

A Yes. And they're available basically to the public because we have had articles in our Watchtower magazine that outlines that which are available.

Q One of the services that you perform, as I understand it, is the distribution of various religious literature and tracts; is that correct?

A Yeah, that we produce. Yeah.

Q When you say "we produce," are those produced and supplied to the congregation from some other source than the congregation itself, or are they produced within the congregation?

A By "congregation," do you mean the local congregation?

Q Yes, I do. I'm sorry. Yes. Thank you.

A Yes. We do no printing locally.

Q Who supplies the local congregation with the literature that is distributed in service?

A It would be the branch office.

Q There is an organization that I have received some documents from, through your counsel, called the Christian Congregation of Jehovah's Witnesses, also located in New York State.

Are you familiar with that organization?

A Yes.

Q Is it correct that that organization was

formed after you already had become an elder?

A Yes.

Q What do you understand to be the purpose of the Christian Congregation of Jehovah's Witnesses organization?

A I think that term denotes more of an accurate description than The Watchtower Bible and Tract Society for those that are looking out -- looking over Jehovah's people throughout the United States branch.

Q Is it the same organization as The Watchtower Bible and Tract Society with a different name, to your understanding, or is it a separate organization, corporation?

A To my understanding, it replaces the name of The Watchtower Bible and Tract Society of New York.

Q To your understanding, do both organizations, The Watchtower Bible and Tract Society of New York and the Christian Congregation of Jehovah's Witnesses, continue to exist at present?

A What was the first one? Watchtower --

Q Of New York.

A Of New York.

Q Bible and Tract Society of New York and Christian Congregation.

A I don't know.

Q Fair enough. Thank you. We talked about the branch office. As you understand it, is the branch office now administered by the Christian Congregation of Jehovah's Witnesses or by The Watchtower Bible and Tract Society of New York?

A Could you rephrase that question?

Q Yes. As you understand it, is the branch office that we talked about --

A The Christian Congregation of Jehovah's Witnesses you're referring to?

Q Yes.

A Okay.

Q Does -- is the branch office a function administered by the Christian Congregation or by Watchtower Bible and Tract of New York at present?

A I -- it seems like you're ask -- not asking the question correctly.

Q All right. Explain, then, how the -- the interplay of these corporations as regards to the branch office works for me.

A Yes. It's my understanding that The Watchtower Bible and Tract Society of Pennsylvania would be the worldwide oversight of the branch office, which is the Christian Congregation of Jehovah's

Witnesses New York.

Q Are you familiar with the term ministerial servant?

A Yes.

Q Did you act as a ministerial servant before you were an elder?

A Yes.

Q Is it customary for an individual before becoming an elder to serve as a ministerial servant?

A Yes.

Q How do the responsibilities of ministerial servant differ from those of elder?

A The duties of a ministerial servant would be more nonteaching, non -- they would be more of a service -- not field service but of a -- a service-oriented, such as maybe bookkeeping, keeping track of the inventory of literature that comes in and goes out, the maps that we have to work our territory locally. They would assist in helping make sure that the coverage was done systematically and in an orderly fashion.

They also may be used as attendants in the congregation to seat different ones or maybe sometimes we have like microphones that in some congregations we use, which is the case in ours, so they'd be used to

pass the microphones and other nonteaching, non-shepherding duties in the congregation.

Q Are ministerial servants appointed?

A They are.

Q By whom?

A The recommendation for their appointment is sent in by the local Body of Elders, and they explain why they feel this man qualifies for such a position, and then it is approved by the branch office service department.

Q Pardon me for asking what might seem like a very obvious question, but are women allowed to serve as elders?

A No.

Q Are women allowed to serve as ministerial servants?

A No. Well, can I qualify that?

Q Please.

A Let's say there were no qualified males to serve in that position. Then a sister could do the duties of that, but she would wear a head covering as a sign that she is doing something that normally would be done by a brother, but they're not appointed as ministerial servants or elders.

Q Are there other administrative or service

A We moved into the Kingdom Hall in 1986, and I would estimate two years from that point Jonathan Kendrick came to the Kingdom Hall. I am just guessing.

Q Did Mr. Kendrick ever serve as a ministerial servant?

A Yes, he did.

Q And do you recall whether or not you were involved in the decision to have Mr. Kendrick appointed as a ministerial servant?

A At that time I was on the Body of Elders. We reviewed it as a body, and I was part of the body that sent in a recommendation that he serve.

Q Do you recall, again, the approximate time frame?

A No, I don't -- I don't know.

Q Had Mr. Kendrick been a member of the congregation for a year or two before he became a ministerial servant, or something in that neighborhood?

A Yes. It seems longer than that even. It should be.

Q Do you recall, when Mr. Kendrick first became a member of the congregation, whether or not he was married?

A When he was first studying the Bible, he was not married. He was living with a woman.

Q All right. Did he become married during the time that he was a member of the Fremont North Congregation?

A No. He got married and cleaned up his life before he was baptized.

Q And when you say "cleaned up his life," what are you referring to?

A To the fact that he was living immorally with a woman and then he legalized that by getting married.

Q Was the woman that he married Evelyn?

A Yes.

Q And do you recall the approximate year that they would have been married?

A Well, I would think, if my years -- I'd say '88, '89, something around there.

Q Am I correct that Mr. Kendrick would have had to have been married to Evelyn before he was eligible to become a ministerial servant?

A Or break off the relationship with her. And even be baptized. Even before he could be baptized, he had to do that.

Q Okay.

A Yeah.

Q Did Evelyn have any children to your knowledge?

A Yes. She had a daughter.

Q Do you remember the daughter's name?

A Andrea.

Q Do you recall Andrea's approximate age during the time that Mr. Kendrick and Evelyn were married, or the range of ages?

A It would be a guess, but I would say in her early teens to probably high school.

Q Did Mr. Kendrick continue to serve as a ministerial servant during the remainder of the time that he was a member of the Fremont North Congregation?

A I believe he was removed as a ministerial servant from the Fremont North Congregation.

Q And what does it mean to be removed as a ministerial servant?

A No longer qualified to serve.

Q Who makes that determination?

A The Body of Elders.

Q And is that a determination that must be approved by the service branch?

A Yes.

Q How is the recommendation of the Body of Elders that a ministerial servant be removed communicated to the service branch?

A Generally by letter.

Q Do you know whether or not that was the case involving Mr. Kendrick?

A I believe it was, yes.

Q Did you participate in the drafting of that letter?

A No.

Q Is the letter a form letter or is it a narrative, if you will?

A Narrative.

Q Why was Mr. Kendrick removed?

MR. McCABE: Object to that. Calls for privileged information. I'll instruct the witness not to answer the question.

MR. SIMONS: What specific privilege?

MR. McCABE: The clergy-communicant privilege.

MR. SIMONS: Any others?

MR. McCABE: Well, that whole section. Confidentiality of the clergy-penitent privilege.

MR. SIMONS: All right.

Q I'm going to ask you a series of some

additional questions related to the removal of Mr. Kendrick as a ministerial servant, and it may very well be that counsel has some objections to some or all of these questions, so pause before answering to give him an opportunity to make any objections he might have; all right?

A Uh-huh.

Q Was the decision to remove Mr. Kendrick -- I'm sorry -- to recommend the removal of Mr. Kendrick as a ministerial servant made by more than one individual?

MR. McCABE: I'm going to object to that question. Same grounds.

MR. SIMONS: All right.

Q Is there a process within the Jehovah's Witnesses in which there is an investigatory or judicial type of committee?

A Yes.

Q Does that committee have a name or that process have a name?

A It has a name. Let's say it would be an investigating committee of two brothers.

Q And has that been part of the procedural practices of the congregations during the entire time that you have been an elder?

A Yes.

Q And during your years of service in Fremont, has such an investigation committee existed?

A The investigative committee is developed based on the circumstances. So maybe an individual felt comfortable coming to me and confessing a sin, or that they were party to a sin or that they heard of a sin. So it might be good for me to be on that investigating committee because they spoke to me. I would be a natural choice, but I wouldn't do it by myself. There would be another brother with me.

Q All right. Is the existence of such an investigation committee something that is communicated to all the members of the congregation?

A No.

Q And let me make my question clear. I don't think it was.

Without regard to a specific investigation, is generally the ability of the elders to have an investigation committee under certain circumstances something that is taught to all of the members or explained to the members?

A Could you rephrase that question, please?

Q Yes. Were members customarily told that the Body of Elders can under certain circumstances convene

an investigation committee? In other words, was the process known to the members that a judicial committee could be or investigation committee could be convened if circumstances so required?

A I believe that's in our publications.

Q So would I be correct in saying that an individual member who brought to an elder's attention a specific situation that would be of such a serious nature that an investigation would follow would customarily be aware of the power of the elders to convene an investigation?

A I believe I understand your question, so to answer that question, the congregation would expect the elders to investigate an allegation of serious wrongdoing.

Q And certainly sexual abuse of a child would fall under that category of serious wrongdoing?

A Yes.

Q Hold on one second for the --

A Okay.

Q -- siren there. All right.

It's not meant to be a hint on any specific question or answer.

THE VIDEOGRAPHER: I need to repair a microphone real quick.

MR. SIMONS: There is a technical issue here.

THE VIDEOGRAPHER: We're good. You're still on.

BY MR. SIMONS:

Q What was it that led to the judicial investigation of Mr. Kendrick during the time that he was a ministerial servant?

MR. McCABE: I'm going to object to that question on the same basis.

MR. SIMONS: Can we stipulate that any questions that I might pose to Mr. Abrahamson regarding the subject of communications involving Mr. Kendrick related to the judicial investigation or related to the action to remove him would draw the same objection that you have posed to the first few questions?

MR. McCABE: Yes.

MR. SIMONS: May we further stipulate that pending some judicial determination of the propriety of those questions that I can reserve that subject matter for further proceedings?

MR. McCABE: Yes.

BY MR. SIMONS:

Q Again, these may fall under that same

category, so give your counsel time to object.

Did you speak to Evelyn Kendrick concerning any allegations involving sexual abuse of her daughter Andrea by Mr. Kendrick, Jonathan Kendrick?

MR. McCABE: Objection. Instruct the witness not to answer on the same basis.

MR. SIMONS: Again, can we agree that any questions involving reports or communications from Evelyn Kendrick would fall under the umbrella of your objections?

MR. McCABE: Yes.

BY MR. SIMONS:

Q Did you at any time notify any secular law enforcement agency of any information concerning possible sexual abuse of children by Mr. Kendrick?

A I did not.

Q Do you know whether anyone within the congregation Body of Elders did so?

A I am not aware of anybody doing so, no.

Q What was the policy that was in place in the mid-1990s regarding reporting possible sexual abuse of a child by an adult to secular law enforcement agencies?

A I'm -- I don't know for sure. I would have to look it up. I know currently we are to call the

communications -- but was there any communication between yourself and anyone from the legal department back in the 1990s concerning Mr. Jonathan Kendrick?

MR. McCABE: I'm going to object to that. Same basis. I'm going to object to all communications from him to New York.

MR. SIMONS: Okay. My question specifically excludes any content of any communications. I want to only ask the very specific question of whether or not there were any communications at that time concerning Mr. Kendrick.

MR. McCABE: Well, normally I wouldn't have an objection to that, but in this case I do have an objection to that because then it assumes that there was some investigatory committee involving Mr. Kendrick and that communication was a result of that, and I don't think that we have got that into evidence at this point in time, so I'm going to object.

MR. SIMONS: All right. Let me ask about the foundational matter.

Q Was a judicial investigation committee convened with regard to Mr. Jonathan Kendrick prior to his removal as a ministerial servant?

MR. McCABE: I'm going to object on the same

basis of communicant-clergy privilege and instruct the witness not to answer.

BY MR. SIMONS:

Q Without providing me any names or other identifying information as to individuals, has there been, during the time that you have served as an elder in the congregation in Fremont, any report received by the Body of Elders or any member thereof, to your knowledge, concerning sexual abuse of a child by an adult?

MR. McCABE: I'm going to object to that too on the basis of the clergy-communicant privilege.

MR. SIMONS: Okay. I have a number of additional follow-up questions regarding Mr. Kendrick during the time that he was a member of the North Congregation, Fremont North Congregation, that are related in varying degrees to this underlying subject matter that is the subject of your objection. I'd like to reserve that questioning, if you will so agree, until the determination of the issues that you have raised objection to.

Is that acceptable?

MR. McCABE: Yes. Can we take just a short break?

MR. SIMONS: We can.

congregation that he is reproved, he's been reproved by the congregation committee.

Q And what does the term "reproved" refer to as you are using it there?

A Disciplined.

Q When a person is removed from an office, such as ministerial servant, is the congregation advised that that individual -- and again, I'm talking about the membership advised -- that that individual no longer is serving as a ministerial servant?

A Yes.

Q Is the congregation told -- again, the members told -- why that individual is no longer serving as a ministerial servant?

A No.

Q During your many years of service as an elder, has there been any change in any of those processes that we have just discussed, the notification of disfellowship or reproval or of removal from an office and the fact that the reason for such action is not disclosed? Has that been the standard practice during all your years of service?

A Yes.

Q Was there any inquiry from a congregation in Oakley to the Fremont North Congregation concerning

Mr. Kendrick of which you are aware?

MR. McCABE: I'm going to object. It's going to call for or elicit testimony which could violate the patient -- I mean clergy-penitent privilege.

MR. SIMONS: Let me follow up on that objection, which I assume is accompanied by an instruction not to answer --

MR. McCABE: Yes.

MR. SIMONS: -- is it? All right.

Q Are the communications that one congregation receives concerning a new member from that member's former congregation considered to be confidential as you understand it? In other words, is it information that is available to the members or elders of both congregations?

A It would be considered confidential.

Q And such a communication, if it came from an elder of another congregation, would the information that is permitted to be disclosed to that new congregation, would that information include the reason for a disfellowshipping?

A It likely would.

Q Have you learned that Mr. Kendrick was convicted of felony child abuse and sent to a prison

earlier. This refers to chairman of the judicial committee. Is that a different role than coordinator of the Body of Elders?

A Yes.

Q Who is the chairman of a judicial committee?

A Once a judicial committee is formed by the Body of Elders, the Body of Elders will choose the chairman.

Q Might that chairman be a different individual for a different judicial committee?

A Absolutely. Yeah.

Q In other words, it's not a permanent role?

A No.

Q It's a role limited only to that individual judicial committee?

A Exactly.

Q Who do you recall being members of any judicial committee that may have heard any issues revolving around or related to Jonathan Kendrick?

A That would be confidential.

MR. McCABE: I'll object to that.

MR. SIMONS: And the objection is?

MR. McCABE: Clergy-penitent privilege.

MR. SIMONS: Okay. Is there an instruction not to answer?

MR. McCABE: Yes.

(Document referred to herein marked for identification Exhibit No. 5)

BY MR. SIMONS:

Q Let's take a look at Exhibit 5. Do you recall receiving this letter?

A I can't honestly say that I remember receiving this exact letter, but the reminder being confidential, I'm sure I read over the letter.

Q Was there some discussion within the Body of Elders in the North Fremont Congregation of this letter when it was received?

A That I would not know -- remember.

Q Do you remember any such discussion about avoiding lawsuits that may result from, as the correspondence states on page 2, paragraph 1, misuse of the tongue?

A Okay. So I thought this letter was regarding confidentiality. So I haven't had an opportunity to look through the letter, so some of my answers would maybe be erroneous.

Q Okay. Why don't we take a second and allow you to review the letter.

A Fine.

Q And let's first of all see if it causes a


2

FILED

SEP 2 9 2005

Clerk of the Napa Superior Court

By: Jean E. Pike
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al.

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Plaintiffs' Motion To Compel Production Of Documents came on for hearing on August 31, 2005. The court, having read and considered the papers and heard oral argument, took the matter under submission and now rules as follows:

Plaintiff's motion to compel production of documents is GRANTED in part and continued in part to allow for the production of an attorney-client privilege log.

Although defendants raised a number of objections when responding to plaintiffs' request for production of documents, they address only two of those objections in opposing plaintiffs' motion to compel: the penitential communication privilege and the attorney-client privilege, which the court will discuss in more detail below. As to the other objections not discussed by defendants, the court finds the objections are not well taken. The requested discovery requests

are not overbroad, are relevant, and are not barred by *Serbian East Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696.

1. Penitential Privilege

Evidence Code section 1032 provides:

> As used in this article, "penitential communication" means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

Defendants object to the production of a number of documents requested by plaintiffs on the ground that they are protected by the penitential communication privilege contained in Evidence Code section 1032. This court finds that the privilege does not apply to communications between the alleged abusers and the Judicial Committee. The evidence presented by both sides establishes that communications with the Judicial Committee do not fall within the scope of the privilege. First, it is clear that the Judicial Committee's purpose is to investigate sins for which disfellowship is a potential penalty. This is established not only by the deposition excerpts provided by plaintiffs, but by the Watchtower publication provided by defendants in connection with the objections to plaintiffs' evidence ("Judicial action is necessary only if a gross sin has been committed that could lead to disfellowshipping" p. 18.) Second, the privilege does not apply because the Judicial Committee was under no duty to keep the communications private. In fact, the evidence establishes that the Judicial Committee was required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters.

Because the penitential communication privilege does not apply, within 20 days defendants shall produce all documents for which it previously asserted this privilege.

2. Attorney-client privilege

Defendants have not produced a privilege log for those few documents they apparently claim are protected by the attorney client privilege. Neither the plaintiffs nor the court can adequately address the objection without a privilege log. Defendants shall serve a privilege log

on plaintiffs within 10 days. Plaintiffs may thereafter file and a supplemental brief addressing the log within 10 days. The court will then issue a written ruling on the matter.

Dated: 9/27/05

Raymond A. Guadagni

Raymond A. Guadagni, Judge

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED
Court of Appeal First Appellate District
JUL 06 2006
Diane Herbert, Clerk
By _____ Deputy Clerk

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK ET AL.,

Petitioners,

v.

THE SUPERIOR COURT OF NAPA COUNTY,

Respondents;

TIM W., ET AL.,

Real Parties in Interest.

A114329

(Judicial Council Coordination Proceeding No. 4374; Coordinated with Napa County Super. Ct. No. 26-22191)

BY THE COURT:*

The petition for a writ of mandate is denied.

Dated: JUL - 6 2006

McGUINESS, P.J.

* McGuiness, P.J., Parrilli, J., and Siggins, J.

9439257

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PROOF OF SERVICE OF NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; MEET AND CONFER DECLARATION OF RICHARD J. SIMONS; SEPARATE STATEMENT; and PROPOSED ORDER

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

///

///

///

///

///

///

///

///

///

///

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On September 7, 2011, I served the within **NOTICE OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; MEET AND CONFER DECLARATION OF RICHARD J. SIMONS; SEPARATE STATEMENT; and PROPOSED ORDER** on interested parties in said action by the following means:

[ ] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[X] By Hand-Delivery By causing a true copy thereof to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 7, 2011, at Hayward, California.

Elaine Landro

ELAINE T. LANDRO

9439261

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

[PROPOSED] ORDER GRANTING MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

The Motion of Plaintiff JANE DOE for an Order Compelling Answers to Deposition of Gary Abrahamson and for Sanctions, having regularly come before the Court on September 29, 2011, at 3:00 p.m. in Department 22, notice having been duly given, the matter having been submitted on the papers and pleadings produced in support of the motion,

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel is GRANTED. Defendants and Mr. Abrahamson are ordered to respond to those questions set forth in plaintiff's Separate Statement, and all reasonable follow-up questions.

IT IS FURTHER ORDERED that sanctions in the amount of $1,440.00 are awarded in favor of plaintiff and her counsel, and against the defendants The Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd., Fremont) and their counsel, payable forthwith.

Dated: _____

_____
THE HONORABLE ROBERT McGUINESS
Judge of the Superior Court

9439253

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP - 7 2011
CLERK OF THE SUPERIOR COURT
By Melissa R
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

SEPARATE STATEMENT IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

INTRODUCTION

Plaintiff Jane Doe presents the following specific questions as the subject of the Motion to Compel answers from witness Gary Abrahamson:

I. THE REMOVAL OF JONATHAN KENDRICK AS A MINISTERIAL SERVANT.

QUESTION:

Q. Why was Mr. Kendrick removed?

OBJECTION:

A. MR. McCABE: Object to that. Calls for privileged information. I'll instruct the witness not to answer the question.
Q. MR. SIMONS: What specific privilege?
A. MR: McCABE: The clergy-communicant privilege.
Q. MR. SIMONS: Any others?

A. MR. McCABE: Well, that whole section. Confidentiality of the clergy-penitent privilege.

(Deposition 57:14-23).

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication to a third party or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

The Removal of Mr. Kendrick as a Ministerial Servant is an administrative decision, made by corporate agents. (Depo. 56:1-7; 16-25). The process does not involve "confidential communications" as defined by Evidence Code §1032 as multiple third persons at both the Congregation and New York corporate level are involved in the entire process. (*Roman Catholic Archbishop*, supra, at 445-6). The decision making that is the subject of the question does not call for any content or 1032 communications, but rather on administrative decision making.

///

II. THE JUDICIAL INVESTIGATION OF JONATHAN KENDRICK.

QUESTION:

Q. What was it that led to the judicial investigation of Mr. Kendrick during the time that he was a ministerial servant?

OBJECTION:

A. MR. McCABE: I'm going to object to that question on the same basis.

(Deposition 61:6-10).

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

This question does not call for any "confidential communications" as defined in §1032. Mr. Abrahamson agreed that members reporting "serious wrongdoing", including a sexual abuse of a child, expected an investigation which involved third parties. (Depo. 58:15-59:1; 59:24-60:5; and

60:6-18). Such communications are not "confidential". (*Roman Catholic Archbishop of Los Angeles v. Superior Court*, supra, at 444-5).

III. THE EVELYN KENDRICK REPORT.

QUESTION:

Q. Did you speak to Evelyn Kendrick concerning any allegations involving sexual abuse of her daughter Andrea by Mr. Kendrick, Jonathan Kendrick?

OBJECTION:

A. MR. McCABE: Objection. Instruct the witness not to answer on the same basis.

(Deposition 62:2-6).

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

This question does not call for any "confidential communications" as defined in §1032. Mr. Abrahamson agreed that members reporting "serious wrongdoing", including sexual abuse of a child, expected an investigation which involved third parties. (Depo. 58-15-59:1; 59:24-60:5; and 60:6-18). Such communications are not "confidential". (*Roman Catholic Archbishop of Los Angeles v. Superior Court*, supra, at 444-5).

IV. JUDICIAL INVESTIGATION COMMITTEE RE KENDRICK REMOVAL.

QUESTION:

Q. Was a judicial investigation committee convened with regard to Mr. Jonathan Kendrick prior to his removal as a ministerial servant?

OBJECTION:

A. MR. McCABE: I'm going to object on the same basis of communicant-clergy privilege and instruct the witness not to answer.

(Deposition 64:22-65:2)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). The removal of Mr. Kendrick as a Ministerial Servant is an administrative decision, made by corporate agents. (56:1-7; 16-25). The process does not involve "confidential communications" as defined by Evidence Code §1032 as multiple third persons at both the Congregation and New York corporate level are involved in the entire process. (*Roman Catholic Archbishop* supra, at 445-6). The decision making that is the subject of the question does not call for any content or 1032 communications, but rather on administrative decision making.

V. REPORTS OF SEXUAL ABUSE.

QUESTION:

Q. Without providing me any names or other identifying information as to individuals, has there been, during the time that you have served as an elder in the congregation in Fremont, any report received by the Body of Elders or any member thereof, to your knowledge, concerning sexual abuse of a child by an adult?

OBJECTION:

A. MR. McCABE: I'm going to object to that too on the basis of the clergy-communicant privilege.

(Deposition 65:4-12)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032). Any communication which is known in advance as "likely to be shared with more than one person, is not subject to the criteria of §1032 (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 444-5). The Clergy-Penitent Privilege is waived if a holder of the privilege discloses a significant part of the communication or consents to such disclosure. (Evidence Code §912(a); *Roman Catholic Archbishop*, supra, 131 Cal.App.4th at 445, Fn.14). "Third parties" include other administrators within the Institution of which the Clergy is a member. (*Roman Catholic Archbishop*, supra, 131 Cal.App.4th 445-6). A Clergy-Penitent communication which the parties are aware is likely to be transmitted to third persons is not "confidential" and is outside the privilege of §1032. (Id, 131 Cal.App.4th 445-6).

It is the doctrine of Jehovah's Witnesses, and the expectation of members, that reports of serious wrongdoing, including sexual abuse of a child will be investigated by a Judicial Committee, involving third persons. (Depo. 58-15-59:1; 59:24-60:5; and 60:6-18). Such conversations are not "confidential". (*Roman Catholic Archbishop*, supra, at 444-5).

VI. COMMUNICATIONS WITH OAKLEY RE JONATHAN KENDRICK.

QUESTION:

Q. Was there any inquiry from a congregation in Oakley to the Fremont North Congregation concerning Mr. Kendrick of which you are aware?

OBJECTION:

A. MR. McCABE: I'm going to object. It's going to call for or elicit testimony which could violate the patient – I mean clergy-penitent privilege.

(Deposition 85:24-86:5)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032).

The communications sought in this question are between congregations. No "confidential communication" between a penitent and clergy are included, as all the responsive answers would address third party administrative communications only.

VII. JUDICIAL COMMITTEE MAKEUP.

QUESTION:

Q. Who do you recall being members of any judicial committee that may have heard any issues revolving around or related to Jonathan Kendrick?

OBJECTION:

A. That would be confidential.
MR. McCABE: I'll object to that.
MR. SIMONS: And the objection is?
MR. McCABE: Clergy-penitent privilege.
MR. SIMONS: Okay. Is there an instruction not to answer?
MR. McCABE: Yes.

(Deposition 93:17-94:1)

ARGUMENT:

The privileges contained in the Evidence Code are exclusive and Courts are not free to create new privileges as a matter of judicial policy. (*Scottsdale Insurance Co. v. Superior Court* (1997) 59 Cal.App.4th 263, at 272; Evidence Code §911). The Clergy-Penitent Privilege covers only "a penitential communication". (Evidence Code §§1030, 1031, and 1032). A "penitential communication" applies only to communications "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who,... under the disciplines or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret" (§1032).

This question seeks identity of defendant's administrative personnel, not the content of any communications. Section 1032 does not apply to the identities of Administrative Persons.

Dated: September 7, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

7976832

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP 15 2011
By

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

NOTICE OF LODGING OF CERTIFIED COPIES OF THE TRANSCRIPT AND VIDEOTAPED DEPOSITION OF GARY ABRAHAMSON IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date:	9/29/11
Time:	3:00 p.m.
Dept:	22
Reservation No:	1212207

TO ALL PARTIES TO THE ABOVE-ENTITLED ACTION AND THE ATTORNEYS OF RECORD FOR SAME:

PLEASE TAKE NOTICE that pursuant to C.C.P. §2025.480(d), plaintiff hereby lodges a Certified Copy of the transcript of the Deposition of Gary A. Abrahamson, taken August 23, 2011, together with a Certified Copy of the video recording of the testimony of Gary Abrahamson taken August 23, 2011.

Dated: September 15, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On September 15, 2011, I served the within **NOTICE OF LODGING OF CERTIFIED COPY OF TRANSCRIPT AND VIDEOTAPED DEPOSITION OF GARY ABRAHAMSON IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]** on interested parties in said action by the following means:

[x] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 15, 2011, at Hayward, California.

Elaine Landro

ELAINE T. LANDRO

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued as the "Jehovah's Witnesses on Peralta Blvd. Fremont" and "Kingdom Hall of Jehovah's Witnesses")

FILED BY FAX
ALAMEDA COUNTY
September 16, 2011
CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy
CASE NUMBER:
HG11558324

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL FURTHER TESTIMONY AND FOR SANCTIONS

Date: 9/29/2011
Time: 3:00 p.m.
Dept. 22
Reservation No.: 1212207

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. STATEMENT OF FACTS 1

III. Penitential Privilege 5

A. The Penitential Privilege Should Apply to All of the Testimony Sought in this Matter 5

1. Why Mr. Kenrick Was Removed as a Ministerial Servant. 5

2. What led to a judicial committee for Mr. Kendrick. 5

3. Testimony about Evelyn Kendrick's allegations involving sexual abuse of her daughter Andrea by Mr. Kendrick. 5

4. Testimony regarding any reports received by the Body of Elders or any member thereof, concerning sexual abuse of a child by an adult. 6

5. Testimony regarding communications between the Oakley Body of Elders and the North Freemont Body of Elders. 6

6. Testimony regarding the names of any members of judicial committee that heard any isues relating to Mr. Kendrick. 6

B. California's Penitential Privilege 6

C. The Testimony Sought Constitutes Penitential Communications 8

1. There is No Evidence that Penitential Communications Were Made With the Knowledge that they Would be Revealed to Anyone Other than Elders 8

2. A Disclosure That is Privileged Itself Does Not Waive the Privilege 11

IV. First Amendment 12

V. Trial Court Should Conduct an in Camera Inspection 13

VI. There is No Basis for Awarding Sanctions against the Watchtower Defendants 13

VII. Conclusion 13

PROOF OF SERVICE 15

SERVICE LIST 16

TABLE OF AUTHORITIES

CASES:

Catholic Charities of Sacramento, Inc. v. Superior Court (2004) 32 Cal.4th 527 ..... 12, 13

Doe 2 v. Superior Court (2005) 132 Cal.App.4th 1504 ..... 6, 7, 11

Lipton v. Superior Court (1996) 48 Cal.App.4th 1599 13

People v. Edwards (1988) 203 Cal.App.3d 1358 13

Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417 ..... 10, 12

STATUTES:

California Evidence Code section 912 ..... 6, 10, 11

California Evidence Code section 917 8

California Evidence Code section 1030 6

California Evidence Code section 1031 ..... 6, 7, 8, 11

California Evidence Code section 1032 ..... 5, 6, 7, 10, 11

California Evidence Code section 1033 ..... 6, 11

California Evidence Code section 1034 ..... 6, 11

MISCELLANEOUS:

First Amendment, United States Constitution 7, 12

Fourteenth Amendment, United States Constitution 12

I. INTRODUCTION

This lawsuit arises from the alleged conduct of co-defendant Jonathan Kendrick that occurred in 1996/1997. (*See* Plaintiffs' Complaint at ¶¶ 6-8) Currently, there is a tentative ruling and a scheduled hearing for September 29, 2011 on Plaintiff's Motion to Compel Production of five documents. Counsel for Plaintiff and Counsel for the Church Defendants are graciously and civilly working together to resolve that dispute. As of this writing the parties have agreed to a stipulation that will obviate the need for production of what has been describer as Document #4 (November 5, 1996, form S-77 regarding the disfellowshipping of a family member of plaintiff) and Document #5 (November 6, 2002, form S-77 from local body of elders to Service Department elders regarding the disfellowshipping of a family member of plaintiff). As to the disputed documents described as Document #1 through #3, it is the parties' intention to submit these documents to the Court under seal for a review *in camera* to determine whether or not the privilege claimed applies.

The testimony that is the subject of this motion is oral history surrounding the reasons for and the creation and transmission of the documents sought to be compelled in the previous motion to compel production of documents.

II. STATEMENT OF FACTS

All of the testimony sought by Plaintiffs involves spiritual communications with ordained elders and appointed congregation elders (hereinafter referred to as "elders") which are private and confidential communications pursuant to the religious practices, beliefs, tenets and teachings of Jehovah's Witnesses based upon Scripture and tradition. *See* Exhibit '1' Affidavit of Allen Shuster[1] ¶¶ 8-10, 12-13, 18-22; Exhibit '2' Affidavit of Michael L. Clarke[2] ¶¶ 7-13 (both of which were filed in the Opposition to the Motion to Compel Production of Documents and are attached hereto and incorporated by reference herein).

---

[1] Hereinafter "Exhibit '1' Shuster Affidavit."

[2] Hereinafter "Exhibit '2' Clarke Affidavit."

As mentioned in the previous opposition, each congregation of Jehovah's Witnesses is provided with spiritual oversight on a local level by a small group of appointed elders who form the congregation's body of elders. Before elders are appointed, they must meet the strict Scriptural qualifications outlined in the Bible and be recommended and approved by current body of elders, a circuit overseer (*i.e.* traveling elder), and elders who serve in the Service Department at the Branch Office of Jehovah's Witnesses in New York. Once an individual is approved and appointed to serve as a congregation elder, a letter from the Branch Office is read to the congregation and the individual is officially vested with ministerial authority as an ordained minister and appointed as an elder. All elders of the North Congregation of Jehovah's Witnesses, Fremont California (hereinafter "North Congregation") are and were at all times relevant to this case ordained ministers and spiritual leaders of the congregation. *See* Exhibit '1' Shuster Affidavit ¶¶ 5-7, 11; Exhibit '2' Clarke Affidavit ¶ 5.

Congregation elders are responsible for the spiritual development and spiritual teaching of the members of the congregation, as well as for pastoral care. Elders frequently provide spiritual counsel and advice to members of the congregation concerning highly confidential personal and spiritual matters. For example, congregation elders are authorized to hear confessions and other private, confidential communications and to provide spiritual guidance and spiritual counsel by virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses. According to the religious beliefs and practices of Jehovah's Witnesses, congregation elders are expected to maintain the confidentiality of confessions and other confidential spiritual communications. *See* Exhibit '1' Shuster Affidavit ¶¶ 8-10, 12; Exhibit '2' Clarke Affidavit ¶¶ 5-10.

From time to time, congregation elders, including those in the North Congregation, communicated with elders in the Branch Office in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. All such spiritual communications between congregation elders and

Branch Office elders must be kept strictly confidential under the religious tenets and teachings of Jehovah's Witnesses. *See* Exhibit '1' Shuster Affidavit ¶¶ 13, 19.

Congregation elders are also responsible for conducting "judicial investigations" or "judicial committees" where a member of the congregation confesses to serious wrongdoing or sin or is accused of serious wrongdoing or a sin. The goal of a judicial investigation or judicial committee is to ensure that the congregation remains spiritually and morally clean. In addition, the elders endeavor to provide spiritual counseling and assistance to those who may have erred, with the hope of helping them to regain their spirituality and relationship with God. When the elders on a judicial committee confirm that a congregant has in fact committed a serious sin for which spiritual discipline is required based on Jehovah's Witnesses' understanding of the Bible, the judicial committee will decide what that spiritual discipline should be. Based on the religious beliefs, practices, and procedures of Jehovah's Witnesses, at least two elders are required to conduct a judicial investigation and at least three elders are required for a judicial committee involving a congregant who is alleged to have committed a serious sin. Jehovah's Witnesses believe that men are imperfect and, therefore, three elders can provide more full and complete spiritual counsel and advice based on a broader range of experience and knowledge than can a single elder alone. Pursuant to the beliefs, practices, and procedures of Jehovah's Witnesses, all spiritual communications taking place during a "judicial investigation" or "judicial committee," are considered extremely private and strictly confidential by all present, including the accused congregant and elders. *See* Exhibit '1' Shuster Affidavit ¶¶ 14-16, 19-21.

Where a serious sin is confirmed by the elders on the judicial committee, the judicial committee may give private or public reproof or disfellowship that congregant, depending on whether the individual is repentant. When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses." If a congregation member is disfel-

lowshipped, the judicial committee elders forward a notice of disfellowshipping to Branch Office elders for their spiritual review to ensure that their decision was spiritually-based and well-founded. The notice of disfellowshipping has the name of the disfellowshipped person, the date of disfellowshipping, and the Scriptural basis for disfellowshipping. *See* Exhibit '1' Shuster Affidavit ¶¶ 16, 19.

The confidentiality of spiritual communication between congregation members and elders is a foundational element of the religious beliefs and teachings of Jehovah's Witnesses. Jehovah's Witnesses recognize the Bible's admonition to confess one's sins to God and believe that there is a great benefit from speaking to congregation elders regarding such confidential spiritual matters. As such, Jehovah's Witnesses encourage those who need spiritual assistance to approach the congregation elders and convey to them whatever information may be necessary to provide such spiritual assistance. *See* Exhibit '1' Shuster Affidavit ¶¶ 17-21; Exhibit '2' Clarke Affidavit ¶¶ 6-11.

Since open and free communication between congregation members and elders is required to provide spiritual counsel and advice under the religious beliefs and practices of Jehovah's Witnesses, emphasis is placed on privacy and strict confidentiality. The confidentiality requirements with respect to such spiritual communications are explained in official literature and publications of Jehovah's Witnesses. Congregants expect that all spiritual communications with congregation elders will remain strictly confidential. Further, revealing confidential spiritual communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation. Moreover, if an elder was compelled to disclose confidential information, his credibility and effectiveness as an elder, as well as the credibility and effectiveness of other elders in the congregation, would be adversely affected and compromised, since congregants would not trust and rely upon their belief that personal problems and information they disclose would not be revealed and used against them in a court action. *See* Exhibit '1' Shuster Affidavit ¶¶ 10, 18-21; Exhibit '2' Clarke Affidavit ¶¶ 7-11.

Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with congregation elders is limited to confessions. This is in harmony with California Evidence Code Section 1032 as discussed below. Such confidentiality extends to all confidential communications of a spiritual nature, including those that take place in the course of judicial investigations or committees, or while seeking and providing spiritual counsel and advice. Additionally, based upon Scripture and church tradition, such confidentiality requirements also extend to congregation files, notes, papers, reports, minutes or other documents prepared in conjunction with, or as a result of, confidential spiritual communications. Should the disclosure of such documents be compelled, the credibility and effectiveness of those in charge of the spiritual well being of entire congregations will be compromised. *See* Exhibit '1' Shuster Affidavit ¶¶ 19-22; Exhibit '2' Clarke Affidavit ¶¶ 7, 11-13.

III. Penitential Privilege

A. The penitential privilege should apply to all of the testimony sought in this matter.

1. The first line of questioning objected to is the reasons why Mr. Kendrick was removed as a ministerial servant called for the witness to reveal confidential communication that he had received in confidence as an elder from a penitent.

2. The second line of questioning objected to is regarding what led to the judicial investigation of Mr. Kendrick during the time that he was a ministerial servant assumes that there was a "judicial committee" which in itself is confidential unless according to the beliefs and practices of Jehovah's Witnesses there is a later announcement about the outcome of a judicial committee. All communications to the elders involved in the judicial committee, if there was one, qualify as penitential communications made to a member of the clergy and are privileged.

3. The third line of questioning objected to involved speaking to Evelyn Kendrick concerning allegations involving sexual abuse of her daughter Andrea by Mr. Kendrick likewise seeks

testimony of conversations between members of the congregation and their clergy made in confidence to obtain spiritual guidance and direction.

4. The fourth line of questioning objected to sought testimony regarding any reports received by the Body of Elders or any member thereof, to your knowledge, concerning sexual abuse of a child by an adult likewise seeks the revelation of communications made to elders as ministers for the purpose of obtaining spiritual guidance and direction.

5. The fifth line of questioning that was objected to had to do with communications between two congregations concerning Mr. Kendrick and sought testimony from the witness about confidential communications between ministers of the Oakley Congregation of Jehovah's Witnesses and ministers of the North Freemont Congregation of Jehovah's Witnesses that in themselves were seeking spiritual guidance and direction.

6. The final line of questions that were objected to involved supplying the names of any members of judicial committee that heard any issues relating to Mr. Kendrick.

B. California's Penitential Privilege.

In each instance related above, Plaintiff seeks to compel the witness to disclose information that is protected by the penitential privilege set forth in California Evidence Code section 1030, *et seq.* California Evidence Code section 1033 provides: "Subject to section 912, a penitent, whether or not a party, has a privilege to refuse to, and to prevent another from disclosing, a penitential communication if he claims the privilege." California Evidence Code section 1034 further provides: "Subject to section 912, a clergyman, whether or not a party, has a privilege to refuse to disclose a penitential communication if he claims the privilege." Under California's statutory scheme, a "member of the clergy" is defined as a "priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization." California Evidence Code section 1031. Therefore, appointed elders of Jehovah's Witnesses are clearly within this defi-

nition of "clergyman." The testimony sought by Plaintiff seeks to invade confidential communications made to the witness by a penitent for which he claims the privilege.

It must be noted that a "penitent" is defined simply as "a person who has made a penitential communication to a clergyman." California Evidence Code section 1031. In turn, a "penitential communication" is not just a confession in the traditional sense of the word but in harmony with the separation of church and state embodied in the First Amendment to the United States Constitution and the First Amendment to the California Constitution broadly defines penitential as follows:

> As used in this article, 'penitential communication' means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a clergyman who, in the course of the discipline or practice of his church, denomination, or organization, is authorized or accustomed to hear such communications and, under the discipline or tenants of his church, denomination or organization, has a duty to keep such communication secret.

Under Evidence Code section 1032, there is no requirement that the communication "have as its purpose the confession of a 'flawed act' to 'receive religious consolation and guidance in return' in order to be privileged." *Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1518. Rather, the privilege applies to any communication that fits the statutory description. *See* Cal. Law Revision Com. com., West's Ann. Evid. Code (2011) foll. § 1032 (statute extends protection of privilege beyond just "confessions"). Consequently, a "penitential communication" is not limited to just confessions in the stereotypical sense of the word. It is any communication that fits the statutory description.

California case law supports the foregoing analysis. The court in *People v. Edwards* (1988) 203 Cal.App.3d 1358, 1362-63,[3] defined the elements of the rule of privilege.

[3] "In order for a statement to be privileged, it must satisfy all of the conceptual requirements of a penitential communication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed to hear such communications; and (3) such member of the clergy has a duty under the discipline or tenants of the church, religious denomination or organization to keep such communications secret."

C. The Testimony Sought Constitutes Penitential Communications.

The communications at issue were made in a fashion that requires the rule of privilege to apply. The questions indicate that the communications were made by a "penitent" as defined by California Evidence Code section 1031 to an elder or elders of Jehovah's Witnesses (clergy) with a reasonable expectation of privacy under the religious beliefs and tenets of Jehovah's Witnesses. Additionally, the fifth and final lines of questioning pursued by counsel for Plaintiff sought communications between elders regarding internal organizational matters relating to the discipline of a congregation member. Those communications were intended to remain strictly confidential. Each was made to elders, members of the "clergy." (*See* Exhibit '1' Shuster Affidavit ¶¶ 13-22.) Each elder has a duty under the tenets of the Jehovah's Witness faith to keep such communications secret. As pointed out in the Affidavit of Allen Shuster, the sharing of this information between the elders in Mr. Kendrick's congregation and the elders in the Service Department (headquarters) or between elders in the Oakley Congregation are all part of the spiritual counsel and advice as to the proper application of religious doctrine and procedures. The sharing of that information does not affect the confidentiality of those communications, or destroy the privilege for such "penitential communications." Under these circumstances, Evidence Code section 917 provides that the confidential quality of the communications *must be presumed.* California Evidence Code section 917 provides that the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

1. There is No Evidence that Penitential Communications Were Made With the Knowledge that they Would be Revealed to Anyone Other than Qualified Elders.

From time to time, congregation elders communicate with other elders and elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers, in order to receive spiritual guidance and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. All such spiritual

communications between congregation elders and the Branch Office Service Department or circuit overseer are not administrative communications but confidential communications that must be kept strictly confidential under the religious tenets and teachings of Jehovah's Witnesses. *See* Shuster Affidavit ¶¶ 13, 19.

Congregation elders are required by the tenets of their faith to keep confessions and other confidential spiritual communications (all of which are defined under the Evidence Code as "penitential") strictly confidential. Similarly, Jehovah's Witnesses doctrine requires that all confidential spiritual communications between congregation elders and elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers, be kept in the strictest confidence. Additionally, confidential spiritual communications taking place during a 'judicial investigation" and during "judicial committee" meetings are considered to be extremely private and elders must keep such confidential spiritual communications strictly confidential. Plaintiff asserts in the Motion to Compel production of documents and by inference herein that the penitential privilege does not apply because the elders were required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters. First, this argument does not apply to each line of questioning. Second, the elders' communications to the elders in the Service Department or to a Body of Elders in another congregations does not automatically result in a breach of their duty to keep penitential communications—whether made to an individual elder or a judicial committee—secret and confidential. Rather, the relevant inquiry is (1) what information was communicated in those settings (i.e. did the congregation elders reveal the penitent's *actual* communications?) and (2) did the penitent know or expect that his confidential communication would be disclosed to the Service Department elders or another Body of Elders.

With regard to the first question, it is unlikely that the congregation elders in this case revealed the contents of the actual communications they had with Jonathan Kendrick (penitent) or with other members of the congregation that communicated to the elders in a confidential manner

("penitents"). Thus, any such communication would not be a waiver under Section 912(a) (a waiver would occur only if the holder of a privilege "has disclosed a significant part of the communication or has consented to disclosure made by anyone"). If the Court finds any legal validity to Plaintiff's arguments, then after ruling on the disclosure of documents pending in the September 29, 2011, hearing it could be in a better position to rule on the claim of privilege to the testimony sought by this motion. The Church defendants urge the Court to make an *in camera* inspection of the documents in question that relate to Mr. Kendrick to determine whether any confidential communications that the elders may have made to elders serving in the Service Department disclosed "a significant part" of a communication resulting in a waiver.

With regard to the second question, in *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal. App 4th 417, 445, upon which plaintiff relies, a priest discussed his psychological and sexual problems with the cardinal and an appointed "vicar for clergy." The priest knew that his conversations, along with the documents that were created as a result of the conversations, were routinely shared with the archbishop, the cardinal, the vicar for clergy, as well as other employees of the archdiocese. Although the priest claimed that these communications were privileged under Section 1032, the court held that the privilege was waived because "both parties to the original communication knew it likely would be transmitted to a third person." *Id.* Importantly, it was noted by that court that disclosure of this confidential information to the bishop and vicar was not required by Catholic tenets or doctrine. Thus, any privilege was waived by the communicant, since he knew the information would not be kept in confidence. In this case, Plaintiff provides no evidence to refute the fact that Jonathan Kendrick or other members of the congregation expected their communications with their congregation elders to remain strictly confidential. Under the tenets and doctrines of the Jehovah's Witness faith, the communications between other members of the congregation and their congregation elders or between Mr. Kendrick and his congregation elders and between his congregation elders and the Branch Office elders were all confidential. In

determining whether a penitent's communication to a clergy member qualifies as a penitential communication, courts look to whether the penitent had an expectation of confidentiality at the time of their communication. *Doe 2*, 132 Cal.App.4th at 1518.

2. A Disclosure That is Privileged Itself Does Not Waive the Privilege

Plaintiff asserts that the penitential privilege was waived when the elders sought the spiritual advice of the elders in the Service Department. Again, a plain reading of Section 912 of the Evidence Codes indicates that such a disclosure does not constitute a waiver.

First, and very importantly, it must be acknowledged that elders (i.e., clergy) may also be penitents under Evidence Code section 1031, when they engage in confidential spiritual communications with other elders. Therefore, any confidential spiritual communications between congregation elders, circuit overseers (i.e., traveling elders), and Branch Office elders in New York for the purpose of obtaining spiritual counsel and advice are also penitential communications as that term is defined under Evidence Code section 1032 and thus protected from disclosure by Evidence Code sections 1033 and 1034.

According to the provisions of Section 912(c), "[a]disclosure that is itself privileged is not a waiver of any privilege." Thus, California recognizes that there will be situations when a privilege holder will have the need to speak to others about matters relating to their privileged communications. And, as long as the privilege holder limits these communications to individuals with whom he also has a privilege, then the privilege is not waived.

Thus, an elder who sought spiritual advice and direction from another elder—no matter where he was physically situated—regarding a privileged communication he received from a penitent, will not be deemed to have been waived the privilege as long as the three requirements of Section 1032 are met. The three requirements are met in this case. *See* Shuster Affidavit ¶ 19.

IV. First Amendment

The establishment clause in the First Amendment to the federal constitution provides that, "Congress shall make no law respecting an establishment of religion...." Among other things, the U.S. Supreme Court has held that this clause prohibits the government's excessive entanglement with religion. The same argument made in Opposition to Compel Production of documents in this case applies herein. Under the established clause, every religion is guaranteed the same rights and protections. The U.S. Supreme Court has decisively settled that these protections have been made wholly applicable to the states by the Fourteenth.

As explained above, the tenets and religious beliefs of Jehovah's Witnesses doctrine establish the requirement that three or more elders receive and investigate penitent communications regarding allegations of serious transgression or sin. They also require that the Branch Office elders be informed. However, all elders are obligated to keep the information confidential. If this court denies the penitential privilege on the basis of a distinction between Jehovah's Witnesses' pastoral procedures and those of other religions, it would essentially establish "acceptable" religious practices in violation of the federal and state constitutional prohibitions of excessive governmental entanglement with religion.

Additionally, if this Court refused to apply the penitential privilege to the religious practices and doctrines of Jehovah's Witnesses for confidential communications, it would inhibit the free exercise of religion of Jehovah's Witnesses and the Watchtower Defendants in violation of the free exercise clauses of the state and federal constitutions. Only a neutral law of general applicability may burden the right to free exercise of religion. California courts also apply the strict scrutiny standard when deciding matters under the free exercise clause of the California Constitution. *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562.

The decision in *Roman Catholic Archbishop* is inapplicable because it concerned testimony and evidence to be presented to a grand jury in a criminal proceeding. Disclosure was re-

quired in that instance, the court held, "because the government had a compelling interest in prosecuting child molesters." In contrast, this case involves civil actions and not the criminal prosecutions of child molesters.

Here, the government has no compelling interest for eroding the penitent-clergy privilege to religions that require a penitent confess to one minister but denying the same privilege to religions that require that a penitent confess to more than one minister. Because there is no compelling state interest for the court's non-neutral judicial interpretation of the rule of privilege, Plaintiffs' arguments must be rejected.

V. Trial Court Should Conduct an In Camera Inspection

Should this Court look favorably upon Plaintiff's Motion and the preceding Motion to Compel Production of documents, the Church Defendants alternatively request that this Court inspect each of the requested documents *in camera* before determining whether or not the privilege should apply as to each document in question. An in camera review by the trial court is appropriate to resolve a dispute as to whether requested documents, which contain privileged information, are discoverable. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1619-20.

VI. There is No Basis for Awarding Sanctions against the Church Defendants

Plaintiff admits that sanctions are only appropriate where the party seeking disclosure has shown good cause and that the objections to that disclosure are totally meritless. In this case, it seems clear that the Church Defendants have shown that there are valid legal arguments against the forced disclosure of each of the testimony sought by Plaintiff. Therefore, it is respectfully submitted that, regardless of the outcome of this motion, Plaintiff's application for sanctions against the Church Defendants should be denied.

VII. Conclusion

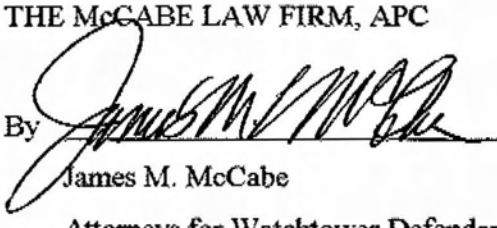
The Church Defendants have attempted in good faith to reasonably respond to all of Plaintiff's requests for information. In the face of Church doctrine and the protections of California Evi-

dence Code, the Church Defendants asserted all appropriate objections and privileges. While Plaintiff is entitled to information reasonably calculated to lead to the discovery of admissible evidence (*i.e.*, "relevant" information), Plaintiff is not entitled to obtain testimony that is protected from disclosure by the penitential privilege.

Therefore, based on the foregoing, the Church Defendants respectfully request that Plaintiffs' application re production of withheld documents be denied.

DATED: September 16, 2011

THE McCABE LAW FIRM, APC

By 

James M. McCabe

Attorneys for Watchtower Defendants

PROOF OF SERVICE
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
Case No. HG11558324

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is 4817 Santa Monica Ave., Ste. B, San Diego, CA 92107

On September 16, 2011, I served the following document(s) described as WATCHTOWER DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL FURTHER TESTIMONY FROM DEFENDANT on all interested parties to this action as follows:

by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST.

☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with The Law Offices of James M. McCabe's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Ocean Beach, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☒ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (619) 224-0089 to Fax No. 510 582-0554 directed to Rich Simons. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

and e-mail to RICH@RSIVAN.COM

Executed on August 16, 2011 at Ocean Beach, California.

Employee of the McCabe Law Firm

SERVICE LIST

JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
Case No. HG11558324

Richard J. Simons, Esq.
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

(ATTORNEY FOR PLAINTIFF)

EXHIBIT 1

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

AFFIDAVIT OF ALLEN SHUSTER

I, Allen Shuster, after being duly sworn, depose and state and if called to testify would do so as follows:

1. I am over 18 years of age, of sound mind, and competent to make this Affidavit. I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I reside in Patterson, New York and have served as an elder in the faith of Jehovah's Witnesses since 1979.

3. Since February 1981, I have served in the Service Department at the U.S. Branch Offices of Jehovah's Witnesses in New York. I provide spiritual assistance to congregation elders who call or write the Service Department for help. Prior to March 2001, the spiritual assistance provided by the Service Department, along with the appointment of elders, was communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc. Since March 2001, this has been communicated through the Christian Congregation of Jehovah's Witnesses.

4. My duties in the Service Department also include monitoring the functioning, organization, and staffing of congregations of Jehovah's Witnesses, including reviewing the qualifications for the appointment of elders to congregations of Jehovah's Witnesses in the United States.

QUALIFICATIONS OF ELDERS

5. Jehovah's Witnesses are not automatically appointed to serve as congregation elders. Rather, they must first meet certain qualifications that are outlined in the Bible, as follows: Before a male member of the congregation can be considered for appointment as a congregation elder, he must first be baptized as one of Jehovah's Witnesses. Next the individual must gain further knowledge of the Holy Scriptures and show a willingness to be used in a further way to assist others in the congregation. If he shows such a willingness, he must then meet Scriptural qualifications set out in 1 Timothy 3:8-13. Thereafter, he may qualify and be appointed as a ministerial servant. Although a ministerial servant would not provide spiritual supervision in the congregation, he could be assigned certain tasks to assist the congregation elders as they carry out their duties. After a period of time—perhaps many years—a ministerial servant who has faithfully carried out his assignments and has gained more experience may meet the qualifications of a congregation elder as outlined in 1 Timothy 3:1-7 and Titus 1:6-9.

When this occurs, the congregation body of elders will make this recommendation to the circuit overseer (a representative of the Branch office who is also an experienced elder). If the circuit overseer agrees with the recommendation, it will then be forwarded to the Branch office's Service Department. Approved elders in the Service Department will then review the recommendation in accord with the guidelines outlined in the Holy Scriptures, adopted by the Governing Body of Jehovah's Witnesses. The Branch office will then inform the local congregation's body of elders, in writing, of their determination with regards the recommendation.

6. If an individual is appointed to serve as a congregation elder, the letter of appointment from the Branch office is read to the congregation. It is at this time that he is officially vested with ministerial authority. In other words, he is appointed as a congregation elder.

7. Jehovah's Witnesses who serve as appointed elders are recognized as ordained ministers and congregation elders.

8. Like Jesus and his apostles, congregation elders do not receive a salary for their ministerial work. Nonetheless, as ordained ministers and congregation elders, they are responsible for providing spiritual supervision to the congregations, which includes hearing confessions and other confidential spiritual communications made to them by congregation members who are seeking spiritual counsel, advice or comfort.

9. Congregation elders are authorized to hear confessions and other confidential spiritual communications and to provide confidential spiritual counsel, advice, and comfort by virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses.

10. According to the religious beliefs and practices of Jehovah's Witnesses, congregation elders are expected to keep confession and other confidential spiritual

communications confidential. An elder who reveals such a confession or other confidential spiritual communication, without the express permission of the one making the confession or confidential spiritual communication may be disqualified from serving as an elder.

11. All elders of local congregations of Jehovah's Witnesses, including the North Congregation of Jehovah's Witnesses in Fremont, California (hereinafter "North Congregation"), are and were at all times relevant to this case ordained ministers and the spiritual leaders of their respective congregations.

DUTIES OF ELDERS

12. As with all congregations of Jehovah's Witnesses, the North Congregation elders frequently provide spiritual counsel, advice, and comfort to congregation members concerning highly confidential and personal matters of a spiritual nature.

13. In addition, at all times relevant to this case, the North Congregation elders occasionally communicated with elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers, in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. As discussed more fully below, the religious beliefs of these elders also require that any confidential spiritual communications between elders serving in the Branch Office's Service Department, elders serving as circuit overseers, and congregation elders must be kept strictly confidential. The spiritual counsel and advice given by the elders serving in the Branch Office's Service Department, elders serving as circuit overseers, and congregation elders is based on Jehovah's Witnesses' understanding of the Bible.

14. The elders of congregations of Jehovah's Witnesses are also responsible for conducting what is referred to as "judicial investigations" when a member of a congregation is

accused of serious Scriptural wrongdoing. Judicial investigations are carried out by two elders selected by the congregation body of elders.

15. The goal of a judicial investigation is to make certain that the Christian congregation remains spiritually and morally clean. (James 1:26) In doing so, if the elders confirm that serious Scriptural wrongdoing has occurred, a judicial committee of at least three elders is selected by the congregation body of elders to endeavor to provide spiritual assistance to the congregant who may have sinned, with the hope of assisting them to regain their spirituality and relationship with God. (Galatians 6:1, 2) At times, a judicial committee will determine that an accused congregant should be spiritually disciplined internally, based on Jehovah's Witnesses' understanding of the Bible.

16. Spiritual discipline administered by elders of Jehovah's Witnesses serving on a judicial committee is based solely on Jehovah's Witnesses' understanding of the Bible as applied to the facts of the matter. Where a serious sin is involved and the accused person is repentant, the judicial committee may recommend private or public reproof. But if the person who committed a serious sin cannot be brought back to repentance, the individual will have to be disfellowshipped. When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses."

17. Jehovah's Witnesses recognize the Bible's admonition to confess ones sins to God. 1 John 1:8, 9 ("If we confess our sins, he is faithful and righteous so as to forgive us our sins and to cleanse us from all unrighteousness.").

18. In addition Jehovah's Witnesses also believe that there can be much benefit from speaking to the congregation elders ("older men") regarding such confidential matters. James 5:13-16 ("Is there anyone suffering evil among YOU? Let him carry on prayer. Is there anyone

in good spirits? Let him sing psalms. Is there anyone sick among YOU? Let him call the older men of the congregation to [him], and let them pray over him, greasing [him] with oil in the name of Jehovah. And the prayer of faith will make the indisposed one well, and Jehovah will raise him up. Also, if he has committed sins, it will be forgiven him. Therefore openly confess YOUR sins to one another and pray for one another, that YOU may get healed."). Jehovah's Witnesses view confessions and other confidential and private communications of a spiritual nature between congregation members and elders as communications that elders must keep confidential. Proverbs 25:9.

19. Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with the congregation elders is limited to confessions. Rather, as outlined in James 5:13-16, Jehovah's Witnesses are encouraged to seek the spiritual counsel and advice of the elders in a variety of life situations. Congregation elders are also encouraged to seek spiritual counsel and advice from elders serving in the Branch Office's Service Department, or from elders serving as circuit overseers, in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members, and on occasion congregation elders seek such spiritual counsel and advice. Such confidential spiritual communications from congregation elders are only handled by elders in the Branch Office Service Department. In addition, if a congregation member is disfellowshipped, the judicial committee elders forward a notice of disfellowshipping to Branch Office elders for their review to ensure that their decision was spiritually based and well founded. The notice of disfellowshipping has the name of the disfellowshipped person, the date of disfellowshipping, and the Scriptural basis for disfellowshipping. Jehovah's Witnesses view all such spiritual communications as confidential communications that must be kept strictly confidential.

20. Elders do not allow unnecessary third parties to be a party to a confidential communication. However, at times more than one elder may be a party to the conversation. For instance, it is Jehovah's Witnesses religious belief and practice to have at least two elders present during a judicial investigation and at least three elders present during a judicial committee. (Deuteronomy 17:6; Deuteronomy 19:15; Matthew 18:15-17; 2 Corinthians 13:1; 1 Timothy 5:19) Before one becomes one of Jehovah's Witnesses, he would be made aware of this provision. *Your Word Is a Lamp To My Foot*, pages 176-79; *Organization for Kingdom-Preaching and Disciple-Making*, pages 159-65; *Organized to Accomplish Our Ministry*, pages 145-47; *Organized To Do Jehovah's Will*, pages 151-2. In addition, there may be instances where a husband and wife, or a parent and child, may together seek or would be provided with spiritual counsel, advice or comfort from the elders. Jehovah's Witnesses believe that men are imperfect and, therefore, three elders serving on a judicial committee can provide more full and complete spiritual counsel and advice based on a broader range of experience and knowledge than can a single elder alone. The elders and participants to these confidential and private spiritual communications would view these communications as confidential and congregants would expect the elders to keep such communications strictly confidential.

21. In addition, the religious doctrine of Jehovah's Witnesses requires that all elders keep these confidential and private spiritual communications strictly confidential. *The Watchtower*, April 1, 1971, pages 222-224; *Kingdom Ministry*, July 1975; *The Watchtower*, December 15, 1975, pages 764-66; *The Watchtower*, September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-27; *The Watchtower*, November 15, 1991, pages 19-23. Indeed, an elder who reveals the contents of such a confidential communication may be subject to removal.

22. In this case, Withheld Documents one through five referenced in Plaintiff's Notice of Motion and Motion to Compel, were all received by or sent by elders serving in the Branch Office's Service Department and are the type of confidential communications and documents described in paragraphs 13-21 above, which must be kept strictly confidential. The undersigned therefore claims and does not waive the penitent privilege as to any of the Withheld Documents.

SIGNED this the 11th day of August, 2011.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my information, belief, and knowledge.

Allen Shuster
Allen Shuster

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

SUBSCRIBED AND SWORN TO BEFORE ME on the 11 day of August, 2011, to certify which witness my hand and official seal.

Robert J. Budrecki
Notary Public, State of New York

ROBERT J. BUDRECKI
Notary Public, State Of New York
No. 01BU6003185
Qualified in Putnam County
Commission Expires 02/23/2014

EXHIBIT 2

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

AFFIDAVIT OF MICHAEL L. CLARKE

I, Michael L. Clarke, after being duly sworn, depose and state and if called to testify would do so as follows:

1. That I am over 21 years of age and reside in Fremont, California.

2. That I have been a member of the North Congregation of Jehovah's Witnesses, in Fremont, California since 1989.

3. That from August 29, 1989, until the present I have served as a duly ordained minister and elder of the North Congregation of Jehovah's Witnesses in Fremont, California.

4. That I am thoroughly familiar with the religious beliefs, teachings, practices, and organization of Jehovah's Witnesses.

5. That Jehovah's Witnesses who are responsible for teaching and pastoral care of congregation members are called "elders."

6. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder has a responsibility to provide spiritual counsel and advice to those who seek or need it, and that a person who seeks or needs spiritual counsel and advice conveys to the elders whatever information may be needed to provide this spiritual assistance.—Isaiah 32:2; James 5:14-16; Hebrews 13:17.

7. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and tradition, that elders must maintain in strict confidence any church communications connected with such spiritual counsel and advice and congregants expect that their communications to elders will remain confidential.—Proverbs 15:22; 25:9, 10.

8. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

9. That if Affiant or any other elder is compelled to disclose such confidential information, his credibility and effectiveness as an elder, as well as the credibility and effectiveness of the other elders in the congregation, would be adversely affected and compromised, since congregation members will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action or otherwise violate their expectation of privacy and confidentiality.

10. That the requirement of keeping the above-described confidential and spiritual communications to elders confidential is explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowledge in the congregation or community.
>
> Those mature ministers will not discuss even with their wives and close friends what they thus learn in confidence. They know that if they did so it would undermine respect for their positions; it would make individuals hesitant to come to them; yes, in time it might even make it impossible for them to fulfill their role as spiritual shepherds.

The Watchtower, April 1, 1971, p. 223.

11. That it is also the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, to keep congregation files, papers, reports, minutes or other documents prepared in conjunction with, or as a result of, the above-described confidential communications, strictly confidential.

12. That Withheld Documents one through five referenced in Plaintiffs' Ex Parte Application Re Production of Withheld Documents, were all prepared, signed, and sent by Affiant or received by Affiant as an elder in the North Congregation, and are the type of confidential communications and documents described in paragraph 6-11 above, which must be kept strictly confidential. The undersigned Affiant therefore claims and does not waive the penitential privilege as to any of the Withheld Documents.

13. That if Affiant or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described

confidential communications, the credibility and effectiveness of Petitioner and other elders in the congregation, will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

SIGNED this the 11 day of August, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

Michael L. Clarke

STATE OF CALIFORNIA)
) ss.:
COUNTY OF ALAMEDA)

SUBSCRIBED AND SWORN TO BEFORE ME on the 11th day of August, 2011, to certify which witness my hand and official seal.

Carol Giddens
Notary Public, State of California

CAROL GIDDENS
Commission # 1854130
Notary Public - California
Alameda County
My Comm. Expires Jul 12, 2013

9520316

RCD

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
SEP 20 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]

Date: 9/29/11
Time: 3:00 p.m.
Dept: 22
Reservation No: 1212207

INTRODUCTION

The Jehovah's Witnesses defendants oppose the Motion to Compel further testimony from Gary Abrahamson, an Elder of the North Congregation, based upon an expanded interpretation of the Evidence Code Clergy/Penitent Privilege not supported by either statutory language or case law. Under the Jehovah's Witnesses' interpretation of the Evidence Code, all reports of sexual abuse of minors, internal proceedings to investigate such reports, and discipline imposed as a result of findings of childhood sexual abuse by an officer or member, are institutional secrets. The law does not support such secrecy.

///

///

I. COMMUNICATIONS REGARDING ADMINISTRATIVE DECISIONS ARE NOT CONFIDENTIAL COMMUNCIATIONS.

The communications at issue, which involve perpetrator Mr. Jonathan Kendrick, reports of sexual abuse concerning him, and his investigation and removal as a Ministerial Servant, are all viewed as issues of "spiritual guidance" by the Church defendants in their opposition. Their position runs contrary to both *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, and *In Re The Clergy Cases I* (2010) 188 Cal.App.4th 1224. In *The Clergy Cases I*, the Franciscan Order voluntarily permitted psychotherapists to disclose psychiatric reports "to make personnel decisions and to arrange for treatment". (188 Cal.App.4th at 1241). The use of the privileged psychotherapist communications for administrative personnel decisions was held to be a waiver of all privileges. The same ruling applies to the administrative matters in this case.

II. REPORTS OF SEXUAL ABUSE OF CHILDREN BY MEMBERS WERE NOT INTENDED TO BE CONFIDENTIAL BY THE ESTABLISHED TESTIMONY.

Neither of the two Declarations produced by defendants in opposition to the Motion to Compel addresses specific communications by a Church member that another member or officer was sexually abusing a child. The generic declarations of Mr. Shuster and Mr. Clark generally address issues of spiritual guidance and application of religious doctrine. However, sexual abuse of a child is a criminal act and felony (Penal Code §288), whether done in Church or elsewhere. There is no evidence produced that any communication to Mr. Abrahamson by Evelyn Kendrick, the former spouse of Jane Doe's perpetrator Jonathan Kendrick, was intended by her to be a request for her own "spiritual guidance." There is no evidence that the subsequent investigation and administrative conduct, including Mr. Kendrick's removal as a Ministerial Servant, involved any "spiritual communication" by Ms. Kendrick. On the contrary, Mr. Abrahamson's testimony clearly admits that a Congregation member who is reporting sexual abuse of a child is doing so with the expectation that there will be an investigation, and by inference, administrative action. (Abrahamson Depo. 60:6-18). The specific testimony of Mr. Abrahamson, a copy of which is attached as Exhibit "1" to this Reply brief, was as follows:

> Q. So would I be correct in saying that an individual member who brought to an elder's attention a specific situation that would be of such a serious nature

that an investigation would follow would customarily be aware of the power of the elders to convene an investigation?

A. I believe I understand your question, so to answer that question, the congregation would expect the elders to investigate an allegation of serious wrongdoing.

Q. And certainly sexual abuse of a child would fall under that category of serious wrongdoing?

A. Yes.

The communications involved in the deposition questions at issue do not address spiritual requests for guidance. They address complaints and actions related to the secular crime of child abuse. Evidence Code §1032 has no application, as its express requirements as to the nature of a "Confidential Communication" are not present.

Dated: September 20, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

-oOo-

CERTIFIED COPY

JANE DOE, Plaintiff, -vs- THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	No. HG11558324

DEPOSITION OF GARY A. ABRAHAMSON

Tuesday, August 23, 2011

Taken Before Karen Scott
Certified Shorthand Reporter
State of California
C.S.R. No. 4027

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ◆ FAX (925) 416-0971

an investigation committee? In other words, was the process known to the members that a judicial committee could be or investigation committee could be convened if circumstances so required?

A I believe that's in our publications.

Q So would I be correct in saying that an individual member who brought to an elder's attention a specific situation that would be of such a serious nature that an investigation would follow would customarily be aware of the power of the elders to convene an investigation?

A I believe I understand your question, so to answer that question, the congregation would expect the elders to investigate an allegation of serious wrongdoing.

Q And certainly sexual abuse of a child would fall under that category of serious wrongdoing?

A Yes.

Q Hold on one second for the --

A Okay.

Q -- siren there. All right.

It's not meant to be a hint on any specific question or answer.

THE VIDEOGRAPHER: I need to repair a microphone real quick.

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On September 20, 2011, I served the within **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO COMPEL ANSWERS TO QUESTIONS AT DEPOSITION OF GARY ABRAHAMSON AND FOR SANCTIONS [C.C.P. §2025.480]** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 20, 2011, at Hayward, California.



ELAINE T. LANDRO

FILED
ALAMEDA COUNTY
SEP 22 2011
CLERK OF THE SUPERIOR COURT
By Kathleen McKeon Deputy
7976806

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

THE MCCABE LAW FIRM
James McCabe, SBN 51040
4817 Santa Monica Ave.
San Diego, Ca.92107
619-224-2848 Telephone
619-224-0089 Facsimile
jim@mccabelaw.net

Attorneys for Church Defendants

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JOINT STATUS REPORT RE ITEMS IN DISPUTE AS TO MOTION OF PLAINTIFF JANE DOE TO COMPEL PRODUCTION OF DOCUMENTS AND FOR SANCTIONS [C.C.P. §2031.310(a)(3) and (h)]

Date:	**9/29/11**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1196202**

Counsel for the parties met and conferred telephonically on September 15, pursuant to the Court's Order. The session was recorded, and the audio recording is attached as Exhibit 1 to this Joint Statement.

During the session, Counsel stipulated that Plaintiff will drop the Motion to Compel as to Separate Statement categories II and IV, the records concerning plaintiff Jane Doe's family members,

and further stipulated that the withdrawal of the Motion to Compel as to these items is based upon the agreement that the Church defendants will not provide any information included in such records, or the records themselves, to any expert on damages; that the defense will not cross examine any witness concerning such records or their content; and that evidence of and evaluation by experts of issues of causation and damages shall be made solely upon such other evidence as may be adduced during discovery or at trial, including the depositions, records of mental or other health care providers, and other documentation or evidence obtained independently of any of the records that are subject of the motion.

Because of the serious difference in the interpretation of the evidence Code privilege as it applies to this case, Counsel remain unable to resolve the issues in categories I and III, concerning records of the perpetrator of Plaintiff's sexual abuse, Mr. Kendrick. Counsel for Defendants has offered, and Plaintiff has no objection, to submit the documents to the Court for *in camera* review.

Dated: September 22, 2011

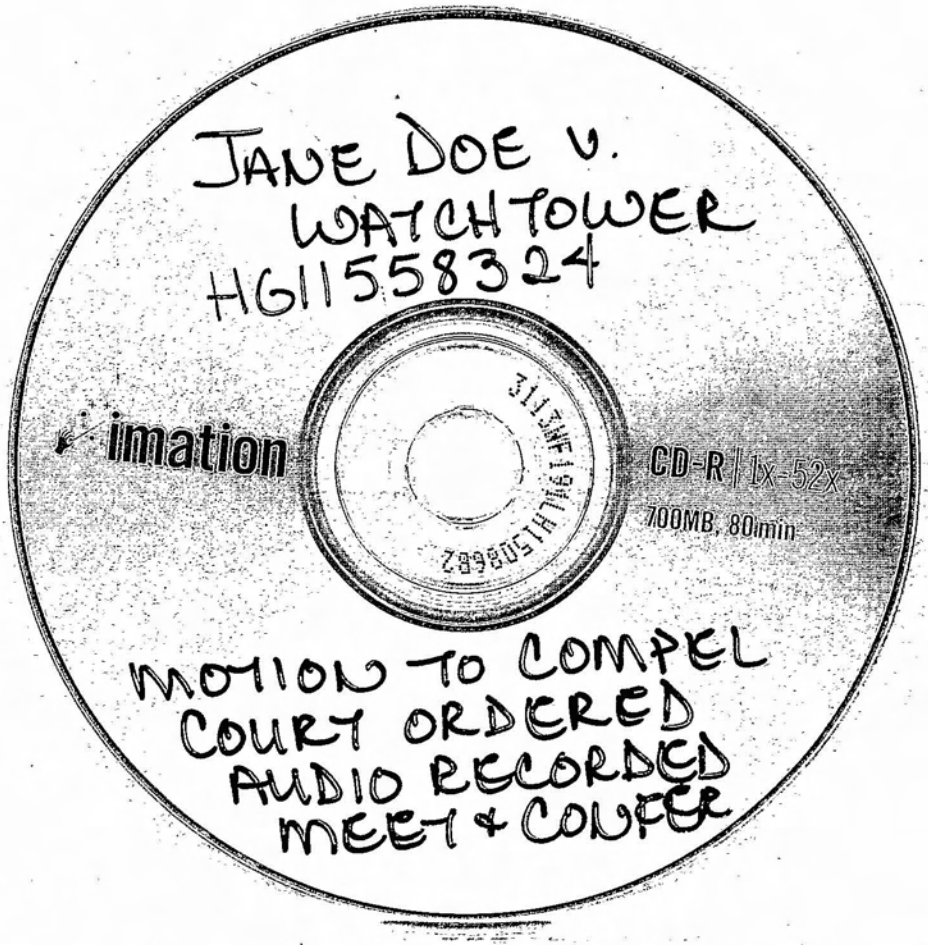
FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorney for Plaintiff Jane Doe

Dated: September 22, 2011

THE McCABE LAW FIRM

By _____
JAMES McCABE
Attorney for Church Defendants


JANE DOE V.
WATCHTOWER
HG15583 24
imation
CD-R | 1x-52x
700MB, 80min
MOTION TO COMPEL
COURT ORDERED
AUDIO RECORDED
MEET & CONFER

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Law Offices Of James M. McCabe
Attn: McCabe, James M.
4817 Santa Monica Avenue
Suite B
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Further Answers at Deposition Granted

The Motion to Compel Further Answers at Deposition was set for hearing on 09/29/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of Plaintiff Jane Doe to Compel Answers to Questions at Deposition of Gary Abrahamson and for Sanctions is GRANTED. Plaintiff has established that the information sought is not precluded from disclosure under the penitent-clergy privilege, Evidence Code §1031-1034 because the questions do not appear to call for communications that were presumed to be kept confidential with only the clergy member to whom they were communication. Instead, the questions appear to call for information and communications of a kind that would be expected to be communicated beyond that clergy member to others within the religious organization, i.e. a judicial investigating committee, for purposes of taking responding to the communication within the church. (Cf. Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417, 445-46.)

Defendant shall present Gary Abrahamson for further deposition and shall not instruct him not to answer the questions identified in the motion based upon clergy-penitent privilege.
The further deposition shall take place at a mutually-convenient time, but no later than 20 days after entry of this order.

The request for sanctions in connection with this motion is DENIED.

Dated: 09/29/2011

Robert McGuiness - facsimile
Judge Robert McGuiness

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 09/29/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/05/2011.

Executive Officer / Clerk of the Superior Court

By Digital
Deputy Clerk

9635582

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
JAMES M. McCABE (SBN 51040) THE McCABLE LAW FIRM, APC 4817 Santa Monica Avenue San Diego, CA 92107 TELEPHONE NO.: 619-224-2848 FAX NO. (Optional): 619-224-0089 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.	FILED ALAMEDA COUNTY OCT 11 2011 CLERK OF THE SUPERIOR COURT By M. Williams Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: 24405 Amador Street CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME:	
CASE NAME: DOE v. THE WATCHTOWER BIBLE AND TRACT SOCIETY	
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)	CASE NUMBER: HG11558324

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): Watchtower Bible and Tract Society of New York, Inc. makes the following substitution:

1. **Former legal representative** ☐ Party represented self ☒ Attorney (name): JAMES M. McCABE
2. **New legal representative** ☐ Party is representing self* ☒ Attorney
   a. Name: ROBERT J. SCHNACK b. State Bar No. (if applicable): 191987
   c. Address (number, street, city, ZIP, and law firm name, if applicable): JACKSON LEWIS LLP, 801 K Street, Suite 2300, Sacramento, CA 95814
   d. Telephone No. (include area code): (916) 341-0404
3. The party making this substitution is a ☐ plaintiff ☒ defendant ☐ petitioner ☐ respondent ☐ other (specify):

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Conservator
- Trustee
- Personal Representative
- Probate fiduciary
- Corporation
- Guardian ad litem
- Unincorporated association

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.
   Date: 9-30-11
   MARIO MORENO (TYPE OR PRINT NAME)
   WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
   ▶ Mario Moreno (SIGNATURE OF PARTY)

5. ☒ I consent to this substitution.
   Date: 9-30-11
   JAMES M. McCABE (TYPE OR PRINT NAME)
   THE McCABE LAW FIRM, APC
   ▶ James M. McCabe (SIGNATURE OF FORMER ATTORNEY)

6. ☒ I consent to this substitution.
   Date: 10-7-11
   ROBERT J. SCHNACK (TYPE OR PRINT NAME)
   JACKSON LEWIS LLP
   ▶ R Schnack (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

Form Adopted For Mandatory Use
Judicial Council of California
MC-050 [Rev. January 1, 2009]

SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)

Legal Solutions Plus

Code of Civil Procedure, §§ 284(1), 285;
Cal. Rules of Court, rule 3.1362

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Jackson Lewis LLP, 801 K Street, Suite 2300, Sacramento, California 95814.

On October 7, 2011, I caused to be served the foregoing document(s) **SUBSTITUTION OF ATTORNEY – CIVIL** on all interested parties in said action, through their attorneys of record by placing a true and correct copy thereof, addressed as shown below, by the following means:

☐ **PERSONAL SERVICE** - by personally delivering a true and correct copy thereof to the person at the address set forth below, in accordance with Code of Civil Procedure section 1011(a).

☒ **MAIL** - by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid for deposit in the United States Post Office mail box, at my business address shown above, following Jackson Lewis LLP's ordinary business practices for the collection and processing of mail, of which I am readily familiar, and addressed as set forth below. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

☐ **OVERNIGHT DELIVERY** - by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Overnite Express or delivering to an authorized courier or driver authorized by Overnite Express to receive documents, addressed as set forth below.

☐ **FACSIMILE TRANSMISSION** - by transmitting a true and correct copy by facsimile from facsimile number (916) 341-0141 to the person(s) at the facsimile number(s) set forth below, which transmission was confirmed as complete. A copy of the transmission record is attached hereto.

☐ **ELECTRONIC MAIL** - by forwarding a true and correct copy thereof by e-mail from e-mail address _____ to the person(s) at the e-mail address(es) set forth below.

SERVICE LIST:

Richard J. Simons, Esq. (SBN 072676) — *Attorneys for Plaintiff*
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
(510) 552-1080 Telephone
(510) 582-8254 Facsimile

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 7, 2011, at Sacramento, California.

Lori Bauer

10133723

JONATHAN KENDRICK
200 Honey Lane
Oakley, California 94561
Tel.: (925) 584-1008

Defendant, *In Pro Per*

FILED
ALAMEDA COUNTY
OCT 14 2011
CLERK OF THE SUPERIOR COURT
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness

DEFENDANT JONATHAN KENDRICK'S NOTICE OF MOTION AND MOTION FOR RELIEF FROM DEFAULT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date:	January 19, 2012
Time:	3:00 p.m.
Dept. No.:	22
Reservation No.:	1225197
Complaint Filed:	January 28, 2011
Trial Date:	March 26, 2012

TO EACH PARTY AND THEIR COUNSEL OF RECORD:

YOU ARE HEREBY NOTIFIED that on January 19, 2012 at 3:00 p.m. or as soon thereafter as the matter may be heard in Department 22 of the Alameda County Superior Court, located at 1225 Fallon Street, Oakland, California, Defendant JONATHAN KENDRICK ("Defendant Kendrick") will move pursuant to California Code of Civil Procedure § 473(b) for an order granting relief from the default entered in this Court on August 26, 2011.

This motion will be made on the ground that the default was entered as a result of excusable neglect and in violation of C.R.C. 3.110, *et seq.* The motion will be based upon this notice, the memorandum of points and authorities herein, the declaration of Defendant Kendrick in support, the records on file in this action, the proposed Answer submitted with this motion, and any further evidence and argument that the Court may receive at or before the hearing.

Dated: 12OCT11

By: _____
JONATHAN KENDRICK
Defendant, *In Pro Per*

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

STATEMENT OF FACTS

On January 28, 2011, Plaintiff filed a complaint in the Alameda County Superior Court alleging childhood sexual abuse ("Complaint"). It is four pages in length and consists of only two causes of action, the second of which for "Willful and Intentional Acts" is the only one against Defendant Kendrick. As a result of the "acts" that are said to have occurred when Plaintiff was a minor, Plaintiff alleges she suffered physical and emotional damages including "medical and other expenses for care, treatment, and counseling; and has suffered loss of earnings and earning capacity" and will incur future damages in an unspecified amount.

Defendant Kendrick was not served with Plaintiff's Complaint until July 16, 2011, almost six months after Plaintiff filed her Complaint. (Kendrick Decl., Exh. A.) Plaintiff's only explanation for the extraordinary delay in service of process was given in her May 12, 2011 Case Management Statement in which she claims Defendant Kendrick was "not at address listed at Registered Sex Offender website." (Kendrick Decl., Exh. B.) From January 28, 2011 to July 16, 2011, litigation in the case was well underway. The remaining defendants ("Church Defendants") filed a Demurrer to the Complaint on March 28, 2011 (Docket entry #14), which was heard and ruled on by the Court on May 19, 2011. (Docket entries #18 and 19 respectively) On June 3, 2011, Church Defendants filed their answer to the Complaint. (Docket entry #22) The initial case management conference took place on June 14, 2011 (Docket entry #23) where the pre-trial settlement conference and trial date were set. (Docket entries #25 and #27 respectively) Furthermore, written discovery had already commenced to the extent that Church Defendants filed a motion to compel production of documents on July 19, 2011. (Docket entry #29) All of this took place without Defendant Kendrick's knowledge or participation.

Once Defendant Kendrick was finally served with the Complaint, he immediately began seeking legal representation, being unaware of the 30-day deadline for him to file a responsive pleading. When Defendant Kendrick's 30 days had passed, Plaintiff filed a Request for Entry of Default with the Court (Docket entry #40; Kendrick Decl., Exh. C.), which the clerk entered on August 26, 2011. (Docket entry #41) To date, Defendant Kendrick has not been able to

secure representation but is eager to defend himself against Plaintiff's malicious allegations with the hope of clearing his name. Defendant Kendrick has attached to his declaration in support of this motion, filed concurrently herewith, a copy of his proposed answer to the Complaint (Kendrick Decl., Exh. E.), showing is good faith and readiness to respond should the Court graciously grant the relief sought.

STATEMENT OF THE LAW

The Court has broad discretion to vacate a clerk's entry of default should the moving party establish through proper procedure and within the statutory time limited, proper ground for relief. [*Cruz v. Fagor America, Inc.* (2006) 146 CA4th 488, 495, 52 CR3d 862, 866] Because Defendant Kendrick has yet to retain representation, the relief he seeks is discretionary and must be based on a showing of "mistake, inadvertence, surprise or excusable neglect." [C.C.P. § 473(b); see also *Lorenz v. Commercial Accept. Ins. Co.* (1995) 40 CA4th 981, 989, 47 CR2d 362, 365-66 (citing text)] The moving party has six (6) months after entry of default to seek such discretionary relief through the filing of a motion request same. [C.C.P. § 473(b)]

ARGUMENT

I. DEFENDANT KENDRICK'S NOT FILING A RESPONSIVE PLEADING IS DUE TO EXCUSABLE NEGLECT AND THE DEFAULT ENTERED SHOULD BE SET ASIDE UNDER C.C.P. § 473(b)

The Court is empowered to relieve a party "upon such terms as may be just" from a clerk's entry of default against him through his "mistake, inadvertence, surprise, or *excusable neglect.*" [C.C.P. § 473(b), emphasis added] The moving party has the burden of showing a reasonable excuse for the default. [*Davis v. Thayer* (1980) 113 CA3d 892, 905, 170 CR 328, 334] By showing that the acts which brought about the default must have been "the acts of a reasonably prudent person under the same circumstances." [*Jackson v. Bank of America* (1983) 141 CA3d 55, 58, 190 CR 78, 80]

Upon service of the Complaint, Defendant Kendrick knew he needed a lawyer because he has no knowledge of or experience in the civil legal arena. Defendant Kendrick contacted the attorneys for Church Defendant(s) asking for their help and representation. He was told they were unable to provide him with legal assistance in this matter. (Kendrick Decl., Exh. D –

in the footnote on page one of Church Defendants' Demurrer, said defendants make it abundantly clear that they are not representing Defendant Kendrick and that appearance was not made on his behalf in any way.) Afterward, Defendant Kendrick began diligently searching for his own an attorney but was quoted on several occasions a retainer fee of more than $10,000.00, which he absolutely cannot afford. He continues to seek counsel but the factors working against him, primarily the inability to afford the attorney's fees involved, have made retaining an attorney to date impossible. Not knowing that he had only a short amount of time to act after receiving the Complaint before having a default entered against him, Defendant Kendrick spent his time seeking representation and did not understand he had to respond within 30 days. Evidence that the defendant is unable to understand the meaning behind being served with process is sufficient to justify discretionary relief under C.C.P. § 473(b). This shows excusable neglect in allowing the default to occur. [*Kesselman v. Kesselman* (1963) 212 CA3d 196, 207-208, 27 CR 769, 776-777] Further, evidence that the defendant was unable to retain a lawyer may also show excusable neglect. [*Bernards v. Grey* (1950) 97 CA3d 679, 683-686, 218 P2d 597, 599-601]

II. GRANTING THIS MOTION WILL NOT PREJUDICE PLAINTIFF, RATHER DENIAL OF THIS MOTION WILL CONTINUE TO PREJUDICE DEFENDANT

A. Pursuant to C.R.C. 3.110(b), Plaintiff Was Required To Serve The Complaint On All Named Defendants And Proofs Of Service On Those Defendants Must Be Filed With The Court Within 60 Days After The Filing Of The Complaint

Plaintiff filed her complaint with the Court on January 28, 2011. (Docket entry #1) The Court issued the summons on said complaint that same day. (Docket entry #3). However, in her Case Management Statement ("CMS") filed with the Court on May 12, 2011[1], Plaintiff admits that service of the summons and complaint had yet to be effected on Defendant Kendrick. (Docket entry #17; Kendrick Decl., Exh. B.)

[1] Plaintiff served this Case Management Statement by mail on counsel for the Church Defendants *only*, as per the document's attached proof of service.

Pursuant to C.R.C. 3.110(b), Plaintiff was required to serve *all* defendants, including Defendant Kendrick, with the summons and complaint within sixty (60) days of filing her complaint, or *by March 29, 2011*. Plaintiff managed to serve all of the other defendants prior to that date but for some reason did not serve Defendant Kendrick. Further, in her May 12, 2011 CMS – which was approximately 45 days over the 60-day deadline set by C.R.C. 3.110(b), Plaintiff's broad and unspecific reason for not having served Defendant Kendrick was "...not at address listed at Registered Sex Offender website." No testament or documentation is provided supporting her statement or proving Plaintiff had even made any diligent attempt at all to effect service. It was not until July 16, 2011, **109 days after the Court issued the summons in this matter,** that Defendant Kendrick was finally served.[2] (Kendrick Decl., Exh. A.)

By the time Defendant Kendrick was served in mid-July 2011, the case was well into litigation. Among other things, the Court had already heard and ruled on Church defendants' demurrer to Plaintiff's complaint, the parties were well into the discovery process and a trial date had been set. From the date of service, Defendant Kendrick was already at a severe disadvantage.

B. Plaintiff Did Not Timely File Her Request For Entry Of Default Against Defendant Kendrick

Plaintiff is not allowed to submit a request for entry of default until the time allowed by law for the defendant to file a response to the Complaint has expired. This date is based on the proof of service of the summons and complaint because this document shows the manner and date upon which service was made. The defendant has thirty (30) days after *service is complete* within which to respond to the complaint. [C.C.P. § 412.20(a)(3)] Service is deemed complete depending on the manner of service. [C.C.P. §415.10] Here, Defendant Kendrick was personally served, thereby deeming service complete as of that date, i.e. July 16, 2011. (Kendrick Decl., Exh. A.)

---

[2] What is of particular interest is the fact that, the date the Complaint was filed to and through the date Defendant Kendrick filed this motion, he resided at the same address – the same location where service of process was finally effected (via personal service), and where he was served with Plaintiff's Request for Entry of Default (via mail service) without problem. Thus, Defendant Kendrick is curious as to the 6-months it took Plaintiff to serve him.

C.R.C. 3.110(g) states, "If a responsive pleading is not served *within* the time limits specified in this rule and no extension of time has been granted [by the Court], the plaintiff must file a request for entry of default within 10 days after the time for service has elapsed." (emphasis added) Based on a date of service of the summons and complaint as provided on the proof of personal service filed with the Court on July 26, 2011 (Kendrick Decl., Exh. A), Defendant Kendrick had thirty (30) days thereafter, or until August 15, 2011, to file a responsive pleading.

For reasons identified below, Defendant Kendrick inadvertently neglected to do so. Therefore, on August 15, 2011 Plaintiff had up to August 25, 2011 to file her request for default, which she did not do. According to the Alameda County Superior Court's online docket, Plaintiff did not submit a Request for Entry of Default as to Defendant Kendrick until August 26, 2011 (Docket entry #40) and the Court entered said request the same day. (Docket entry #41; Kendrick Decl., Exh. C.)

This default entry against Defendant Kendrick should be set aside on the ground that it was entered in violation of C.R.C. 3.110(b) and (g). In the alternative, the Court should give consideration to the facts that: (1) Plaintiff wholly violated C.R.C. 3.110(b) by waiting until almost six (6) months after the filing of the summons and complaint to serve Defendant Kendrick with said pleadings thereby placing him at an acute disadvantage and prejudicing his defense given the substantial litigation that had progressed among the other parties by that time all without Defendant Kendrick's knowledge or participation; and, (2) even though the time to do so had expired, Plaintiff [again] violated legal statute by having a clerk's default unlawfully entered against Defendant Kendrick despite the ten (10) day limit imposed by C.R.C. 3.110(g) having been run.

///

///

///

///

///

Further, Plaintiff's counsel of record in this matter, Richard J. Simons, did not bother to even attempt to warn Defendant Kendrick of Plaintiff's intent to file a request for entry of default despite knowing full well that Defendant Kendrick had not secured legal counsel.[3] Ethically, Mr. Simons should have given Defendant Kendrick some sort of advance notice either by telephone or by mail. Such notice is considered a professional courtesy, regardless if the defendant has retained a lawyer or not. The Courts do not condone such discourtesy between two legal professionals, making Defendant Kendrick's situation that much more distasteful. "The quiet speed of plaintiffs' attorney in seeking a default...without the knowledge of defendants' counsel is not to be commended." [*Smith v. Los Angeles Bookbinders Union No. 63* (1955) 133 CA2d 486, 500, 284 P2d 194, 201 (disapproved on other grounds in *MacLeod v. Tribune Pub. Co., Inc.* (1959) 52 C2d 536, 551, 343 P2d 36, 44)] "Even legitimate tactics must sometimes yield to the only goal that justifies the very existence of our judicial system; i.e. the resolution of our citizens' disputes and the administration of justice ." [*Brown v. Presley of So. Calif.* (1989) 213 CA3d 612, 620, 261 CR 779, 784, fn. 3 – the notion that ours is a "dog-eat-dog business" governed by the "law of the jungle" should be curtailed, not rewarded] The absence of prior warning makes courts inclined to grant C.C.P. § 473(b) motions to set aside defaults. [See *Smith v. Los Angeles Bookbinders Union No. 63*, supra, 133 CA2d at 500, 284 P2d at 201 (disapproved on other grounds in *MacLeod v. Tribune Pub. Co., Inc.*, supra; and *Pearson v. Continental Airlines* (1970) 11 CA3d 613, 619, 89 CR 852, 857]

Plaintiff would in no way be prejudiced if the Court grants Defendant Kendrick relief from the default entry. As such, "the original negligence in allowing the default to be taken will be excused..." [*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 CA3d 725, 740, 216 CR 300, 308] On the other hand, denial of Defendant Kendrick's request for relief would further the *in*justice he has received from the day Plaintiff filed her complaint on January 28, 2011. If anyone has been or would be further prejudiced by the outcome of this motion it is

[3] Being an attorney license to practice law in the State of California, Mr. Simons knew, or should have known, that Defendant Kendrick was unrepresented based on Defendant Kendrick's lack of appearance (thus leading to the filing of Plaintiff's default request) and that all pleadings and/or correspondence as of the date of the filing and entry of Plaintiff' default request was being successfully received by Defendant Kendrick at his residential address.

Defendant Kendrick who has not yet been given any opportunity to prepare his case or properly defend himself due to Plaintiff's inability to abide by the rules and procedures established by the State of California.

III. DEFENDANT KENDRICK SHOWED DUE DILIGENCE IN THE FILING AND SERVICE OF THIS MOTION

The application for discretionary relief under C.C.P. § 473(b) must be made "within a reasonable time" and in no case "exceeding six months" after the entry of default. [C.C.P. §473(b); see *Davis v. Thayer*, supra, 113 CA3d at 901, 170 CR at 332] An application for relief under § 473(b) requires both filing a notice of motion and service on the adverse party within the 6-month period. [*Arambula v. Union Carbide Corp.* (2005) 128 CA4th 333, 345, 26 CR3d 854, 861] A motion for relief under § 473(b) must also be made within a "reasonable time" after discovery of the default; "In order to qualify for relief under section 473, the moving party *must act diligently* in seeking relief..." [*Elston v. City of Turlock* (1985) 38 C3d 227, 234, 211 CR 416, 420] In determining what constitutes a "reasonable" time, the Court may take into consideration the moving party's lack of funds to obtain counsel. [*Carrasco v. Craft* (1985) 164 CA3d 796, 805-806, 210 CR 599, 605-606]

In an effort to show due diligence to the Court, and not having found an attorney despite relentlessly searching since July 2011, Defendant Kendrick turned to hiring paralegal services in order to help him timely file this motion on his own. Defendant Kendrick filed and served this motion well under the 6-month deadline set by C.C.P. § 473(b) and has included with his declaration a proposed answer to the Complaint, both of which evidence due diligence and responding within a reasonable amount of time as required when seeking relief due to "mistake, surprise, inadvertence or excusable neglect." [*Luz v. Lopes* (1960) 55 C2d 54, 62, 10 CR 161, 165-166]

The Court usually resolves even tentative or dubious cases by granting relief because "the law strongly favors trial and disposition on the merits" and "any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." [*Elston v. City of Turlock*, supra, 38 C3d at 233, 211 CR at 419] As well, where the defendant in default

promptly moves to seek relief, and no prejudice to the plaintiff will result from the setting aside of the default and letting the case go to trial on the merits, only a "very slight evidence will be required to justify a court in setting aside the default." [*Ibid*; see also *Miller v. City of Hermosa Beach* (1993) 13 CA4th 1118, 1136, 17 CR2d 408, 419]

IV. DEFENDANT KENDRICK HAS COMPLIED TO STATUTE REQUIREMENTS TO THE BEST OF HIS ABILITY WITH THE INCLUSION OF HIS PROPOSED RESPONSIVE PLEADING

California Code of Civil Procedure section 473(b) specifies that an application for relief from a default entry taken against a defendant through "mistake, inadvertence, surprise, or excusable neglect" requires the application "be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted..." Courts have upheld relief on the rationale that § 473(b) should be construed "liberally with a view to substantial compliance." [*Job v. Farrington* (1989) 209 CA3d 338, 340-341, 257 CR 210, 211; *County of Stanislaus v. Johnson* (1996) 43 CA4th 832, 836-838, 51 CR2d 73, 76-77] Exhibit E to the Defendant Kendrick's declaration in support of this motion is his proposed answer to the Complaint. By including a proposed answer, Defendant Kendrick has shown good faith, substantial compliance and a readiness to respond to the Complaint should the Court grant his motion.

CONCLUSION

When a defendant moves the Court for relief from default, any doubts in applying C.C.P. section 473 must be resolved in favor of the moving party. In this case, the grounds for granting Defendant Kendrick's motion are well established: (1) Defendant Kendrick did not realize the implications behind service of process but yet diligently attempted to secure legal representation; (2) both Plaintiff's request and the clerk's entry of default were entered in violation of the applicable statute; (3) Defendant Kendrick's motion for relief was filed and served promptly; (4) Plaintiff will not be prejudiced by the granting of relief from default; (5) Defendant Kendrick deserves the opportunity to property defend himself particularly since he has yet to have a fair shot at doing so; and, (6) Defendant Kendrick continues to show his desire

for justice by being prepared to file an answer to Plaintiff's complaint upon the granting of this motion.

Therefore, based on the argument provided above, Defendant Kendrick respectfully requests the Court grant his motion and set aside the default entered against him. Further, Defendant Kendrick requests that his proposed answer to Plaintiff's complaint, attached as Exhibit E to his declaration in support of this motion, be deemed filed and served as of the date the Notice of Entry of Order for this motion is filed and served.

Respectfully submitted,

Dated: 12OCT11

By: _____
JONATHAN KENDRICK
Defendant, *In Pro Per*

10133731

JONATHAN KENDRICK
200 Honey Lane
Oakley, California 94561
Tel.: (925) 584-1008

Defendant, *In Pro Per*

FILED
ALAMEDA COUNTY
OCT 14 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness

DECLARATION OF JONATHAN KENDRICK IN SUPPORT OF DEFENDANT'S MOTION FOR RELIEF FROM DEFAULT

Date:	January 19, 2012
Time:	3:00 p.m.
Dept. No.:	22
Reservation No.:	1225197
Complaint Filed:	January 28, 2011
Trial Date:	March 26, 2012

I, Jonathan Kendrick, declare:

I am one of the defendants in this action and have personal knowledge of each fact state in this declaration.

1. On January 28, 2011, Plaintiff filed a complaint in the Alameda County Superior Court alleging childhood sexual abuse ("Complaint") and naming me as a defendant.

2. I was not served with the Complaint until July 16, 2011, almost six months after its filing. See **Exhibit A.** All other defendants were served by March 21, 2011 and had already filed responsive pleadings well before I was served.

3. Plaintiff's only explanation for the extraordinary delay in service of process was given in her May 12, 2011 Case Management Statement in which she claims I was "not at address listed at Registered Sex Offender website." See **Exhibit B.** As of the time of the filing of the Complaint to this day, I have resided at the same address where Plaintiff ultimately served me with her Complaint on July 16, 2011 and with her Request for Entry of Default on August 22, 2011.

4. From January 28, 2011 to July 16, 2011, litigation in the case was well underway. The remaining defendants ("Church Defendants") filed a Demurrer to the Complaint on March 28, 2011 (Docket entry #14), which was heard and ruled on by the Court on May 19, 2011. (Docket entries #18 and 19, respectively) On June 3, 2011, Church Defendants filed their answer to the Complaint. (Docket entry #22) The initial case management conference took place on June 14, 2011 (Docket entry #23) during which the pre-trial settlement conference and trial dates were set. (Docket entries #25 and #27, respectively)

5. Furthermore, written discovery had already commenced to the extent that Church Defendants had filed a motion to compel production of documents on July 19, 2011. (Docket entry #29)

6. All of the above took place without my knowledge or participation.

7. Once I was finally served with the Complaint, I knew I needed a lawyer because I have no knowledge of or experience in the civil legal arena. Given that, I was unaware of the 30-day deadline to file a responsive pleading.

///

///

///

///

///

8. I contacted the attorneys for Church Defendants asking for their help and representation. I was told they were unable to provide me with legal assistance in this matter. See **Exhibit D** [1]. This refusal was hard for me to understand and accept, considering my association with Church Defendants as well as the nature and allegations of the Complaint.

9. Despite this, I began to diligently search for my own attorney, completely unaware that I had only a short amount of time to act before having a default entered against me. I contacted multiple attorneys but was quoted a retainer fee over $10,000.00, which I absolutely cannot afford. I nevertheless continued, and still continue, to seek representation. Because of factors working against me, primarily my inability to afford a private attorney, I have yet to retain legal representation.

10. Shortly after the 30-day period to respond to the Complaint had expired, Plaintiff filed a Request for Entry of Default with the Court, which the clerk entered on August 26, 2011. See **Exhibit C;** see also Docket entry #41. As far as I know, Plaintiff's counsel of record in this matter, Richard J. Simons, never even attempted to give me any type of forewarning of their intentions even though they were well aware I was unrepresented.

11. I have since learned that the date the default was entered, i.e. August 26, 2011, exceeds the time allotted by California Rules of Court 3.110(g), which is *within* ten (10) days after the time for service had elapsed. I was served on July 16, 2011 and, therefore, had thirty (30) days – or until August 15, 2011 – to file a responsive pleading. When I did not, Plaintiff had to file her Request for Entry of Default within 10 days, or by August 25, 2011. According to the Court's online docket, Plaintiff's request for entry and the actual entry of default against me was filed on August 26, 2011, thereby violating the limits specifically identified in said statute.

12. To date, I have not been able to secure representation but am eager to defend myself against Plaintiff's malicious allegations with the hope of clearing my name. In an effort

[1] In the footnote on page one of Church Defendants' Demurrer, said defendants make it abundantly clear that they are not representing me and that their appearance was not made on my behalf in any way.

to prove my sincerity, I have attached hereto as **Exhibit E** my proposed answer to the Complaint.

13. I believe my actions with regard to the above and the filing of this motion show the Court my good faith effort and readiness to respond should the Court grant my motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 12OCT11

JONATHAN KENDRICK



RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

ENDORSED
FILED
ALAMEDA COUNTY
JAN 28 2011
CLERK OF THE SUPERIOR COURT
By A. MENDOLA
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation;
THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation;
THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association;
JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity;
KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation;
JONATHAN KENDRICK, an individual;
and ROES 1 to 10,

Defendants.

No. HG11558324

COMPLAINT FOR DAMAGES FOR CHILDHOOD SEXUAL ABUSE

Trial Date: 3/26/12

Plaintiff alleges,

1. Plaintiff JANE DOE is an adult, under the age of 26, and residing in Los Angeles County. Plaintiff appears by the fictitious name JANE DOE to preserve her anonymity because of the sensitive and highly personal nature of the subject matter of this action. (*Doe v. Lincoln Unified School District* (2010) 187 Cal. App. 4th 1286). Plaintiff's true name and identity will be disclosed to defendants with service of this Complaint.

2. At all times herein, defendant THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc. (WATCHTOWER NY) was a corporation, licensed in the State of New York, with a principle place of business in the City of New York, State of New York. At all times herein, defendant THE

EX A

WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA (WATCHTOWER PA) was a corporation, licensed in the State of State of Pennsylvania, with a principle place of business in the City of New York, State of New York. At all times herein, defendant THE GOVERNING BODY OF JEHOVAH'S WITNESSES (GBJW), was an unincorporated association of individuals, with a principle place of business in the City of New York, State of New York.

3. Plaintiff is unaware of the true names and capacities of defendants sued herein as ROES 1 to 10 and therefore sue said defendants by such fictitious names. Said fictitiously named defendants were negligent in and about the matters alleged herein, and that such negligence was the proximate cause of the damages complained of by plaintiff. Plaintiff will seek leave to amend this Complaint when the true names and capacities of such fictitiously-named defendants have been ascertained.

4. At all times herein, defendant JEHOVAH'S WITNESSES on Peralta Boulevard (JWP), Fremont, was an entity, the form of which is unknown, that owned, managed, operated, supervised, and staffed a religious facility, organized and existing for the purpose of practicing and promoting the faith of Jehovah's Witnesses, and located within the City of Fremont, State of California. At all times herein, defendant KINGDOM HALL OF JEHOVAH'S WITNESSES (KHJW), a corporation, was a corporation with a principle place of business located in the City of Fremont, County of Alameda, State of California. At all times herein, defendant KHJW concurrently with defendant JWP owned, managed, operated, supervised, and staffed the facility located in the City of Fremont, County of Alameda, California. At all relevant times herein, defendants WATCHTOWER NY, WATCHTOWER PA, and GBJW, concurrently owned, managed, operated, supervised, and staffed that religious facility located in the City of Fremont, County of Alameda, California.

5. At all times herein, defendant JONATHAN KENDRICK was an individual, residing in the State of California, with a date of birth of January 31, 1954, and is currently a registered sex offender within the State of California.

///

///

FIRST CAUSE OF ACTION
Negligence
(As to Defendants WATCHTOWER NY, WATCHTOWER PA, GBJW, KHJW, and JWP Only)

6. In the time period of 1996 and 1997, plaintiff JANE DOE was a minor. During that time period, plaintiff JANE DOE, was a member of the religious group commonly known as the Jehovah's Witnesses, and attended, participated in, and was a member of the Jehovah's Witness religious facility located in the City of Fremont, and owned, managed, operated, supervised, and staffed by defendants WATCHTOWER NY, WATCHTOWER PA, GBJW, KHJW, JWP, and each of them. During that same time period, defendant JONATHAN KENDRICK was a volunteer, active member, and participant in the congregation and congregation leadership of the religious facility in Fremont. During that time period, defendant KENDRICK sexually molested and abused plaintiff JANE DOE on multiple occasions within the County of Alameda. Defendant KENDRICK accomplished the sexual abuse and molestation of plaintiff by use of the trust, position, and authority he held as a fellow member, volunteer, and leader of the religious facility and congregation in Fremont.

7. At all times herein, defendants WATCHTOWER NY, WATCHTOWER PA, GBJW, KHJW, JWP, and each of them, negligently supervised, managed, and controlled defendant KENDRICK in his membership and participation in the Fremont religious facility, and negligently failed to warn plaintiff JANE DOE, her family, and other members of the congregation, of the propensity and risk that defendant KENDRICK would sexually molest or abuse minor girls, a propensity and history of which defendants, and each of them, acting through their employees, agents, and volunteers, had actual notice. During the same time period, defendants, and each of them, were negligent in failing to exercise reasonable care to protect plaintiff JANE DOE, and other minors, who were members of, or participants in, activities at the religious facility in Fremont, from the risk of sexual abuse or molestation by perpetrators, including defendant JONATHAN KENDRICK.

8. As a result of the negligence of defendants, and each them, as herein alleged, plaintiff JANE DOE was caused to suffer the physical, mental, and emotional injuries of childhood sexual abuse and molestation; was caused to incur medical and other expenses for care, treatment, and counseling; and has suffered loss of earnings and earning capacity. Plaintiff will further continue to

incur all such damages in the future, in amounts of which plaintiff will advise defendants at least sixty days prior to trial.

SECOND CAUSE OF ACTION
Willful and Intentional Acts
(As to Defendant Jonathan Kendrick Only)

9. Plaintiff realleges each and every allegation contained in paragraphs 1 through 8 as though fully set forth herein.

10. During the time period stated herein, defendant JONATHAN KENDRICK intentionally, willfully, and maliciously sexually abused and molested plaintiff JANE DOE during the time that she was a minor.

11. As a result of the intentional, willful conduct of defendant JONATHAN KENDRICK, as set forth herein, plaintiff has incurred, and will continue to incur the damages as set forth in paragraph 8 of this Complaint.

WHEREFORE, plaintiff prays for relief as follows:

1. For compensatory damages, including economic and non-economic, according to proof in amounts of which plaintiff will advise defendants at least 60 days prior to trial;

2. For costs of suit incurred herein; and

3. For such further relief as the Court deems just and proper.

Dated: January 26, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Richard J. Simons, Esq. 072676
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
TELEPHONE NO.: (510) 582-1080 FAX NO. (Optional): (510) 582-8254
E-MAIL ADDRESS (Optional): Rick@fjslaw.com
ATTORNEY FOR (Name): Plaintiff JANE DOE

FILED BY E-DELIVERY
ALAMEDA COUNTY
May 12, 2011
CLERK OF
THE SUPERIOR COURT
By Catherine Green, Deputy
CASE NUMBER:
HG11558324

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
STREET ADDRESS: 24405 Amador Street
MAILING ADDRESS:
CITY AND ZIP CODE: Hayward, CA 94544
BRANCH NAME:

PLAINTIFF/PETITIONER: JANE DOE

DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF N
a corporation;

CASE MANAGEMENT STATEMENT

(Check one): [X] **UNLIMITED CASE** (Amount demanded exceeds $25,000) [ ] **LIMITED CASE** (Amount demanded is $25,000 or less)

CASE NUMBER: HG11558324

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:
Date: 6/14/2011 Time: 3:00 p.m. Dept.: 22 Div.: Room:
Address of court *(if different from the address above)*:
1221 Oak Street
Oakland, CA 94612
[X] **Notice of Intent to Appear by Telephone, by *(name)*:** RICK SIMONS

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. [X] This statement is submitted by party *(name)*: Plaintiff JANE DOE
   b. [ ] This statement is submitted jointly by parties *(names)*:

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*: 1/28/2011
   b. [ ] The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [X] The following parties named in the complaint or cross-complaint
      (1) [X] have not been served *(specify names and explain why not)*:
      Jonathan Kendrick-not at address listed at Registered Sex Offender website.
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) [ ] have had a default entered against them *(specify names)*:
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served)*:

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(Describe, including causes of action)*:
   Childhood sexual abuse.

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. January 1, 2009]
Matthew Bender's ESSENTIAL FORMS™

CASE MANAGEMENT STATEMENT

Cal. Rules of Court, rules 3.720-3.730
www.courtinfo.ca.gov

JANE DOE

Ex B

CM-110

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER: HG11558324
DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF a corporation;	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

Plaintiff, now age 25, was sexually abused as a minor by Jonathan Kendrick. Kendrick was a member and leader in the Jehovah's Witness Church in Fremont, and met and abused plaintiff through that institution. Plaintiff has suffered and continues to suffer the personal injury of her abuse and emotional distress and past and future counseling expenses.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☒ days *(specify number):* 8-10
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

CM-110

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER: HG11558324
DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW a corporation;	

10. d. The party or parties are willing to participate in *(check all that apply)*:
    (1) [X] Mediation
    (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
    (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
    (4) [ ] Binding judicial arbitration
    (5) [ ] Binding private arbitration
    (6) [ ] Neutral case evaluation
    (7) [ ] Other *(specify)*:

    e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
    f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
    g. [ ] This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court *(specify exemption)*:

11. **Settlement conference**
    [ ] The party or parties are willing to participate in an early settlement conference *(specify when)*:

12. **Insurance**
    a. [ ] Insurance carrier, if any, for party filing this statement *(name)*:
    b. Reservation of rights: [ ] Yes [ ] No
    c. [ ] Coverage issues will significantly affect resolution of this case *(explain)*:

13. **Jurisdiction**
    Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.
    [ ] Bankruptcy [ ] Other *(specify)*:
    Status:

14. **Related cases, consolidation, and coordination**
    a. [ ] There are companion, underlying, or related cases.
        (1) Name of case:
        (2) Name of court:
        (3) Case number:
        (4) Status:
    [ ] Additional cases are described in Attachment 14a.
    b. [ ] A motion to [ ] consolidate [ ] coordinate will be filed by *(name party)*:

15. **Bifurcation**
    [ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons)*:

16. **Other motions**
    [X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues)*:
    Defendants' Demurrer set for hearing on 5/19/11.
    In limine motions.

CM-110

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER: HG11558324
DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW a corporation;	

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☒ The following discovery will be completed by the date specified *(describe all anticipated discovery)*:

Party	Description	Date
Plaintiff	Depositions of other Jehovah's Witness Leaders	TBA
	Deposition of PMO of Jehovah's Witnesses on Peralta	6/9/11
	Depositions of other Victims	TBA
	Depositions of Witnesses	TBA
	Written Discovery to Defendants	Due 5/18/11

    c. ☐ The following discovery issues are anticipated *(specify)*:

18. **Economic litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

20. **Meet and confer**
    a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain)*:

    b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify)*: Governing Body dismissed.

21. Total number of pages attached *(if any)*: _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: May 12, 2011

RICHARD J. SIMONS ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On May 12, 2011, I served the within **CASE MANAGEMENT STATEMENT** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.
JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT
KINGDOM HALL OF JEHOVAH'S WITNESSES

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 12, 2011, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Richard J. Simons, Esq. 072676 Furtado, Jaspovice & Simons 22274 Main Street Hayward, CA 94541 TELEPHONE NO.: (510) 582-1080 FAX NO. (Optional): (510) 582-8254 E-MAIL ADDRESS (Optional): Rick@fjslaw.com ATTORNEY FOR (Name): Plaintiff JANE DOE	[redacted] 9540496*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME:	
PLAINTIFF/PETITIONER: JANE DOE DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY, et al.	
REQUEST FOR (Application) ☒ Entry of Default ☐ Clerk's Judgment ☐ Court Judgment	CASE NUMBER: HG11558324

Rec'd

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date)*: 1/28/2011
   b. by *(name)*: JANE DOE
   c. ☒ Enter default of defendant *(names)*: JONATHAN KENDRICK
   d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant *(names)*:

   (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
   e. ☐ Enter clerk's judgment
      (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
         ☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) ☐ under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) ☐ for default previously entered on *(date)*:

2. **Judgment to be entered.**

	Amount	Credits acknowledged	Balance
a. Demand of complaint	$	$	$
b. Statement of damages *			
(1) Special	$	$	$
(2) General	$	$	$
c. Interest	$	$	$
d. Costs *(see reverse)*	$	$	$
e. Attorney fees	$	$	$
f. **TOTALS**	$	$	$

   g. **Daily damages** were demanded in complaint at the rate of: $ per day beginning *(date)*:
   (Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)*
3. ☐ *(Check if filed in an unlawful detainer case)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4)*.

Date: August 22, 2011
RICHARD J. SIMONS ▶ [signature]
(TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY
(1) ☒ Default entered as requested on *(date)*:
(2) ☐ Default NOT entered as requested *(state reason)*:
Clerk, by [signature], Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-100 [Rev. January 1, 2007]
Martin Dean's ESSENTIAL FORMS™

REQUEST FOR ENTRY OF DEFAULT
(Application to Enter Default)

Code of Civil Procedure, §§ 585-587, 1169
www.courtinfo.ca.gov

JANE DOE

EXC

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER:
DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF a corporation;	HG11558324

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☒ did **not** for compensation give advice or assistance with this form. *(If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state):*
   a. Assistant's name:
   b. Street address, city, and zip code:
   c. Telephone no.:
   d. County of registration:
   e. Registration no.:
   f. Expires on *(date):*

5. ☐ **Declaration under Code of Civil Procedure Section 585.5** *(required for entry of default under Code Civ. Proc., § 585(a)).* This action
   a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
   b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
   c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
   a. ☐ **not mailed** to the following defendants, whose addresses are **unknown** to plaintiff or plaintiff's attorney *(names):*

   b. ☒ **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
      (1) Mailed on *(date):* 8/22/2011 (2) To *(specify names and addresses shown on the envelopes):*
      Jonathan Kendrick
      200 Honey Lane
      Oakley, CA 94561

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
Date: August 22, 2011

RICHARD J. SIMONS ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

7. **Memorandum of costs** *(required if money judgment requested).* Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
   a. Clerk's filing fees ..... $
   b. Process server's fees ..... $
   c. Other *(specify):* ..... $
   d. ..... $
   e. **TOTAL** ..... $
   f. ☐ Costs and disbursements are waived.
   g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

8. ☐ **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)



[redacted]
9234210

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Watchtower et. al.

FILED
AT ALAMEDA COUNTY
MAR 28 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation.

Defendants.

Case No.: HG11558324

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRER TO PLAINTIFF'S COMPLAINT

JUDGE: ROBERT MCGUINESS
DEPT.: 22
DATE:
TIME:

TRIAL DATE: Not yet set

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, and KINGDOM HALL OF JEHOVAH'S WITNESSES,[1] by and through the undersigned counsel, submit this Memorandum of Points and Authorities in Support of Church Defendants' Demurrer to Plaintiff's Complaint.

[1] This appearance is *not* made on behalf of JONATHAN KENDRICK, the individual named in the Complaint. Additionally, this appearance is not made on behalf of the entity described by the Plaintiff as "THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association" because this entity has not yet been served with a copy of the Summons and Complaint in this matter.

EX D'



Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
(925)584-1008

Defendant, *In Pro Per*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 To 10, Defendants.	Case No.: HG11558324 ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness Defendant, Jonathan Kendrick's Answer to Complaint Hearing Date: January 19, 2012 Time: 3:00 p.m. Department: 22 Reservation No.: 1225197 Complaint Filed: January 28, 2011 Trial Date: March 26, 2012

Defendant Jonathan Kendrick (referred hereinafter "Defendant Kendrick") answers the complaint of plaintiff and admit, deny, and alleges as follows:

//

Defendant Kendrick generally denies each and every allegation of Paragraphs 1-4 of the plaintiff's complaint pursuant to CCP §431.40, deny having knowledge or information sufficient to form a belief as to the truth of the allegations.

Defendant Kendrick admits to allegations in Paragraph 5 of the plaintiff's complaint, pursuant to CCP 2033.220, as Defendant Kendrick is a registered sex offender within the State of California.

Defendant Kendrick generally denies Paragraphs 6-11 of the plaintiff's complaint pursuant to CCP §431.40, deny having knowledge or information sufficient to form a belief as to the truth of the allegations.

FIRST AFFIRMATIVE DEFENSE
(First Amendment)

The complaint, and each cause of action thereof, is barred by the First Amendment to the United States Constitution and/or Article 1 §4 of the California Constitution.

SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations)

The complaint, and each cause of action thereof, is barred by the applicable statute of limitations set for in California Code of Civil Procedure, including without limitation sections 335.1, 338, 340, 340.1, 340.3, 340.35 and 343.

THIRD AFFIRMATIVE DEFENSE
(Mitigation of Damages)

To the extent that plaintiff failed or neglected to use reasonable care to minimize and mitigate her claimed losses, injuries and damages, if there are any, plaintiff's damages, if any, are barred or subject to reduction.

//

FOURTH AFFIRMATIVE DEFENSE
(Laches)

Plaintiff has unreasonably delayed in bringing this action to the prejudice of this answering defendant and is therefore barred from brining the action by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE
(Failure to Provide Notice)

Plaintiff failed to give appropriate or timely notices required to bring her claims.

SIXTH AFFIRMATIVE DEFENSE
(Waiver and/or Estoppel)

By her own conduct, plaintiff has waived and/or is stopped from pursing the claims alleged in her complaint.

WHEREFORE, Defendant Kendrick prays for judgment as follows:

1. That plaintiff takes nothing from Defendant Kendrick by her complaint;
2. That defendant Kendrick be dismissed with prejudice, with an award of costs; and
3. That Defendant Kendrick be awarded such other and further relief as the court deems just and proper.

Dated: October 12, 2011

Jonathan Kendrick, *In Pro Per*

10133735

FILED
ALAMEDA COUNTY
OCT 14 2011
CLERK OF THE SUPERIOR COURT
By: Deputy

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
(925)584-1008

Defendant, *In Pro Per*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 To 10, Defendants.	Case No.: HG11558324 ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness PROOF OF SERVICE Hearing Date: January 19, 2012 Time: 3:00 p.m. Department: 22 Reservation No.: 1225197 Trial Date: March 26, 2012 Complaint Filed: January 28, 2011

PROOF OF SERVICE

State of California ss.
County of Alameda

I am a citizen of the United Stated and reside in Contra Costa County; I am over the age of eighteen years and not a party to the within entitled action; my business address 568565 Main Street, Suite A, Oakley, CA 94561.

On October __, 2011, I served the following documents:

Defendant Jonathan Kendrick's Notice of Motion and Motion for Relief From Default; Declaration of Jonathan Kendrick; Answer to Complaint and Proposed Order

[X] By First Class Mail - By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the company's ordinary business practice for deposit in the United Stated mail in Oakley, California, addressed as shown below.

[ ] By Hand-Delivery - By causing a true copy thereof, enclosed in a sealed envelope to be delivered by hand to the address(es) shown below.

Richard J. Simons, Esq.
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Attorneys for Plaintiff

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
Attorneys for Defendants
Watchtower Bible and Tract Society, et al.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10-13-11

Redjil McLeod

10133739

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
(925)584-1008

Defendant, *In Pro Per*

OCT 14 2011

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 To 10, Defendants.	Case No.: HG11558324 ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness [Proposed] Order Granting Defendant Jonathan Kendrick's Motion For Relief From Default Hearing Date: January 19, 2012 Time: 3:00 p.m. Department: 22 Reservation No.: 1225197 Complaint Filed: January 28, 2011 Trial Date: March 26, 2012

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN THAT:

//

On January 19, 2012, Defendant, Jonathan Kendrick, sought a Motion for Relief From Default filed in this matter.

After consideration of Defendant, Kendrick's Notice of Motion, Memorandum of Points and Authorities, supporting Declaration with exhibits, along with an Answer to Plaintiff's complaint and the Proposed Order, GOOD CAUSE having been shown, I hereby ORDER:

Defendant, Jonathan Kendrick's Motion for Relief From Default is GRANTED.

Dated: _____

_____
The Honorable Robert McGuiness
Judge of the Superior Court
Alameda County

10133727

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
(925)584-1008

Defendant, *In Pro Per*

FILED
ALAMEDA COUNTY

OCT 14 2011

CLERK OF THE SUPERIOR COURT
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 To 10, Defendants.	Case No.: HG11558324 ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness Defendant, Jonathan Kendrick's Answer to Complaint Hearing Date: January 19, 2012 Time: 3:00 p.m. Department: 22 Reservation No.: 1225197 Complaint Filed: January 28, 2011 Trial Date: March 26, 2012

Defendant Jonathan Kendrick (referred hereinafter "Defendant Kendrick") answers the complaint of plaintiff and admit, deny, and alleges as follows:

//

Defendant Kendrick generally denies each and every allegation of Paragraphs 1-4 of the plaintiff's complaint pursuant to CCP §431.40, deny having knowledge or information sufficient to form a belief as to the truth of the allegations.

Defendant Kendrick admits to allegations in Paragraph 5 of the plaintiff's complaint, pursuant to CCP 2033.220, as Defendant Kendrick is a registered sex offender within the State of California.

Defendant Kendrick generally denies Paragraphs 6-11 of the plaintiff's complaint pursuant to CCP §431.40, deny having knowledge or information sufficient to form a belief as to the truth of the allegations.

FIRST AFFIRMATIVE DEFENSE
(First Amendment)

The complaint, and each cause of action thereof, is barred by the First Amendment to the United States Constitution and/or Article 1 §4 of the California Constitution.

SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations)

The complaint, and each cause of action thereof, is barred by the applicable statute of limitations set for in California Code of Civil Procedure, including without limitation sections 335.1, 338, 340, 340.1, 340.3, 340.35 and 343.

THIRD AFFIRMATIVE DEFENSE
(Mitigation of Damages)

To the extent that plaintiff failed or neglected to use reasonable care to minimize and mitigate her claimed losses, injuries and damages, if there are any, plaintiff's damages, if any, are barred or subject to reduction.

//

10133739

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
(925)584-1008

Defendant, *In Pro Per*

OCT 14 2011

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 To 10, Defendants.	Case No.: HG11558324 ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness [Proposed] Order Granting Defendant Jonathan Kendrick's Motion For Relief From Default Hearing Date: January 19, 2012 Time: 3:00 p.m. Department: 22 Reservation No.: 1225197 Complaint Filed: January 28, 2011 Trial Date: March 26, 2012

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN THAT:

//

8801473

Furtado, Jaspovice & Simons
Attn: ~~Simons, Richard J.~~ Martin Jaspovice
A Law Corporation
22274 Main Street
Hayward, CA 94541____

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave.
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Production of Documents Granted

The Motion to Compel Production of Documents filed for Jane Doe was set for hearing on 10/03/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

Pursuant to the court's prior order in this matter, it conducted an in camera review of two letters dated respectively, November 15, 1993 and December 3, 1993, to determine whether the same were (are) privileged communications within the application of Evidence Code section 1034 and related statutes. After review, the court determines that the letters are not privileged and plaintiff's motion to compel production is granted. However, the court will withhold production of the subject letters and they shall remain under seal until November 17, 2011 so as to allow defendants time to consider and seek appellate review here. The court has determined this matter largely within the context of the holding of Roman Catholic Diocese of Los Angeles v. Superior Court, 131 Cal. App. 4th 417. The record there and here demonstrate that the communications were likely to be shared with more than one person; persons other than elders would be likely to consider same and that the penitent (defendant Kendrick) did not expect the communications to be kept confidential (under the circumstances related and presented).

Dated: 10/17/2011

Facsimile

Judge Robert McGuiness

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 10/17/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/17/2011.

Executive Officer / Clerk of the Superior Court

By Kasley McClean digital
_____
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 10/17/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/17/2011.

Executive Officer / Clerk of the Superior Court

By Kasey McCann digital
_____
Deputy Clerk

9980155

RCD

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
DEC 20 2011
CLERK OF THE SUPERIOR COURT
By A Tarrett Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT KENDRICK'S MOTION TO SET ASIDE DEFAULT

Date: 1/19/2012
Time: 3:00 p.m.
Dept: 22
Reservation No: 1225197

INTRODUCTION

Plaintiff JANE DOE was repeatedly sexually molested by defendant Jonathan Kendrick during 1995 when she was 9 and 10 years old. During the time of the abuse, Kendrick was an apparently trustworthy member of the North Fremont Congregation of Jehovah's Witnesses to which plaintiff and her family belonged. Unknown to Jane Doe's family, however, was that Mr. Kendrick had previously, but secretly, been disciplined for a 1993 sexual molestation of a different minor girl.

Defendant Kendrick did not file a timely answer, or request an extension of time to answer, when the Complaint in this action was served upon him. His Motion for Relief from Default is based upon the alternate grounds of his own excusable neglect and plaintiff's supposed violation of California Rule of Court 3.110. As shown below, there was no excusable neglect. Mr. Kendrick's

waited one additional week to make sure that I was not going to hear from either Mr. Kendrick or an attorney on his behalf.

15. At my instruction, my office staff mailed the Request for Entry of Default to Mr. Kendrick on August 22, 2011. A courtesy copy of the Endorsed Filed Request is attached as Exhibit 7 to this Declaration. The Clerk entered default as to Mr. Kendrick on August 26, 2011, as is stated on Exhibit 7.

16. Written discovery in this matter, and depositions of institutional defendants' employees and agents, has demonstrated that Mr. Kendrick has a long history of sexual abuse of children during his association with Jehovah's Witnesses that has been the subject of numerous interventions and proceedings. These include reproval from the North Congregation of Jehovah's Witnesses in 1993 following his admitted molestation of his 13-year-old stepdaughter, as documented in institutional defendants' correspondence attached as Exhibit 8; and his sexual abuse of his 8-year-old step-granddaughter in 2002, about which elders of the Oakley Congregation were questioned, as documented in Contra Costa Sheriff's Department Report #03-20646, excerpts of which are attached as Exhibit 9; and a sexual affair with the wife of an Elder, as described in the Deposition of Claudia Francis, attached at Exhibit 13, and a letter from North Congregation Elders to Elders of Kendrick's new congregation in Oakley, attached as Exhibit 14 .

17. Defendant Kendrick's deposition was noticed by my office October 25, 2011. A Subpoena was served upon him for appearance on that date. A true and correct copy of the Notice and Subpoena, and Proof of Service thereof, is attached as Group Exhibit 10. Thereafter, Mr. Kendrick faxed me a letter requesting an extension of time for appearance at the deposition, while he obtained an attorney. A true and correct copy of the fax received by my office from Mr. Kendrick on October 19, 2011 requesting the extension of time is attached as Exhibit 11. The extension of time was granted to Mr. Kendrick as confirmed by my correspondence of October 20, 2011, a true of correct copy of which is attached hereto as Exhibit 12.

18. Mr. Kendrick has personal experience with civil proceedings and has shown himself to be competent in using them. My investigation uncovered restraining orders between Mr. Kendrick and

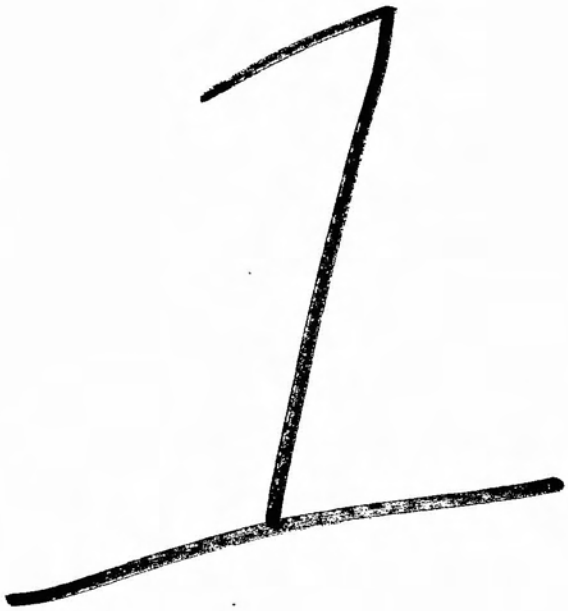
family members that includes civil documents completed by Mr. Kendrick on his own behalf. True and correct copies as obtained by my investigator are attached as Exhibit 16.

19. Attached as Exhibit 15 is a courtesy copy of the Summons issued in this case.

I declare that the above is true under penalty of perjury, that I have personal knowledge of the facts set forth herein, and am competent to testify thereto.

Executed this 5 day of December, 2011, at Hayward, California.

RICHARD J. SIMONS



FILED

OCT 28 2003

K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
COUNTY OF CONTRA COSTA - PITTSBURG
By _____ Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
PITTSBURG

THE PEOPLE OF THE STATE OF CALIFORNIA,

VS.

JONATHAN KENDRICK,

DEFENDANT./

NO. 138568-1
DA NO. X 03 000410-1
COMPLAINT - FELONY

01) PC 288(a)
02) PC 288(a)
03) PC 288(a)

The undersigned states, on information and belief, that JONATHAN KENDRICK, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about ~~November~~ February 2002, at Oakley, in Contra Costa County, the Defendant, JONATHAN KENDRICK, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane DOE, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COUNT TWO:

The undersigned further states, on information and belief, that JONATHAN KENDRICK, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about ~~November~~ February 2002, at Oakley, in Contra Costa County, the Defendant, JONATHAN KENDRICK, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane DOE, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COUNT THREE:

The undersigned further states, on information and belief, that JONATHAN KENDRICK, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about November 2002, at Oakley, in Contra Costa County, the Defendant, JONATHAN KENDRICK, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane DOE, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COMPLAINANT REQUESTS THAT DEFENDANT(S) BE DEALT WITH ACCORDING TO LAW. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
DATED: October 28, 2003 AT MARTINEZ, CALIFORNIA

BALDWIN
COMPLAINANT

DARA CASHMAN/lk
DEPUTY DISTRICT ATTORNEY

CONTRA COSTA COUNTY SHERIFF

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
PITTSBURG

THE PEOPLE OF THE STATE OF CALIFORNIA,

V.

JONATHAN KENDRICK

DEFENDANT(S).

FILED
OCT 28 2003
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA - PITTSBURG
By _____ Deputy Clerk

NO. 138568-1
DA NO. X 03 000410-1
DECLARATION

THE UNDERSIGNED DECLARES:

DECLARANT IS AN OFFICER OF THE AGENCY SHOWN BELOW, WHICH AGENCY HAS CONDUCTED AN OFFICIAL INVESTIGATION INTO THE ABOVE-ENTITLED CAUSE. ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS IF SET FORTH IN FULL ARE COPIES OF THE DOCUMENTS, LISTED BELOW, AND ATTENDANT DOCUMENTS THERETO.

CONTRA COSTA COUNTY SHERIFF CASE NO. 03-20646

SAID INCORPORATED DOCUMENTS WERE PREPARED IN THE ORDINARY COURSE OF BUSINESS AND PURSUANT TO THE SWORN DUTY OF THE OFFICER SUBSCRIBING SAME.

DECLARANT IS INFORMED AND THEREFORE BELIEVES THAT SAID DEFENDANT COMMITTED THE OFFENSE(S) CHARGED IN THE ACCOMPANYING COMPLAINT IN THE MANNER AND BY THE MEANS AS SET FORTH IN SAID INCORPORATED DOCUMENTS AND THEREFORE PRAYS

(XX) THAT A WARRANT BE ISSUED FOR THE ARREST OF SAID DEFENDANT.

(XX) DEFENDANT BE HELD IN CUSTODY UNTIL BAIL IS POSTED.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: October 28, 2003

BALDWIN
DECLARANT

CONTRA COSTA COUNTY SHERIFF
AGENCY

ORDER

THE COURT FINDS, BASED ON THE DECLARATION FILED HEREIN, THAT THERE IS PROBABLE CAUSE TO BELIEVE THE ABOVE-NAMED DEFENDANT COMMITTED THE CRIME(S) ALLEGED IN THE COMPLAINT AND ORDERS THAT:

(X) A WARRANT BE ISSUED FOR THE ARREST OF SAID DEFENDANT.
(X) DEFENDANT BE HELD IN CUSTODY UNTIL BAIL IS POSTED.
(X) BAIL SET AT $ 300,000.

DATED: 10/28/03

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA

RECORDS SEARCH RESPONSE

1/29/2010
11:04

Name Requested: KENDRICK, JONATHAN

****
* IT IS THE RESPONSIBILITY OF THE REQUESTOR TO DETERMINE *
* WHETHER THIS RECORD IS RESPONSIVE TO THE SPECIFIC REQUEST *
****

RECORD FOUND

Court: SUPERIOR COURT, MARTINEZ
Docket Number: S04-138568-1 Sup.Ct. Nbr.
Defendant Name: KENDRICK, JONATHAN
Birthdate: 01/31/1954

Charge(s):

CODE SECTION	SEVERITY	OFFENSE DATE	DISPOSITION DATE	DISPOSITION
PC 288(a)	FEL	11/00/2002	1/08/2004	GUILTY
PC 288(a)	FEL	11/00/2002	1/08/2004	GUILTY
PC 288(a)	FEL	11/00/2002	1/08/2004	DISMISSED

Sentence Information:

****
* NOTE: DISPLAYS MODIFIED SENTENCE IF MODIFICATION OCCURRED AFTER JANUARY 2003.*
****

Sentence Date: 1/08/2004 OTHER S/P SUSPENDED; CONTACT CAB
FORMAL PROBATION 5 YEARS
JAIL 365 DAYS
73 DAYS CREDIT
R/F $200.00 AMT
ORDERED TO PAY TO PROBATION

By: A. FRENKLACH
Deputy Clerk

Date: 1/29/2010

SWARTCHD

Superior Court of California, County of Contra Costa

FELONY ORDER OF PROBATION

☐ CONCORD ☑ MARTINEZ ☐ PITTSBURG ☐ RICHMOND ☐ WALNUT CREEK

DEFENDANT KENDRICK, JONATHAN DOCKET NO. 04-13F568-1 DEPT: 4

The above named defendant having been convicted in this court of the offense(s) of violation PC 288(a)

IT IS ORDERED THAT: ☑ imposition ☐ execution of sentence be suspended during period of probation with the following terms and conditions:

TERMS OF PROBATION: **(Applicable Items Checked):** ☒

1. ☑ STATE PRISON - EXECUTION SUSPENDED - Fixed Term of: 8 yrs/months California Department of Corrections.
   ☑ FORMAL PROBATION GRANTED: Conditional and revocable release in community with Probation supervision except as specified by the Court.
   ☐ COURT PROBATION GRANTED: Conditional and revocable release in community without Probation supervision except as specified by the court.
   For a period of 5 **months/yrs from the date of this order.**
   ☒ STANDARD TERMS (see reverse for standard terms and additional instructions)
2. ☐ REVIEW DATE: _____
   ☐ Defendant must appear in Court.
   ☐ Defendant need not appear unless directed by DPO.

JAIL/FINE/VOLUNTEER WORK/ RESTITUTION

3. ☑ **Be IMPRISONED** 365 hrs / days / months
   ☑ 73 hrs / days / months credit.
   ☐ _____ hrs / days / months suspended.
   ☐ Sentence to commence _____.
   ☐ Serve consecutive / concurrent with _____.
   ☐ any imposed sentence.
   ☐ Other _____
   ☐ Main Jail ☐ Work Alternative Program
   ☐ Electronic Home Detention ☐ in _____ County allowed.
   ☑ Contact Custody Alternative Bureau (CAB) ~~within 15 days~~ From IN CUSTODY
   ☐ Remain in custody in the Contra Costa County Jail pending possible release by the Probation Officer to a residential treatment program and balance of remaining jail sentence be suspended.
   ☐ Day for day ☐ No credit for time served in approved residential program unless successfully completed.
   ☐ OTHER: _____
4. ☐ Pay a FINE of $ _____
   ☑ Pay RESTITUTION FINE of $200.00
   ☑ Make monthly installments to Court Collections & Compliance Unit,
   Complete payments by _____.
   ☐ Pay to Clerk of Court by _____.
   ☐ Probation to terminate upon payment of fine/completion of jail sent.
   ☐ _____ days jail concurrent / consecutive in lieu of fine.
   ☐ OTHER: _____
5. ☐ Perform _____ hrs VOLUNTEER COMMUNITY SERVICE
   ☐ In lieu of fine ☐ OTHER: _____
   ☐ Show proof of completion to Court or DPO by _____
6. ☐ Make RESTITUTION of $_____ to _____
   ☑ Make RESTITUTION as determined by the Probation Officer.
   ☐ Show proof of restitution to Court or DPO by _____
   ☐ Honor any civil judgments as a result of this conviction.
   ☐ OTHER: _____
7. ☑ Submit your person, place of residence, storage locker or any vehicle under your control to search and seizure at any time of day or night, with or without warrant, to any peace officer.
   ☐ for alcoholic beverages ☐ _____
8. ☐ Not use or possess any dangerous drugs, narcotics, or narcotic paraphernalia without prescription.
9. ☐ Not have checking or charge accounts, or possess, control or have custody of checks/credit cards except checks payable to you.
10. ☑ Do not own or possess or control any firearm or weapon.
11. ☐ Weapon ordered ☐ confiscated ☐ destroyed
    ☐ returned to _____
12. ☑ Do not annoy/harass/threaten/contact victim
13. ☒ Contact Probation Officer within 5 (five) days
14. ☒ Cost of Probation not to exceed $ 50.00 per month.
15. ☐ Abstain from the use of alcoholic beverages.
16. ☑ Submit to drug/alcohol detection tests as directed by DPO or any peace officer and pay costs not to exceed ☑ $10.00 ☐ _____
17. ☐ Not go places where alcoholic beverages are the chief item of sale.
18. ☐ Pay a laboratory analysis fee (H&S 11372.5) of $_____ and a drug education fee (H&S 11372.7) of $_____.
19. ☐ Not associate with _____ or with any individuals designated in writing by the Probation Officer.

PROGRAM TERMS

20. ☑ Register per ☐ H&S 11590 ☐ PC 457.1 ☑ PC 290
21. ☐ Submit to all tests and pay all fees as directed by DPO.
22a. ☐ Report to Post Conviction Drinking Driver's Program within 10 days and comply with its rules and fee requirements.
22b. ☐ Attend Domestic Violence Progam.
23. ☑ Participate in counseling as directed by the Probation Officer and not leave or terminate program without permission.
24. ☐ OTHER: _____

DRIVING TERMS

25. ☐ Driving privilege restricted for _____ to / during / from:
    ☐ Employment, treatment program ☐ School
26. ☐ Driving privilege suspended / revoked for _____
27. ☐ Not drive a motor vehicle unless properly licensed and insured.
28. ☐ Not drive vehicle with any measurable alcohol in blood.
29. ☐ If arrested for a violation of 23152 or 23153 CVC, not refuse a chemical test for the detection of alcohol.

ADDITIONAL TERMS

Stay away victim. Test per PC 296 + 1202.1
100 yards away. See special sex offender conditions attached.

Although not a condition of Probation, you are ordered to pay the following fees: ☐ $25 Booking ☐ $10 Cite ☐ CJA $_____
☐ Other fees $_____ ☐ Cost of Probation $_____ month

I HAVE READ AND RECEIVED A COPY OF THESE CONDITIONS OF PROBATION AND I UNDERSTAND AND AGREE TO PERFORM THEM AND UNDERSTAND THAT IF I FAIL TO DO SO, MY PROBATION MAY BE REVOKED AND I MAY BE SENTENCED TO JAIL OR SENTENCED AS OTHERWISE PROVIDED BY LAW.

DEFENDANT'S SIGNATURE [redacted]

SOC. SEC. # [redacted] DOB 1-31-84

ADDRESS 200 HONEY LANE

CITY OAKLEY ST CA ZIP 94561

HOME PH. (925) 679-0411 MSG. PH. (925) 584-1008

COMMITMENT: TO THE SHERIFF: I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ENTRY OF JUDGMENT OR ORDER AND IS YOUR AUTHORITY FOR THE EXECUTION THEREOF.

JUDGE _____ DATED 1/8/04

JAN 8 2004

SUPERIOR COURT CLERK OF THE COURT STATE OF CALIFORNIA COUNTY OF CONTRA COSTA

JAN 26 2004

SEX OFFENDER – SPECIAL PROBATION CONDITIONS

( ) Defendant shall have no contact with any minors under the age of 18, until authorized by the Probation Officer.

(✓) Defendant shall consent to a full sex offender evaluation as provided by an approved Sex Offender treatment provider as directed by the Probation Officer.

( ) Defendant shall consent and cooperate with sex offender assessment instruments (i.e. polygraphic; penile plethysmographic; Able screen examinations; etc.) when deemed necessary by treatment providers and the Probation Officer.

(✓) Defendant shall be financially responsible for all counseling costs incurred by the victim(s).

(✓) Defendant shall consent to the sharing of privileged assessment and treatment information between public and private agencies, agents and persons who are deemed essential in assessing, monitoring, and mediating treatment for sexual deviancy problems.

(✓) Defendant shall not possess at any time any type of pornography including written, pictures, video tapes or electronic computer applications or telecommunications access to such applications. Defendant shall not contact minors via the Internet.

(✓) Defendant shall enter and complete a Sexual Offender Treatment Program as directed by the Probation Officer.

(✓) Defendant shall consent to and cooperate with any plan deemed necessary by Treatment Providers and/or Probation Officer to maintain and monitor offense-free behavior for the duration of probation.

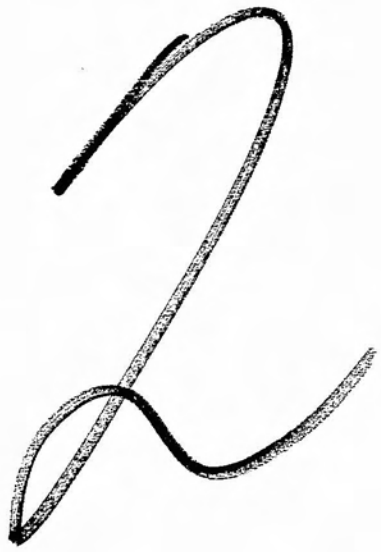
( ) Defendant shall not be involved in any organizations or employment which would place him/her in direct contact with minors (i.e. Boy Scouts, Girl Scouts, 4-H, Big Brother/Big Sister Programs, Youth Counselor, Teacher, Instructor, etc.)

( ) Defendant shall not frequent or visit places that exist primarily for the enjoyment of minors (i.e. circuses; playgrounds; arcades; amusement parks; zoos; etc.)

(✓) Defendant shall register per terms and conditions as a sex offender pursuant to PC 290.

(✓) Defendant shall submit specimens of blood and saliva and palm and thumb prints for DNA purposes pursuant to PC 296.

(✓) Defendant shall submit to HIV testing with release of information to the victim(s) pursuant to PC 1202.1.



attempted showing is filled with half-truths and falsehoods. The evidence demonstrates Mr. Kendrick was persuaded to change his mind about appearing in the case after his default was taken. CRC 3.110 has no applicability to this Motion. Because defendant Kendrick is not a victim of "excusable neglect," the Motion must be denied.

STATEMENT OF FACTS

The Complaint in this action was filed on January 28, 2011. In addition to a cause of action for willful and intentional misconduct against Kendrick as perpetrator of the sexual abuse of plaintiff during her minority, claims of negligence were alleged against entities of the Jehovah's Witnesses. ("Church Defendants"). Plaintiff timely served all Church Defendants, who filed responsive pleadings. Mr. Kendrick was not served because plaintiff's investigation had not been able to confirm an address for Mr. Kendrick. (Declaration of R. Simons, attached, ¶¶2-4, and Exs. 1 and 2). The Court was advised of this delay in service at the initial Case Management Conference held on June 14, 2011.

Mr. Kendrick's address was obtained from the Church Defendants on June 29, 2011, as a result of Supplemental Responses to written discovery. (Simons Dec., ¶¶4-6 and Exs. 3-5). Mr. Kendrick was then served by personal service on July 16, 2011. (Simons Dec., Ex. 6).

Kendrick consulted multiple attorneys concerning this civil action before any default was entered. He admits in his Declaration he contacted the attorneys for the Church Defendants. (Kendrick Dec., ¶8). He also "contacted multiple attorneys" on his own. (Kendrick Dec., ¶9, 3:8). At least one of those attorneys, Michael Markowitz of Danville, contacted plaintiff's counsel prior to the expiration of the time to file a responsive pleading. (Simons Dec., ¶¶8-11). Although Mr. Kendrick makes no reference to his discussions with Mr. Markowitz, it was clear from the discussions with plaintiff's counsel that Mr. Kendrick, who apparently has no assets, decided to allow his default to be taken in exchange for the promise by plaintiff not to attempt any collection against him. (Simons Dec., *Ibid*). Mr. Markowitz and counsel for plaintiff had extensive discussions about the service, the possibility of default, and the filing of an answer. No request for an extension of time was ever made to plaintiff's counsel, no application for filing an answer with an accompanying Petition for Waiver of Fees was made by Mr. Kendrick, and no extension of time was granted. (Simons Dec., ¶¶10-13).

Last Name: **KENDRICK** First Name: **JONATHAN** Middle Name: **DAVID**



Description	Addresses	Offenses	Scars/Marks/Tattoos	Known Aliases

Last Known Address

Report Information to DOJ

THE REGISTRANT MAY HAVE SUBSEQUENTLY RELOCATED

<<Back

Last Name: **KENDRICK** First Name: **JONATHAN** Middle Name: **DAVID**



Description	Addresses	Offenses	Scars/Marks/Tattoos	Known Aliases

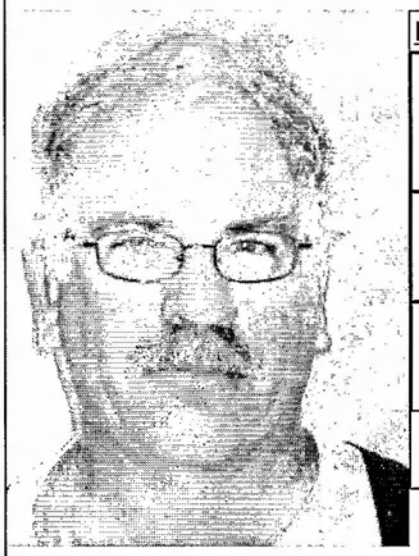
Date of Birth:	**01-31-1954**
Sex:	**MALE**
Height:	**6'0"**
Weight:	**215**
Eye Color:	**HAZEL**
Hair Color:	**GRAY/PARTIAL**
Ethnicity:	**WHITE**

Report Information to DOJ

THE REGISTRANT MAY HAVE SUBSEQUENTLY RELOCATED

<<Back

Last Name: **KENDRICK** First Name: **JONATHAN** Middle Name: **DAVID**



Description | Addresses | Offenses | Scars/Marks/Tattoos | Known Aliases

Offense Code	Description	Year of Last Conviction	Year of Last Release
288(a)	LEWD OR LASCIVIOUS ACTS WITH A CHILD UNDER 14 YEARS OF AGE		
243.4(d)	SEXUAL BATTERY INVOLVING A RESTRAINED PERSON		

Registrant has subsequent felony conviction(s) but DOJ has no incarceration information for this felony.

Report Information to DOJ

THE REGISTRANT MAY HAVE SUBSEQUENTLY RELOCATED

<<Back



THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorneys for Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S REPONSES TO PLAINTIFF'S FORM INTERROGATORIES

PROPOUNDING PARTY: PLAINTIFF JANE DOE

RESPONDING PARTY: Watchtower Bible and Tract Society of New York, Inc.

SET NUMBER: ONE

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "this Defendant") provides the following answers to form interrogatories pursuant to the California Code of Civil Procedure Section 2030. In answering these interrogatories, you have been

between you and the insurance company; and

(g) the name, ADDRESS, and telephone number of the custodian of the policy.

RESPONSE TO FORM INTERROGATORY NO. 4.1:

This Defendant has no policy of insurance in effect which might provide insurance in any manner applicable to this case.

FORM INTERROGATORY NO. 4.2:

Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the incident? If so, specify the statute.

RESPONSE TO FORM INTERROGATORY NO. 4.2:

This Defendant is not self-insured under any statute for the damages complained of by the Plaintiff.

FORM INTERROGATORY NO. 12.1:

State the name, address, and telephone number of each individual:

(a) who witnessed the incident or the events occurring immediately before or after the incident;

(b) who made any statement at the scene of the incident;

(c) who heard any statements made about the incident by any individual at the scene;

(d) who you or anyone acting on your behalf claim has knowledge of the incident (except for expert witnesses covered by Code of Civil Procedure, §2034).

RESPONSE TO FORM INTERROGATORY NO. 12.1:

Subject to and without waiving the above objections, this defendant is not aware of any witnesses to the incidents, anyone who made any statements at the scene, anyone who heard statements about the incidents at the scene, or anyone who has personal knowledge of the incidents complained of by the Plaintiff.

FORM INTERROGATORY NO. 12.2:

Have you or anyone acting on your behalf interviewed any individual concerning the incident? If so, for each individual state:

(a) the name, address, and telephone number of the individual interviewed;

(b) the date of the interview;

(c) the name, address, and telephone number of the person who conducted the interview.

RESPONSE TO FORM INTERROGATORY NO. 12.2:

After the filing of the lawsuit, attorneys for this Defendant interviewed Jonathan Kendrick (contact information unknown to this Defendant) on April 6, 2011, and Neal Conti (contact information unknown to this Defendant) on April 7, 2011. The private notes, personal thoughts and legal conclusions of those attorneys for this Defendant arising from their interviews constitute work product that is privileged.

FORM INTERROGATORY NO. 12.3:

Have you or anyone acting on your behalf obtained a written or recorded statement from any individual concerning the incident? If so, for each statement state:

(a) the name, address, and telephone number of the individual from whom the statement was obtained;

(b) the name, address, and telephone number of the individual who obtained the statement;

(c) the date the statement was obtained;

(d) the name, address, and telephone number of each person who has the original statement or a copy.

RESPONSE TO FORM INTERROGATORY NO. 12.3:

This Defendant has not obtained any written or recorded statements at this time concerning the incident(s) complained of by the Plaintiff.

FORM INTERROGATORY NO. 12.4:

Do you or anyone acting on your behalf know of any photographs, films, or videotapes depicting any place, object, or individual concerning the incident or plaintiff's injuries? If so, state:

(a) the number of photographs or feet of film or videotape;

(b) the places, objects, or persons photographed, filmed, or videotaped;

PROOF OF SERVICE
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. HG11558324

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is 4817 Santa Monica Ave., Ste. B, San Diego, CA 92107

On June 14, 2011, I served the following document(s) described as **DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S RESPONSES TO PLAINTIFF'S FORM INTERROGATORIES** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST.

☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with The Law Offices of James M. McCabe's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Ocean Beach, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (619) 224-0089 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

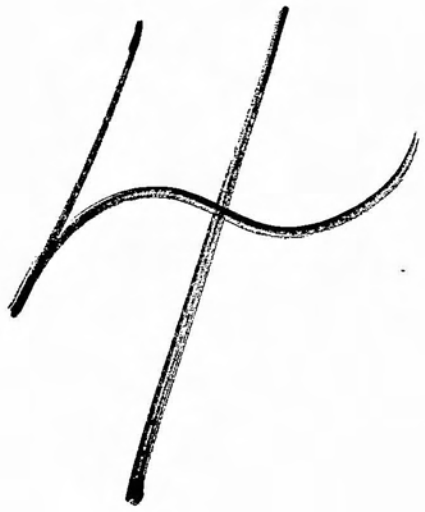
☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 14, 2011 at Ocean Beach, California

_____
Employee of the McCabe Law Firm



MANUEL FURTADO (1925-1999)
MARTIN L. JASPOVICE
RICK SIMONS

OF COUNSEL:
BILL LOCKYER

FURTADO JASPOVICE & SIMONS
A LAW CORPORATION

22274 MAIN STREET
HAYWARD, CALIFORNIA 94541
TELEPHONE: (510) 582-1080
FACSIMILE: (510) 582-8254

June 20, 2011

James Murray McCabe, Esq.
The McCabe Law Firm, APC
4817 Santa Monica Avenue, Suite B
San Diego, CA 92107

Re: Doe v. Watchtower, et al.

Dear Mr. McCabe:

I have received the discovery responses from your various clients in this matter. As to Answer to Form Interrogatory No. 12.2, I request some further information. The answer states that Jonathan Kendrick was interviewed on April 6, 2011, but that "contact information unknown to this Defendant". Since I have been unable to find Mr. Kendrick, and apparently you spoke with him on April 6, 2011, and must have some contact information, I am entitled to whatever information you have. Please provide a supplemental response, including telephone and cell phone numbers, address, email, or whatever other information concerning his identity and whereabouts you have.

With respect to the North Congregations Response to Request for Documents, category 5, as to records involving Jonathan Kendrick, the objections and claim of privilege are not well taken. There is no First Amendment right for matters involving childhood sexual abuse, as that is a secular rather than a theology issue. The clergy/penitent privilege of California Evidence Code §1030 does not apply, as the letters of December 3, 1993, and November 15, 1993, from elders to the U.S. Service Department are not confidential communications between penitent and clergy. In the event that your client refused to produce these documents, please notify me promptly, so that I may bring a Motion to Compel production.

Additionally, in the North Congregation's Response to Request for Documents, category 7, Reports from the Elders dated November 5, 1996, and November 7, 2002, are both objected to on the grounds of First Amendment, and clergy/penitent privilege. Clergy/penitent privilege would not apply to either of these reports, as they on their face are not confidential communications from a parishioner to a clergyman as defined in the Evidence Code. Secondly, there is no First Amendment right where issues of childhood sexual abuse are involved, since this is strictly a secular matter. Lastly, in the event that defendants wish to assert that some or all of plaintiff's emotional distress and other damages flow from family relations, rather than the sexual abuse by Mr. Kendrick, information concerning Kathleen Conti and plaintiff would both be relevant. Candace Conti obviously has waived any privacy interest, as she is a plaintiff in this action. Kathleen Conti has no objection, and a written waiver can be provided. In any event, the Letters from the Elders dated November 7, 2002, and November 5, 1996, are not subject to privilege based upon the information provided to date, and should be produced. In the event that your client refused to produce these documents, please notify me promptly, so that I may bring a Motion to Compel production.

Thank you for your immediate attention to this matter.

Very truly yours,

FURTADO, JASPOVICE & SIMONS

RICK SIMONS

RJS:etl
enclosures

Mr. Kendrick's claim that he is unable to understand the nature of the process, the language in the Summons and Complaint, or the duty to either request an extension of time or file an answer, is difficult to establish as credible. Mr. Kendrick read and understood the paperwork well enough to call Jehovah's Witness' attorneys and meet with Mr. Markowitz. He was able to send his own correspondence to plaintiff's counsel regarding his deposition after receiving a subpoena on October 8, 2011. (Simons Dec., ¶17 and Exs. 10-12).

Plaintiff's counsel waited an extra week prior to submitted a Request for Entry of Default against Mr. Kendrick to confirm that no answer was going to be filed, no extension of time requested, and no attorney appearing in the matter. (Simons Dec., ¶¶14 and 15).

As shown below, Mr. Kendrick's argument that he did not understand the nature of the proceedings and therefore is protected by the statutory doctrine of "excusable neglect" – like many of the other factual assertions contained in Mr. Kendrick's Declaration – is beyond belief. There is no excusable neglect in this matter, but rather an apparent change of mind for reasons unknown, including the influence of others.

I. THE PARTY SEEKING RELIEF FROM DEFAULT MUST MAKE A SUFFICIENT SHOWING TO ESTABLISH EXCUSABLE NEGLECT.

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Cal. Code Civ. Pro. § 473(b).) The moving party must establish his grounds for relief by a preponderance of the evidence. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.) "Mere mistake, inadvertence or neglect does not warrant relief unless, upon a consideration of all of the evidence, it is found to be excusable." (*Daher v. American Pipe & Constr. Co.*, (1968) 257 Cal.App.2d 816, 820.)

Excusable neglect must be an act or omission that a reasonably prudent person may have committed under the same circumstances. (*Kooper v. King* (1961) 195 Cal.App.2d 621, 626.) "Relief will be denied unless the plaintiff or the moving party is able to convince the court that he has exercised



THE MCCABE LAW FIRM, APC

4817 Santa Monica Avenue, Suite B
San Diego, CA 92107
Telephone (619) 224-2848
Facsimile (619) 224-0089
jim@mccabelaw.net

James M. McCabe*
Ryan M. McCabe
Jesse R. McCabe

*Admitted in NY and CA

June 29, 2011

Mr. Richard Simons
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541

Original By Facsimile to 510 582-8254 and Us Mail

Re: Doe v. Watchtower, et. al.

Dear Mr. Simons:

I was able to obtain Mr. Kendrick's contact information which is as follows:

200 Honey Lane
Oakley, California 94561
Telephone 925 670-0411

I have spoken by telephone to your assistant and requested that we try to schedule all of my client's depositions during the week of August 22, 2011. I am unavailable August the 11th as I am taking a few days off to celebrate my 42nd wedding anniversary. Additionally, I will have co-counsel from New York involved in these depositions and it would be helpful if we could group the depositions together to facilitate his travel schedule and if possible minimize the number of trips across the country.

I would reiterate also that I would like a date for your client's deposition which I would estimate would take a half day. Again, if it could be scheduled following my clients' depositions that would be very helpful.

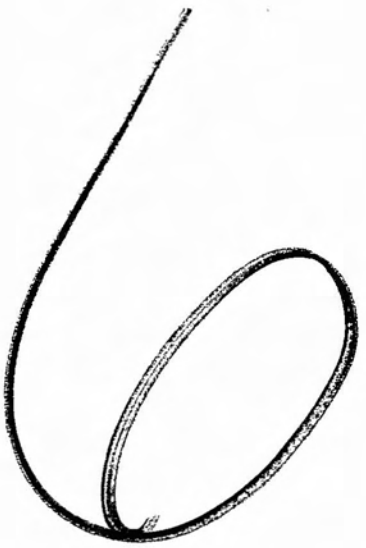
Verifications for the discovery responses from Watchtower New York and Pennsylvania are in the mail to me and will be forwarded to your office as soon as I receive them. Once you have had a chance to review the responses, I look forward to working with you to try to resolve any disputes that we may have.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

James M. McCabe

C: Watchtower



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NO.	FOR COURT USE ONLY
FURTADO, JASPOVICE & SIMONS 22274 MAIN STREET HAYWARD CA 94541	510.582-1080 Ref. No. or File No.	ENDORSED FILED ALAMEDA COUNTY JUL 26 2011 CLERK OF THE SUPERIOR COURT By A. MENDOLA Deputy
Insert name of court and name of judicial district and branch court, if any. ALAMEDA COUNTY SUPERIOR SOUTHERN DIVISION OFFICE 24405 AMADOR STREET #108 HAYWARD, CA. 94544		
SHORT TITLE OF CASE: JANE DOE vs THE WATCHTOWER		

082176	DATE:	TIME:	DEPT./DIV.	CASE NUMBER: HG11558324

PROOF OF SERVICE (SUMMONS)

1. AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION.

2. I SERVED COPIES OF THE:
SUMMONS; COMPLAINT; ADR INFORMATION PACKAGE; LETTER RE IDENTITY; NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER; STATEMENT OF DAMAGES; NOTICE OF JUDICIAL ASSIGNMENT FOR ALL PURPOSES

3. a. PARTY SERVED: **JONATHAN KENDRICK,** an individual
b. PERSON SERVED: PARTY IN ITEM 3a

4. ADDRESS WHERE PARTY WAS SERVED: 200 HONEY LANE OAKLEY CA 94561

5. I SERVED THE PARTY:
a. BY PERSONAL SERVICE. I PERSONALLY DELIVERED THE DOCUMENTS IN ITEM 2 TO THE PARTY OR PERSON AUTHORIZED TO RECEIVE SERVICE OF PROCESS FOR THE PARTY (1) ON **07/16/11** (2) AT **04:20 PM**

6. THE "NOTICE TO THE PERSON SERVED" WAS COMPLETED AS FOLLOWS:

AS AN INDIVIDUAL DEFENDANT. (CCP 416.90)

7. PERSON SERVING: VALERIE L. PECKHAM FEE FOR SERVICE:$ 82.50

CONFORMS WITH JUDICIAL COUNCIL FORM POS-010 (revised 07/01/04)
PROOF OF SERVICE ON SUMMONS

LSO Attorney Service
P.O. Box 4910 (94596-0910)
2156 North Main Street, Suite E
Walnut Creek, CA 94596-3708
Tel. (925) 945-1922 • Fax (925) 945-1771

Registered California process server
(1) ☐ Employee ☑ Independent contractor
(2) Registration No. 697
(3) County: CONTRA COSTA
(4) Expiration Date:

☑ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: JUL 18 2011

► V. Peckham
SIGNATURE



CIV-10

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Richard J. Simons, Esq. 072676 Furtado, Jaspovice & Simons 22274 Main Street Hayward, CA 94541 TELEPHONE NO.: (510) 582-1080 FAX NO. (Optional): (510) 582-8254 E-MAIL ADDRESS (Optional): Rick@fjslaw.com ATTORNEY FOR (Name): Plaintiff JANE DOE	ENDORSED FILED ALAMEDA COUNTY AUG 2 6 2011 CLERK OF THE SUPERIOR COURT By MICHELLE BANKS Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME:	
PLAINTIFF/PETITIONER: JANE DOE DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY, et al.	
REQUEST FOR (Application) ☒ Entry of Default ☐ Clerk's Judgment ☐ Court Judgment	CASE NUMBER: HG11558324

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date)*: 1/28/2011
   b. by *(name)*: JANE DOE
   c. ☒ Enter default of defendant *(names)*: JONATHAN KENDRICK
   d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant *(names)*:

   (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
   e. ☐ Enter clerk's judgment
      (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
         ☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) ☐ under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) ☐ for default previously entered on *(date)*:

2. **Judgment to be entered.**

	Amount	Credits acknowledged	Balance
a. Demand of complaint	$	$	$
b. Statement of damages *			
(1) Special	$	$	$
(2) General	$	$	$
c. Interest	$	$	$
d. Costs *(see reverse)*	$	$	$
e. Attorney fees	$	$	$
f. **TOTALS**	$	$	$

   g. **Daily damages** were demanded in complaint at the rate of: $ per day beginning *(date)*:
   (Personal injury or wrongful death actions: Code Civ. Proc., § 425.11.)*
3. ☐ *(Check if filed in an unlawful detainer case)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4)*.

Date: August 22, 2011
RICHARD J. SIMONS
(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY

(1) ☒ Default entered as requested on *(date)*: AUG 2 6 2011
(2) ☐ Default NOT entered as requested *(state reason)*:

Clerk, by MICHELLE BANKS, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-100 [Rev. January 1, 2007]
Matthew Bender ESSENTIAL FORMS™

REQUEST FOR ENTRY OF DEFAULT
(Application to Enter Default)

Code of Civil Procedure, §§ 585-587, 1169
www.courtinfo.ca.gov

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER:
DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF a corporation;	HG11558324

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☒ did **not** for compensation give advice or assistance with this form.
(If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state):
a. Assistant's name:
b. Street address, city, and zip code:
c. Telephone no.:
d. County of registration:
e. Registration no.:
f. Expires on *(date):*

5. ☐ **Declaration under Code of Civil Procedure Section 585.5** *(required for entry of default under Code Civ. Proc., § 585(a)).*
This action
a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
a. ☐ **not mailed** to the following defendants, whose addresses are **unknown** to plaintiff or plaintiff's attorney *(names):*

b. ☒ **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
(1) Mailed on *(date):* 8/22/2011 (2) To *(specify names and addresses shown on the envelopes):*
Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
Date: August 22, 2011

RICHARD J. SIMONS ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

7. **Memorandum of costs** *(required if money judgment requested).* Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
a. Clerk's filing fees ..... $
b. Process server's fees..... $
c. Other *(specify):* ..... $
d. ..... $
e. **TOTAL** ..... $
f. ☐ Costs and disbursements are waived.
g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

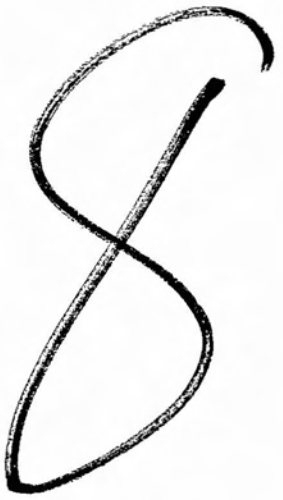
_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

8. ☐ **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)



North Congregation #15685
Fremont
c/o Michael L. Clarke
32852 Bass Lake St.
Fremont, Ca 94555

Nov 15, 1993

Watchtower Bible & Tract Society
25 Columbia Heights
Brooklyn, New York, 11201 USA

Dear Brothers,

We are writing to you regarding a case of child abuse. We telephoned 11/12/93 and it was suggested that we submit in writing our questions.

We met on 11/11/93 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15 yr old step daughter. The abuse occurred approximately 4 months ago. He confessed to touching the breast of his step daughter while she was sleeping. She was awaken instantly and knew what had happened. His wife was informed that evening and the 3 of them talked it out between them. Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders. He said that his conscious continued to bother him.

Evelyn, his wife, is baptized but inactive. She occasionally attends meetings.

Andrea, the step daughter, is not baptized and is no longer an unbaptized publisher. The step daughter is now using this as a tool to threaten with when she wants something. Because she has been promiscuous with 2 boys at school. the parents have tried to enforce house rules covering her comings and goings.

Andrea has recently mentioned the abuse to another young girl, Toy Register, whom she attends school with. Coincidentally, Toy attends our congregation meetings and is studying. Her mother is disfellowshipped. Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional. Mrs Register is now threatening to call the police.

Here are the facts as best as we can present them without interviewing each party. Our questions are as follows:

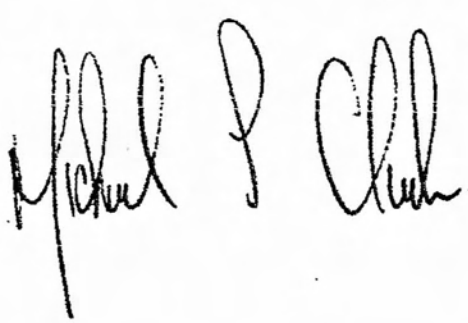
1. Can 2 elders handle this matter with Brother Kendrick as mentioned on page 93 of "Pay attention to Yourselves....Flock", under the heading Uncleanness? Or do we have to form a Judicial hearing because of it being child abuse?

2. We assume that Brother Kendrick does not qualify any longer as a Ministerial Servant. We will announce to the congregation that he is no longer serving as such. If this is incorrect, please inform us.

3. The legal department has given us some direction as far as our legal requirements and we will follow that closely.

We will wait to hear from you regarding the above questions. If I have not been clear enough, you may reach me during the day at my work phone (510-462-7861 ext 105)

Your Brothers,



reasonable diligence to protect himself against the judgment." (*Elms* v. *Elms* (1946) 72 Cal.App.2d 508, 513).

While Courts generally interpret section 473 liberally, the law has long recognized that "this does not mean, however, that relief should be given to one who willfully slumbers on his rights and makes no effort to protect himself, and courts should not listen to flimsy excuses and the claim of ignorance of the law." (*Williams v. McQueen*, (1928) 89 Cal.App. 659, 662).

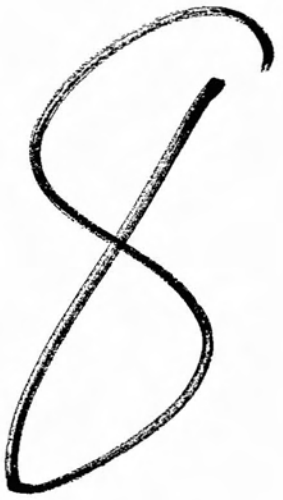
II. KENDRICK'S FAILURE TO FILE RESPONSIVE PLEADING WAS NOT DUE TO EXCUSABLE NEGLECT.

Defendant's Declaration states that, upon receipt of service of the Complaint, "I knew I needed a lawyer because I have no knowledge of or experience in the civil legal arena. Given that, I was unaware of the 30 deadline to file a responsive pleading." (Kendrick Dec., ¶7, 2:21-23). Mr. Kendrick's Declaration is false.

First of all, as shown by his Declaration and Motion, Mr. Kendrick is able to read and write in the English language. Therefore, he presumably could read the language of the Summons, served with the Complaint, which states: **"NOTICE! You have been sued. The Court may decide against you without you being heard unless you respond within 30 days."** (Simons Dec ¶19; Ex. 15.)

Additionally, Mr. Kendrick claims to have promptly contacted multiple attorneys. At least one attorney, Mr. Markowitz, conducted negotiations with plaintiff's counsel that included discussion of a default. Although Mr. Kendrick's Declaration purposefully omits any mention of his consultation with Mr. Markowitz, there can be no doubt that a reputable attorney of Mr. Markowitz's stature would have explained all of the applicable deadlines and alternative methods of proceeding, even in a case where he was unable to accept representation of the client's interests. Mr. Kendrick was satisfied to allow a default if there was no risk of collection. It is likely that Mr. Kendrick later decided, or was influenced by others to decide, to become an active party to the lawsuit.

Mr. Kendrick's claim that he has no knowledge of the civil legal arena is also false. Mr. Kendrick and his stepchildren were involved in civil proceedings in Contra Costa County to obtain



WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

SCN:SST December 3, 1993

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers:

Your letter dated November 15, 1993, has been received. As you will note from the enclosed S-52 form, Brother Jonathan Kendrick has been deleted from serving as a ministerial servant on the grounds of "uncleanness."

Your letter states: "He confessed to touching the breasts of his stepdaughter while she was sleeping. She was awakened instantly and knew what had happened." Since this incident is known by outside members of the family, it is appropriate that Brother Kendrick be deleted from serving as a ministerial servant with your congregation.

On page 92 of the Kingdom Ministry School textbook the following is stated: "Uncleanness includes an intentional momentary touching of sexual parts or caressing of breasts. Such minor uncleanness can be handled at the discretion of an elder or two; it does not require a judicial hearing. There is a need for strong counsel, admonition, and assistance to help the individual to maintain chaste conduct in the future."

In harmony with the above, it will not be necessary for a judicial committee to handle the "uncleanness" committed by Brother Kendrick. However, it would be appropriate for two elders to meet with him and provide him with strong Scriptural counsel so as to avoid a repetition of such a serious offense.

We trust the above comments will be helpful to you. With this letter we are pleased to send you an expression of our warm Christian love and best wishes.

Your brothers,

[signature] L. A. Swift
OF NEW YORK, INC.

cc: R. Rainer, CA #40

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A. PHONE (718) 625-3600

SDU:SSW June 19, 1998

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL L CLARKE
32852 BASS LAKE ST
FREMONT CA 94555-1000

Dear Brothers:

This is in regard to a matter involving Jonathan Kendrick. In reviewing our files, we noted that Jonathan Kendrick was reproved by the North Congregation and deleted as a ministerial servant on December 3, 1993, for child molestation.

In the letter to all bodies of elders dated March 14, 1997, direction was given to provide a report on anyone who is currently serving or who formerly served in a Society-appointed position in the congregation who is known to have been guilty of child molestation in the past. Has this information been provided to the Society? If so, perhaps it was lost in the mail. Therefore, please send us additional copies of your correspondence for our files. If not, please answer the questions in the first paragraph of page 3 of the March 14, 1997, letter. When responding, you may make reference to this letter by the date and desk symbol above.

Please accept our warm Christian love and best wishes.

Your brothers,

Watchtower B.T.S. Society
OF NEW YORK, INC.

North Congregation Fremont

#15685
c/o Michael Clarke
32852 Bass Lake St
Fremont, CA 94555-1000

COPY

Watchtower Bible & Tract Society of New York , Inc
25 Columbia Heights
Brroklyn, New York 11201-2483

SDU:SSW Aug. 31, 1998

Dear Brothers:

This is in regard to your letter of June 19, 1998 involving Jonathan Kendrick. We are providing a copy of our November 15, 1993 letter to you, and your letter to us of December 3, 1993 SCN:SST

Below are answers to questions posed in the March 14, 1997 letter to all bodies of elders, page 3, para 1

1. How long ago did he committ the sin?	July 1993
2. What was the age of his victim?	15yrs old
3. Was it a one-time occurrence?	one time
4. How is he viewed in the community/authorities?	legal authorities contacted, police report made, no action taken by courts
5. Has he lived down any notoriety in community?	community unaware
6. Are members of congregation aware of sin?	no
7. Has he ever been disfellowshipped, reproved, etc	yes - loss of temper, self control - Reproval
8. If he has moved, indentify congregation	Oakley Congregation, Antioch, CA
9. Have they been notified?	No

We were not aware that we needed to send a follow up letter after our November 15, 1993 letter. We are sorry for that oversite. Brother Kendrick was deleted as a ministerial servant as of December 3, 1993. Full restrictions were put into place and lifted over a 2 year period. *He moved to Antioch in Jan of 1998. Our letter failed to mention anything about this matter. We will write to them immediately and send them a copy of this letter.*

Please accept our warm Christian love and best wishes

Michael Clarke Gary Abrahamson Larry Lamerdin

cc: Oakley Congregation

North Congregation
c/o Michael Clarke
32852 Bass Lake St
Fremont, CA 94555

Dec 20th 2009

Oakley Congregation
Manuel Iglesias
4060 Brown Rd
Oakley, CA 94561

Re: Jonathan Kendrick

Dear Brothers,

Larry Lamerdin and I met with Candace Conti on 12/13/09 regarding Jonathan Kendrick. Candace is the daughter of Neal and Cathy Conti who are now divorced. The father, Neal is remarried and attends meetings in the Niles Congregation in Fremont California. He is serving as a ministerial servant. The mother, Cathy attends meeting in the North Congregation in Downy California. Candace claims that Jonathan Kendrick sexually abused her from 1992-1993 when she was 9-11yrs old. She is now 24 years old

The Conti family and Jonathan Kendrick were close friends and spent quite a bit of time together. Because Cathy was having alcohol and emotional problems, they relied on Jonathan more than they should have. Candace claims that Jonathan Kendrick and her spent time alone together at his home. She claims that he would often drive her home from the meetings with her parent's permission. She claims that there relationship was inappropriate and her parents and congregation elders should have put a stop to it. We totally agreed. To our knowledge, the elders were not aware of this arrangement. She claims that he did unspeakable things to her including having her do things to him. She refused to go into detail other than saying it occurred over a 1-2 year period on many occasions. She remembers him taking her shopping along with 2 other young boys in the North Congregation. She recalls on another occasion him putting his hands under her shirt. She admits that she has blocked out much of the details and doesn't understand why.

Candace was asked if she wanted to 'confront' Jonathan Kendrick about the alleged abuse. She broke down in tears and said that would be too difficult. She asked us twice if we were going to report this to the authorities. We told her that if she wishes to make a report, it is her absolute right to do so.

Her biggest concern seems to be protecting other children from harm. She wanted to know what procedures were in place in the congregations when convicted abusers change congregations. What is to prevent them from 'hiding what they are?' She mentioned that the national list for these convicted abusers has a program that allows victims to list their e-mail address and if the abuser moves, the victim is notified. She wants to know if the Society has such plans to do something similar. We promised her we would ask.

We have made an appointment to talk with her father on 12/16/09. Candace expressed a reluctance to trust the congregation or her father to do the right thing. She feels betrayed and alone. We shared a number of scriptures with her regarding Jehovah's love and concern for her. We feel there is an opportunity to get her back into the congregation.

Candace mentioned that she had lunch last year (2008) with Sister Claudia Francis who had a close friendship with the Conti family and Jonathan Kendrick. Candace asked Sister Francis if she ever suspected that Jonathan was abusing her. Sister Francis revealed to Candace that she had found a receipt where Jonathan Kendrick had taken her boys and Candace shopping for clothes. The receipt was for a black bra. She doesn't know why she kept that receipt but it now makes her suspect wrong doing. We have tried to contact Sister Francis but so far no success.

Another judicial case that has a bearing on this matter involves Claudia Francis. She admitted to committing adultery with Jonathan Kendrick in 1998. We formed a judicial committee in October of 1999 and reproved her. The judicial committee notified the Oakley congregation since Jonathan Kendrick had moved there in Jan 1998. Brother Eric Smothers was our contact. We have no other notes regarding your judicial case with Jonathan Kendrick. You mentioned on the phone this week that you couldn't find any letters from us regarding this matter nor had any judicial committee met with him on this matter. This is quite disturbing. If no judicial committee was formed, Jonathan Kendrick should be confronted with this charge. It would be a serious matter if he has kept this secret all this time.

12/16/09
We met with Candace's father, Neal Conti on 12/16/09 to discuss the matter. He offered very little help or insight. He is remarried and serving as a ministerial servant in the Niles congregation of Fremont. He admits that the family was very troubled back then and that Candace was asked to shoulder too big of a load for a young girl when her parents divorced. We asked if he ever suspected that Candace was being abused and he said no. We encouraged him to reach out to his daughter and provide support. He said he would try.

We trust that these notes may help you when you meet with Jonathan Kendrick. We have plans to talk with Candace again after we hear from your congregation and the branch.

Your brothers

Michael Clarke

Larry Lamerdin



☐ Continuation

CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT CA0070000

Sect 51

P.O. Box 391, Martinez, CA 94553-0039

☒ Supplemental ☐ HRO ☐ Arrest ☐ S.I.

1. DR No.	2. City Code	3. Crime / Classification	4. Detail	5. Reclassification
03-20648	OAK/57	CHILD MOLEST	1. 288 2.	☐

6. Victim Name (L,F,M)	7. Date Orig. Report	8. Employee No.
[redacted]	07-25-03	54108

9. Address / Location of Occurrence	10. Suspect's Name (L,F,M)
200 HONEY LN, OAKLEY	KENDRICK, JONATHAN DAVID

11. Property Description:
Impounded, Recovered, Found, Lost, Stolen - Item Number, Article, Quantity, Brand/Make/Manufacturer's Model Number, Serial Number, Miscellaneous Description, Location Where Taken, Value, Include Total Loss - LIST IN FOLLOWING ORDER: A) Currency, Notes; B) Jewelry; C) Clothing, Furs; D) Vehicles; E) Office Equipment; F) Radio, TVs, etc.; G) Firearms; H) Household Goods; I) Misc.

12. Recovered Property $: 0

13. Narrative / Statements

CASE SUMMARY: (OFFICER BROWN'S ORIGINAL REPORT)

ON 07-31-03, I RECEIVED AND REVIEWED CASE #03-20646 REGARDING ALLEGATIONS THAT JONATHAN KENDRICKS HAD USED HIS HAND TO RUB, SKIN TO SKIN, HIS EIGHT-YEAR-OLD STEP-GRANDDAUGHTER'S VAGINA.

IN ESSENCE, OFFICER BROWN MET WITH JOSHUA HOOD AT THE OAKLEY SUBSTATION REGARDING ALLEGATIONS OF MOLEST ON HIS DAUGHTER, [redacted] JOSHUA PROVIDED BROWN WITH TWO COMPUTER CD'S WHICH APPARENTLY CONTAINED CHILD PORNOGRAPHIC MATERIAL.

BROWN INTERVIEWED JOSHUA AND HE DETERMINED THE FOLLOWING. ABOUT FOUR YEARS AGO, JONATHAN KENDRICKS MARRIED JOSHUA'S MOTHER. DURING THIS TIME, BOTH JOSHUA AND HIS BROTHER HAD BEEN SUSPICIOUS OF JOHATHAN. IN TURN, JOSHUA SAID HE SPOKE WITH JONATHAN'S EX-WIFE WHO DISCLOSED THAT HE WAS INVOLVED IN A SEXUAL ASSAULT CASE REGARDING HER DAUGHTER IN 1995.

WHILE BOTH LINDA, HIS MOTHER, AND JONATHAN WERE AWAY FROM THEIR HOME ONE WEEKEND (07-19-03), BOTH JOSHUA AND HIS BROTHER ENTERED THE KENDRICK HOME AND GAINED ACCESS TO THEIR COMPUTER. JOSHUA STATED THAT HE HAD A KEY TO THE HOUSE AND PERMISSION TO BE AT THIS LOCATION.

SUSPECTING THE POSSIBILITY OF JONATHAN POSSESSING CHILD PORNOGRAPHY, JOSHUA AND HIS BROTHER OBSERVED AND DOWNLOADED TO CD WHAT THEY BELIEVED TO BE IMAGES AND VIDEO OF CHILD PORNOGRAPHY. APPARENTLY, THEY HAD USED AN "UNERASE" PROGRAM TO EXTRACT THIS MATERIAL FROM THE COMPUTERS HARD DRIVE.

THEN, JOSHUA REVIEWED THIS INFORMATION WITH HIS WIFE, MELISSA. IN TURN, THEY AGREED TO SPEAK WITH [redacted] ABOUT ANY POSSIBLE INAPPROPRIATE CONTACTS WITH JONATHAN. UPON ASKING [redacted], SHE THEN DISCLOSED AN INCIDENT THAT OCCURRED IN NOVEMBER OF 2002. ESSENTIALLY, JONATHAN PLACED AN UNKNOWN TYPE OF CREAM ON HIS HAND AND RUBBED [redacted]S LOWER STOMACH AND VAGINAL AREA, SKIN TO SKIN. IN ADDITION, JONATHAN HAS PINCHED [redacted]S BUTTOCKS AND KISSED HER ON THE MOUTH.

UPON HEARING THIS DISCLOSURE, JOSHUA CONTACTED HIS MOTHER AND HE DISCUSSED THIS INCIDENT WITH HER. APPARENTLY, PRIOR TO THE 07-25-03 CONTACT WITH BROWN, JOSHUA DISCOVERED THAT JOHATHAN WAS COMMITTED TO SAN FRANCISCO GENERAL HOSPITAL ON A "5150" HOLD. IN JOSHUA'S OPINION, SINCE JONATHAN HAD BEEN

NOV [illegible] 2011

14. Distribution
☐ B ☐ C ☐ DA ☐ DE ☐ L ☐ O ☐ SR ☐ V
☐ Investigation ☐ Vice ☐ Narcotics ☐ Juvenile ☐ Coroner
☐ Property Clerk ☐ ACS ☐ Intelligence ☐ R.O. ☐ SHC
☐ Patrol Captain ☐ Complaint Office ☐ Marine Patrol
☐ Other

15. Additional Routing

16. Reporting Deputy (Print)	17. Date/Time Written	18. Disp.
Detective J. Baldwin	10-24-03 / 1545 HRS	CO
19. Approving Supv. (Print)	**20. Supv. No.**	**21. Date** / **22. Page**
Sgt. S. Douglas 42933		10/31/03 / 1 OF 26

FORM B (REV. 1/80)

☐ Continuation

CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT CA0070000

Beat 51

P.O. Box 391, Martinez, CA 94553-0039

☒ Supplemental ☐ HRO ☐ Arrest ☐ S.I.

1. DR No.	2. City Code	3. Crime / Classification	4. Detail	5. Reclassification
03-20646	OAK/57	CHILD MOLEST	1. 288 2.	☐

6. Victim Name (L,F,M)	7. Date Orig. Report	8. Employee No.
[redacted]	07-25-03	54108

9. Address / Location of Occurrence	10. Suspect's Name (L,F,M)
200 HONEY LN, OAKLEY	KENDRICK, JONATHAN DAVID

11. Property Description:
Impounded, Recovered, Found, Lost, Stolen - Item Number, Article, Quantity, Brand/Make/Manufacturer's Model Number, Serial Number, Miscellaneous Description, Location Where Taken, Value, Include Total Loss - LIST IN FOLLOWING ORDER: A) Currency, Notes; B) Jewelry; C) Clothing, Furs; D) Vehicles; E) Office Equipment; F) Radio, TVs, etc.; G) Firearms; H) Household Goods; I) Misc.

12. Recovered Property $: 0

13. Narrative / Statements

HIS ACTIONS IN THIS CASE AS WELL AS HOW HE OBTAINED THIS INFORMATION. JOSHUA AGREED TO MEET WITH ME AT A LATER DATE.

FREMONT P.D. REPORT: (PAST SEXUAL ASSAULT CASE)

BASED ON THE INFORMATION THAT JOSHUA HAD PROVIDED ME, I CONTACTED THE FREMONT POLICE DEPARTMENT. THEIR RECORDS BUREAU VERIFIED THAT THERE WAS A REPORT MADE IN 1994 IN WHICH JONATHAN WAS LISTED AS A SUSPECT IN A CHILD MOLEST. IT APPEARS THAT HE WAS CONVICTED ON THIS MATTER, BUT THE FINAL CHARGES WERE SEXUAL BATTERY. I REQUESTED AND RECEIVED THIS REPORT FROM FREMONT P.D.

IN SUMMARY, JONATHAN FONDLED THE BREASTS AND PELVIC / VAGINAL AREA OF HIS STEPDAUGHTER FROM A PREVIOUS MARRIAGE. BOTH THE VICTIM AND HER BIOLOGICAL MOTHER SAID JONATHAN ADMITTED TO THIS TOUCHING. HOWEVER, UPON QUESTIONING BY POLICE, HE DID NOT ADMIT TO THE TOUCHING OF HER VAGINAL AREA. IT APPEARS THAT JONATHAN WAS CONVICTED FOR A SEXUAL BATTERY AND HE RECEIVED A THREE-YEAR PROBATION ENDING IN JULY OF 1997. REFER TO THIS REPORT FOR SPECIFICS.

INTERVIEW NARRATIVE: MANUAL INGLESIAS (LEAD)

I HAVE ATTEMPTED ON SEVERAL OCCASSIONS TO CONTACT MANUAL TO DISCUSS HIS ROLE IN THE JEHOVAH WITNESS RELIGION AS WELL AS WHAT INFORMATION HE COULD PROVIDE ME REGARDING THIS CASE. I HAVE LEFT SEVERAL VOICE MESSAGES AT HIS HOME WITH NEGATIVE RESULTS.

INTERVIEW NARRATIVE: JIM DOMINGAS (LEAD)

AFTER SEVERAL ATTEMPTS TO CONTACT BOTH INGLESIAS AND JIM DOMINGAS, I WAS FINALLY ABLE TO REACH JIM. I EXPLAINED TO JIM THAT I WAS INVESTIGATING ALLEGATIONS OF INAPPROPRIATE CONDUCT BY JONATHAN. FURTHERMORE, I WAS UNDER THE IMPRESSION THAT HE AND MANUAL HAD MET WITH HIM WHILE HE WAS HOSPTIALIZED IN MARTINEZ. DURING THIS VISIT, I AM TOLD JONATHAN ADMITTED TO THESE INAPPROPRIATE ACTS.

JIM TOLD ME THAT BOTH HE AND MANUAL WENT TO VISIT JONATHAN TO CONDUCT A "PENITENTIAL" CONVERSATION THAT WAS TO BE HELD IN CONFIDENCE. IN TURN, THE CONTENTS OF THIS CONVERSATION WAS EXEMPT FROM THE MANDATORY REPORTING PROTOCAL SET FORTH BY THE CALIF. PENAL CODE. AS A RESULT, JIM SAID HE, NOR MANUAL, WOULD NOT SPEAK TO ME REGARDING THIS CONVERSATION AND THAT I SHOULD

14. Distribution
☐ S ☐ C ☐ DA ☐ DE ☐ L ☐ O ☐ SR ☐ V
☐ Investigation ☐ Vice ☐ Narcotics ☐ Juvenile ☐ Coroner
☐ Property Clerk ☐ ACS ☐ Intelligence ☐ R.O. ☐ SHC
☐ Patrol Captain ☐ Complaint Office ☐ Marine Patrol
☐ Other

15. Additional Routing

16. Reporting Deputy (Print)	17. Date/Time Written	18. Disp.
Detective J. Baldwin	10-24-03 / 1545 HRS	CO
19. Approving Supv. (Print)	**20. Supv. No.**	**21. Date**

22. Page: 8 OF 26

FORM 8 (REV. 1/89)

☐ Continuation

CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT CA0070000

Beat 51

P.O. Box 391, Martinez, CA 94553-0039

☒ Supplemental ☐ HRO ☐ Arrest ☐ S.I.

1. DR No.	2. City Code	3. Crime / Classification	4. Detail	5. Racially-Motivation
03-20646	OAK/57	CHILD MOLEST	1. 288 2.	☐

6. Victim Name (L,F,M)	7. Date Orig. Report	8. Employee No.
[redacted]	07-25-03	54108

9. Address / Location of Occurrence	10. Suspect's Name (L,F,M)
200 HONEY LN, OAKLEY	KENDRICK, JONATHAN DAVID

11. Property Description:
Impounded, Recovered, Found, Lost, Stolen - Item Number, Article, Quantity, Brand/Make/Manufacturer's Model Number, Serial Number, Miscellaneous Description, Location Where Taken, Value, Include Total Loss - LIST IN FOLLOWING ORDER: A) Currency, Notes; B) Jewelry; C) Clothing, Furs; D) Vehicles; E) Office Equipment; F) Radio, TVs, etc.; G) Firearms; H) Household Goods; I) Misc.

12. Recovered Property $: 0

13. Narrative / Statements

DIRECT MY CONVERSATIONS TO HIS ATTORNEY ON THIS MATTER. I ENDED MY CONVERSATION WITH HIM.

INTERVIEW NARRATIVE: LINDA HOOD-KENDRICKS (LEAD)

I CONTACTED LINDA, VIA PHONE CALL, TO SCHEDULE AN INTERVIEW WITH HER REGARDING ANY STATEMENTS / INFORMATION SHE MAY HAVE REGARDING THE ALLEGATIONS. THIS CONVERSATION FOCUSED ON HER DESIRE TO UNDERSTAND HYPOTHETICAL OUTCOMES IF SHE SPOKE WITH ME OR IF SHE DID NOT.

AS THIS CONVERSATION PROGRESSED, I FELT THAT JONATHAN HAD ADMITTED TO LINDA ABOUT HIS INAPPROPRIATE CONDUCT WITH [redacted]. THESE FEELINGS STEM FROM THE FACT THAT LINDA CONTINUED TO EXPRESS HER CONCERNS THAT BY SPEAKING WITH ME AND /OR DISCLOSING THE INFORMATION SHE POSSESSED WOULD SURELY LEAD TO JONATHAN'S ARREST. I TOLD LINDA THE DECISION TO SPEAK WITH ME WAS HERS. IN TURN, SHE WANTED TO THINK ABOUT THIS MATTER FURTHER AND RE-CONTACT ME LATER IF SHE CHOSE TO GIVE A STATEMENT.

AS OF THE TIME OF THIS REPORT, I HAVE NOT RECEIVED ANY CONTACT FROM LINDA REGARDING THIS MATTER.

INTERVIEW NARRATIVE: JOSHUA HOOD

ON 10-08-03, I MET WITH JOSHUA AND I CONDUCTED AN INTERVIEW WITH HIM. THIS INTERVIEW WAS AUDIO RECORDED. JOSHUA SAID THE FOLLOWING IN SUMMARY:

I ASKED JOSHUA TO DESCRIBE THE CIRCUMSTANCES THAT LED TO HIS "INVESTIGATION" OF JONATHAN. IN ESSENCE, LINDA AND JONATHAN MARRIED SHORTLY AFTER JOSHUA'S FATHER DIED. BOTH JOSHUA AND HIS BROTHERS WERE "LEARY" OF JONATHAN SINCE THEY DID KNOW MUCH ABOUT HIM.

AS TIME PASSED, JOSHUA SAID HE OBSERVED INCIDENTS WHERE JONATHAN WOULD BECOME INTOXICATED AND VERBALLY ABUSIVE TO LINDA. JOSHUA SAID HE ALSO HEARD OF SOME RUMORS THAT JONATHAN'S EX-WIFE HAD MADE UP "A BUNCH OF LIES" ABOUT HIM. IN ADDITION, JOSHUA HEARD THAT JONATHAN COULD NO LONGER HAVE ANY CONTACT WITH HIS STEPDAUGHTER. JOSHUA SAID HE DID NOT KNOW WHAT THESE LIES ENTAILED NOR LEARNED THE REASON FOR THIS RESTRICTED CONTACT.

14. Distribution
☐ B ☐ C ☐ DA ☐ DE ☐ L ☐ O ☐ SR ☐ V
☐ Investigation ☐ Vice ☐ Narcotics ☐ Juvenile ☐ Coroner
☐ Property Clerk ☐ ACS ☐ Intelligence ☐ R.O. ☐ SHC
☐ Patrol Captain ☐ Complaint Office ☐ Marine Patrol
☐ Other

15. Additional Routing

16. Reporting Deputy (Print)	17. Date/Time Written	18. Disp.
Detective J. Baldwin	10-24-03 / 1545 HRS	CO

19. Approving Supv. (Print)	20. Supv. No.	21. Date	22. Page
			9 OF 26

FORM B (REV. 1/89)

mutual civil restraining orders, including a civil restraining order requested by Mr. Kendrick representing himself. Copies of these documents were obtained by plaintiff's counsel in the course of investigation. (Simons Dec., ¶18; Ex. 16). Mr. Kendrick is certainly guilty of selective lack of knowledge of civil court processes, as he is in selective memory of his conduct prior to the entry of default.

Mr. Kendrick's assertion that it was hard for him "to understand and accept, considering my association with Church Defendants as well as the nature and allegations of the Complaint" that the Church Defendants would not represent him, is similarly misleading -- if not completely false. (Kendrick Dec., ¶8). Mr. Kendrick's associations with the Jehovah's Witnesses have been remarkable primarily for his repeated sexual misconduct. In 1993, he was removed as a Ministerial Servant for the sexual molestation of his stepdaughter. (Simons Dec., ¶16 and Ex. 8). He then engaged in a sexual affair with the wife of an Elder. (Simons Dec., ¶16 and Ex. 13). In 2003, Elders at the Oakley Jehovah's Witnesses Congregation were contacted by the Contra Costa County Sheriff's Department in their investigation of defendant's sexual abuse of his 8 year-old step-granddaughter. (Simons Dec., ¶16 and Ex. 9). Although Mr. Kendrick was convicted of felony sexual abuse of a child for these offenses (Simons Dec., Ex. 1), the Jehovah's Witnesses Elders refused to cooperate with the Sheriff's Department in the investigation. This is hardly the "association" with the Church Defendants that would create the reasonable expectation that Mr. Kendrick would be provided with an attorney by Jehovah's Witnesses for yet another episode of sexual abuse of Jehovah's Witness' children.

III. CALIFORNIA RULE OF COURT 3.110(b) HAS NO APPLICABILITY TO THIS ACTION.

CRC 3.110(b) seeks to enforce the policy of timely prosecution of cases as part of the Trial Court Delay Reduction Act. It is one of multiple standards designed "to compel attorneys and litigants to prepare and resolve all litigation without delay." (California Government Code §68607). However, the purpose of Rule 3.110 is to require a plaintiff to proceed promptly in the prosecution of the action, not to reward delay by a defendant by prohibiting the taking of their default. Plaintiff's delay in service, and the delay in entering the default were both reasonable. Plaintiff did not incur the expense of serving Mr. Kendrick until a confirmed address had been obtained. The Court was advised, and no Order to Show Cause was ever issued. Once the address was obtained, service was promptly made. Plaintiff promptly

☐ Continuation

CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT CA0070000

Beat 51

P.O. Box 391, Martinez, CA 94553-0039

☒ Supplemental ☐ HRO ☐ Arrest ☐ S.I.

1. DR No.	2. City Code	3. Crime / Classification	4. Detail	5. Reclassification
03-20646	OAK/57	CHILD MOLEST	1. 288 2.	☐

6. Victim Name (L,F,M)	7. Date Occ. Report	8. Employee No.
[redacted]	07-25-03	54108

9. Address / Location of Occurrence	10. Suspect's Name (L,F,M)
200 HONEY LN, OAKLEY	KENDRICK, JONATHAN DAVID

11. Property Description:
Impounded, Recovered, Found, Lost, Stolen - Item Number, Article, Quantity, Brand/Make/Manufacturer's Model Number, Serial Number, Miscellaneous Description, Location Where Taken, Value, Include Total Loss - LIST IN FOLLOWING ORDER: A) Currency, Notes; B) Jewelry; C) Clothing, Furs; D) Vehicles; E) Office Equipment; F) Radio, TVs, etc.; G) Firearms; H) Household Goods; I) Misc.

12. Recovered Property $
0

13. Narrative / Statement

JOSHUA TOLD LINDA THAT HE WAS GOING TO DETERMINE IF JONATHAN HAS ANY PRIOR ARRESTS AND / OR A CRIMINAL RECORD. JOSHUA WENT TO FREMONT AND HE TRIED TO ACCESS THIS INFORMATION. THE CLERKS AT THIS LOCATION TOLD HIM THAT THEY COULD NOT DISCLOSE THE CONTENT OF HIS CRIMINAL RECORD TO HIM. YET, THROUGH FURTHER CONVERSATIONS WITH THEM, JOSHUA DETERMINED THAT JONATHAN HAD SOME TYPE OF CRIMINAL RECORD AND THERE WERE SOME SERIOUS CHARGES ON IT IF THEY COULD NOT BE DISCLOSED TO HIM.

AT THAT POINT, JOSHUA TOLD LINDA OF THIS FINDING AND HE TOLD HER THAT HE WAS GOING TO THE OAKLEY POLICE DEPT TO FILE A REPORT. JOSHUA WENT TO THE OAKLEY SUBSTATION AND HE FILED A REPORT ALLEGING THE MOLESTATION OF [redacted] BY JONATHAN.

A SHORT TIME LATER, JONATHAN WAS RELEASED FROM THE HOSPITAL AND HE RETURNED TO LINDA'S HOME. AT THAT POINT, HE KICKED JOEL OUT OF THE HOUSE. THEN, JONATHAN CONTACTED A LAWYER THAT SPECIALIZED IN SEXUAL ASSAULT CASES. DURING THIS MEETING WITH THE ATTORNEY, JONATHAN ADMITTED TO MOLESTING [redacted] TO BOTH LINDA AND THE ATTORNEY.

I ASKED JOSHUA IF HE, LINDA OR JONATHAN HAVE EVER DISCLOSED THIS ADMISSION OR ANY OTHER INFORMATION TO ANYONE ELSE. JOSHUA SAID, PRIOR TO FILING THE INITIAL POLICE REPORT, HE CONTACTED THE ELDERS OF LINDA'S AND JONATHAN'S CHURCH.

IN ESSENCE, THESE ELDERS CAME TO JOSHUA'S HOUSE AND HE TOLD THEM OF [redacted] DISCLOSURES. IN TURN, WHEN JONATHAN WAS ADMITTED TO THE MENTAL HEALTH WARD, THESE ELDERS VISITED HIM. AGAIN, JONATHAN ADMITTED TO THESE ELDERS THAT HE HAD MOLESTED [redacted]

JOSHUA SAID HE SPOKE TO THE WIFE OF ONE OF THE ELDERS AND SHE TOLD HIM THAT THE ELDERS WOULD RESOLVE THIS PROBLEM. FURTHERMORE, SHE TOLD JOSHUA TO "GO ABOUT YOUR LIFE." JOSHUA SAID HE DID NOT AGREE WITH THIS COURSE OF ACTION. THIS WOMAN TOLD JOSHUA THAT JONTHAN HAD ADMITTED HIS "WRONG-DOINGS". IN TURN, HE SHOULD BE MORE FORGIVING TOWARDS HIM.

JOSHUA THEN TOLD LINDA THAT SHE WAS GOING TO HAVE TO SPEAK WITH THE POLICE. LINDA SAID SHE WOULD GIVE A STATEMENT. HOWEVER, AS TIME WENT ON, LINDA BECAME MORE RESISTANT IN CONTACTING THE POLICE. EVENTUALLY, JOSHUA FELT THAT LINDA WAS NOT GOING TO GIVE A STATEMENT REGARDING THIS MATTER.

14. Distribution
☐ B ☐ C ☐ DA ☐ DE ☐ L ☐ O ☐ SR ☐ V
☐ Investigation ☐ Vice ☐ Narcotics ☐ Juvenile ☐ Coroner
☐ Property Clerk ☐ ACS ☐ Intelligence ☐ R.O. ☐ SHC
☐ Patrol Captain ☐ Complaint Office ☐ Marine Patrol
☐ Other

15. Additional Routing

16. Reporting Deputy (Print)	17. Date/Time Written	18. Dispo.
Detective J. Baldwin	10-24-03 / 1545 HRS	CO

19. Approving Supv. (Print)	20. Supv. No.	21. Date	22. Page
			14 OF 26

FORM B (REV. 1/89)

Printed on Recycled Paper
20% Post Consumer Waste

10

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	No. HG11558324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22 NOTICE OF TAKING DEPOSITION PURSUANT TO SUBPOENA– VIDEOTAPE FOR USE AT TRIAL

TO ALL PARTIES TO THE ABOVE-ENTITLED ACTION AND THE ATTORNEYS OF RECORD FOR SAME:

PLEASE TAKE NOTICE that on October 25, 2011, at 10:00 a.m. in the law offices of Furtado, Jaspovice & Simons, located at 22274 Main Street, Hayward, California, plaintiff will take the deposition of JONATHAN KENDRICK, 200 Honey Lane, Oakley, CA 94561; upon oral examination before a Certified Shorthand Reporter pursuant to Subpoena for Personal Appearance, a copy of which is attached hereto and served herewith. Said deposition will continue from day to day until completed.

Pursuant to C.C.P. §2025220(1)(1)-(6); 2025.230; 2025.240(c), this deposition will be recorded by audio and video tape. Plaintiff hereby gives notice pursuant to C.C.P. §2025.620(d) of her intention to offer said videotaped deposition into evidence at trial.

All parties or attorneys for parties on whom this deposition notice has been served are listed on the attached proof of service.

///

///

Dated: September 15, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

SUBP-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Richard J. Simons, Esq. 072676 Furtado, Jaspovice & Simons 22274 Main Street Hayward, CA 94541 TELEPHONE NO.: (510) 582-1080 FAX NO. (Optional): (510) 582-8254 E-MAIL ADDRESS (Optional): Rick@fjslaw.com ATTORNEY FOR (Name): Plaintiff JANE DOE	
SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME:	
PLAINTIFF/PETITIONER: JANE DOE DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NY	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE	CASE NUMBER: HG11558324

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of deponent, if known):*
JONATHAN KENDRICK, 200 Honey Lane, Oakley, CA 94561

1. **YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:**
   Date: 10/25/11 Time: 10:00 a.m. Address: 22274 Main Street Hayward, CA 94541

   a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.230.)
   b. ☒ This deponent will be recorded stenographically ☐ through the instant visual display of testimony and by ☐ audiotape ☒ videotape.
   c. ☒ This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

2. ☐ If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

3. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF $500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: September 9, 2011

RICHARD J. SIMONS ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney at Law
(TITLE)

(Proof of service on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-015 [Rev. January 1, 2009]
Martin Dean's ESSENTIAL FORMS™

DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

Code of Civil Procedure §§ 2020.310, 2025.220, 2025.230, 2025.250, 2025.620
Government Code, § 68097.1
www.courtinfo.ca.gov

JANE DOE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NO.	FOR COURT USE ONLY
FURTADO, JASPOVICE & SIMONS 22274 MAIN STREET HAYWARD CA 94541	510.582-1080	
	Ref. No. or File No.	
insert name of court and name of judicial district and branch court, if any.		
SHORT TITLE OF CASE: JANE DOE vs. THE WATCHTOWER BIBLE		

	DATE:	TIME:	DEPT./DIV.	CASE NUMBER:
082443	10/25/11	10:		HG11558324

PROOF OF SERVICE OF CIVIL SUBPOENA

1. I SERVED THIS:

DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

a. PERSON SERVED: **JONATHAN KENDRICK**

b. ADDRESS WHERE SERVED: **200 HONEY LANE**
OAKLEY CA 94561

c. DATE OF DELIVERY: **10/08/11**

d. TIME OF DELIVERY: **08:00 PM**

e. WITNESS FEES WERE OFFERED OR DEMANDED & PAID: $

IF THE ABOVE NOT FILLED IN, FEES WERE NOT DEMANDED OR PAID.

f. FEE FOR SERVICE: $ 78.50

2. PERSON SERVING: VALERIE L. PECKHAM

Attorney Service

P.O. Box 4910 (94596-0910)
2158 North Main Street, Suite E
Walnut Creek, CA 94596-3708

Tel. (925) 945-1922 • Fax (925) 945-1771

Registered California process server ☐
(1) ☐ Employee ☑ Independent contractor
(2) Registration No. 697
(3) County: CONTRA COSTA
(4) Expiration Date:

☑ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: OCT 10 2011

► _____
SIGNATURE

Printed on Recycled Paper



Wednesday, October 19, 2011

Richard J. Simons, Esq.

Furtado. Jaspovice & Simons

24405 Amador Street

Hayward. CA 94544

Sir,

As per the message I left at your offices on 18 Oct. 2011 at 10:00AM:

I have received the summons for deposition scheduled for 25 Oct. 2011. Unfortunately I have been unable to retain counsel as of this date. As soon as possible I will contact you and we can arrange another date for this deposition.

Thank you for your cooperation.

Respectfully,

Jonathan Kendrick

925-584-1008

12

MANUEL FURTADO (1925-1999)
MARTIN L. JASPOVICE
RICK SIMONS

OF COUNSEL:
BILL LOCKYER

FURTADO
JASPOVICE
& SIMONS
A LAW CORPORATION

22274 MAIN STREET
HAYWARD, CALIFORNIA 94541
TELEPHONE: (510) 582-1080
FACSIMILE: (510) 582-8254

October 20, 2011

HAND-DELIVERED

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561

Re: Jane Doe v. The Watchtower, et al.

Dear Mr. Kendrick:

All counsel in the above-entitled case have been made aware of your request to reschedule your appearance at your deposition on Tuesday October 25, 2011. You have been served with a Subpoena for that appearance. You may be excused from this appearance only by agreement to reschedule the date and time with the attorneys in the case.

I am willing to delay the deposition until Wednesday, November 9, 2011. at 10:00 a.m., in my office at 22274 Main Street, Hayward, upon the condition you agree to reschedule your appearance to that time and place without further Subpoena. Please notify my office of your acceptance of that schedule change immediately, in writing, by fax to 510/582-8254.

I will notify all other counsel of the new time and date.

Very truly yours,

FURTADO, JASPOVICE & SIMONS
A Law Corporation

RICK SIMONS

RJS:etl

cc: James McCabe, Esq. (via fax and mail)
Robert J. Schnack, Esq. (via fax and mail)

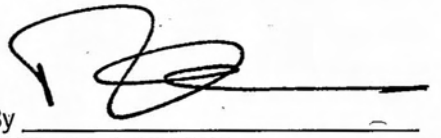
submitted the Request for Default, after allowing Mr. Kendrick an extra week because, knowing that Mr. Kendrick had already been in touch with at least two attorneys, plaintiff's counsel sought to confirm that no extension would be requested and no answer belatedly filed.

CONCLUSION

Mr. Kendrick's false and misleading showing is not sufficient to establish excusable neglect. His showing is instead one of flimsy excuses and a false claim of ignorance of the law. The Court should deny his Motion for Relief.

Dated: December 3, 2011

FURTADO, JASPOVICE & SIMONS
A Law Corporation



By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

13

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

CLAUDIA NANCY FRANCIS

Monday, October 24, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

A. That's correct. 10:21:59

Q. All right. 10:22:00

And in this letter it states that 10:22:01

"Miss Francis admitted to committing adultry with 10:22:05

Jonathan Kendrick in 1998." Is that true? 10:22:09

A. I did not have sexual intercourse with 10:22:15

Jonathan Kendrick. 10:22:17

Q. Was there some form of personal 10:22:20

relationship that had a physical, sexual component that 10:22:23

you had with Mr. Kendrick? 10:22:27

A. There was a romantic interlude that did 10:22:29

take place, and there was kissing and fondling. 10:22:31

Q. How was it that you first met 10:22:37

Mr. Kendrick? 10:22:38

A. I met him in like 1991. He was brand new 10:22:40

in the congregation. He had studied. And he got 10:22:45

baptized. And so, it was like a "new member" 10:22:49

(indicating), if you will, even though that's not an 10:22:52

appropriate term. 10:22:55

And my husband became friends with him, he 10:22:58

became very good friends with him. 10:23:00

Q. Was Mr. Kendrick married to 10:23:03

Evelyn Kendrick at the time that you and 10:23:04

Jonathan Kendrick first met? 10:23:06

A. They were newlyweds. 10:23:08

14

North Congregation
c/o Michael Clarke
32852 Bass Lake St
Fremont, CA 94555

Dec 20th 2009

Oakley Congregation
Manuel Iglesias
4060 Brown Rd
Oakley, CA 94561

Re: Jonathan Kendrick

Dear Brothers,

Larry Lamerdin and I met with Candace Conti on 12/13/09 regarding Jonathan Kendrick. Candace is the daughter of Neal and Cathy Conti who are now divorced. The father, Neal is remarried and attends meetings in the Niles Congregation in Fremont California. He is serving as a ministerial servant. The mother, Cathy attends meeting in the North Congregation in Downy California. Candace claims that Jonathan Kendrick sexually abused her from 1992-1993 when she was 9-11yrs old. She is now 24 years old

The Conti family and Jonathan Kendrick were close friends and spent quite a bit of time together. Because Cathy was having alcohol and emotional problems, they relied on Jonathan more than they should have. Candace claims that Jonathan Kendrick and her spent time alone together at his home. She claims that he would often drive her home from the meetings with her parent's permission. She claims that there relationship was inappropriate and her parents and congregation elders should have put a stop to it. We totally agreed. To our knowledge, the elders were not aware of this arrangement. She claims that he did unspeakable things to her including having her do things to him. She refused to go into detail other than saying it occurred over a 1-2 year period on many occasions. She remembers him taking her shopping along with 2 other young boys in the North Congregation. She recalls on another occasion him putting his hands under her shirt. She admits that she has blocked out much of the details and doesn't understand why.

Candace was asked if she wanted to 'confront' Jonathan Kendrick about the alleged abuse. She broke down in tears and said that would be too difficult. She asked us twice if we were going to report this to the authorities. We told her that if she wishes to make a report, it is her absolute right to do so.

Her biggest concern seems to be protecting other children from harm. She wanted to know what procedures were in place in the congregations when convicted abusers change congregations. What is to prevent them from 'hiding what they are?' She mentioned that the national list for these convicted abusers has a program that allows victims to list their e-mail address and if the abuser moves, the victim is notified. She wants to know if the Society has such plans to do something similar. We promised her we would ask.

We have made an appointment to talk with her father on 12/16/09. Candace expressed a reluctance to trust the congregation or her father to do the right thing. She feels betrayed and alone. We shared a number of scriptures with her regarding Jehovah's love and concern for her. We feel there is an opportunity to get her back into the congregation.

Candace mentioned that she had lunch last year (2008) with Sister Claudia Francis who had a close friendship with the Conti family and Jonathan Kendrick. Candace asked Sister Francis if she ever suspected that Jonathan was abusing her. Sister Francis revealed to Candace that she had found a receipt where Jonathan Kendrick had taken her boys and Candace shopping for clothes. The receipt was for a black bra. She doesn't know why she kept that receipt but it now makes her suspect wrong doing. We have tried to contact Sister Francis but so far no success.

Another judicial case that has a bearing on this matter involves Claudia Francis. She admitted to committing adultery with Jonathan Kendrick in 1998. We formed a judicial committee in October of 1999 and reproved her. The judicial committee notified the Oakley congregation since Jonathan Kendrick had moved there in Jan 1998. Brother Eric Smothers was our contact. We have no other notes regarding your judicial case with Jonathan Kendrick. You mentioned on the phone this week that you couldn't find any letters from us regarding this matter nor had any judicial committee met with him on this matter. This is quite disturbing. If no judicial committee was formed, Jonathan Kendrick should be confronted with this charge. It would be a serious matter if he has kept this secret all this time.

12/16/09
We met with Candace's father, Neal Conti on 12/16/09 to discuss the matter. He offered very little help or insight. He is remarried and serving as a ministerial servant in the Niles congregation of Fremont. He admits that the family was very troubled back then and that Candace was asked to shoulder too big of a load for a young girl when her parents divorced. We asked if he ever suspected that Candace was being abused and he said no. We encouraged him to reach out to his daughter and provide support. He said he would try.

We trust that these notes may help you when you meet with Jonathan Kendrick. We have plans to talk with Candace again after we hear from your congregation and the branch.

Your brothers

Michael Clarke

Larry Lamerdin

15

SUM-100

SUMMONS
(CITACIÓN JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
THE WATCHTOWER BIBLE AND TRACT SOCIETY OF OF NEW YOR, INC., a corporation;
"ADDITIONAL PARTIES ATTACHMENT FORM IS ATTACHED"

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
JANE DOE

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ENDORSED
FILED
ALAMEDA COUNTY
JAN 28 2011
CLERK OF THE SUPERIOR COURT
By A. MENDOLA
Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center *(www.courtinfo.ca.gov/selfhelp)*, your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site *(www.lawhelpcalifornia.org)*, the California Courts Online Self-Help Center *(www.courtinfo.ca.gov/selfhelp)*, or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.
¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), *en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), *en el Centro de Ayuda de las Cortes de California,* (www.sucorte.ca.gov) *o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

CASE NUMBER: *(Número del Caso):* RG11558324

The name and address of the court is:
(El nombre y dirección de la corte es):
Alameda County Superior Court
24405 Amador Street
Hayward, CA 94544

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Richard J. Simons, Esq.
22274 Main Street
Hayward, CA 94541
Furtado, Jaspovice & Simons
(510) 582-1080

DATE: JAN 28 2011 (Fecha)
PAT SWEETEN EXECUTIVE OFFICER/CLERK
Clerk, by A. MENDOLA (Secretario), Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]
Martin Dean's ESSENTIAL FORMS™

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

JANE DOE

SHORT TITLE:	CASE NUMBER:
DOE v. WATCHTOWER	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation;
THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association;
JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity;
KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation;
JONATHAN KENDRICK, an individual;
and ROES 1 to 10,

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]
Martin Dean's ESSENTIAL FORMS™

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons JANE DOE

16

RCD

9980151

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY

DEC 20 2011

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF RICHARD SIMONS IN OPPOSITION TO DEFENDANT KENDRICK'S MOTION TO SET ASIDE DEFAULT

Date: 1/19/2012
Time: 3:00 p.m.
Dept: 22
Reservation No: 1225197

I, Richard J. Simons, hereby declare:

1. That I am an attorney at law licensed to practice before all Courts of the State of California and am the attorney for Plaintiff in the above-entitled action.

2. That prior to the filing of this action, I performed investigation into the allegations of Plaintiff to obtain corroborative evidence. In the course of that pre-litigation investigation, I obtained a copy of the Contra Costa Superior Court file in action #138568-1, People v. Jonathan Kendrick. Included in that criminal record of Defendant Kendrick was a Felony Order of Probation, in which the terms and conditions of the sentence imposed on Mr. Kendrick for his conviction on felony violations of Penal Code section 288(a) were ordered. These terms included the order that he must register as a sex offender pursuant to Penal Code section 290. A true and correct copy of the document obtained from the court record is attached as Exhibit 1 to this Declaration.

DV-100 Request for Order

Clerk stamps below when form is filed:

FILED

2003 AUG -4 A 8:

K. TORRE, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.

BY: C. Aguenzoni, Deputy Clerk

Court name and street address:

Superior Court of California, County of

SUPERIOR COURT - MARTINEZ
FAMILY LAW BUILDING
751 PINE ST. P.O. BOX 911
MARTINEZ, CA 94553

Case Number:
D 03-03802

1 Your name (person asking for protection):
JONATHAN D KENDRICK

Your address *(skip this if you have a lawyer): (If you want your address to be private, give a mailing address instead):*
200 HOVEY LANE

City: OAKLEY State: Ca Zip: 94561

Your phone # *(optional):* (925) 679-0411

Your lawyer *(if you have one): (Name, address, phone #, and State Bar #):*

2 Name of person you want protection from (restrained person):
Joshua Hood

Describe that person: Sex: ☑ M ☐ F Ht.: 5'9 Wt.: 180

Race: CAU. Hair Color: BROWN

Eye Color: HZL Age: 32 Date of Birth: 12-2-70

3 Besides you, who needs protection? *(Family or household members)*

Full Name	Age	Lives with you?	How are they related to you?
LINDA A. Hood-KENDRICK	56	☑ Yes ☐ No	Spouse
		☐ Yes ☐ No	
		☐ Yes ☐ No	
		☐ Yes ☐ No	

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Item 3 — Protected People" at the top.*

4 What is your relationship to the person in **2**? *(Check all that apply)*

a. ☐ We are now married.
b. ☐ We used to be married.
c. ☐ We live together.
d. ☐ We used to live together.
e. ☒ We are relatives, in-laws, or related by adoption *(specify relationship):* Son of (3)
f. ☐ We are dating or used to date.
g. ☐ We are engaged to be married or were engaged to be married.
h. ☐ We are the parents together of a child or children under 18:
   Child's Name: _____ Date of Birth: _____
   Child's Name: _____ Date of Birth: _____
   Child's Name: _____ Date of Birth: _____
   ☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Item 4h" at the top.*
i. ☐ We have signed a Voluntary Declaration of Paternity for our child or children. *Attach a copy if you have one.*

This is not a Court Order.

Your name: _____

Case Number: D 03-03802

5 Other Court Cases

a. Have you and the person in ❷ been involved in another court case? ☒ No ☐ Yes
If yes, where? County: _____ State: _____
What are the case numbers? *(If you know)* _____
What kind of case? *(Check all that apply)*
☐ Divorce/Dissolution ☐ Parentage/Paternity ☐ Legal Separation ☐ Domestic Violence ☐ Criminal
☐ Juvenile ☐ Child Support ☐ Nullity ☐ Civil Harassment
☐ Other *(specify):* _____

b. Are there any domestic violence restraining/protective orders now (criminal, juvenile, family)?
☒ No ☐ Yes *If yes, attach a copy if you have one.*

What orders do you want? Check the boxes that apply to your case ☑.

6 ☒ Personal Conduct Orders

I ask the court to order the person in ❷ not to do the following things to me or any of the people listed in ❸:

a. ☒ Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements

b. ☒ Contact (either directly or indirectly), or telephone, or send messages or mail or e-mail

7 ☒ Stay-Away Order

I ask the court to order the person in ❷ to stay at least 100 yards away from: *(Check all that apply)*

a. ☒ Me
b. ☒ The people listed in ❸
c. ☒ My home
d. ☒ My job or workplace
e. ☐ The children's school or child care
f. ☒ My car
g. ☐ Other *(specify):* _____

If the person listed in ❷ is ordered to stay away from all the places listed above, will he or she still be able to get to his or her home, school, job, church or temple? ☒ Yes ☐ No *(If no, explain):* _____

8 ☐ Move-Out Order

I ask the court to order the person in ❷ to move out from and not return to *(address):*

_____

I have the right to live at the above address because *(explain):* _____

9 ☐ Child Custody, Visitation, and Child Support

I ask the court to order child custody, visitation, and/or child support. *You must fill out and attach Form DV-105.*

This is not a Court Order.

Your name: _____

Case Number: D 03-03802

What orders do you want? Check the boxes that apply to your case ☑.

10 ☐ **Record Unlawful Communications**
I ask for the right to record communications made to me by the person in ❷ that violate the judge's orders.

11 ☐ **Property Control**
I ask the court to give *only* me temporary use, possession, and control of the property we own or are buying, listed here: _____

12 ☐ **Debt Payment**
I ask the court to order the person in ❷ to make these payments while the order is in effect:
☐ *Check here if you need more space. Attach Form MC-020 or a sheet of paper and write "DV-100, Item 12 — Debt Payment" at the top.*

Pay to: _____ For: _____ Amount: $_____ Due date: _____
Pay to: _____ For: _____ Amount: $_____ Due date: _____
Pay to: _____ For: _____ Amount: $_____ Due date: _____

13 ☐ **Property Restraint**
I am married to the person in ❷. I ask the judge to order that he or she not borrow against, sell, hide, or get rid of or destroy any possessions or property, except in the usual course of business or for necessities of life. I also ask the judge to order the restrained person to notify me of any new or big expenses and to explain them to the court.

14 ☐ **Attorney Fees and Costs**
I ask that the person in ❷ pay some or all of my attorney fees and costs.
You must complete and file Form FL-150, Income and Expense Declaration.

15 ☐ **Payments for Costs and Services**
I ask that the person in ❷ pay the following:
You can ask for lost earnings or your costs for services caused directly by the person in ❷ (damaged property, medical care, counseling, temporary housing, etc.). You must bring proof of these expenses to your hearing.

Pay to: _____ For: _____ Amount: $_____
Pay to: _____ For: _____ Amount: $_____
Pay to: _____ For: _____ Amount: $_____

16 ☐ **Batterer Intervention Program**
I ask the court to order the person listed in ❷ to go to a 52-week batterer intervention program and show proof of completion to the court.

17 ☑ **No Fee to Notify Restrained Person**
I ask that law enforcement notify the person in ❷ about the orders for free.

This is not a Court Order.

Your name: _____ Case Number: D 03-03802

What orders do you want? Check the boxes that apply to your case ☑.

18 ☐ **More Time for Notice**
I need extra time to notify the person in ❷ about these papers. Because of the facts explained on this form, I want the papers served up to ____ days before the date of the hearing. *For help, read DV-210.*
If necessary, add additional facts: _____

19 ☐ **Other Orders**
What other orders are you asking for? _____

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Item 19 — Other Orders" at the top.*

20 ☑ **Turn in Guns or Other Firearms**
I ask the judge to order the person in ❷ to sell or turn in any guns or firearms that he or she has or controls. *Describe any use or threatened use of firearms in ❷.*

21 **Describe the most recent abuse.**

a. Date of most recent abuse: 7-31-03
b. Who was there? JONATHAN KENDRICK, LINDA KENDRICK- CHRIS Felsberg
c. What did the person in ❷ do or say that made you afraid? THREATENED VIOLENCE TO PROPERTY - CHALLENGED PHYSICAL CONFRONTATION STANDING IN FRONT OF OUR HOME SCREAMING OBSCENITIES
d. Describe any use or threatened use of guns or other weapons: _____
e. Describe any injuries: _____
f. Did the police come? ☐ No ☒ Yes
If yes, did they give you an Emergency Protective Order? ☐ Yes ☒ No ☐ I don't know
Attach a copy if you have one.
g. Describe previous abuse: ~~THREATENED~~ THREATENED VIOLENCE - VERBAL ABUSE, STA·

☐ *Check here if you need more space. Use Form DV-101 or MC-020. Or attach a sheet of paper and write "DV-100, Item 21 — Abuse" at the top.*

22 I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: 8-1-03

JONATHAN KENDRICK
Type or print your name

➤ Jonathan Kendrick
Sign your name

This is not a Court Order.

10:40

DV-110 Temporary Restraining Order and Notice of Hearing

Clerk stamps below when form is filed.

FILED

2003 DEC -4 A 8:

K. TOMPKINS, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA

BY: _____, Deputy Clerk

1 Protected person's name:
JONATHAN D KENDRICK

Protected person's address *(skip this if you have a lawyer): (If you want your address to be private, give a mailing address instead):*
200 HONEY LANE

City: OAKLEY State: CA Zip: 94561

Phone # (optional): (925) 679-0411

Protected person's lawyer *(if any): (Name, address, phone #, and State Bar #):*

Court name and street address:

Superior Court of California, County of
SUPERIOR COURT-MARTINEZ
FAMILY LAW BUILDING
751 PINE ST.P.O.BOX 911
MARTINEZ,CA.94553

SEE ITEM #4 BELOW FOR HEARING LOCATION

2 Restrained person's name:
Joshua Hood

Description of that person: Sex: ☑ M ☐ F Ht.: 5'9
Wt.: 180 Race: CAU Hair Color: BROWN
Eye Color: HZL Age: 32 Date of Birth: 12-2-70

Case Number:
D-03-03802

3 List the full names of all family or household members protected by this order: LINDA A. HOOD-KENDRICK

4 Court Hearing Date *(Fecha de la Audiencia)*

Court will fill in box below.

OB

Hearing Date → Date: 2/22/03 Time: 1:30PM Dept.: PLTS Rm.: _____

Name and address of court if different from above:
Superior Court - Pittsburg
45 Civic Ave.
Pittsburg, CA 94565

To the person in 2: At the hearing, the judge can make restraining orders that last for up to 3 years. The judge can also make other orders about money, children, and property. At the hearing, you can tell the judge if you do not want the orders against you. Even if you do not attend the hearing, you ***must*** obey the orders.

Para la persona nombrada en 2: En esta audiencia el juez puede hacer que la orden de restricción sea válida hasta un máximo de 3 años. El juez puede también hacer otras órdenes acerca de dinero, niños y propiedad. Si Usted se opone a estas órdenes, vaya a la audiencia y dígaselo al juez. Aunque no vaya a la audiencia, tiene que obedecer estas órdenes.

5 Temporary Orders *(Ordenes Temporales)*

Any orders made in this form end on the date and time of the court hearing in 4, unless a judge extends them. Read this form carefully. All checked boxes ☑ are court orders.

Todas las órdenes hechas en esta formulario terminarán en la fecha y hora de la audiencia en 4, al menos que un juez las extienda. Lea este formulario con cuidado. Todas las casillas marcadas ☑ son órdenes de la corte.

This is a Court Order.

Protected person's name: JONATHAN KENDRICK

Case Number: D 03-03802

Checked boxes ☑ are court orders.

6 ☑ **Personal Conduct Orders**

The person in ❷ must *not* do the following things to the protected people listed in ❶ and ❸:

a. ☑ Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements

b. ☑ Contact (either directly or indirectly), or telephone, or send messages or mail or e-mail

(1) ☐ Except for brief and peaceful contact as required for court-ordered visitation of children unless a criminal protective order says otherwise

(2) ☐ Except for peaceful written contact through a process server or another person to serve legal papers

7 ☑ **Stay-Away Order**

The person in ❷ must stay at least 100 yards away from:

a. ☑ The person listed in ❶

b. ☑ The people listed in ❸

c. ☑ Home ☑ Job ☑ Car of person in ❶

d. ☐ The children's school or child care

e. ☐ Other *(specify)*: _____

8 ☐ **Move-Out Order**

The person in ❷ must take only personal clothing and belongings needed until the hearing and move out immediately from *(address)*: _____

9 ☐ **Child Custody and Visitation Order**

a. ☐ You and the other parent must make an appointment for court mediation *(address and phone #)*:

b. ☐ Follow the orders listed in Form DV-140, which is attached.

10 ☑ **No Guns or Other Firearms**

The person in ❷ cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get a gun or firearm.

11 ☐ **Turn In or Sell Guns or Firearms**

The person in ❷:

- Must sell to a licensed gun dealer or turn in to police any guns or firearms that he or she has or controls. This must be done within 48 hours of receiving this order. But if the person in ❷ was at a hearing for this order, it must be done within 24 hours of the hearing.
- Must bring a receipt to the court within 72 hours of receiving this order, to prove that guns have been turned in or sold.

12 ☐ **Property Control**

Until the hearing, ***only*** the person in ❶ can use, control, and possess the following property and things:

This is a Court Order.

Protected person's name: JONATHAN KENDRICK

Case Number: D 03-03802

Checked boxes ☑ are court orders.

13 ☐ **Property Restraint**
If the people in ❶ and ❷ are married to each other, they must not transfer, borrow against, sell, hide, or get rid of or destroy any property, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court.

14 ☐ **Record Unlawful Communications**
The person in ❶ can record communications made by the person in ❷ that violate the judge's orders.

15 ☑ **No Fee to Notify Restrained Person**
If local law enforcement can serve this order, they will do it for free.

16 ☐ **Other Orders** *(specify):* _____

17 If the judge makes a restraining order at the hearing, which has the same orders as in this form, the person in ❷ will get a copy of that order by mail at his or her last known address. *(Write restrained person's address here):*
3902 HARVEST CIRCLE OAKLEY CA 94561
If this address is not correct, or to know if the orders were made permanent, contact the court.

18 ☒ **Time for Service**

Ⓐ To: Person Asking for Order	Ⓑ To: Person Served With Order
Someone 18 or over—**not you or the other protected people**—must personally "serve" a copy of this order to the restrained person at least 10 days before the hearing.	If you want to respond in writing, someone 18 or over—**not you**—must "serve" Form DV-120 on the person in ❶, then file it with the court at least 5 days before the hearing.

Contra Costa County Superior Court

Contra Costa Superior Court

For help with Service or Answering, read Form DV-210 or DV-540.

Date: 8-1-03

➤ _____
Judge (or Judicial Officer)

Certificate of Compliance With VAWA

This temporary protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in all jurisdictions throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

This is a Court Order.

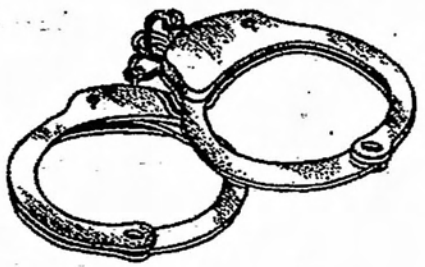
Protected person's name: _____

Case Number: D 03-03802

Warnings and Notices to the Restrained Person in ❷

19 If you do not obey this order, you can be arrested and charged with a crime.

- It is a felony to take or hide a child against this order. You can go to prison and/or pay a fine.
- If you travel to another state or to tribal lands, or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.
- If you do not obey this order, you can go to prison and/or pay a fine.



20 You Cannot Have Guns or Firearms



You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get a gun while the order is in effect. If you do, you can go to jail and pay a $1,000 fine. If the orders are approved at the hearing listed on page 1, the court will order you to sell to a gun dealer or turn in to police any guns or firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. If the orders are approved at the hearing, federal law says you cannot have guns or ammunition.

21 After You Have Been Served With a Restraining Order

- Obey all the orders.
- If you want to respond, fill out Form DV-120. Take it to the court clerk with the forms listed in Item ㉒.
- File DV-120 and have all papers served on the protected person by the date listed in Item ⑱ of this form.
- At the hearing, tell the judge if you agree to or disagree with the orders requested.
- Even if you do not attend the hearing, the judge can make the restraining orders last for 3 years.

22 Child Custody, Visitation, and Support

- Child Custody and Visitation: If you do not go to the hearing, the judge can make custody and visitation orders for your children without hearing your side.
- Child Support: The judge can order child support based on the income of both parents. The judge can also have that support taken directly from your paycheck. Child support can be a lot of money, and usually you have to pay until the child is 18. File and serve a Financial Statement (FL-155) or an Income and Expense Declaration (FL-150) so the judge will have information about your finances. Otherwise, the court will make support orders without hearing your side.

This is a Court Order.

Protected person's name: _____

Case Number: D 03-03802

Instructions for Law Enforcement

23 Start Date and End Date of Orders
The start date is the date next to the judge's signature on page 3. The orders end on the hearing date on page 1 or the hearing date on Form DV-125, if attached.

24 Arrest Required If Order Is Violated
If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

25 Notice/Proof of Service
- Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Fam. Code, § 6383.)

  Consider the restrained person "served" (noticed) if:
  - The officer sees a copy of the Proof of Service, or confirms that the Proof of Service is on file ***or***
  - The restrained person was at the restraining order hearing, or was informed of the order by an officer (Fam. Code, § 6383, Pen. Code, § 836(c)(2))

26 If the Protected Person Contacts the Restrained Person
Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

27 Child Custody and Visitation
- Custody and visitation orders are on Form DV-140, Items ❸ and ❹. They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.
- **Forms DV-100 and DV-105 are not orders. Do not enforce them.**

28 Enforcing the Restraining Order in California
Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, or on the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

29 Conflicting Orders
If a criminal restraining order (CR-160) conflicts with a civil restraining order (DV-110 or DV-130), enforce the criminal order. Even if the criminal order is older, the officer must still enforce it over the civil order. (Pen. Code, § 136.2(h).) Any nonconflicting terms of the civil restraining order remain in full force.

Clerk's Certificate
[seal]

I certify that this Temporary Restraining Order is a true and correct copy of the original on file in the court. Date: _____

Clerk, by _____, Deputy

This is a Court Order.

3. At the time of filing of this action, I checked on the Department of Justice's Sex Offender Registry website to obtain Defendant Kendrick's address. Although Mr. Kendrick is listed and the information contained his name and photograph, no address is listed. A printout of the DOJ pages on Mr. Kendrick is attached as Exhibit 2 to this Declaration.

4. Because I did not have a confirmed address for Mr. Kendrick, I did not serve him immediately after the filing of this action. The Court was advised of the delayed service on Mr. Kendrick prior to the time of the Initial case Management Conference in this case. The Complaint was served on the institutional defendants, and discovery served upon them. On June 14, 2011, I received defendant Watchtower Bible and Tract Society of New York's Responses to Plaintiff's Form Interrogatories. Response 12.2 stated that defense counsel had interviewed Kendrick on April 6, 2011, but that contact information was unknown to that Defendant. A true and correct copy of the excerpt of Answers to Form Interrogatory 12.2 is attached as Exhibit 3 to this Declaration.

5. On June 20, 2011, I sent a Meet and Confer Letter to Mr. McCabe, counsel for the institutional defendants, requesting a further response to answer 12.2 that would include all contact information for Mr. Kendrick. A true and correct copy of the correspondence of June 20 is attached as Exhibit 4 to this Declaration.

6. On June 29, 2011, James McCabe responded in writing with Mr. Kendrick's current address and home telephone number. A true and correct copy of his correspondence is attached as Exhibit 5 to this Declaration.

7. Defendant Kendrick was then promptly served by personal service on July 16, 2011. A courtesy copy of the Endorsed Filed Proof of Service is attached as Exhibit 6 to this Declaration.

8. After service of Summons and Complaint on Mr. Kendrick, and prior to entry of the default, I received a telephone call from attorney Michael Markowitz of Danville. I know Mr. Markowitz personally as an experienced criminal defense attorney, knowledgeable as well in civil litigation, and an attorney who has represented other sex offenders' interests in child sex abuse civil litigation I have brought on behalf of other plaintiffs in the past.

RCD

9980082

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY

DEC 20 2011

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PROOF OF SERVICE OF MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT KENDRICK'S MOTION TO SET ASIDE DEFAULT; DECLARATION OF RICHARD J. SIMONS IN SUPPORT; and PROPOSED ORDER

Date:	1/19/2012
Time:	3:00 p.m.
Dept:	22
Reservation No:	1225197

///

///

///

///

///

///

///

///

///

///

///

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On December 20, 2011, I served the within **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT KENDRICK'S MOTION TO SET ASIDE DEFAULT; DECLARATION OF RICHARD J. SIMONS IN SUPPORT; and PROPOSED ORDER** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

Eric Graves, Esq.
Stone & Graves
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
916/631-1522 Telephones
916/631-1592 Facsimile
Attorneys for Defendant
JONATHAN KENDRICK

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 20, 2011, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

RCD

9980159

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

[PROPOSED] ORDER DENYING MOTION FOR RELIEF FROM DEFAULT

Date:	1/19/2012
Time:	3:00 p.m.
Dept:	22
Reservation No:	1225197

The Motion for Relief from Default of Defendant JONATHAN KENDRICK having regularly come before the Court on January 19, 2012, in Department 22, notice having been duly given, oral argument having been heard, and the matter having been submitted on the papers and pleadings produced in support and opposition of the Motion,

IT IS HEREBY ORDERED that Defendant's Motion for Relief from Default is DENIED.

Dated: _____

THE HONORABLE ROBERT McGUINESS
Judge of the Superior Court

RECEIVED
ALAMEDA COUNTY
DEC 20 2011
CLERK OF THE SUPERIOR COURT
By _____ Deputy

9. I did speak telephonically with Mr. Markowitz prior to the entry of the Default in this case. He told me that Defendant Kendrick had consulted him on his position in this civil case, but did not have adequate funds to retain his office. Mr. Markowitz then asked me several questions concerning my views on the role Mr. Kendrick might have in providing compensation to Plaintiff in view of his weak financial condition. I advised Mr. Markowitz that although Plaintiff would be required to enter a default if no timely answer was filed by Mr. Kendrick, I did not intend to make any effort to institute collection proceedings against Mr. Kendrick, based on his lack of financial resources, and that Jane Doe and I both were aware that any compensation to be obtained would come from the institutional defendants in the event Plaintiff prevailed. We also briefly discussed other issues, specifically that Mr. Kendrick was likely to be deposed, and that accompanying Fifth Amendment questions would likely arise.

10. Mr. Markowitz did not request an extension of time for Mr. Kendrick to respond, and advised me that he would relay our conversation and intentions to him, and that it was likely Mr. Kendrick would simply default.

11. From professional and personal experience with Mr. Markowitz, I know him to be a reputable and honest attorney. As such, I have no doubt that he explained to Mr. Kendrick the timing for avoiding a default, the manner to file an in pro per answer without fees based lack of ability to pay, and Plaintiff's intention of taking default if no answer was filed.

12. After my conversation with Mr. Markowitz, I had contact with Mr. Kendrick and his wife, Linda Hood Kendrick, after a representative of my office inadvertently left a message at what was later identified as their home telephone number while looking for another witness. They each called back and either spoke with me, or left voicemail messages after talking to my staff. Neither requested an extension of time to answer or that the default be set aside.

13. At no time did Mr. Kendrick contact my office to request an extension of time to file a responsive pleading.

14. As of August 15, 2011, the 30-day deadline to file a responsive pleading after service of summons pursuant to Cal. Civ. Proc. Code section 412.20, Defendant had not filed any response. I

10136013

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Richard J. Simons, Esq. 072676 Furtado, Jaspovice & Simons 22274 Main Street Hayward, CA 94541 TELEPHONE NO.: (510) 582-1080 FAX NO. (Optional): (510) 582-8254 E-MAIL ADDRESS (Optional): Rick@fjslaw.com ATTORNEY FOR (Name): Plaintiff JANE DOE	FILED ALAMEDA COUNTY JAN 09 2012 CLERK OF THE SUPERIOR COURT By Molly Kaats Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME:	
PLAINTIFF/PETITIONER: JANE DOE DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW	
REQUEST FOR DISMISSAL ☒ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☒ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☐ **Other (specify):**	CASE NUMBER: HG11558324
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -	

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☒ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* As to THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation, ONLY
2. *(Complete in all cases except family law cases.)*
   ☐ Court fees and costs were waived for a party in this case. *(This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).*

Date: January 5, 2012

RICHARD J. SIMONS
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

Attorney or party without attorney for: JANE DOE
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

3. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

_____
(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for the cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)
4. ☒ Dismissal entered as requested on *(date)*: JAN 09 2012
5. ☐ Dismissal entered on *(date)*: as to only *(name)*:
6. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

7. a. ☐ Attorney or party without attorney notified on *(date)*:
   b. ☐ Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to be conformed ☐ means to return conformed copy

Date: JAN 09 2012

Clerk, by Molly Kaats, Deputy

PAT S. SWEETEN

Form Adopted for Mandatory Use
Judicial Council of California
CIV-110 [Rev. July 1, 2009]
Martin Dean's ESSENTIAL FORMS™

REQUEST FOR DISMISSAL

JANE DOE

Code of Civil Procedure, § 581 et seq.;
Gov. Code, § 68637(c); Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov

BY FAX

PLAINTIFF/PETITIONER: JANE DOE	CASE NUMBER: HG11558324
DEFENDANT/RESPONDENT: THE WATCHTOWER BIBLE AND TRACT SOCIET	

Declaration Concerning Waived Court Fees

The court has a statutory lien for waived fees and costs on any recovery of $10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien must be paid before the court will dismiss the case.

1. The court waived fees and costs in this action for *(name):*
2. The person in item 1 *(check one):*
   a. ☐ is not recovering anything of value by this action.
   b. ☐ is recovering less than $10,000 in value by this action.
   c. ☐ is recovering $10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. ☐ All court fees and costs that were waived in this action have been paid to the court *(check one):* ☐ Yes ☐ No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY MAKING DECLARATION) (SIGNATURE)

10036468

Jeff Stone, SBN 155190
Eric Graves, SBN 179253
Kimberlee Tsai, SBN 227426
STONE & GRAVES
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
Telephone: (916) 631-1522
Facsimile: (916) 631-1592

Attorneys for Defendant
JONATHAN KENDRICK

FILED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By R.C. Hughes Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

CASE NO. HG11558324

REPLY BRIEF IN SUPPORT OF DEFENDANT JONATHAN KENDRICK'S MOTION FOR RELIEF FROM DEFAULT

Hearing Date: January 19, 2012
Hearing Time: 3:00 p.m.
Department: 22
Reservation No.: 1225197

Trial Date: May 21, 2012

BY FAX

I

INTRODUCTION

Defendant JONATHAN KENDRICK (hereinafter "Defendant") brought this Motion for Relief from Default (hereinafter "Motion") based on excusable neglect, among other reasons. Plaintiff JANE DOE (hereinafter "Plaintiff") fails to adequately oppose the Motion and/or demonstrate any prejudice that she would suffer if the default was set aside. The basic facts are that Defendant acted diligently to secure legal representation after being served with the complaint in this matter and simply failed to understand he had only thirty (30) days to file a response. Further, less than two months after learning that his default had been entered,

Defendant, while continuing his search for legal counsel, sought the assistance of a paralegal service and filed this Motion. Defendant's diligence, coupled with the fact that Plaintiff will suffer no prejudice if Defendant's default is set aside, more that support Defendant's request that the Court grant his Motion and set aside the default entered against him on August 26, 2011.

II

PLAINTIFF'S OPPOSITION FAILS TO PROVIDE SUPPORT FOR THE CONTENTION THAT DEFENDANT'S FAILURE TO TIMELY REPSOND TO PLANTIFF'S COMPLAINT WAS NOT EXCUSEABLE NEGLECT

Despite Plaintiff's insistence otherwise, this Motion is not the proper forum for which to explore the allegations in her Complaint, or any other allegations relating to Defendant's past. Defendant brought this Motion so that he may participate in this case and defend himself at trial, rights afforded to him by the laws of the State of California. That is the focus of the Motion and should be the focus of any opposition and reply. Unlike the defendants in the cases cited in Plaintiff's Opposition, Defendant acted as a reasonably prudent person after being served with Plaintiff's complaint, as demonstrated in his moving papers. Defendant's failure to file a responsive pleading in the required time was not inexcusable or intentional. During the time period between being served with the complaint and having his default taken, Defendant spoke with numerous attorneys and was trying to find representation, unaware that the clock was ticking. (Declaration of Jonathan Kendrick filed herewith [hereinafter "Kendrick Decl."] at ¶¶ 2-4.) Further, as shown below, Plaintiff fails to provide case law, or credible evidence that refutes Defendant's demonstration of excusable neglect.

In Plaintiff's Opposition she argues that Defendant's ability to read and write the English language negates his assertion that he was unaware of the 30 day deadline to file a responsive pleading because the Summons includes a notice of the same. However, a defendant's ability to read the language of the Summons is insufficient to negate excusable neglect, otherwise no motion for relief, brought by a person who can read/write the English language, could ever be granted. As previously stated, after Defendant was served with the complaint he understood he needed legal counsel; however, he was unaware of the deadline to respond and none of the lawyers he spoke with during that time warned him of the deadline. (Kendrick Decl." at ¶¶ 2-4.)

This includes attorney Michael Markowitz, whom Plaintiff assumes because of his reputation would have explained the timing for a response. However, Mr. Markowitz did not provide that information to Defendant. (Kendrick Decl. at ¶ 3.) In fact, Mr. Markowitz informed Defendant that he had spoken with Plaintiff's counsel and that Defendant need not worry about the litigation at all because Plaintiff was simply going to ignore him as a Defendant as Plaintiff's target was the Watchtower defendants. (Kendrick Decl. at ¶ 3.)

Further, Plaintiff's contention that Defendant's request for a restraining order nearly a decade ago takes away his ability to claim that he does not have knowledge and/or experience in the civil legal arena is preposterous. It should go without saying that, filling out a judicial council form requesting a restraining order is a completely different, and much more simplified, process than civil litigation. The forms required to request a restraining order are of the "fill-in-the-blank" variety and are accompanied by an instructions sheet for how they are to be filled out, filled and served. They are clearly tailored for non attorneys. Moreover, Defendant received assistance with filling out these documents from the court clerk who provided him with copies of the documents he needed to fill out. (Kendrick Decl. at ¶ 5.) Most telling, and a fact which is notably absent from Plaintiff's Opposition, is the fact that Defendant's request for the restraining order was denied because he failed to properly serve and file a proof of service. (Kendrick Decl. at ¶ 5.) Defendant did not become "experienced" with civil litigation, and the attendant time required for responding to a complaint, by virtue of requesting a restraining order. Defendant simply became aware of how to request a restraining order (not even how to properly serve one). The fact is, in regards to this case, Defendant failed to understand that he had a short window of time to respond to the complaint served on him by Plaintiff, which is exactly why he was diligently seeking out legal representation - he knew he did not have the knowledge or the experience to handle such a complicated legal matter on his own. (Kendrick Decl. at ¶ 2.)

///

///

///

///

II

PLAINTIFF WILL SUFFER NO PREJUDICE IF THE DEFAULT AGAINST DEFENDANT IS SET ASIDE

Plaintiff has failed to allege, and will not suffer, any prejudice if Defendant's default is set aside. Plaintiff did not serve Defendant with the complaint until six months into the litigation while discovery against the other Defendants was already well underway. (Declaration of Jonathan Kendrick filed in support of this Motion on October 14, 2011 at ¶ 4.) Further, the trial of this matter is still more than five months away leaving sufficient time for any necessary discovery to be completed. If granting the relief will not prejudice the opposing party (other than losing the advantage of the default), "the original negligence in allowing the default to be taken *will be excused on a weak showing.*" (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 740.)

III

THE LAW FAVORS TRIAL OF CASES ON THE MERITS.

The law always favors trial on the merits, and looks with disfavor upon a party who seeks to take advantage of the excusable mistake or neglect of his adversary. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855.) Based upon that principle, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 696.)

The bottom line is that where the party in default moves promptly to seek relief, which Defendant did, and no prejudice to the opposing party will result from setting aside the default and letting the case go to trial on the merits, which is the case here as there is plenty of time for discovery before trial, "*very slight evidence* will be required to justify a court in setting aside the default." (*Elston v. City of Turlock, supra,* 38 Cal.3d at 233; *Fasuyi v. Permatex, Inc., supra,* 167 Cal.App.4th at 696; *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478; *Misic v. Segars* (1995) 37 Cal.App.4th 1149, 1154; *Purdum v. Holmes* (2010) 187 Cal.App.4th 916, 922.) The fact that Defendant diligently pursued legal representation after being served with the Complaint, unaware that his time to respond was set to expire in 30 days, and none of the numerous

attorneys he spoke with warned him of the deadline is sufficient to demonstrate excusable neglect in allowing the default to occur. (*Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208; *Elms v. Elms* (1946) 72 Cal.App.2d 508, 513.)

III

CONCLUSION

Based on the foregoing, Defendant Jonathan Kendrick respectfully requests that this Court grant his Motion for Relief from Default and set aside the default entered against him on August 26, 2011.

Respectfully submitted.

Dated: January 11, 2012

STONE & GRAVES

KIMBERLEE TSAI
Attorney for Defendant JONATHAN KENDRICK

PROOF OF SERVICE

I, Deseree Gamayo, declare and state:

I am over 18 years of age, employed in the County of Sacramento, and not a party to the within action. My business address is 2377 Gold Meadow Way, Suite 210, Gold River, CA 95670.

On January 11, 2012, I served the within:

REPLY BRIEF IN SUPPORT OF DEFENDANT JONATHAN KENDRICK'S MOTION FOR RELIEF FROM DEFAULT

on the following parties in said action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Simons
Furtado Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone (510) 582-1082
Facsimile (510) 582-8255
Attorney for Plaintiff

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave
San Diego, CA 92107
Telephone (619) 224-2848
Facsimile (619) 224-0089
Attorney for Defendants

Robert Schnack
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone (916) 341-0404
Facsimile (916) 341-0141
Attorney for Defendants

[] (BY U.S. MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Gold River, California. I am familiar with my firm's practice whereby the mail is given the appropriate postage and is placed in a designated area to be deposited in a U.S. Mail box in Gold River, California, in the ordinary course of business.

[X] (BY FEDERAL EXPRESS MAIL) I caused such envelope to be placed in the Federal Express depository at Gold River, California.

[] (BY PERSONAL SERVICE) delivered by hand to addressee at the address listed above.

[] (BY FACSIMILE/TELECOPIER/MAIL) I personally sent to the addressee's telecopier number (stated above) a true copy of the above-described documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 11, 2012, at Gold River, California.

Deseree Gamayo

105M470443973.tif - 1/11/2012 11:35:37 AM

10036472

Jeff Stone, SBN 155190
Eric Graves, SBN 179253
Kimberlee Tsai, SBN 227426
STONE & GRAVES
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
Telephone: (916) 631-1522
Facsimile: (916) 631-1592

Attorneys for Defendant
JONATHAN KENDRICK

FILED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By R.C. Hughes
Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

CASE NO. HG11558324

DECLARATION OF JONATHAN KENDRICK IN SUPPORT OF REPLY BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM DEFAULT AND OBJECTION TO THE DECLARATION OF RICHARD SIMONS

Hearing Date: January 19, 2012
Hearing Time: 3:00 p.m.
Department: 22
Reservation No.: 1225197

Trial Date: May 21, 2012

BY FAX

I, JONATHAN KENDRICK, declare as follows:

1. I am the Defendant in the above-referenced action. As such, I have personal knowledge of the matters contained herein and, if called upon, would competently testify thereto.

2. After being served with the Complaint in this matter by Plaintiff Jane Doe (hereinafter "Plaintiff"), I immediately contacted numerous attorneys in an attempt to secure representation because I knew that I lacked the knowledge or the experience to handle such a complicated legal matter on my own.

FILED
ALAMEDA COUNTY
JAN 1 1 2011
CLERK OF THE SUPERIOR COURT
BY
Deputy

3. One of the attorneys I met with during that time period was Michael Markowitz. During my consultations with him he never explained the timing for filing a response to the complaint to avoid having my default entered, the manner to file an in pro per answer without fees based on lack of ability to pay nor did Mr. Markowitz explain Plaintiff's intention of taking my default if no answer was filed within the required time period. In fact, Mr. Markowitz informed me that he had spoken with Plaintiff's counsel and that I did not need to worry about the litigation at all because Plaintiff was simply going to ignore me as a Defendant and that The Watchtower defendants were the "real targets".

4. Further, none of the attorneys I spoke with after being served with the complaint, and prior to the entry of default, told me I only had 30 days to respond to Plaintiff's Complaint.

5. In regards to the Request for Restraining Order that I filed in 2003, I received assistance in preparing those documents from the court clerk who provided me with the copies of everything I would need. Ultimately, my request was denied based on the fact that I failed to properly serve the papers and/or file a proof of service by the time of the hearing – a process which I did not understand even after the clerk explained it to me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 10th day of January, 2011, at Oakley, California.

JONATHAN KENDRICK

PROOF OF SERVICE

I, Deseree Gamayo, declare and state:

I am over 18 years of age, employed in the County of Sacramento, and not a party to the within action. My business address is 2377 Gold Meadow Way, Suite 210, Gold River, CA 95670.

On January 11, 2012, I served the within:

DEFENDANT JONATHAN KENDRICK'S OBJECTION TO DECLARATION OF RICHARD SIMONS IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR RELIEF FROM DEFAULT

on the following parties in said action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Simons
Furtado Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone (510) 582-1082
Facsimile (510) 582-8255
Attorney for Plaintiff

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave
San Diego, CA 92107
Telephone (619) 224-2848
Facsimile (619) 224-0089
Attorney for Defendants

Robert Schnack
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone (916) 341-0404
Facsimile (916) 341-0141
Attorney for Defendants

[] (BY U.S. MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Gold River, California. I am familiar with my firm's practice whereby the mail is given the appropriate postage and is placed in a designated area to be deposited in a U.S. Mail box in Gold River, California, in the ordinary course of business.

[X] (BY FEDERAL EXPRESS MAIL) I caused such envelope to be placed in the Federal Express depository at Gold River, California.

[] (BY PERSONAL SERVICE) delivered by hand to addressee at the address listed above.

[] (BY FACSIMILE/TELECOPIER/MAIL) I personally sent to the addressee's telecopier number (stated above) a true copy of the above-described documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 11, 2012, at Gold River, California.

Deseree Gamayo

10036401

Jeff Stone, SBN 155190
Eric Graves, SBN 179253
Kimberlee Tsai, SBN 227426
STONE & GRAVES
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
Telephone: (916) 631-1522
Facsimile: (916) 631-1592

FILED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By R.C. Hughes Deputy

Attorneys for Defendant
JONATHAN KENDRICK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

CASE NO. HG11558324

NOTICE OF ERRATA RE: DEFENDANT JONATHAN KENDRICK'S NOTICE OF MOTION FOR RELIEF FROM DEFAULT

TO THE ABOVE-ENTITLED COURT, PLAINTIFF AND ATTORNEYS OF RECORD HEREIN:

1. PLEASE TAKE NOTICE that Defendant, JONATHAN KENDRICK (hereinafter "Defendant") hereby respectfully corrects an error with respect to his Notice of Motion for Relief from Default. Defendant inadvertently failed to include the required language relating to the Alameda County Superior Court rules regarding tentative rulings.

2. Attached hereto as Exhibit "A" is an amended notice which includes the required language.

Dated: January 11, 2012

STONE & GRAVES

KIMBERLEE TSAI
Attorney for Defendant JONATHAN KENDRICK

BY FAX

FILED
ALAMEDA COUNTY

JAN 11 2012

CLERK OF THE SUPERIOR COURT
By
Deputy

EXHIBIT A

Jeff Stone, SBN 155190
Eric Graves, SBN 179253
Kimberlee Tsai, SBN 227426
STONE & GRAVES
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
Telephone: (916) 631-1522
Facsimile: (916) 631-1592

Attorneys for Defendant
JONATHAN KENDRICK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

CASE NO. HG11558324

AMENDED NOTICE OF MOTION FOR RELIEF FROM DEFAULT

Hearing Date: January 19, 2012
Hearing Time: 3:00 p.m.
Department: 22
Reservation No.: 1225197

Trial Date: May 21, 2012

TO EACH PARTY AND THEIR COUNSEL OF RECORD:

YOU ARE HEREBY NOTIFIED that on January 19, 2012 at 3:00 p.m. or as soon thereafter as the matter may be heard in Department 22 of the Alameda County Superior Court, located at 1225 Fallon Street, Oakland, California, Defendant JONATHAN KENDRICK ("Defendant Kendrick") will more pursuant to California Code of Civil Procedure § 473(b) for an order granting relief from the default entered in this Court on August 26, 2011.

This motion will be made on the ground that the default was entered as a result of excusable neglect and in violation of C.R.C. 3.110, *et seq.* The motion will be based upon this notice, the memorandum of points and authorities, the declaration of Jonathan Kendrick in support, the records on file in this action, the proposed Answer submitted with this motion, and any further evidence and argument that the Court may receive at or before the hearing.

The court adopts the tentative ruling procedure set out in California Rules of Court, rule 3.1308(a)(1). The tentative ruling or notice to appear will generally be available by 4:00 p.m. two court days prior to the scheduled hearing and no later than 3:00 p.m. the court day before the hearing. Unless the court directs otherwise, the court's tentative ruling will be available on the court's website at www.alameda.courts.ca.gov/tentativerulings or by calling (866) 223-2244. Whenever a tentative ruling has not been issued, the parties are to appear at the hearing unless otherwise ordered.

Dated: January 11, 2012

STONE & GRAVES

KIMBERLEE TSAI
Attorney for Defendant JONATHAN KENDRICK

PROOF OF SERVICE

I, Deseree Gamayo, declare and state:

I am over 18 years of age, employed in the County of Sacramento, and not a party to the within action. My business address is 2377 Gold Meadow Way, Suite 210, Gold River, CA 95670.

On January 11, 2012, I served the within:

NOTICE OF ERRATA RE: DEFENDANT JONATHAN KENDRICK'S NOTICE OF MOTION FOR RELIEF FROM DEFAULT

on the following parties in said action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Simons
Furtado Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone (510) 582-1082
Facsimile (510) 582-8255
Attorney for Plaintiff

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave
San Diego, CA 92107
Telephone (619) 224-2848
Facsimile (619) 224-0089
Attorney for Defendants

Robert Schnack
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone (916) 341-0404
Facsimile (916) 341-0141
Attorney for Defendants

[] (BY U.S. MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Gold River, California. I am familiar with my firm's practice whereby the mail is given the appropriate postage and is placed in a designated area to be deposited in a U.S. Mail box in Gold River, California, in the ordinary course of business.

[X] (BY FEDERAL EXPRESS MAIL) I caused such envelope to be placed in the Federal Express depository at Gold River, California.

[] (BY PERSONAL SERVICE) delivered by hand to addressee at the address listed above.

[] (BY FACSIMILE/TELECOPIER/MAIL) I personally sent to the addressee's telecopier number (stated above) a true copy of the above-described documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 11, 2012, at Gold River, California.

Deseree Gamayo

10036476

Jeff Stone, SBN 155190
Eric Graves, SBN 179253
Kimberlee Tsai, SBN 227426
STONE & GRAVES
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
Telephone: (916) 631-1522
Facsimile: (916) 631-1592

Attorneys for Defendant
JONATHAN KENDRICK

FILED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By R.C. Woolard Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

CASE NO. HG11558324

DEFENDANT JONATHAN KENDRICK'S OBJECTION TO DECLARATION OF RICHARD SIMONS IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR RELIEF FROM DEFAULT

Hearing Date: January 19, 2012
Hearing Time: 3:00 p.m.
Department: 22
Reservation No.: 1225197

Trial Date: May 21, 2012

Defendant JONATHAN KENDRICK (hereinafter "Defendant"), hereby asserts the following objections to the Declaration of Richard Simons ("Simons Declaration"), dated December 5, 2011, and filed by Plaintiff JANE DOE (hereinafter "Plaintiff") in support of her opposition to Defendant's Motion for Relief from Default (hereinafter "Motion"), and requests that this Court strike portions of the Simons Declaration, for the reasons set forth herein.

BY FAX

FILED
AMERICA COUNTY
JUN 1 1 2018
CLERK OF THE SUPERIOR COURT
Deputy

Simons Declaration, ¶ 16, p. 3, lines 15-18 which state: "As such, I have no doubt that he explained to Mr. Kendrick the timing for avoiding a default, the manner to file an in pro per answer without fees based lack of ability to pay, and Plaintiff's intention of taking default if no answer was filed" is objectionable since this statement is hearsay, speculative, argumentative, lacks foundation and Simons lacks personal knowledge of whether, in fact, Mr. Markowitz actually provided Plaintiff with any of the information as alleged. (*Cal. Evid. Code* §§ 702, 1101, 1200.) Further, Mr. Markowitz never told Defendant the timing for filing a response to the complaint to avoid having his default entered, the manner to file an in pro per answer without fees based on lack of ability to pay and Plaintiff's intention of taking his default if no answer was filed. (Declaration of Jonathan Kendrick filed herewith at ¶ 3.)

As a result, Defendant respectfully requests that this Court sustain this objection, and strike the above-quoted portion of paragraph 11 of Mr. Simons' Declaration.

Dated: January 11, 2012

STONE & GRAVES

KIMBERLEE R. TSAI
Attorney for Defendant JONATHAN KENDRICK

PROOF OF SERVICE

I, Deseree Gamayo, declare and state:

I am over 18 years of age, employed in the County of Sacramento, and not a party to the within action. My business address is 2377 Gold Meadow Way, Suite 210, Gold River, CA 95670.

On January 11, 2012, I served the within:

DECLARATION OF JONATHAN KENDRICK IN SUPPORT OF REPLY BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM DEFAULT AND OBJECTION TO THE DECLARATION OF RICHARD SIMONS

on the following parties in said action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Simons
Furtado Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone (510) 582-1082
Facsimile (510) 582-8255
Attorney for Plaintiff

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave
San Diego, CA 92107
Telephone (619) 224-2848
Facsimile (619) 224-0089
Attorney for Defendants

Robert Schnack
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone (916) 341-0404
Facsimile (916) 341-0141
Attorney for Defendants

[] (BY U.S. MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Gold River, California. I am familiar with my firm's practice whereby the mail is given the appropriate postage and is placed in a designated area to be deposited in a U.S. Mail box in Gold River, California, in the ordinary course of business.

[X] (BY FEDERAL EXPRESS MAIL) I caused such envelope to be placed in the Federal Express depository at Gold River, California.

[] (BY PERSONAL SERVICE) delivered by hand to addressee at the address listed above.

[] (BY FACSIMILE/TELECOPIER/MAIL) I personally sent to the addressee's telecopier number (stated above) a true copy of the above-described documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 11, 2012, at Gold River, California.

Deseree Gamayo

9980950

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

FILED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By H. Barrett Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

PROOF OF SERVICE

Trial Date: May 21, 2012
Department 22
Honorable Robert McGuiness

BY FAX

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Jackson Lewis LLP, 801 K Street, Suite 2300, Sacramento, California 95814.

On January 11, 2012, I caused to be served the foregoing document(s)

- **STIPULATION FOR MENTAL EXAM OF PLAINTIFF;** and,
- **[PROPOSED] ORDER PURSUANT TO STIPULATION GRANTING MENTAL EXAMINATION OF PLAINTIFF**

on all interested parties in said action, through their attorneys of record by placing a true and correct copy thereof, addressed as shown below, by the following means:

☐ **PERSONAL SERVICE** - by personally delivering a true and correct copy thereof to the person at the address set forth below, in accordance with Code of Civil Procedure section 1011(a).

☐ **MAIL** - by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid for deposit in the United States Post Office mail box, at my business address shown above, following Jackson Lewis LLP's ordinary business practices for the collection and processing of mail, of which I am readily familiar, and addressed as set forth below. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

☐ **OVERNIGHT DELIVERY** - by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Overnite Express or delivering to an authorized courier or driver authorized by Overnite Express to receive documents, addressed as set forth below.

☒ **FACSIMILE TRANSMISSION** - by transmitting a true and correct copy by facsimile from facsimile number (916) 341-0141 to the person(s) at the facsimile number(s) set forth below, which transmission was confirmed as complete. A copy of the transmission record is attached hereto.

☐ **ELECTRONIC MAIL** - by forwarding a true and correct copy thereof by e-mail from e-mail address _____ to the person(s) at the e-mail address(es) set forth below.

SERVICE LIST:

Richard J. Simons, Esq. (SBN 072676) — *Attorneys for Plaintiff*
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
(510) 552-1080 Telephone
(510) 582-8254 Facsimile

Eric L. Graves, Esq. (SBN 179253) — *Attorney for Defendant Jonathan Kendrick*
Stone & Graves
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
(916) 631-1522 Telephone
(916) 631-1592 Facsimile

The Mccabe Law Firm, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 11, 2012, at Sacramento, California.

Lori Bauer

Lori Bauer

9980958

FILED
ALAMEDA COUNTY

JAN 11 2012

CLERK OF THE SUPERIOR COURT
By _____ Deputy

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorneys for Defendant North Congregation

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

STIPULATION FOR MENTAL EXAM OF PLAINTIFF

Trial Date: May 21, 2012
Department 22
Judge Robert McGuiness

BY FAX

//

//

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel of record, that plaintiff will submit to a mental examination pursuant to Code of Civil Procedure sections 2032.310, *et seq.*, in the above referenced matter by Martin Williams, Ph. D. on January 12th from 9 a.m. to 1 p.m. and January 13th from 9a.m. to 1 p.m. 2012 at the offices of Dr. Williams located at:

//

2033 Gateway Place, Suite 500
San Jose CA 95110

It is further agreed and stipulated that:

1. The examiner may conduct a face to face interview with Plaintiff to obtain a history and to evaluate plaintiff's mental status and history;

2. Plaintiff shall be permitted to audio record the entire examination and the examiner shall not interfere in any way with such recording;

3. Examiner shall ensure that Plaintiff has a quiet environment, conducive to the taking of examinations without distraction;

4. The entire exam shall not exceed 8 hours and Plaintiff shall be allowed to take breaks at reasonable intervals during the examination;

5. Any and all reports pertaining to the examination of Plaintiff prepared by the examiner will be provided to plaintiff within 30 days of the examination;

6. The raw data and scores from each exam administered to plaintiff will be provided to plaintiff within 15 days of the examination;

7. Defendants will provide air transportation of Plaintiff from Los Angeles to San Jose for purposes of the examination and shall provide two nights of hotel accommodations on the dates of January 11th and January 12th as well as $100 for food and incidental expenses while Plaintiff is in the San Jose area for the examination.

8. The exams to be administered are limited to the following:

a. MMPI-2RF
b. MCMI-III
c. Post Traumatic Stress Diagnostic Scale

d. WAIS-IV

Date: 1/10, 2012

ROBERT J. SCHNACK
JACKSON LEWIS LLP

By: _____
ROBERT SCHNACK
Attorneys for Defendant Watchtower

DATED: January 7, 2012

THE MCCABE LAW FIRM, APC

By: _____
JAMES M. McCABE
Attorneys for Defendant North Congregation

SO STIPULATED

RICK SIMONS
FURTADO, JASPOVICE & SIMONS

DATED: 1/9, 2012

By: _____
RICK SIMONS

9980954

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

[PROPOSED] ORDER PURSUANT TO STIPULATION GRANTING MENTAL EXAMINATION OF PLAINTIFF

Trial Date: May 21, 2012
Department 22
Honorable Robert McGuiness

RECEIVED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By _____ Deputy

BY FAX

The parties have submitted and filed a stipulation for mental examination of Plaintiff by Martin Williams, Ph.D., pursuant to Code of Civil Procedure sections 2032.310, *et seq*. Now therefore, based on said stipulation,

IT IS HEREBY ORDERED that Plaintiff shall submit to a mental examination by Martin Williams, Ph.D., pursuant to Code of Civil Procedure sections 2032.310, *et seq.*, and the terms contained within the parties' stipulation which are incorporated by this reference.

IT SO ORDERED.

DATED: January __, 2012

Honorable Robert McGuiness
Judge of the Superior Court

8798625

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

FILED
ALAMEDA COUNTY
JAN 13 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

~~[PROPOSED]~~ ORDER PURSUANT TO STIPULATION GRANTING MENTAL EXAMINATION OF PLAINTIFF

Trial Date: May 21, 2012
Department 22
Honorable Robert McGuiness

RECEIVED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By
Deputy

BY FAX

The parties have submitted and filed a stipulation for mental examination of Plaintiff by Martin Williams, Ph.D., pursuant to Code of Civil Procedure sections 2032.310, *et seq.* Now therefore, based on said stipulation,

IT IS HEREBY ORDERED that Plaintiff shall submit to a mental examination by Martin Williams, Ph.D., pursuant to Code of Civil Procedure sections 2032.310, *et seq.*, and the terms contained within the parties' stipulation which are incorporated by this reference.

IT SO ORDERED.

DATED: January 17, 2012

Honorable Robert McGuiness
Judge of the Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NAME: JANE DOE VS THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al

ACTION NO.: HG11-558324

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak Street, Oakland, California. I served the **ORDER PURSUANT TO STIPULATION GRANTING MENTAL EXAMINATION OF PLAINTIFF** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Richard J. Simons, Esq.
Furtado, Jaspovice & Simons
22275 Main Street
Hayward, CA 94541

Robert J. Schnack
JACKSON LEWIS LLP
801 K Street, Suite 2300
Sacramento, CA 95814

The McCabe Law Firm, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107

Eric L. Graves, Esq.
Stone & Graves
2377 Gold Meadow Way, Ste 210
Gold River, CA 95670

I declare under penalty of perjury that the following is true and correct

Executed on January 18, 2012 at Oakland, California.

Pat Sweeten
Executive Officer/Clerk of the Superior Court

By Miranda Edgerly
Miranda Edgerly, Deputy Clerk

9980954

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

[PROPOSED] ORDER PURSUANT TO STIPULATION GRANTING MENTAL EXAMINATION OF PLAINTIFF

Trial Date: May 21, 2012
Department 22
Honorable Robert McGuiness

RECEIVED
ALAMEDA COUNTY
JAN 11 2012
CLERK OF THE SUPERIOR COURT
By _____ Deputy

BY FAX

The parties have submitted and filed a stipulation for mental examination of Plaintiff by Martin Williams, Ph.D., pursuant to Code of Civil Procedure sections 2032.310, *et seq*. Now therefore, based on said stipulation,

IT IS HEREBY ORDERED that Plaintiff shall submit to a mental examination by Martin Williams, Ph.D., pursuant to Code of Civil Procedure sections 2032.310, *et seq.*, and the terms contained within the parties' stipulation which are incorporated by this reference.

IT SO ORDERED.

DATED: January __, 2012

Honorable Robert McGuiness
Judge of the Superior Court

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Vacate/Set Aside Granted

The Motion to Vacate/Set Aside was set for hearing on 01/19/2012 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of Jonathan Kendrick for relief from default is GRANTED.

The court is concerned that the evidence suggests that Mr. Kendrick was aware of the lawsuit, had consulted with counsel, and was possibly aware that he was required to file a responsive pleading yet failed to do so within the allotted time. The court also notes that the motion was filed shortly after the default, which mitigates any prejudice to the Plaintiff, that counsel for Plaintiff did not did not provide notice to Plaintiff before taking the default, Kim v. Westmoore Partners, Inc. (2011) 201 Cal.App.4th 267, 271 fn 1, and that there is a strong policy preference in favor of resolving cases on their merits, Fasuyi v. Permatex, Inc. (2008) 167 Cal.App.4th 681, 696. Weighing these factors, the court finds that defendant Mendrick has made the "very slight" showing required for excusable neglect and grants the relief requested under CCP 473(b).

Because of the significant evidence that Mr. Kendrick was aware that he was required to file a responsive pleading, the court makes the grant of this motion conditional on Mr. Kendrick paying Plaintiff $1000 for the fees that plaintiff incurred as a result of Mr. Kendrick's failure to file a timely answer. Vanderkous v. Conley (2010) 188 Cal.App.4th 111, 118-119.

Defendant Kendrick must file the proposed answer on or before January 26, 2012.

Dated: 01/19/2012

Robert McGuiness - facsimile
Judge Robert McGuiness

SHORT TITLE:	CASE NUMBER:
Doe VS The Watchtower Bible and Tract Society of New York, I	HG11558324

ADDITIONAL ADDRESSEES

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 01/19/2012

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 01/20/2012.

Executive Officer / Clerk of the Superior Court

By digital _____

Deputy Clerk

ROD

9998547

Jeff Stone, SBN 155190
Eric Graves, SBN 179253
Kimberlee Tsai, SBN 227426
STONE & GRAVES
2377 Gold Meadow Way, Suite 210
Gold River, CA 95670
Telephone: (916) 631-1522
Facsimile: (916) 631-1592

Attorneys for Defendant
JONATHAN KENDRICK

FILED
ALAMEDA COUNTY
JAN 31 2012
CLERK OF THE SUPERIOR COURT
By Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

CASE NO. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE Robert McGuiness

DEFENDANT JONATHAN KENDRICK'S ANSWER TO COMPLAINT

Trial Date: May 21, 2012

BY FAX

Defendant Jonathan Kendrick (referred hereinafter "Defendant Kendrick") answers the complaint of plaintiff and admits, denies, and alleges as follows:

Defendant Kendrick generally denies each and every allegation of Paragraphs 1-4 of the plaintiff's complaint pursuant to CCP § 431.40, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations.

Defendant Kendrick admits the allegations in Paragraph 5 of the plaintiff's complaint, pursuant to CCP 2033.220, as Defendant Kendrick is a registered sex offender within the State of California.

Defendant Kendrick generally denies Paragraphs 6-11 of the plaintiff's complaint pursuant to CCP §431.40, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations.

FIRST AFFIRMATIVE DEFENSE

(First Amendment)

The complaint, and each cause of action thereof, is barred by the First Amendment to the United States Constitution and/or Article 1 §4 of the California Constitution.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

The complaint, and each cause of action thereof, is barred by the applicable statute of limitations set for in California Code of Civil Procedure, including without limitation sections 335.1, 338, 340, 340.1, 340.3, 340.35 and 343.

THIRD AFFIRMATIVE DEFENSE

(Mitigation of Damages)

To the extent that plaintiff failed or neglected to use reasonable care to minimize and mitigate her claimed losses, injuries and damages, if there are any, plaintiff's damages, if any, are barred or subject to reduction.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff has unreasonably delayed in bringing this action to the prejudice of this answering defendant and is therefore barred from bringing the action by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Provide Notice)

Plaintiff failed to give appropriate or timely notices required to bring her claims.

SIXTH AFFIRMATIVE DEFENSE

(Waiver and/or Estoppel)

By her own conduct, plaintiff has waived and/or is estopped from pursuing the claims alleged in her complaint.

WHEREFORE, Defendant Kendrick prays for judgment as follows:

1. That Plaintiff takes nothing from Defendant Kendrick by her complaint;
2. That Defendant Kendrick be dismissed with prejudice, with an award of costs; and
3. That Defendant Kendrick be awarded such other and further relief as the court deems just and proper.

Dated: January 24, 2012

STONE & GRAVES

KIMBERLEE TSAI
Attorney for Defendant JONATHAN KENDRICK

PROOF OF SERVICE

I, Deseree Gamayo, declare and state:

I am over 18 years of age, employed in the County of Sacramento, and not a party to the within action. My business address is 2377 Gold Meadow Way, Suite 210, Gold River, CA 95670.

On January 24, 2012, I served the within:

DEFENDANT JONATHAN KENDRICK'S ANSWER TO COMPLAINT

on the following parties in said action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Simons
Furtado Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone (510) 582-1082
Facsimile (510) 582-8255
Attorney for Plaintiff

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave
San Diego, CA 92107
Telephone (619) 224-2848
Facsimile (619) 224-0089
Attorney for Defendants

Robert Schnack
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone (916) 341-0404
Facsimile (916) 341-0141
Attorney for Defendants

[x] (BY U.S. MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Gold River, California. I am familiar with my firm's practice whereby the mail is given the appropriate postage and is placed in a designated area to be deposited in a U.S. Mail box in Gold River, California, in the ordinary course of business.

[] (BY EXPRESS MAIL) I caused such envelope to be placed in the U.S. Mail depository at Gold River, California.

[] (BY PERSONAL SERVICE) delivered by hand to addressee at the address listed above.

[] (BY FACSIMILE/TELECOPIER/MAIL) I personally sent to the addressee's telecopier number (stated above) a true copy of the above-described documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 24, 2012, at Gold River, California.

Deseree Gamayo

10250222

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
APR 10 2012
CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

NOTICE OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY [C.C.P. §425.14; Civil Code §3295]

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

TO ALL PARTIES TO THE ABOVE-ENTITLED ACTION AND TO THE ATTORNEYS OF RECORD FOR SAME:

PLEASE TAKE NOTICE that on May 3, 2012, at 3:00 p.m. in Department 22 of the above-entitled Court, plaintiff JANE DOE will move for an Order Granting Plaintiff's Motion to Amend Complaint to allege a cause of action for punitive damages against defendant Watchtower Bible and Tract Society of New York, Inc. only, and for an Order permitting financial discovery from defendant Watchtower Bible and Tract Society of New York, Inc.

This motion will be based on this Notice, the Memorandum of Points and Authorities, the Declarations of Richard J. Simons, and the exhibits and evidence presented in support of the Motion, served and filed herewith, as well as on any oral and documentary evidence presented at the time of hearing.

///

///

Dated: April 9, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

10250226

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
APR 10 2012
CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO FILE AMENDED COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY [C.C.P. §425.14; Civil Code §3295]

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

///

///

///

///

///

///

///

///

///

///

INTRODUCTION 1

STATEMENT OF FACTS 1

I. PLAINTIFF'S BURDEN IS A *PRIMA FACIE* SHOWING 6

II. PLAINTIFF HAS OFFERED A *PRIMA FACIE* SHOWING TO SUPPORT HER PROPOSED AMENDMENT 6

A. WBTSNY Had A Duty To Plaintiff 6

B. WBTSNY Negligently Breached Its Duty to Plaintiff 8

C. WBTSNY's Negligent Conduct Constitutes Legal Malice 9

1. Standard for Malice 9

2. Corporate Authority 11

3. Deliberate Indifference and Conscious Disregard 12

4. Causation 13

III. PLAINTIFF IS ENTITLED TO AN ORDER PERMITTING FINANCIAL DISCOVERY 15

CONCLUSION 15

Cases

Angie M. v. Superior Court (1995) 37 Cal.App.4th 1217, 1228-29 9
College Hospital, Inc. v. Superior Court (1994) 8 Cal.4th 704, 725; CACI 3945 9
Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 828, 842-3 6
Hung v. Wang (1992) 8 Cal.App.4th 908, 931 6
Jabro v. Superior Court (2002) 95 Cal. App. 4th 754, 755 14
Juarez v. Boy Scouts of America (2000) 81 Cal.App.4th 377, 395-6 and fn. 5 6
Little Co. of Mary Hospital v. Superior Court (2008) 162 Cal.App.4th 261, 268 6
Major v. Western Home Ins. Co., (2009) 169 Cal. App. 4th 1197, 1221 11
Mike Davidov Co. v. Issod (2000) 78 Cal. App. 4th 597, 609 14
Nolin v. National Convenience Stores, Inc. (1979) 95 Cal.App.3d 279, 288 9
Pamela L. v. Farmer (1980) 112 Cal.App.3d 206, 211 6
Rowe v. Superior Court (1993) 15 Cal.App.4th 1711, 1722 6
Snyder v. Enterprise Rent-A-Car Co. (2005) 392 F.Supp. 2d 1116, 1129 (N.D. Cal. 9
Taylor v. Superior Court (1979) 24 Cal.3d 890, 895 9
Wallace v. Der-Ohanian, (1962) 199 Cal.App.2d 141 7
White v. Ultramar, Inc., (1999) 21 Cal. 4th 563, at p. 573 11

Statutes

C.C. § 3294(c)(1) 9
Penal Code §288 5
Section 3294 of the Civil Code 6

Other Authorities

Rest. 2d Torts §302B 7

INTRODUCTION

Jonathan Kendrick sexually molested and abused Plaintiff Jane Doe when she was nine years old. Jonathan Kendrick gained access to his victim through their mutual involvement in the North Congregation of Jehovah's Witnesses in Fremont. The Congregation was managed and supervised by The Watchtower Bible and Tract Society of New York, Inc.

Plaintiff Jane Doe seeks leave to file a First Amended Complaint to add factual allegations supporting an award of punitive damages against Defendant Watchtower Bible and Tract Society of New York, Inc. (WBTSNY).

STATEMENT OF FACTS

The Jehovah's Witnesses are a collection of various corporations and entities around the world organized for religious purposes. (Evidence in Support of Motion Ex. 8, "Organized to Accomplish Our Ministry," p. 26 [all exhibits cited hereinafter are Evidence in Support of Motion of Jane Doe to Amend Complaint].) The "Governing Body" is a group of men who meet at the Jehovah's Witnesses' New York world headquarters and control all Jehovah's Witnesses activities worldwide. (Deposition of WBTSNY PMQ Alan Shuster, Ex. 29, 9:9-17, 19:6-13; Dec. of Expert William Bowen, Ex. 31, ¶4.) The Governing Body acts through the various corporations it has established, including WBTSNY, and establishes in detail each and every significant policy and administrative practice for all the entities and all the Jehovah's Witnesses. (Shuster Depo., Ex. 29, 19:6-16; Bowen Dec., Ex. 31, ¶4 3:3-7.) The policies and procedures are issued and explained through official publications such as the Branch Organization Manual, the Kingdom Ministry School Textbook, letters to All Bodies of Elders, letters to All Circuit and District Overseers, the Awake and Watchtower magazines, and a manual named "Organized to Do Jehovah's Will." (Shuster Depo., Ex. 29, 19:14-20:2; 54:11-25; 109:22-110:11; Bowen Dec. ¶4; Deposition of Elder Gary Abrahamson, Ex. 21, 12:21-13:5,15-18, 43:8-19.) The local and national congregational administrative officials, called "Elders," must follow these rules, without any discretion to depart from them. (Letter from WBTSNY to All Bodies of Elders 7/31/89, Ex. 1, Abrahamson Depo., Ex. 21, 88:18-89:17; Bowen Dec., Ex. 31, ¶5 3:9-12.)

WBTSNY's "Legal Department," located in New York, communicates instructions and directions to the local Elders within the Congregations. (Deposition of WBTSNY PMQ Mario Moreno, Ex. 28, 6:12-20.) The Legal Department's instructions are formulated in each case to implement the mandates and rules set by the Governing Body. (*Ibid.*; Shuster Depo., Ex. 29, 41:17-25, 43:2-14; Bowen Dec., Ex. 31, ¶5 3 9-12, ¶6 3:20-26.) Before 2001, WBTSNY also directed local congregations through a "Service Department." After 2001, the Governing Body formed a new corporation, the Christian Congregation of Jehovah's Witnesses, to perform this function. (Shuster Depo., Ex. 29, 16:6-11; Bowen Dec. ¶5 3:13-16.)

For many years, WBTSNY has had written policies, established by the Governing Body, which Elders are required to follow when they receive information concerning possible sexual abuse of children within their Congregation. (Shuster Depo., Ex. 29, 54:11-25; Bowen Dec. ¶4; Deposition of Elder Michael Clarke, Ex. 20., 9:12-17, 18:2-25.) The primary document setting forth these procedures is the letter to All Bodies of Elders dated July 1, 1989. (Ex. 1.) This letter, approved by the Governing Body, has been and remains the controlling document setting forth the administrative policies and procedures in cases of childhood sexual abuse. (Shuster 38:20-39:24; Bowen Dec. ¶6.)

In 1993, Elders in the North Fremont Congregation learned of possible sexual abuse of two girls by Jonathan Kendrick, an important member of the Congregation. (Letter from North Congregation Elders to WBTSNY 11/15/93, Ex. 2; Abrahamson Depo., Ex. 22, 120:23-123:8; Clarke, Ex. 20, 34:11-35:9; Declaration of Evelyn Kendrick, Ex. 30, ¶3.) They confirmed the first report, and did not investigate the second. (Ex. 2; Clarke, Ex. 20, 34:11-35:9.) The Elders, on a written instruction from WBTSNY, "removed" Jonathan Kendrick from his position within the congregation as a "Ministerial Servant." (Letter from WBTSNY to North Congregation 12/3/93, Ex. 3; Abrahamson Depo., Ex. 22, 119:15-120:2.) Also following specific instruction from WBTSNY, the Elders involved in the investigation of Jonathan Kendrick did not notify or warn anyone else in the congregation that Jonathan Kendrick was a potential sexual predator of children. (Letter to All Bodies of Elders, 7/31/89, Ex. 1; Letter from North Congregation to WBTSNY 8/31/98, Ex. 4; Clarke Depo., Ex. 20, 60:3-22.) Following an official policy of

secrecy, the Elders did not notify law enforcement. (Clarke Depo., Ex. 20, 36:10-25, 38:17-24.) The Elders did not warn or notify other administrative persons in the Congregation including fellow Elders or other Ministerial Servants (Deposition of Former Elder Paul Inman, Ex. 24, 7:16-21, 11:25-12:3), or Congregation members, or the parents of children active in the Congregation, including Plaintiff's parents. (Deposition of Congregation Member Claudia Francis, Ex. 26, 10:7-13, 28:11-25; Deposition of Kathleen Conti, Ex. 18, 41:21-24, 44:1-8; Deposition of Neal Conti, Ex. 19, 11:23-25, 15:4-12.) Jonathan Kendrick continued to be allowed to engage in all Congregation activities, including "service," where members, including children, go door to door through residential neighborhoods. (Deposition of Jane Doe, Ex. 17, 12:20-22, 13:20-22, 26:7-21; N. Conti Depo., Ex. 19, 12:11-25.) The policy of secrecy allowed Jonathan Kendrick, a confirmed child molester, to hide in the North Congregation and continue to groom and molest girls, including Plaintiff. (Bowen Dec., Ex. 31, ¶12; Declaration of Expert Dr. Anna Salter, Ex. 32, ¶8; K. Conti Depo., Ex. 18, 47:10-14.)

The policy of secrecy has as its rationale a very secular foundation: the effort of the Governing Body to avoid lawsuits by victims of sexual or other abusive conduct perpetrated by leaders or members of the Jehovah's Witnesses. The secrecy policy and its basis are stated repeatedly and explicitly in the letter to All Bodies of Elders dated July 1, 1989. (Ex. 1.) It states in different provisions:

> "Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society. " (Ex. 1, p. 1, ¶3.)
>
> "Worldly persons are quick to resort to lawsuits if they feel their "rights" have been violated. " (Ex. 1, p. 1, ¶4.)
>
> "The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, <u>such mistakes could result in successful litigation by those offended</u>. <u>Substantial monetary damages could be assessed against the elders or the congregation.</u> In some cases where the authorities are involved, certain complications could lead to a fine or imprisonment. **These possibilities underscore the need for elders to be discerning and to follow carefully directions provided by the Society.** (Ex. 1, p. 2, ¶3, emphasis added in part and in part in original.)

In total, the letter makes more than 18 references to costly lawsuits, legal problems, and monetary damages. (Ex. 1, p. 1, ¶¶1, 3-4; p. 2, ¶¶1, 3; p. 4, ¶4; p. 5, ¶¶3, 4.) It contains eight directives to contact the Society's Legal Department immediately when issues arise. (Ex. 1, p. 3, ¶¶ 2, 3,

4; p. 5, ¶ 4; p. 5, ¶ 1.) It also gives repeated separate instruction not to cooperate with law enforcement or honor search warrants or subpoenas. (p. 3, ¶¶2-5; p. 5, ¶3.)

The evidence in support of this Motion to Amend supports a clear and convincing finding that the Governing Body was the managing agent of WBTSNY; that the Governing Body's policies were and continued to be administered through WBTSNY's Legal Department; that the secrecy policy violated WBTSNY's secular duty to protect children from sexual abuse while taking part in Jehovah's Witnesses' activities; that the policy exposed Plaintiff to the sexual abuse she suffered; and that the policy to be followed in child sexual abuse cases were promulgated by the Governing Body through WBTSNY in deliberate disregard of the safety of children, and with conscious knowledge of the risks. Specific evidence includes:

(1) WBTSNY issued specific instructions to the Fremont Elders that Jonathan Kendrick was to be removed from his position as Ministerial Servant, but that the reasons for the removal would be kept confidential from all members of the congregation. (Letter from North Congregation to WBTSNY 8/31/98, Ex. 4; Clarke Depo., Ex. 20, 60:3-22.) Jonathan Kendrick continued to be active and a respected member in good standing of the Congregation. (K. Conti Depo., Ex. 18, 44:3-8, 80:24-81:6.) He continued to be fully involved in Congregation activities that provided him access to children – including Plaintiff. (Jane Doe, Ex. 17, 12:20-22, 13:20-22, 26:7-21; N. Conti Depo., Ex. 19, 12:11-25.) The North Fremont Congregation consisted of a little over 100 members, providing Jonathan Kendrick with both enough members to "blend in," and yet a small enough community that he easily knew and was trusted by all of the other members – including Plaintiff's parents. (Abrahamson Depo., Ex. 21, 15:14-16:7, K. Conti Depo., Ex. 18, 44:3-8, 80:24-81:6; Francis Depo., Ex. 26, 28:11-25.)

(2) Jonathan Kendrick took advantage of his place in the Congregation to molest Plaintiff. The ability to operate with the protection of the secrecy policy allowed Jonathan Kendrick to also continue sexual predatory conduct with other members of the Congregation, both adults and children. For example, Claudia Francis, wife of Elder Roderick Francis, personally observed that Jonathan Kendrick bought a bra for a ten-year-old girl in the Congregation named Brianna, which she thought was "weird."

(Francis Depo., 10:16-19, 33:13-35:6.) She observed Jonathan Kendrick engaged in activities with Candace, and calling her overly affectionate names, which she also thought was strange (*Id.* at 35:10-25, 36:4-23.) She even observed Jonathan Kendrick in a soft porn photograph with children. (*Id.* at 42:4-18.) However, it was not until later, when she learned of Jonathan Kendrick's past history of molesting children, that the significance of her observations occurred to her (*Id.* at 36:24-37:10). That was too late to protect Plaintiff.

(3) The reprehensibility of the secrecy policy is demonstrated by Jonathan Kendrick's continuing molestation of other children after he was first identified in 1993. After molesting Plaintiff, he moved to a new Congregation in Oakley, which was not advised of his record of child molestation in Fremont. (Letter from North Congregation to WBTSNY, 8/31/98, Ex. 4.) This failure to warn is specifically authorized by the July 31, 1989 Letter to All Bodies of Elders. (Ex. 1, p. 4.) Jonathan Kendrick then met and married Linda Hood, an Oakley Congregation member, who was unaware of his background. He molested his wife's eight-year-old granddaughter, leading to his conviction of 2 felony counts of violating Penal Code section 288, and his registration as a sex offender. (Oakley Police Report No. 03-20645, July 25, 2003, Ex. 6; Conviction, Ex. 5.).

(4) The Governing Body, and the WBTSNY Corporation as its acting agent, were fully aware of the risks and probable consequences of protecting child abusers' identities and failing to warn congregation members. Their publications repeatedly acknowledge the risk of continuing abuse by one who is known to have engaged in such conduct. (Awake, 10/8/93, Ex. 15, p. 11; The Watchtower, 1/31/97, Ex. 16, p. 29.) This information was generally known to all national organizations that involve youth activities. (Salter Dec., ¶8.) Nevertheless, the policy of secrecy has continued to the present day. (Shuster Depo., Ex. 29, 38:20-39:24, 81:13-82:4.)

This corporate policy, and its implementation in the case now before the Court, meets the legal and evidentiary requirements for an amendment to allege punitive damages.

///

///

I. PLAINTIFF'S BURDEN IS A *PRIMA FACIE* SHOWING.

A Complaint may be amended to allege facts supporting a claim for punitive damages against a religious corporation "upon a finding, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established evidence which substantiates that plaintiff will meet the clear and convincing standard of proof under Section 3294 of the Civil Code." (C.C.P. § 425.14.)

Section 425.14 requires that a plaintiff establish only "a sufficient prima facie showing of facts to sustain a favorable decision if the evidence submitted is credited." (*Little Co. of Mary Hospital v. Superior Court* (2008) 162 Cal.App.4th 261, 268, citing *Hung v. Wang* (1992) 8 Cal.App.4th 908, 931.) A plaintiff need not establish that she "will win," as such a requirement would infringe her Constitutional right to a jury trial. (*Rowe v. Superior Court* (1993) 15 Cal.App.4th 1711, 1722.)

In assessing whether a plaintiff has established a prima facie showing, the trial court does not make any factual determination or engage in any substantive weighing process. (*Id.* at p. 1723.) Consideration of opposing affidavits involves "only a determination that they do not *as a matter of law*, defeat the evidence." (*Ibid.*) If the Court determines a prima facie case exists, it must permit the plaintiff to file the proposed amended complaint. (*Ibid.*)

II. PLAINTIFF HAS OFFERED A *PRIMA FACIE* SHOWING TO SUPPORT HER PROPOSED AMENDMENT.

A. WBTSNY Had A Duty To Plaintiff.

California Courts have long recognized a duty to protect children from the risk of sexual abuse at the hands of those known to present a specific risk. Third-party defendants have been exposed to liability for their own negligent failure to prevent sexual molestations by employees, volunteers, and family members, where the non-perpetrator defendant possessed actual knowledge of the employee or volunteer's history of sexual abuse and failed to warn or protect children exposed to the abuser. (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 842-43 [Church Youth Director]; *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206, 211 [Spouse of molester of girls in home swimming pool]; *Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377, 395-6 and fn. 5 [Boy Scout volunteer Scout Master]). The basis of the duty is found both in the "special relationship" between children and those

who sponsor, organize, or supervise their activities, and in the general duty owed to persons of all ages to protect them from criminal conduct by third persons known to present a specific and preventable risk of criminal conduct or assault. (Rest. 2d Torts §302B.)

A specific duty also exists for organizations or persons who sponsor or supervise activities where youth participate. For example, *Juarez v. Boy Scouts*, *supra*, held that the evidence in that case established a duty to protect the child victim from the sexual abuse he experienced, even where there was no actual knowledge of prior molestation by the perpetrator Scout Master. The Court found that the general knowledge concerning child molesters' involvement in activities where youth are present and participate, and the knowledge of the risk of child molestation in or arising out of those activities, was sufficient to support "the imposition of a duty of care on the Scouts to take reasonable protective measures to protect Juarez from the risk of sexual abuse by adult volunteers involved in scouting programs, such as warning, training, or educating him (either directly or through his parent or adult volunteers) about how to avoid such an outcome." (*Juarez, supra*, 81 Cal.App.4th at p. 409-10). As *Juarez* noted, its holding was a continuation of a long line of cases recognizing such a duty even in the absence of specific knowledge of a specific child abuser. *Juarez* relied upon *Wallace v. Der-Ohanian*, (1962) 199 Cal.App.2d 141, where a youth camp operator was held liable for sexual abuse of an 11-year-old by an unknown third-party stranger who was not associated with the camp.

In this action, the Congregation Elders acted as Defendant WBTSNY's agents in their conduct concerning knowledge (WBTSNY's Responses to Plaintiff's Requests for Admission, Set Three (RFA), Ex. 7, Nos. 3 and 4.) The members of the Governing Body were the managing agents who set the policies followed by the Elders. (Shuster Depo., Ex. 29, 19:6-20:2, 31:12-16; Bowen Dec., Ex. 31, ¶4 3:1-4.) Plaintiff met Jonathan Kendrick through the Jehovah's Witnesses, she and her family trusted him because of the Jehovah's Witnesses community and church relationship, and Jonathan Kendrick had access to Plaintiff during, before, and after meetings, services, and door-to-door neighborhood service. (K. Conti Depo., Ex. 18, 80:24-81:6; Jane Doe, Ex. 17, 25:8-26:24; N. Conti Depo., Ex. 19, 12:11-25; Abrahamson Depo., Ex. 21, 38:2-23; Shuster Depo., Ex. 29, 62:3-6; 63:2-7; Clarke Depo., Ex. 20, 47:4-

16). The Elders' knowledge of Kendrick's prior sexual abuse involving one confirmed and a second suspected victim, and the involvement of children such as Plaintiff in every aspect of Jehovah's Witnesses activities (Abrahamson Depo., Ex. 21, 38:2-23; Shuster Depo., Ex. 29, 62:3-6; 63:2-7; Clarke Depo., Ex. 20, 47:4-16), is sufficient to establish a duty to have protected her from Jonathan Kendrick's sexual abuse.

B. WBTSNY Negligently Breached Its Duty to Plaintiff.

The standard of care between 1993 and 1996 for the prevention of child molestation and sexual abuse in religious institutions where children are allowed to participate is established by the expert witness Declaration of Anna Salter, Ph. D. (Ex. 32, ¶8.). Dr. Salter holds a Ph.D. in Clinical Psychology and Public Practice from Harvard, and has spent her entire professional career in childhood sexual abuse recognition and response. She has conducted workshops and trainings for 30 years all over the nation and world, and been a consultant with organizations of all kinds on policies and procedures. (Salter Dec., Ex. 32, ¶¶1-4). Dr. Salter's opinion is that, throughout the relevant time period, national religious corporations like defendants had "an obligation to educate and train participants in such groups or activities, including volunteer adults, children, administrative personnel, in the recognition, prevention, reporting, and possible signs of childhood sexual abuse; and a further obligation to address reports of childhood sexual abuse immediately to actively prevent further opportunities for abuse of any child . . . Failure to notify those individuals in positions of leadership authority within the local chapter, group, congregation, or club of a confirmed report violates the standard, and the failure to notify parents and other adults within the group or congregation violates this standard." (Salter Dec., ¶8, 2:22-3:6).

Dr. Salter's opinion as to the standard of care is consistent with the legal duties long recognized in California case law. (*Evan F. v. United Methodist*, *supra*, 8 Cal.App.4th 828; and cases cited therein). There is a *prima facie* case that Defendant WBTSNY violated the applicable standards of care in this case. WBTSNY did not notify parents, congregation members, or congregation officials of Kendrick's established or suspected sexual abuse of two girls. (Letter from North Congregation to WBTSNY 8/31/98, Ex. 4; Clarke Depo., Ex. 20, 60:3-22; Francis Depo., Ex. 26, 28:11-25; K. Conti Depo., Ex. 18,

44:3-8.) They did not warn parents or congregation members of Jonathan Kendrick's history. (*Ibid.*) On the contrary, the Fremont Elders followed their instructions, and corporate policy, and kept Kendrick's sexual abuse of children a secret. (Letter from WBTSNY to All Bodies of Elders 7/31/89, Ex. 1; Shuster Depo., Ex. 29, 81:13-82:4; Clarke Depo., Ex. 20, 60:3-22.) Further, although general platitudes were espoused in its publications (See WBTSNY's Amended Responses to Plaintiff's Request for Documents, Ex. 9, No. 6), WBTSNY provided no evidence that it actually maintained or implemented any policy or program of education, training, or childhood sexual abuse prevention.

C. WBTSNY's Negligent Conduct Constitutes Legal Malice.

1. Standard for Malice

To prevail on a claim for punitive damages at trial, a plaintiff must prove by clear and convincing evidence that the defendant acted with oppression, fraud, or malice. (Civ. Code § 3294(a).) "Malice" means "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (C.C. § 3294(c)(1).) "Despicable conduct is conduct that is so vile, base, or contemptible that it would be looked down on and despised by ordinary decent people." (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725; CACI 3945.) If the Court cannot be said as a matter of law that the conduct was not despicable, the determination should be left to the jury. (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1228-29.) Malice is usually proven by circumstantial evidence alone. (*Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d 279, 288, citation omitted.)

A plaintiff is entitled to punitive damages based upon negligence liability if the defendant's negligence exhibits a "conscious disregard of the safety of others." (*Snyder v. Enterprise Rent-A-Car Co.* (2005) 392 F.Supp. 2d 1116, 1129 (N.D. Cal.), citing *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895.) Malice may be established where the defendant is aware of, but fails to avoid, the probable and dangerous consequences of his conduct. (*Taylor v. Superior Court, supra,* 24 Cal.3d 890, at p. 895-96.)

Claims for punitive damages have been recognized and affirmed in a multiplicity of circumstances of negligent harm arising from the failure to warn or the withholding of significant

information. In *Snyder v. Enterprise Rent-a-Car*, *supra*, the plaintiffs sought punitive damages against a company that rented a car to a driver with a suspended license whose driving under the influence resulted in their son's death. (392 F.Supp.2d at p. 1120.) The court denied the defendant's motion for summary judgment on the issue of punitive damages, finding that in adopting a policy opting not to check the status of renters' licenses, the defendants were aware that they would inevitably rent vehicles to persons who were not licensed, and that injuries would result. (*Id.* at p. 1130.)

In *Nolin v. National Convenience Stores, Inc.*, *supra*, 95 Cal.App.3d 279, 282, sufficient evidence was presented to support the jury's determination of malice where the plaintiff was injured when she slipped on gasoline spilled near a pump at the defendant's gas station. The court found that both direct and circumstantial evidence proved that the defendant knew about the chronic dangerous condition and so carelessly maintained the area that it had displayed a conscious disregard for the safety of its customers. (*Id.* at p. 288.) The defendant's disregard for the risk was demonstrated by a lack of concern for the likelihood of injury, its lack of training of its employees concerning cleanup procedures, and its financial motives. (*Ibid.*)

In *O'Hara v. Western Seven Trees Corp.*, (1977) 75 Cal.App.3d 798, the court held inducing the plaintiff to rent an apartment by misrepresenting that the complex was patrolled by the defendant's security agents, and withholding knowledge that several rapes had occurred and few safety precautions had been taken, demonstrated conscious disregard for the plaintiff's safety. (*Id.* at p. 806.) The court explicated that the defendant was on notice of the past attacks and conditions making future assaults likely, and "by not acting affirmatively to protect [the plaintiff], they increased the likelihood that she would also be a victim." (*Id.* at p. 804.)

In this case, Defendant WBTSNY's conduct consisted of (1) having actual knowledge of Jonathan Kendrick's record of child molestation (Letter from North Congregation Elders to WBTSNY 11/15/93, Ex. 2; Abrahamson Depo., Ex. 22, 120:23-123:8; Clarke, Ex. 20, 34:11-35:9; Declaration of Evelyn Kendrick, Ex. 30, ¶3); (2) having general knowledge of both the effects of childhood sexual abuse on victims, and the high recidivism of childhood sexual abusers (Awake, Ex. 10-14; Awake, 10/8/93, Ex. 15, p. 11; The

Watchtower, 1/31/97, Ex. 16, p. 29); (3) failing to provide any training to Elders, parents, congregation members, or others, on investigation of or recognition and prevention of sexual abuse of children (Shuster Depo., 89:14-90:13, 113:17-114:13; Clarke Depo., 33:6-10; Abrahamson Depo., Ex. 21, 43:7-19); (4) failing to warn anyone of the risk of childhood sexual abuse posed by Jonathan Kendrick (Letter from WBTSNY to All Bodies of Elders 7/31/89, Ex. 1; Shuster Depo., Ex. 29, 81:13-82:4; Clarke Depo., Ex. 20, 60:3-2; K. Conti Depo., Ex. 18, 44:3-8; Francis Depo., Ex. 26, 28:11-25) (5) continuing to allow Jonathan Kendrick to participate in congregation activities involving children, including plaintiff (Doe Depo., Ex. 17, 26:7-29:14; K. Conti Depo., Ex. 18, 47:10-14, Shuster Depo., Ex. 29, 89:14-90:13); and (6) keeping Jonathan Kendrick's sexual abuse of children secret (Letter from WBTSNY to All Bodies of Elders 7/31/89, Ex. 1, Letter from North Congregation to WBTSNY 8/31/98, Ex. 4, Clarke Depo., Ex. 20, 60:3-22). All of these omissions and actions were in furtherance of the policies of, and on the authority of, WBTSNY, and were committed by admitted agents of WBTSNY. The factual analogies to the *Snyder, Nolin,* and *O'Hara* cases are clear.

2. Corporate Authority

To establish a prima facie case supporting an award of punitive damages against a corporate defendant, Plaintiff must present evidence that the defendant's managing agents "authorized or ratified" the wrongful conduct, or was "personally guilty of" malice. (Civ. Code § 3294(b).) Plaintiff meets the elements of section 3294 in this case. A "Managing Agent" is one who exercises "substantial independent authority and judgment over decisions that ultimately determine corporate policy." (*White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, at p. 573; *Major v. Western Home Ins. Co.* (2009) 169 Cal. App. 4th 1197, 1221.)

Although the conduct regarding Jonathan Kendrick was performed at the North Fremont Congregation by Elders Abrahamson and Clarke, they acted as agents of WBTSNY. (RFA, Ex. 7, Nos. 3 and 4.) All of the disputed conduct involved following the policies of, and instructions of, WBTSNY. (Letter from WBTSNY to All Bodies of Elders 7/31/89, Ex. 1; Clarke Depo., Ex. 20, 60:3-22; Shuster Depo., Ex. 29, 81:13-17.) All of the policies, including the secrecy policy as to childhood sexual abusers,

were in fact WBTSNY corporate policy as established by the Governing Body as its managing policy makers. (Shuster Depo., Ex. 29, 19:6-20:2, 31:12-16; Shuster depo 19:6-16; Bowen Dec., Ex. 31, ¶4 3:1-4.) The Elders had no discretion to diverge from their instructions or the policies established by the Governing Body through WBTSNY. (Ex. 1; Abrahamson Depo., Ex. 21, 89:12-17.)

3. Deliberate Indifference and Conscious Disregard

WBTSNY's implementation and maintenance of the secrecy policy epitomizes despicable conduct carried on with a willful and conscious disregard of the rights or safety of children. (C.C. §3294(c)(1).) Circumstantial evidence supports this finding, as the Declaration of Dr. Salter establishes that national organizations of all kinds, from the Boy Scouts of America to the National Council of Churches, had recognized by 1993 the need to educate and train participants in sexual abuse recognition and prevention, and to respond immediately to reports of childhood sexual abuse in such a way as to actively prevent further victims of that perpetrator. (Salter Dec., ¶8, 2:22-3:6.) It was also generally well known long before the relevant time period that childhood sexual abusers frequently are recidivists, their grooming conduct goes unnoticed, that children frequently do not report, that there are usually no witnesses to childhood sexual abuse, and that the perpetrators are not the type of people who are generally "suspicious." (Salter Dec., ¶8, 3:6-18; Awake, 1/22/85, Ex. 10, p. 4-5; Awake, 4/8/93, Ex. 13, p. 31; Awake, 10/8/93, Ex. 15, p. 6: "In the vast majority of cases – 85 to 90 percent by some estimates – the abuser is a person the child knows and trusts.") It was further generally known that allowing adults who have sexually molested even one child to participate in further activities with youth without warning or precautions exposes children to further abuse. (Salter Dec., ¶8, 3:18-23; Awake 10/8/93, Ex. 15, p. 11.)

Besides this circumstantial evidence, there is evidence that the Governing Body was aware of and disregarded these known risks by the policies and practices at issue in this case. In the two preceding years, four issues of Awake magazine featured articles and letters about the prevalence and consequences of child sexual abuse. Six weeks before the investigation at the Kendrick home, WBTSNY published an issue of Awake entirely dedicated to the subject, with headings such as "Your Child Is in

Danger!," "An Urgent Problem," and "How Can We Protect Our Children?" (Awake, 10/8/93, Ex. 15.) It reports that "assaults on children are often cloaked in secrecy" and go unreported, even though it has been found that almost one in three girls falls victim to sexual abuse. (*Id.* at p. 4.) It explains that "child molestation is neither new nor rare; it is a longstanding problem that is epidemic today." (*Ibid.*) The also reports about an alarming rate of recidivism among child molesters and the overwhelming likelihood they repeat their abuse among many victims, citing a study that revealed 30 child molesters had abused 2,099 children. (*Id.* at p. 11.) It also explains that those child molesters had used "positions of trust" to accomplish their abuse, and that "denial and disbelief allow abuse to continue." (*Ibid.*) Moreover, the article notes a Conference of Bishops' conclusion that "it was a 'general conspiracy of silence' that allowed gross child abuse to persist among the Catholic clergy for decades." (*Id.* at p. 5). The Awake articles set forth the policies of the Governing Body and their corporate entities. (Shuster Depo., Ex. 29, 109:22-110:11.) WBTSNY consciously disregarded a known risk by following the secrecy policy and withholding from parents and adults at North Congregation the fact that Jonathan Kendrick was a known child molester. The sole motive was to protect the organization's secular legal and pecuniary interests.

4. Causation

These policies and practices were a substantial factor in Plaintiff's abuse by Jonathan Kendrick. After confessing to molesting Andrea, Jonathan Kendrick continued to participate in meetings, field service, and activities at North Congregation, and was not prevented from interacting with children. (Doe Depo., Ex. 17, 26:7-29:14; K. Conti Depo., Ex. 18, 47:10-14, Shuster Depo., Ex. 29, 89:14-90:13.) In the close North Congregation community of only about 100 members, neither Plaintiff's parents, nor any other parents, suspected Jonathan Kendrick was a threat to children. (K. Conti Depo., Ex. 18, 80:24-81:6; Francis Depo., Ex. 26, 28:11-25.)

Congregation member Claudia Francis saw the middle-aged Jonathan Kendrick rollerblading alone with Plaintiff, age nine, and thought, "that is very strange." (Francis Depo., Ex. 26, 35:10-25.) Jonathan Kendrick said to her about Plaintiff: "'She's my absolute favorite. She's my number one,'" and she thought, "That's awful strange," but chalked it up to his flamboyant and outrageous personality. (*Id.*

at 36:4-23.) Ms. Francis also learned that Jonathan Kendrick bought a black bra for a ten-year-old girl in the Congregation named Brianna. When she asked him why he would buy a ten-year-old a black bra, he told her, "every girl needs a black bra." Ms. Francis thought, "That's weird." (*Id.* at 33:13-35:6.) And Ms. Francis once accompanied Jonathan Kendrick to a storage facility and came across and old photo of him in his 20s, in his underwear, posing on the floor with two four-year-olds, also in their underwear. (*Id.* at 41:6-42:3.) Jonathan Kendrick explained the children were "friends" of his. Seeing the photo "bothered" Ms. Francis. (*Id.* at 42:4-18.) But this suggestive evidence did not "connect the dots" for Claudia Francis. Ms. Francis testified that the events indicating Jonathan Kendrick's misconduct were disjunctive and gradual, and it was not until she was told that he molested his stepdaughter that she recognized the significance of what she had seen. (*Id.* at 36:24-37:10.) By then, it was too late for Plaintiff.

In Jehovah's Witnesses, children routinely attend congregation meetings without their parents, and rely on other members to drive them home. (Abrahamson Depo., Ex. 21, 38:2-23.) Jonathan Kendrick provided that role for the Conti Family and abused Candace on dozens of occasions. (Doe Depo., Ex. 17, 28:9-29:14.) WBTSNY expects parents in the Congregation to be the primary protectors of children from abuse. (Abrahamson Depo., Ex. 21, 44:6-19; Awake, Exs. 10-15.) However, without knowing of a specific threat, parents cannot protect their children. (Salter Dec., ¶8.) Like Claudia Francis, Plaintiff's parents were under the impression that Jonathan Kendrick, like all other members attending the five weekly meetings, doing service work, and participating in the Congregation's activities, was acting with the Jehovah's Witnesses' blessing. (K. Conti Depo., Ex. 18, 44:3-8, 47:10-14, 80:24-81:6; N. Conti Depo., Ex. 19, 12:11-13:25.) They never suspected that Watchtower had actual knowledge that Jonathan Kendrick was a threat to their daughter.

Jonathan Kendrick accomplished the sexual abuse of Plaintiff by use of the trust, position, and authority he held as a fellow member, volunteer, and leader of the North Congregation religious facility. Watchtower endorsed Kendrick's continued membership and participation in North Congregation during the duration of his abuse of Plaintiff despite actual knowledge that Jonathan Kendrick had sexually

molested his 13-year-old stepdaughter in 1993, and that there may be other victims. WBTSNY authorized the Elders' conduct, and dictated their decisions. WBTSNY elected to follow its secrecy policy and withhold critical information about Jonathan Kendrick's risk to children.

III. PLAINTIFF IS ENTITLED TO AN ORDER PERMITTING FINANCIAL DISCOVERY.

Plaintiff also seeks an Order Permitting Financial Discovery as to WBTSNY. (Civil Code §3295(c)). The Court may enter the Order "at any time." (*Ibid.*) Because Plaintiff has shown that she is very likely to succeed on her claim for punitive damages, the Court may enter the Order before trial. (*Jabro v. Superior Court* (2002) 95 Cal. App. 4th 754, 755.) Alternatively, the Court may enter the Order at any time during trial, or if the trial is bifurcated, between the two phases of the trial. (*Mike Davidov Co. v. Issod* (2000) 78 Cal. App. 4th 597, 609.)

CONCLUSION

The evidence shows WBTSNY implemented and maintained policies and practices that authorized a known child molester to continue his conduct in secret among the children of the North Fremont Congregation. The wrongful conduct at issue was authorized by Defendant WBTSNY for the purpose of protecting its own secular legal and financial interests. The evidence shows willful indifference and conscious disregard of the safety of children, including Plaintiff, and her sexual abuse was the result. Plaintiff has met her burden by presenting sufficient clear and convincing evidence on each essential element necessary for a reasonable jury to award punitive damages, and her proposed amendment and request for financial discovery should be allowed.

Dated: April 10, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

10250174

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
APR 10 2012
CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF RICHARD J. SIMONS AUTHENTICATING EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY [C.C.P. §425.14; Civil Code §3295]

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

I, RICHARD J. SIMONS, hereby declare:

1. I am an attorney at law duly licensed to practice before all Courts of the State of California and am the attorney of record for plaintiff in the above-entitled action.

2. That as attached as Exhibit 1 in support of this Motion is a true and correct copy of the Letter from Watchtower Bible and Tract Society of New York, Inc. to All Bodies of Elders dated July 1, 1989, as identified and authenticated by employee Gary Abrahamson as Exhibit 5 to his deposition of August 23, 2011;

3. That as attached as Exhibit 2 in support of this Motion is a true and correct copy of Letter from North Congregation to WBTSNY dated November 15, 1993, produced by defendant in Response to Plaintiff's Demand for Inspection of Documents in this action;

4. That as attached as Exhibit 3 in support of this Motion is a true and correct copy of the Letter from WBTSNY to North Congregation dated December 3, 1993, produced by defendant in Response to Plaintiff's Demand for Inspection of Documents in this action;

5. That as attached as Exhibit 4 in support of this Motion is a true and correct copy of the Letter from North Congregation to WBTSNY dated August 31, 1998, produced by defendant in Response to Plaintiff's Demand for Inspection of Documents in this action;

6. That as attached as Exhibit 5 in support of this Motion is a Certified Copy of the records of the Contra Costa County Superior Court Action No. 04-138568-1, evidencing criminal conviction of Jonathan Kendrick for two counts of Felony Penal Code §288a, filed January 8, 2004;

7. That attached as Exhibit 6 in support of this Motion are true and correct copies of excerpts of Oakley Police Report No. 03-20645, July 25, 2003, sealed and confidential as it involves a minor's records obtained by subpoena from the Contra Costa County Sheriff's Department at the deposition of Sgt. Baldwin taken in this action on January 23, 2012;

8. That as attached as Exhibit 7 in support of this Motion is a true and correct copy of WBTSNY's Responses to Plaintiff's Requests for Admission, Set Three;

9. That as attached as Exhibit 8 in support of this Motion is a true and correct copy of WBTSNY's Response to Plaintiff's Demand for Inspection of Documents, Set Five, Response No. 26, containing an excerpt from defendant's manual entitled, "Organized to Accomplish Our Ministry";

10. That as attached as Exhibit 9 in support of this Motion is a true and correct copy of WBTSNY's verified Amended Responses to Plaintiff's Request for Documents, itemizing the Awake articles produced by defendant in discovery and marked as Exhibits 10 – 16, in this Motion to Amend;

11. That as attached as Exhibit 17 in support of this Motion are true and correct copies of excerpts of the Deposition of Jane Doe, taken in this action on August 25, 2011, at which I was personally present;

12. That attached as Exhibit 19 in support of this Motion are true and correct copies of excerpts of the Deposition of Kathleen Conti, taken in this action on October 21, 2011, at which I was personally present;

13. That attached as Exhibit 19 in support of this Motion are true and correct copies of excerpts of the Deposition of Neal Conti, taken in this action on October 25, 2011, at which I was personally present;

14. That as attached as Exhibit 20 in support of this Motion are true and correct copies of excerpts of the Deposition of Michael Clarke, taken in this action on November 8, 2011, at which I was personally present;

15. That as attached as Exhibit 21 in support of this Motion are true and correct copies of excerpts of the Deposition of Gary Abrahamson, taken in this action on August 23, 2011, at which I was personally present;

16. That as attached as Exhibit 22 in support of this Motion are true and correct copies of excerpts of the Deposition of Gary Abrahamson, taken in this action on October 25, 2011, at which I was personally present;

17. That attached as Exhibit 23 in support of this Motion are true and correct copies of excerpts of the Deposition of Clifford Williams, taken in this action on October 14, 2011, at which I was personally present;

18. That attached as Exhibit 24 in support of this Motion are true and correct copies of excerpts of the Deposition of Paul Inman, taken in this action on February 21, 2012, at which I was personally present by video;

19. That attached as Exhibit 25 in support of this Motion are true and correct copies of excerpts of the Deposition of Manuel Iglesias, taken in this action on January 23, 2012, at which I was personally present;

20. That as attached as Exhibit 26 in support of this Motion are true and correct copies of excerpts of the Deposition of Claudia Francis, taken in this action on October 24, 2011, at which I was personally present;

21. That as attached as Exhibit 27 in support of this Motion are true and correct copies of excerpts of the Deposition of Sergeant Jeffrey Baldwin, taken in this action on January 23, 2012, at which I was personally present;

22. That as attached as Exhibit 28 in support of this Motion are true and correct copies of excerpts of the Deposition of Mario Moreno, Person Most Qualified On Behalf of Watchtower Bible and Tract Society of New York, Inc., taken in this action on February 15, 2012, at which I was personally present;

23. That as attached as Exhibit 29 in support of this Motion are true and correct copies of excerpts of the Deposition of Alan Shuster, Person Most Qualified On Behalf of Watchtower Bible and Tract Society of New York, Inc., taken February 15, 2012, at which I was personally present.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 9th day of April, 2012, at Hayward, California.

RICHARD J. SIMONS

10250166

APR 10 2012

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

[PROPOSED] ORDER GRANTING MOTION OF PLAINTIFF JANE DOE TO FILE AMENDED COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY [C.C.P. §425.14; Civil Code §3295]

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

The Motion of Plaintiff JANE DOE for an Order Granting Plaintiff's Motion to Amend Complaint, having regularly come before the Court on May 3, 2012, at 3:00 p.m. in Department 22, notice having been duly given, the matter having been submitted on the papers and pleadings produced in support of the motion,

IT IS HEREBY ORDERED that Plaintiff's Motion to Amend Complaint is GRANTED;

IT IS FURTHER ORDERED that Plaintiff shall file her First Amended Complaint within ten (10) days of the date of this Order;

IT IS FURTHER ORDERED that defendants need not file an Answer to the First Amended Complaint, their answers to the Complaint being deemed sufficient to deny all of the allegations of the First Amended Complaint.

IT IS FURTHER ORDERED that Plaintiff shall be permitted to serve, and Defendant Watchtower Bible and Tract Society of New York shall respond to prior to the first day of trial on May 21, 2012, such discovery as is reasonably necessary to determine said Defendant's financial condition.

Dated: _____

_____
THE HONORABLE ROBERT McGUINESS
Judge of the Superior Court

10250170

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
APR 10 2012
CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

EXHIBITS IN SUPPORT OF THE MOTION OF JANE DOE TO FILE AMENDED COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY [C.C.P. §425.14; Civil Code §3295]

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

The following exhibits in support of the Motion of Jane Doe to File Amended Complaint and for Order Permitting Financial Discovery are authenticated in the attached Declaration of Richard J. Simons:

1. Letter from WBTSNY to All Bodies of Elders dated July 1, 1989
2. Letter from North Congregation to WBTSNY dated November 15, 1993
3. Letter from WBTSNY to North Congregation dated December 3, 1993
4. Letter from North Congregation to WBTSNY dated August 31, 1998
5. Certified criminal conviction of Jonathan Kendrick filed January 8, 2004
6. Excerpts of Oakley Police Report No. 03-20645, July 25, 2003 [Filed Under Seal]
7. WBTSNY's Responses to Plaintiff's Requests for Admission, Set Three
8. WBTSNY's Response to Plaintiff's Demand for Inspection of Documents, Set Five, Response No. 26

9. WBTSNY's Amended Responses to Plaintiff's Request for Documents

10. Excerpts of Awake Magazine, January 22, 1985

11. Excerpts of Awake Magazine, October 8, 1991

12. Excerpts of Awake Magazine, April 8, 1992

13. Excerpts of Awake Magazine, April 8, 1993

14. Excerpts of Awake Magazine, July 22, 1993

15. Excerpts of Awake Magazine, October 8, 1993

16. Excerpts of Watchtower Magazine, January 1, 1997

17. Excerpts of the Deposition of Jane Doe, taken August 25, 2011

18. Excerpts of the Deposition of Kathleen Conti, taken October 21, 2011

19. Excerpts of the Deposition of Neal Conti, taken October 25, 2011

20. Excerpts of the Deposition of Michael Clarke, taken November 8, 2011

21. Excerpts of the Deposition of Gary Abrahamson, taken August 23, 2011

22. Excerpts of the Deposition of Gary Abrahamson, taken October 25, 2011

23. Excerpts of the Deposition of Clifford Williams, taken October 21, 2011

24. Excerpts of the Deposition of Paul Inman, taken February 21, 2012

25. Excerpts of the Deposition of Manuel Iglesias, taken January 23, 2012

26. Excerpts of the Deposition of Claudia Francis, taken October 24, 2011

27. Excerpts of the Deposition of Sergeant Jeffrey Baldwin, taken January 23, 2012

28. Excerpts from the Deposition of Mario Moreno, taken February 15, 2012

29. Excerpts of the Deposition of Alan Shuster, taken February 15, 2012

Plaintiff also offers the following exhibits in support of her Motion to File Amended Complaint:

30. Declaration of Evelyn Kendrick dated March 26, 2012

31. Declaration of William H. Bowen dated April 9, 2012

32. Declaration of Dr. Anna Salter, Ph.D dated April 4, 2012

///

Dated: April 10, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

CABLE WATCHTOWER

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

July 1, 1989

TO ALL BODIES OF ELDERS IN THE UNITED STATES.

CONFIDENTIAL

Dear Brothers:

We are writing to help all of you as individual elders be aware of a growing concern regarding the handling of your duties that may involve legal issues or questions. **Due to its importance, the presiding overseer should arrange for a special meeting of the body of elders to read and consider this letter carefully.**

In spreading the Kingdom message, it is appropriate that we be bold and outspoken. Jesus commanded that "what you hear whispered, preach from the housetops." (Matthew 10:27) Even when worldly authorities demand that we keep silent, we reply as did the apostles: "We cannot stop speaking about the things we have seen and heard." (Acts 4:20) The Christian congregation will continue to declare the Kingdom message boldly until Jehovah says the work is done.

Elders share the obligation to shepherd the flock. However, they must **be careful not to divulge information about personal matters to unauthorized persons.** There is "a time to keep quiet," when "your words should prove to be few." (Ecclesiastes 3:7; 5:2) Proverbs 10:19 warns: "In the abundance of words there does not fail to be transgression, but the one keeping his lips in check is acting discreetly." Problems are created when elders unwisely reveal matters that should be kept confidential. Elders must give special heed to the counsel: "Do not reveal the confidential talk of another." (Proverbs 25:9) Often the peace, unity, and spiritual well-being of the congregation are at stake. Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society.

While we as Christians are ready to forgive others who may wrong us, those in the world are not so inclined. Worldly persons are quick to resort to lawsuits if they feel their "rights" have been violated. Some who oppose the Kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress. Thus, elders must especially guard the use of the tongue. Jesus faced opposers who tried to "catch him in speech, so as to turn him over to the government." (Luke 20:20) He instructed us to be "cautious as serpents and yet innocent as doves" in such situations. (Matthew 10:16) Where such a threat exists, our position as elders should be in line with David's words: "I will set a muzzle as a guard to my own mouth, as long as anyone wicked is in front of me."—Psalm 39:1.

In recent years, this matter has come to be a cause for increasing concern. The spirit of the world has sensitized people regarding their legal "rights" and the legal means by which they can exact punishment if such "rights" are violated. Hence, a growing number of vindictive or disgruntled ones, as well as opposers, have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the Society. **Many of these lawsuits are the result of the misuse of the tongue.** As elders, remember that ill-advised statements or actions on your part can sometimes be interpreted legally as violating others' "rights."

The need for elders to maintain strict confidentiality has been repeatedly stressed. Please see The Watchtower of April 1, 1971, pages 222-4, and September 1, 1987, pages 12-15. The September 1977 Our Kingdom Service, page 6, paragraph 36, and the ks77 text- book, page 65, also provide helpful direction and counsel. That material strongly emphasized the elders' responsibility to avoid revealing confidential information to those not entitled to it.

The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended. Substantial monetary damages could be assessed against the elders or congregation. In some cases where the authorities are involved, certain complications could lead to a fine or imprisonment. These possibilities underscore **the need for elders to be discerning and to follow carefully directions provided by the Society.**

I. WHAT TO DO IN SPECIFIC CASES

A. Judicial Committee Matters

Judicial committees must follow carefully the Society's instructions in carrying out their duties. (Note ks77, pages 66-70; ks81, pages 160-70.) Anything submitted in writing to the committee by the alleged wrongdoer or by witnesses should be kept in strict confidence. If it is necessary to continue at a later time a committee hearing, the members of the committee should submit to the chairman any personal notes they have taken. The chairman will keep these notes in a secure place to prevent breaches of confidentiality. The notes may be returned to the individual elders when the hearing resumes. Upon conclusion of the case, the chairman should place only necessary notes and documents, a summary of the case, and the S-77 forms in a sealed envelope for the congregation file. Nothing should be preserved outside of this sealed envelope (including unnecessary personal notes) by any elder on the committee. Obviously, no committee will ever allow judicial proceedings to be tape recorded or allow witnesses testifying before the committee to take notes.

B. Child Abuse

Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. Victims of such abuse need to be protected from further danger.—See "If the Worst Should Happen," Awake! January 22, 1985, page 8.

C. Search Warrants and Subpoenas

1. A search warrant is a court order authorizing the police to search premises to locate evidence that may be used in a criminal prosecution. No elder should ever consent to the search of a Kingdom Hall or any other place where confidential records are stored. However, armed with a search warrant the police do not need consent and may even use force to accomplish their task. Likely before obtaining a search warrant, the police or other governmental officials will make inquiries regarding confidential records, make request to obtain the records, or indicate that they will seek a search warrant if the elder(s) involved does not cooperate. In any such situation, the Society's Legal Department should be called immediately.

At any time an elder is confronted with a search warrant (whether given advance notice or not), the elder should first ask to read the warrant. After reading it he should ask if he can call for legal guidance and then call the Society's Legal Department. If for some reason the Legal Department cannot be contacted, the elders involved should make every effort to obtain the assistance of a local attorney for the purpose of protecting the confidentiality of the records. It may be impossible to stop determined officers from conducting the search authorized by the warrant. Conscientious elders will want to do all they reasonably and peaceably can to preserve the confidentiality of the congregation in harmony with the principle set out in Acts 5:29.

2. Subpoenas are demands for records or for the appearance of an individual at a trial or deposition to give testimony. Subpoenas may be issued by a court or in some cases by a governmental agency or an attorney. If an elder receives a subpoena, he should contact the Society's Legal Department immediately. Never turn over records, notes, documents, or reveal any confidential matter sought by subpoena without receiving direction from the Legal Department.

D. Crimes and Criminal Investigations

In some cases the elders will form judicial committees to handle alleged wrongdoing that also could constitute a violation of Caesar's criminal laws (e.g., theft, assault, etc.). Generally, a secular investigation into a matter that is a concern to the congregation should not delay conducting a judicial hearing. To avoid entanglement with the secular authorities who may be investigating the same matter, the strictest confidentiality (even of the fact that there is a committee) must be maintained.

If the alleged wrongdoer confesses to the sin (crime), no one else should be present besides the members of the committee. When evidence supports the accusation but genuine repentance is not displayed resulting in a decision to disfellowship, this should be handled in the normal course regarding advice of appeal rights and announcements to the congregation. In cases of serious criminal wrongdoing (e.g., murder, rape, etc.), or where the criminal conduct is widely known in the community, the body of elders should contact the Society before proceeding with the judicial committee process.

E. When Servants and Publishers Move

A considerable number of publishers, including **elders and ministerial servants move from one congregation to another.** Sometimes the circumstances surrounding their departure are unsettled. Some appointed brothers may be experiencing problems that have brought their qualifications into question. It is not uncommon for a body of elders to hold back in giving counsel, allowing a brother to move without discussing his problem. Thereafter, they decline to recommend his reappointment in his new congregation. Often such a brother protests, requiring extensive correspondence between the bodies of elders. Much personal, and sometimes embarrassing, information must then be passed on. Such mishandling of things greatly increases the potential for serious repercussions. Problems can be avoided by the body of elders assuming its responsibility to inform a brother that he will not be favorably recommended, fully explaining the reasons why. **Every effort should be made to resolve any difference before he leaves, eliminating any need for controversy involving his new congregation.** The body should assign two elders to meet with him before he moves, letting him know whether they are recommending him to the new congregation.

This would likewise apply to publishers who move at a time when their personal conduct requires investigation by the elders. **If serious accusations of wrongdoing have been made against an individual and he moves to another congregation before matters are finalized, usually it is best for the elders in the original congregation to follow through in handling matters, if possible and if distance permits.** They are acquainted with the individual and the circumstances surrounding the alleged wrongdoing; this ordinarily puts them in the best position to get the facts and to handle the case. Handling matters in this way will eliminate the need to reveal confidential information unnecessarily about the private lives of individuals.

F. When Lawsuits Are Threatened

If the congregation or the elders (in their capacity as elders) are threatened with a lawsuit, the Society's Legal Department should be contacted immediately. No statements should be made by any member of the body of elders about the merits or validity of an actual or threatened lawsuit without authorization from the Society.

G. Child Custody

Elders may learn that a publisher is facing a dispute over child custody in a divorce proceeding. If the parental rights of such is challenged on the basis of our Christian beliefs, or on the assertion that our beliefs are harmful to a child's best interests, the elders should immediately write to the Society's Legal Department. In a rare emergency, a telephone call may be necessary. The Legal Department will assess the facts and determine the degree of its involvement, if any. Elders have no authority to make any promises about the Society's paying legal fees or handling specific cases. There is no need to contact the Society if there is no indication that the beliefs and practices of Jehovah's Witnesses will be attacked in a child custody dispute.

When you write to the Society's Legal Department about a specific case, please provide the following information:

1. The names of the parents and their attorneys.
2. The number of children involved and their ages.
3. A brief description of the facts, including the presence of any apostates.
4. An assessment of the Christian parent's spiritual condition—Is he or she new in the truth? Active? Inactive? Balanced?
5. The status of the legal proceedings—Has the matter gone to trial? Has the trial date been set? If so, when?

II. POINTS TO REMEMBER

A. Appreciate the Importance of Maintaining Confidentiality

Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out favorably, valuable time and energy that could have been devoted to Kingdom interests will be lost.

B. Do Not Make Statements to Secular Authorities Until You Receive Legal Advice from the Society

You are not legally required to make immediate responses to secular authorities about matters that could involve the disclosure of confidential information. Voluntarily allowing the Kingdom Hall or confidential records to be searched, where no search warrant is produced, could infringe on the legal rights of the congregation or of others. No statements should be made until you have an understanding of your legal position from the Society's Legal Department.

C. Be Extremely Careful with Written Material

All material related to judicial matters should be kept in a safe place, accessible only to elders. **Final reports on the handling of judicial matters should be placed in a sealed envelope in the congregation file.** A judicial committee should avoid sending to an individual any kind of correspondence that accuses him of specific wrongdoing. (Note ks77, pages 68-9.) **Nothing should be put in writing to any disfellowshipped person to advise him of his status or the reasons for it without specific direction from the Society.** The rules and procedures of Jehovah's Witnesses do not require such written disclosures. Anything in writing submitted to a judicial committee should be kept in strict confidence. If a judicial committee disfellowships an individual, he should be informed **orally** of the action taken and of the right to appeal. If the wrongdoer refuses to attend the hearing, two members of the judicial committee should attempt to contact the individual at his home and inform him **orally** of the decision. If this is not possible, the two elders may be able to inform him by telephone.

D. Guard the Use of Your Tongue

Think before you speak. Do not discuss private and judicial matters with members of your family, including your wives, or with other members of the congregation. Be extremely careful not to inadvertantly disclose private information when others are present, such as when speaking on the telephone with others listening in or nearby. (Note ks77, page 65.) At times, complicated judicial cases may necessitate consultation with an experienced, mature elder in another congregation or with the circuit overseer. Unless the circuit overseer is the elder consulted, only the pertinent details should be discussed and names should not be used.

Elders bear a heavy responsibility in ministering to the needs of the Christian congregation, and observing confidentiality as they do so. (1 Corinthians 16:13) We trust that the information in this letter will help you carry this burden. Please be assured of our love and prayers, and may Jehovah continue to bless you as you shepherd his flock.—1 Peter 5:1-3.

Your brothers,

Watchtower B.T.S. Society
OF NEW YORK, INC.

P.S. Due to the importance of the information that is presented herein it is suggested that the body of elders jointly read and consider this letter as soon as possible after its receipt in the congregation. Please do not make any copies of this letter, nor should it be read by others. It should be kept in the congregation's confidential files for any future reference that may be required by the body of elders.

SSD NOV 23 1993

North Congregation #15685
Fremont
c/o Michael L. Clarke
32852 Bass Lake St.
Fremont, Ca 94555

Nov 15, 1993

Watchtower Bible & Tract Society
25 Columbia Heights
Brooklyn, New York, 11201 USA

Dear Brothers,

We are writing to you regarding a case of child abuse. We telephoned 11/12/93 and it was suggested that we submit in writing our questions.

We met on 11/11/93 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15 yr old step daughter. The abuse occurred approximately 4 months ago. He confessed to touching the breast of his step daughter while she was sleeping. She was awaken instantly and knew what had happened. His wife was informed that evening and the 3 of them talked it out between them. Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders. He said that his conscious continued to bother him.

Evelyn, his wife, is baptized but inactive. She occasionally attends meetings.

Andrea, the step daughter, is not baptized and is no longer an unbaptized publisher. The step daughter is now using this as a tool to threaten with when she wants something. Because she has been promiscuous with 2 boys at school. the parents have tried to enforce house rules covering her comings and goings.

Andrea has recently mentioned the abuse to another young girl, Toy Register, whom she attends school with. Coincidentally, Toy attends our congregation meetings and is studying. Her mother is disfellowshipped. Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional. Mrs Register is now threatening to call the police.

Here are the facts as best as we can present them without interviewing each party. Our questions are as follows:

1. Can 2 elders handle this matter with Brother Kendrick as mentioned on page 93 of "Pay attention to Yourselves....Flock", under the heading Uncleanness? Or do we have to form a Judicial hearing because of it being child abuse?

2. We assume that Brother Kendrick does not qualify any longer as a Ministerial Servant. We will announce to the congregation that he is no longer serving as such. If this is incorrect, please inform us.

3. The legal department has given us some direction as far as our legal requirements and we will follow that closely.

We will wait to hear from you regarding the above questions. If I have not been clear enough, you may reach me during the day at my work phone (510-462-7861 ext 105)

Your Brothers,

Michael P. Clark

SCN DEC [illegible] 33

SCN:SST December 3, 1993
SSG

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers:

Your letter dated November 15, 1993, has been received. As you will note from the enclosed S-52 form, Brother Jonathan Kendrick has been deleted from serving as a ministerial servant on the grounds of "uncleanness."

Your letter states: "He confessed to touching the breasts of his stepdaughter while she was sleeping. She was awakened instantly and knew what had happened." Since this incident is known by outside members of the family, it is appropriate that Brother Kendrick be deleted from serving as a ministerial servant with your congregation.

On page 92 of the Kingdom Ministry School textbook the following is stated: "Uncleanness includes an intentional momentary touching of sexual parts or caressing of breasts. Such minor uncleanness can be handled at the discretion of an elder or two; it does not require a judicial hearing. There is a need for strong counsel, admonition, and assistance to help the individual to maintain chaste conduct in the future."

In harmony with the above, it will not be necessary for a judicial committee to handle the "uncleanness" committed by Brother Kendrick. However, it would be appropriate for two elders to meet with him and provide him with strong Scriptural counsel so as to avoid a repetition of such a serious offense.

We trust the above comments will be helpful to you. With this letter we are pleased to send you an expression of our warm Christian love and best wishes.

Your brothers,

cc: R. Rainer, CA #40

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

SCN:SST December 3, 1993

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers:

The Governing Body of Jehovah's Witnesses is pleased to advise that the following brother(s) has been appointed to serve in your congregation. Each one appointed should be sure that he is well acquainted with what the Bible says about his responsibilities in the congregation. In all that he does, he should look to God's Word for guidance and should cooperate closely with the faithful and discreet slave class, through whom the Lord is providing direction for his congregation. Further details as to the assignments to be cared for by each one will be provided by the local body of elders.

ELDER(S) MINISTERIAL SERVANT(S)

DELETION(S)

Jonathan Kendrick

Serving with you under the appointed
Head of the congregation, Jesus Christ,

P.S. To body of elders: If any brother recommended is appointed by the Society, please have two elders speak to him before announcing the appointment. Ask if there is any reason why it should not be announced. If so, do not announce it, but return this form and advise the Society why he is disqualified.

If there is a deletion only, it is not necessary to read the first paragraph. Simply announce the deletion. If an elder is deleted for reasons other than moving to another congregation with a favorable recommendation, he should turn over his Kingdom Ministry School textbook(s) to the Congregation Service Committee.

file
Read in MTG

DO NOT DESTROY

SSW SEP 14 1998

North Congregation Fremont

#15685
c/o Michael Clarke
32852 Bass Lake St
Fremont, CA 94555-1000

Watchtower Bible & Tract Society of New York, Inc
25 Columbia Heights
Brroklyn, New York 11201-2483

SDU:SSW Aug. 31, 1998

Dear Brothers:

This is in regard to your letter of June 19, 1998 involving Jonathan Kendrick. We are providing a copy of our November 15, 1993 letter to you, and your letter to us of December 3, 1993 SCN:SST

Below are answers to questions posed in the March 14, 1997 letter to all bodies of elders, page 3, para 1

1. How long ago did he committ the sin?	July 1993
2. What was the age of his victim?	15yrs old
3. Was it a one-time occurrence?	one time
4. How is he viewed in the community/authorities?	legal authorities contacted, police report made, no action taken by courts
5. Has he lived down any notoriety in community?	community unaware
6. Are members of congregation aware of sin?	no
7. Has he ever been disfellowshipped, reproved, etc	yes - loss of temper, self control – Reproved
8. If he has moved, indentify congregation	Oakley Congregation, Antioch, CA
9. Have they been notified?	No

We were not aware that we needed to send a follow up letter after our November 15, 1993 letter. We are sorry for that oversite. Brother Kendrick was deleted as a ministerial servant as of December 3, 1993. Full restrictions were put into place and lifted over a 2 year period. *He moved to Antioch in Jan of 1996. Our letter failed to mention anything about this matter. We will write to them immediately and send them a copy of this letter.*

Please accept our warm Christian love and best wishes

Michael Clarke Gary Abrahamson Larry Lamerdin

cc: Oakley Congregation

SUPERIOR COURT, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

SUPERIOR COURT OF CALIFORNIA MARTINEZ

DOCKET NO. SO4-138548-I 01

NOTICE, SENTENCE, COMMITMENT FORM

CLERK'S DOCKET AND MINUTES

PA RATE-H

DEFENDANT KENDRICK, JONATHAN DEPT. 006 DATE 1/07/2005 TIME 10:30 AM

ADDRESS 200 HONEY LANE OAKLEY CA 9456 DOB 01/31/195

ROC MOD/P FEL PROB FORM DEFENSE ATTORNEY CHAZIN TIME NOT WAIVED

CUSTODIAL STATUS CUST

CHARGES 01 F PC 288(a) G 02 F PC 288(a) G 03 F PC 288(a) DSM

FILED

JAN - 7 2005

SUPERIOR COURT CLERK OF CONTRA COSTA COUNTY

By

PROCEEDINGS

JUDGE DAVID B. FLINN COURT REPORTER VALERIE PRINCE DEPUTY CLERK MARY SLATER MINUTES CERTIFIED CORRECT

ASSIGN. TO DEPT. JUDGE COURT REPORTER DEPUTY CLERK

APPLICABLE ENTRIES MARKED

APPEARANCE
- ☐ Deft. proceeds in PRO PER
- ☒ Deft. appears ☐ in custody ☐ Deft. not appearing
- ☐ With/by Atty./Pub. Def./ADO
- ☒ Deputy Dist. Atty. Santos
- ☒ Court Probation Off. Osborne
- ☐ **Interp.** _____ **sworn/oath on file**
- ☐ **Cert.** ☐ **Non-Cert.** ☐ **Qualified per Rule 984.2**
- ☐ **Order** _____ **Int.** ☐ Int. Coord. notified

ARRAIGNMENT
- ☐ Answers true name as charged
- ☐ Waives Arr/reading of Complaint
- ☐ Handed copy of Complaint/Discovery
- ☐ Deft. duly arr. ☐ Video ☐ on Prob. Vio.
- ☐ Deft. waives arr. on amended complaint.

WARRANT
- ☐ Bench/Arrest Warrant to Issue
- Bail Set at $ _____
- ☐ Recalled ☐ Set Aside ☐ Remain Out
- ☐ No PTA Release ☐ No Vol. App.
- ☐ Hold until _____

BAIL ORDERS
- ☐ Bail forfeit & continued 190 days ☐ Bail Exon
- ☐ Bail forfeiture set aside & reinstated upon payment of fee $ _____

REFERRALS
- ☐ _____ Referred To: PUBLIC DEFENDER
- ☐ _____ Referred To: PROB. Bail Study/PPR
- ☐ Referred per ☐ 288.1 PC ☐ 1368 PC
- ☐ Adult Pre-Trial/PC 1000 Diversion eligibility
- ☐ Pub. Def. Conflict Filed; Appointed ADO
- ☐ Report to _____ for booking
- ☐ **977 waiver filed** ☐ 170.6 PC filed/oral
- ☐ In re law notice given

WAIVERS/PLEAS
- ☐ Written Plea filed ☐ Pleads Guilty, Ct.#
- ☐ Pleads No Contest, Found Guilty, Ct.#
- ☐ Pleads Not Guilty, Ct.# _____
- ☐ Jury Trial Waived/Demanded
- ☐ Time for Trial/Sent Waived/Not Waived
- ☐ Time for PX 10/60 Days Waived/Not Waived
- ☐ Admit/Denies _____ Priors/Refused/Enhance

CONTINUANCES
- ☐ _____
- ☐ _____
- ☐ **THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.**
- ☐ Vacate date on ☐ Def. must/need not appear

ATTEST: APR 06 2012

K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA - PITTSBURG

BY _____ DEPUTY CLERK

MOTIONS/ORDERS
- ☐ Peo/Def. Motion to/for/cont. _____
- ☐ Submitted with argument ☐ without argument
- ☐ Granted ☐ Denied ☐ Submitted ☐ No Action Taken
- ☐ Grounds: _____
- ☐ D.A. Motion to file amended complaint
- ☐ Complaint amended on its face to add Ct.# _____, a violation of section _____
- ☐ Pursuant to 23103.5CVC
- ☐ Strike the words felony and feloniously. Substitute the word misdemeanor wherever it appears in Complaint.
- ☐ Per Court/DA dismiss, Complaint/Ct.# _____
- ☐ Criminal Protective Order issued and served

PROBATION
- ☐ Court Probation granted for _____ mo/yr
- ☐ Adult Pre-Trial/PC 1000 Diversion granted
- ☒ Probation/Diversion/Reinstated/Modified/Extended to _____
- Original terms in full force and effect except as ordered.
- ☐ Deft. given/waived rights to Revoc. Hg; Admits/Denies allegations
- ☐ Prob. Revoked: ☐ Def. found in violation of probation
- ☐ Probation/Diversion: Terminated: Successfully/Unsuccessfully/Denied
- ☐ Pay Prob. Vio. fine of $ _____ ☐ Upon payment of fine/completion of jail sentence
- ☐ Criminal Proceedings Reinstated/Dismissed

No contact w/minors
Cooperate w/ sex offender instructions incl. polygraph
No involvement w/ youth programs.
No visiting places minors regularly attend

FINES/ORDERS/FEES
- ☐ Pay a fine of $ _____ ☐ Rest. Fine of _____
- ☐ Pay $10 cite fee/$25 Booking Fee/ $ _____ CJA Fee
- ☐ Pay balance of fine/ ☐ In lieu of fine ☐ Susp. $ _____ after fine.
- ☐ Make monthly payments to CCU P.O. Box 2528 Martinez, CA 94553 Phone (925) 646-1951 by _____
- ☐ _____ hours Volunteer work by _____ Fee $ _____
- ☐ Re-refer/reinstate to Level I/Level II/PCDDP
- ☐ Referred to ORC for Attorney Fee Costs of $ _____
- ☐ License Suspended/Revoked _____ months/years
- ☐ DL310/DL309 Served ☐ Advised 14607.6 CVC
- ☐ **Pay** fine/comply or appear on _____ at _____

COMMITMENTS
- ☐ Be imprisoned _____ days/months/years
- ☐ _____ days/months/years credit
- ☐ _____ days/months/years suspended
- ☐ Sentence to commence _____
- ☐ Serve consecutive/concurrent
- ☐ with _____ ☐ with any sentence
- ☐ Main Jail ☐ Electronic Home Detention
- ☐ WAP Contact CAB immediately / within 15 days.
- ☐ Day for day credit for time served in approved residential program. Proof by _____

OR CONDITIONS
- ☐ Obey all laws.
- ☐ Do not use any alcohol. Do not go to places where alcoholic beverages are the chief item of sale.
- ☐ Attend _____ AA/NA meetings per week and present proof at each court appearance.
- ☐ Submit to search and testing
- ☐ Destroy ☐ Return weapon
- ☐ Stay away from _____

JAN 24 2005

☐ REMANDED to County Jail: ☐ Ordered released ☒ On OR ☐ Promise to Appear ☐ Def. to be allowed _____ phone calls

Bail Set in the amt. of $ _____ ☐ Court Courtesy ☐ State Prison Commitment ☐ Committed to custody until sentence is satisfied in full

TO THE SHERIFF: COMMITMENT: I hereby certify that this is a true copy of the Entry of Judgment or Order and is your authority for the execution thereof.

See other minute pages for additional proceedings.

JAN - 7 2005

ED: _____

(JUDGE OF THE SUPERIOR COURT)

☐ See attached additional orders.

CRIM. MINUTES (4/01)

CR-300

SUPERIOR COURT, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

04-138568-1

NOTICE, SENTENCE, COMMITMENT FORM

CLERK'S DOCKET AND MINUTES

FILED
JAN 8 2004
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

DEFENDANT KENDRICK, JONATHAN DEPT. 4 DATE 1/8/04 TIME 1:30

ADDRESS DOB

ROC CAP PROB DEFENSE ATTORNEY TIME WAIVED

CUSTODIAL STATUS

CHARGES PC 288(a)+

MINUTES CERTIFIED CORRECT

PROCEEDINGS

JUDGE M. O'MALLEY COURT REPORTER D. THOMMES DEPUTY CLERK MOYER

ASSIGN. TO DEPT. JUDGE COURT REPORTER DEPUTY CLERK

APPLICABLE ENTRIES MARKED

APPEARANCE
- ☐ Deft. proceeds in PRO PER
- ☑ Deft. appears ☑ in custody ☐ Deft. not appearing
- ☑ With/by Atty./~~Pub. Def./ADO~~ CHAZIN
- ☑ Deputy Dist. Atty. CAMPBELL
- ☑ Court Probation Off. MS. JARRETT
- ☐ **Interp.** _____ **sworn/oath on file**
- ☐ **Cert.** ☐ **Non-Cert.** ☐ **Qualified per Rule 984.2**
- ☐ **Order** _____ **Int.** ☐ Int. Coord. notified

ARRAIGNMENT
- ☐ Answers true name as charged _____
- ☐ Waives Arr/reading of Complaint
- ☐ Handed copy of Complaint/Discovery
- ☐ Deft. duly arr. ☐ Video ☐ on Prob. Vio.
- ☐ Deft. waives arr. on amended complaint.

WARRANT/BAIL ORDERS
- ☐ Bench/Arrest Warrant to Issue
- Bail Set at $ _____
- ☐ Recalled ☐ Set Aside ☐ Remain Out
- ☐ No PTA Release ☐ No Vol. App.
- ☐ Hold until _____
- ☐ Bail forfeit & continued 190 days ☑ Bail Exon
- ☐ Bail forfeiture set aside & reinstated upon payment of fee $ _____

REFERRALS
- ☐ _____ Referred To: PUBLIC DEFENDER
- ☐ _____ Referred To: PROB. Bail Study/PPR
- ☐ Referred per ☐ 288.1 PC ☐ 1368 PC
- ☐ Adult Pre-Trial/PC 1000 Diversion eligibility
- ☐ Pub. Def. Conflict Filed; Appointed ADO
- ☐ Report to _____ for booking
- ☐ **977 waiver filed** ☐ 170.6 PC filed/oral
- ☐ In re law notice given

WAIVERS/PLEAS
- ☑ Written Plea filed ☐ Pleads Guilty, Ct.# _____
- ☑ Pleads No Contest, Found Guilty, Ct.# 1+2
- ☐ Pleads Not Guilty, Ct.# _____
- ☐ Jury Trial Waived/Demanded
- ☐ Time for Trial/Sent Waived/Not Waived
- ☐ Time for PX 10/60 Days Waived/Not Waived
- ☐ Admit/Denies _____ Priors/Refusal/Enhance

CONTINUANCES
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST: APR 06 2012
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA - PITTSBURG
DEPUTY CLERK

MOTIONS/ORDERS
- ☐ Peo/Def. Motion to/for/cont. _____
- ☐ Submitted with argument ☐ without argument
- ☐ Granted ☐ Denied ☐ Submitted ☐ No Action Taken
- ☐ Grounds: _____
- ☐ D.A. Motion to file amended complaint
- ☐ Complaint amended on its face) add Ct.# _____, a violation of section _____
- ☐ Pursuant to 23103.5CVC
- ☐ Strike the words felony and feloniously. Substitute the word misdemeanor wherever it appears in Complaint.
- ☑ Per ~~Court~~/DA dismiss, ~~Complaint~~/Ct.# 3
- ☐ Criminal Protective Order issued and served

PROBATION
- ☑ ~~Court~~ Probation granted for 5 yrs mo/yr
- ☐ Adult Pre-Trial/PC 1000 Diversion granted
- ☐ Probation/Diversion/Reinstated/Modified/Extended to _____
- Original terms in full force and effect except as omitted
- ☐ Deft. given/waived rights to Revoc. Hg; Admits/Denies allegations
- ☐ Prob. Revoked: ☐ Def. found in violation of probation
- ☐ Probation/Diversion: Terminated: Successfully/Unsuccessfully/Denied
- ☐ Pay Prob. Vio. fine of $ _____ ☐ Upon payment of fine/completion of jail sentence
- ☐ Criminal Proceedings Reinstated/Dismissed

This is a negotiated disposition. As to counts 1+2 amend time of offense to February 2002. Chazin relieved as counsel.
Count 1+2 - 6 years suspended upper term.
Count 2 - 6 years mid term concurrent to Count 1

FINES/ORDERS/FEES
- ☐ Pay a fine of $ _____ ☐ Rest. Fine of _____
- ☐ Pay $10 cite fee/$25 Booking Fee/ $ _____ CJA Fee
- ☐ Pay balance of fine/ ☐ In lieu of fine ☐ Susp. $ _____ after fine.
- ☐ Make monthly payments to CCU P.O. Box 2528 Martinez, CA 94553 Phone (925) 646-1951 by _____
- ☐ _____ hours Volunteer work by _____ Fee $ _____
- ☐ Re-refer/reinstate to Level I/Level II/PCDDP
- ☐ Referred to ORC for Attorney Fee Costs of $ _____
- ☐ License Suspended/Revoked _____ months/years
- ☐ DL310/DL309 Served ☐ Advised 14607.8 CVC
- ☐ **Pay** fine/comply or appear on _____ at _____

COMMITMENTS
- ☐ Be imprisoned _____ days/months/years
- ☐ _____ days/months/years credit
- ☑ 8 days/months/years suspended
- ☐ Sentence to commence _____
- ☐ Serve consecutive/concurrent
  - ☐ with _____ ☐ with any sentence
- ☐ Main Jail ☐ Electronic Home Detention
- ☐ WAP Contact CAB immediately / within 15 days.
- ☐ Day for day credit for time served in approved residential program. Proof by _____

OR CONDITIONS
- ☐ Obey all laws.
- ☐ Do not use any alcohol. Do not go to places where alcoholic beverages are the chief item of sale.
- ☐ Attend _____ AA/NA meetings per week and present proof at each court appearance.
- ☐ Submit to search and testing
- ☐ Destroy ☐ Return weapon
- ☐ Stay away from _____

See the Order of Probation.

☑ REMANDED to County Jail: ☐ Ordered released ☐ On OR ☐ Promise to Appear ☐ Def. to be allowed _____ phone calls

Bail Set in the amt. of $ _____ ☐ Court Courtesy ☐ State Prison Commitment ☐ Committed to custody until sentence is satisfied in full

TO THE SHERIFF: COMMITMENT: I hereby certify that this is a true copy of the Entry of Judgment or Order and is your authority for the execution thereof.

☐ See other minute pages for additional proceedings.

DATED: 1/8/04

MOM
(JUDGE OF THE SUPERIOR COURT)

CRIM. MINUTES (4/01)

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, SET THREE

PROPOUNDING PARTY: Plaintiff JANE DOE

RESPONDING PARTY: Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SET NUMBER: THREE (3)

///

///

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Defendant"), by and through its undersigned counsel and pursuant California Code of Civil Procedure section 2033, hereby responds to Plaintiff Jane Doe's ("Plaintiff") Demand for Inspection of Documents, Things, and/or Places, Set Four, as follows.

RESPONSES TO REQUESTS FOR ADMISSION, SET THREE

REQUEST FOR ADMISSION NO. 3:

Do you admit that, during the time he performed services as an Elder at the North Congregation, Fremont, between January 1, 1993, and December 31, 1998, Gary Abrahamson was acting as an agent of Watchtower Bible and Tract Society of New York, Inc.?

RESPONSE NO. 3:

Defendant admits that between January 1, 1993, and December 31, 1998, while Gary Abrahamson was acting within the course and scope of his duties as an elder in the North Congregation, Fremont, California, he was acting as an agent of Watchtower Bible and Tract Society of New York, Inc.; however, Defendant denies that Gary Abrahamson was acting as an agent of Watchtower Bible and Tract Society of New York, Inc., during any and all times that he was not acting within the course and scope of his duties as an elder in the North Congregation, Fremont, California.

REQUEST FOR ADMISSION NO. 4:

Do you admit that, during the time he performed services as an Elder at the North Congregation, Fremont, between January 1, 1993, and December 31, 1998, Michael Clark [sic] was acting as an agent of Watchtower Bible and Tract Society of New York, Inc.?

///

///

RESPONSE NO. 4:

Defendant admits that between January 1, 1993, and December 31, 1998, while Michael Clarke was acting within the course and scope of his duties as an elder in the North Congregation, Fremont, California, he was acting as an agent of Watchtower Bible and Tract Society of New York, Inc.; however, Defendant denies that Michael Clarke was acting as an agent of Watchtower Bible and Tract Society of New York, Inc., during any and all times that he was not acting within the course and scope of his duties as an elder in the North Congregation, Fremont, California.

REQUEST FOR ADMISSION NO. 5:

Do you admit that, during the time he performed services as an Elder at the North Congregation, Fremont, between January 1, 1993, and December 31, 1998, Larry Lamberdin [sic] was acting as an agent of Watchtower Bible and Tract Society of New York, Inc.?

RESPONSE NO. 5:

Defendant admits that between January 1, 1993, and December 31, 1998, while Larry Lamerdin was acting within the course and scope of his duties as an elder in the North Congregation, Fremont, California, he was acting as an agent of Watchtower Bible and Tract Society of New York, Inc.; however, Defendant denies that Larry Lamerdin was acting as an agent of Watchtower Bible and Tract Society of New York, Inc., during any time that he was not acting within the course and scope of his duties as an elder in the North Congregation, Fremont, California.

DATED: December 8, 2011

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

JANE DOE v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
Alameda Superior Court Case No. HG11558324

VERIFICATION

I am a duly authorized representative of Defendant Watchtower Bible and Tract Society of New York, Inc. in the above-entitled action.

I have read the foregoing **DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.' S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET THREE** to which this verification is attached. As to factual statements set forth therein for which I have personal knowledge, I declare that such statements are true and correct to the best of my knowledge. To the extent that factual statements contained therein represent composites of knowledge of various other persons, including or not including myself, I believe that such statements are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9 day of December, 2011, at Patterson, New York.

Gregory Allen

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S RESPONSE TO PLAINTIFF'S DEMAND FOR INSPECTION OF DOCUMENTS, THINGS, AND/OR PLACES, SET FIVE

PROPOUNDING PARTY: Plaintiff JANE DOE

RESPONDING PARTY: Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SET NUMBER: FIVE (5)

JANE DOE v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
Alameda Superior Court Case No. HG11558324

VERIFICATION

I am a duly authorized representative of Defendant Watchtower Bible and Tract Society of New York, Inc. in the above-entitled action.

I have read the foregoing **DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.' S RESPONSE TO PLAINTIFF'S DEMAND FOR INSPECTION OF DOCUMENTS, THINGS, AND/OR PLACES, SET FIVE** to which this verification is attached. As to factual statements set forth therein for which I have personal knowledge, I declare that such statements are true and correct to the best of my knowledge. To the extent that factual statements contained therein represent composites of knowledge of various other persons, including or not including myself, I believe that such statements are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of March 2012, at Patterson, New York.

Gregory Allen

WTNY's Response to Plaintiff's Demand for Inspection of Documents to WTNY, Set Five Response No. 26

ORGANIZED TO ACCOMPLISH OUR MINISTRY

"You, though, keep your senses in all things, suffer evil, do the work of an evangelizer, fully accomplish your ministry."—2 Tim. 4:5.

COPYRIGHT, 1983
by

WATCH TOWER BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

Publishers
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.
INTERNATIONAL BIBLE STUDENTS
ASSOCIATION
Brooklyn, New York, U.S.A.

Made in the United States of America

and to care for all His "belongings," or Kingdom interests on earth. (Matt. 24:45-47; Luke 12: 42-44) Rather than being an individual Christian, the 'faithful slave' today is the remnant, still living on earth, of the composite body of Christ's anointed footstep followers. Such remaining ones are a part of spiritual Israel, the anointed congregation of God. (Gal. 6:16; compare Isaiah 43: 10.) This remnant is faithfully discharging the responsibilities of the "slave" during this time of the end by taking the lead in the preaching of "this good news of the kingdom" throughout all the earth and by providing spiritual food at the proper time for the household of faith.—Matt. 24:14.

USE OF RELIGIOUS CORPORATIONS

During these last days of the present wicked system of things, the "belongings" of the Master have increased abundantly throughout all the earth. This has placed a heavy responsibility on the 'faithful slave.' In discharging its responsibility to provide spiritual food at the proper time and in order to get the good news of the Kingdom preached before the end comes, the remnant on earth, as "the faithful and discreet slave" class, has formed certain agencies, or legal entities. It has proved to be the course of wisdom for the 'faithful slave' to organize certain corporations that are recognized by the laws of various countries. These religious corporations own and operate printing facilities that produce and distribute Bibles and Bible literature on a worldwide basis for use in the Kingdom ministry.

The first in time and the principal corporation used in this way is the Watch Tower Bible and Tract Society of Pennsylvania. This nonprofit religious society was incorporated in 1884, is made

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S AMENDED RESPONSES TO PLAINTIFFS' REQUEST FOR DOCUMENTS

PROPOUNDING PARTY: PLAINTIFF JANE DOE

RESPONDING PARTY: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SET NUMBER: ONE AMENDED

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter, "this Defendant") by and through its undersigned counsel and pursuant to CAL. CIV. PROC. CODE § 2031, hereby responds to Plaintiff Jane Doe's ("Plaintiff") Request for Production of Documents as follows:

with Jonathan Kendrick or any alleged incident(s) between Jonathan Kendrick and plaintiff.)

Privilege log: The following documents responsive to this request are not produced based on the minister-communicant privilege, California Evidence Code §1034.

1. December 3, 1993, letter from elders in the U.S. Service Department to elders in the North Congregation of Jehovah's Witnesses, Fremont, California (2 Pages).

2. November 15, 1993, letter from elders in the North Congregation, Fremont, California, to elders in the U.S. Service Department (2 Pages).

REQUEST FOR PRODUCTION NO. 6:

Any and all documentary, tangible, or electronically created or stored materials of any kind, evidencing procedures, policies, protocols, guidelines, or other information promulgated by or provided to persons participating in or supervising Jehovah's Witnesses' activities, including the Jehovah's Witnesses on Peralta Blvd., Fremont, on the subjects of prevention of the sexual abuse of minors during or arising out of Jehovah's Witness activities, or the protection of minors against such abuse, including policies, procedures, or guidelines developed, circulated, or promulgated between 1990 and the present.

RESPONSE NO. 6:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege. California Evidence Code § 1034. In addition, this Defendant objects to this request to the extent that it requests documents related to religious faith, custom or law, or to internal church organization which are protected from discovery by the First Amendment of the U.S. Constitution and it's California analog, which bar civil court inquiry into such matters. *See*, *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. Further, this Defendant objects to this request as overbroad as to time since the relevant time period in this complaint ended in 1997.

Subject to and without waiving these objections, this Defendant produces the following attached documents responsive to the request:

- February 8, 1981, *Awake!,* pp. 16-19 "Incest—The Hidden Crime"
- June 22, 1982, *Awake!,* pp. 7-8 "'Baby Pros and Kiddie Porn'"; pp. 9-10 "Rape at Home"; pp. 11-12 "To End Child Abuse"
- October 1, 1983, *The Watchtower,* pp. 27-31 "Help for the Victims of Incest"
- November 22, 1983, *Awake!,* pp. 5-6 "Child Abuse—The Spin-off Epidemic"
- January 22, 1985, *Awake!*, pp. 3-4 "Child Molesting—Every Mother's Nightmare"; pp. 4-6 "Child Molesting'—Who Would Do a Thing Like That?'"; pp. 6-10 "Child Molesting—You Can Protect Your Child"
- July 22, 1985, *Awake!*, pp. 26-8 "From Our Readers—Response on Child Molesting"
- Portion of December 5, 1985, letter To Circuit and District Overseers in the United States that relates to child abuse.
- December 22, 1986, *Awake!*, pp. 7-11 "The Pornography Plague—Resist It!"
- Redacted portion (dealing with child abuse) of Lesson No. 15 from Fall 1987 Kingdom Ministry School.
- December 8, 1987, *Awake!*, pp. 4-6 "The Day-Care Controversy" [Sidebar, page 6] "Day Care and Sexual Abuse"
- Redacted portion (dealing with child abuse and subpoenas) of July 1, 1989, letter To All Bodies of Elders in the United States.
- January 8, 1990, *Awake!*, p. 25 "'The Most Pervasive Form of Child Abuse'"
- October 8, 1991, *Awake!*, p. 3 "The Innocent Victims of Child Abuse"; pp. 4-6 "The Secret Wounds of Child Abuse"; pp. 7-11 "'A Time To Heal'"
- March 23, 1992, letter To All Bodies of Elders in the United States.
- April 8, 1992, *Awake!*, pp. 24-27 "'I Wept for Joy'"
- Addendum No. 1 from 1991 Kingdom Ministry School (as referenced in March 23, 1992, letter)
- October 8, 1992, *Awake!*, p. 32, "Answer to a Prayer."
- April 8, 1993, *Awake!*, pp. 20-21 "Millions Are Suffering—Can They Be Helped?"; p. 31 "Victims of Pedophile Priests Speak Out"
- Redacted portion (dealing with child abuse) of Circuit Overseer Meets With Elders Program From September 1993 through August 1994
- July 22, 1993, *Awake!*, pp. 6-7 "Abusive Parents—The Ultimate Stressors"
- October 8, 1993, *Awake!*, pp. 3-4 "Your Child Is in Danger!"; pp. 5-9 "How Can We Protect Our Children?"; [Sidebar, page 6] "Common Misconceptions"; pp. 10-14 "Prevention in the Home"
- February 3, 1993, letter To All Bodies of Elders in the United States.
- November 22, 1993, *Awake!, p. 30,* "Help at the Right Time."
- December 22, 1993, *Awake!,* p. 30 "From Our Readers--Children Under Stress."

- Redacted portion (dealing with child abuse) from January 25, 1994, letter To All Circuit and District Overseers
- January 1, 1994, *The Watchtower*, pp. 20-5, "*The Watchtower* and *Awake!*—Timely Journals of Truth."
- Redacted portion (dealing with child abuse) from 1994 Kingdom Ministry School.
- Redacted portion (dealing with child abuse) of January 25, 1994, letter To All Circuit and District Overseers.
- Redacted portion (dealing with child abuse) from September 25, 1995, letter To All Traveling Overseers in the United States
- August 1, 1995, letter to All Bodies of Elders in the United States
- Redacted portion (dealing with child abuse) of Circuit Overseer Meets With Elders Program From September 1995 Through February 1996
- November 1, 1995, *The Watchtower*, pp. 25-29, "Comfort for Those with A Stricken Spirit."
- January 1, 1997, *The Watchtower*, pp. 26-29, "Let Us Abhor What is Wicked."
- February 1, 1997, *The Watchtower*, p. 29, "Questions From Readers."
- March 14, 1997, letter To All Bodies of Elders
- April 8, 1997, *Awake!*, pp. 11-15, "Sexual Exploitation of Children—A Worldwide Problem."

REQUEST FOR PRODUCTION NO. 7:

Any and all records, files, photographs, or other information, documents, or tangible materials of any kind, concerning Candace Conti, her mother Kathleen Conti, or any present or past member of her immediate family.

RESPONSE NO. 7:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege, California Evidence Code §1034.

In addition, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons not party to this litigation.

JANE DOE v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
Alameda Superior Court Case No. HG11558324

VERIFICATION

I am a duly authorized representative of Defendant Watchtower Bible and Tract Society of New York, Inc. in the above-entitled action. I have read the foregoing DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S AMENDED RESPONSES TO PLAINTIFF'S REQUEST FOR DOCUMENTS from and know the contents thereof. I certify that the same is true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24th day of June, 2011, at Patterson, New York.

Mario F. Moreno

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of January 22, 1985, pages 1-10) (*rpn85 01/22a*-E) (*rpn85 01/22b*-E) (*rpn85 01/22c*-E)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Awake!

JANUARY 22, 1985



Child Molesting

You Can Protect Your Child

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of January 22, 1985, pages 4-6) (*rpn85 01/22b-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Exact statistics are difficult to come by. In the United States, the National Center on Child Abuse and Neglect has records of 55,399 cases of children being sexually molested in one year. But these are only cases of incestuous abuse. Abuse by friends, neighbors, teachers, and so forth—as well as by strangers—would increase that figure to a considerable extent. And a spokesman for the Child Welfare League of America told *Awake!* that "the figures we have are only the tip of the iceberg."

A report in the magazine *Ladies Home Journal* estimates: "Sexual abuse of young girls is four times more common than rape of adult women. Between the ages of five and 13, one in four little girls falls prey to some form of sexual abuse by adults—whether it be exhibitionism, inappropriate fondling, rape, or incest. Although young females are the most common victims, 20 to 25 percent of those attacked are little boys."

Doctors are convinced of the harmful and long-term effects of such abuse. Hence, parents wonder: 'Are my children at risk? What steps can I take to protect them? What sort of person would try to harm them?'



Child Molesting

'Who Would Do a Thing Like That?'

MOST parents would answer this question wrong. When we think of sexual molestation, most of us probably picture a weird stranger who exposes himself to children or lures them away into a car or to some wooded area. Publicity has also been given to groups that lure children away to exploit them for pornography or child prostitution. Such things *do* happen, but these people are far from the usual type of child molester. So who are the usual child molesters?

Sue was molested by a man who was running a church group. He ran a youth club, and everybody agreed that he was very pleasant. But he sexually abused Sue and other girls. Another young girl wrote to an advice column to tell that her favorite uncle had taken to pulling her onto his lap and fondling her improperly. One man remembers that as a boy he was habitually abused by the grown son of a close family friend. An 11-year-old boy was molested by the aunt that he lived with. A New York woman reports being molested by her grandfather when she was seven years old. A 15-year-old boy was molested by his doctor during a medical examination. For Pam, it was even worse. For many years, her own father molested her. And Mary was molested by two older brothers and an older first cousin.

In fact, probably less than a third of sexual assaults on children are committed by strangers. Usually the victim knows the assailant. Often the abuser is a relative. Thus, in most cases children are molested by people they know and trust, which makes the problem of protecting them more difficult.

The Molester at Work

Many parents have another misconception. They envision molestation as being violent, with the child fighting and screaming for mercy. This may not be the case at all, at least not in the beginning. At the outset, sexual abuse may be disguised as playful or affectionate contact, and go on from there. The abuser is likely to persuade and pressure the child, using all the built-in authority of an older person. Do you remember what it was like when you were a child and were trained to obey adults even when they told you to do things you did not like, such as go to bed early or eat all your vegetables? Molesters take advantage of this training. One convicted abuser said: "Show me an obedient child, and I'll show you an easy victim."

One child was receiving obscene phone calls. When asked why she had not put the phone down, she said she thought it was rude to do that when someone was still talking! A woman of 30 remembers having been approached at the age of 5 by her grandfather. He said to her: "Good girls do this for Grandpa and never tell their mothers." How many five-year-olds would be able to see through such a deception?

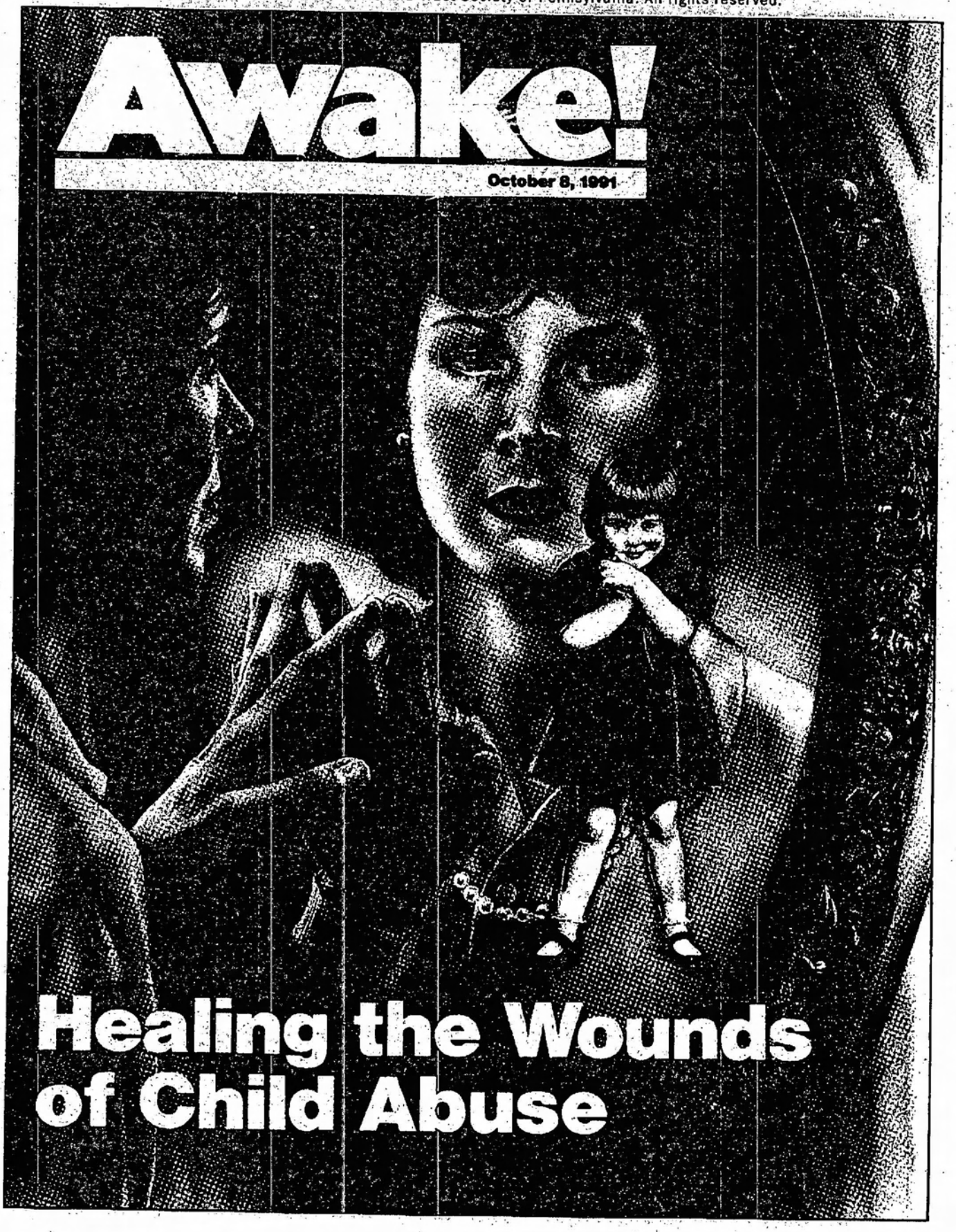
And do you remember how you loved presents and treats as a child? Abusers often use this childish trait to get an abusive relationship started. For example, what would your child do if the school janitor said: "Stay with me for a while in the office after school, and I will give you some money"? or if the baby-sitter said: "I will let you sit up late and watch television, if you do something for me first"?

Sometimes molesters misuse a child's natural love of secrets. Wasn't it exciting, when you were young, to have a secret? One little girl had a secret that she kept from her parents. But one day her parents saw her acting in a precocious, sexual manner. When asked where she had learned such a thing, the little girl said: "It's a secret." Her father explained that sometimes we should not keep a secret, so the little girl revealed her secret. A 40-year-old man with a family of his own, who was a close family relative, had pushed her down and sexually assaulted her.

"She was molested by her minister."

Finally, threats may be involved, subtle threats that strike at a child's sense of security. A grown woman tells of having been abused by her stepfather when she was a child. She says he abused her for four years, starting when she was six. Why did she not tell her mother? "He said that if I ever told anybody about it, the police would come get him and my mother would lose her job. The family would starve and it would all be my fault."

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of October 8, 1991, pages 1, 3-11) (*rpn91 10/08a-E*) (*rpn91 10/08b-E*) (*rpn91 10/08c-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.



Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of October 8, 1991, page 3) (*rpn91 10/08a-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

The Innocent Victims of Child Abuse

"I'M NEAR 40 now," says Eilene.* "And even though my problem is over 30 years old, it still haunts me. The anger, the guilt, the problems in my marriage! People try to understand, but they just can't." Eilene's problem? She is a victim of childhood sexual abuse, and for her the effects have proved to be long lasting.

Eilene is far from alone. Surveys indicate that an alarming number of women—and men—have suffered such mistreatment.* Far from being a rare act of deviant behavior, then, childhood sexual abuse is a widespread affliction, one that cuts across all social, economic, religious, and racial lines.

Fortunately, the vast majority of men and women would never even *think* of mistreating a child in this way. But a dangerous minority have this sick inclination. And contrary to stereotypes, few child abusers are drooling homicidal maniacs who lurk around playgrounds. The majority are persons who have cultivated a convincing veneer of normalcy. They satisfy their perverted lusts by targeting naive, trusting, defenseless children—usually their own daughters.^ Publicly, they may treat them kindly, tenderly. Privately, they subject them to threats, violence, and humiliating, degrading forms of sexual assault.

Admittedly, it is difficult to comprehend that such horrors could take place in so many seemingly respectable homes. Even in Bible times, though, children were used "for the momentary gratification of . . . sensual passion." (*The International Critical Commentary;* compare Joel 3:3.) The Bible predicted: "But know this, that in the last days critical times hard to deal with will be here. For men will be lovers of themselves . . . having no natural affection . . . without self-control, fierce, without love of goodness." Therefore, it should not surprise us that child abuse is taking place on a large scale today.—2 Timothy 3:1-3, 13.

Childhood molestation may leave no physical scars. And not all adults who were victimized as children are visibly distressed. But as an ancient proverb observed: "Even in laughter the heart may be in pain." (Proverbs 14:13) Yes, many victims have deep emotional scars—secret wounds that fester inside. Why, though, does childhood molestation wreak such havoc in some? Why does not the passage of time alone always heal its wounds? The magnitude of this distressing problem demands that we address it. True, some of what follows may be unpleasant to read—especially so if you have been a victim of childhood abuse. But be assured that there is hope, that you can recover.

* All names have been changed.

* Because definitions of sexual abuse and survey methods vary greatly, accurate statistics are nearly impossible to obtain.

^ Most victims are molested by their biological fathers or their stepfathers. Abuse also takes place at the hands of older siblings, uncles, grandfathers, adult acquaintances, and strangers. Since the vast majority of victims are female, we will generally refer to them in the feminine gender. For the most part, though, the information presented herein applies to both sexes.

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of October 8, 1991, pages 4-6) (*rpn91 10/08b-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

The Secret Wounds of Child Abuse

"I just *hate* myself. I keep thinking there's something I should have done, should have said to stop it. I just feel so *dirty*."—Ann.

"I feel alienated from people. I often deal with feelings of hopelessness and despair. Sometimes I want to die."—Jill.

"CHILDHOOD sexual abuse is . . . an overwhelming, damaging, and humiliating assault on a child's mind, soul, and body . . . The abuse invades every facet of one's existence." So says *The Right to Innocence*, by Beverly Engel.

Not all children react to abuse in the same way.* Children have different personalities, coping skills, and emotional resources. Much also depends on the child's relationship to the abuser, the severity of the abuse, how long the abuse lasted, the child's age, and other factors. Furthermore, if the abuse is exposed and a child receives loving adult support, damage can often be minimized. However, many victims suffer deep emotional wounds.

Why It Devastates

The Bible offers insight into why such damage occurs. Ecclesiastes 7:7 observes: "Mere oppression may make a wise one act crazy." If this is true for an adult, imagine the effect of brutal oppression on a small child—*particularly* if the abuser is a trusted parent. After all, the first few years of life are critical to a child's emotional and spiritual development. (2 Timothy 3:15) It is during those tender years that a youngster begins developing moral boundaries and a sense of personal worth. By bonding to her parents, a child also learns the meaning of love and trust.—Psalm 22:9.

"With abused children," explains Dr. J. Patrick Gannon, "this process of trust building gets derailed." The abuser betrays the child's trust; he robs her of any semblance of safety, privacy, or self-respect and uses her as a mere

* Our discussion focuses on what the Bible calls *por-nei'a*, or fornication. (1 Corinthians 6:9; compare Leviticus 18:6-22.) This includes all forms of immoral intercourse. Other abusive acts, such as exhibitionism, voyeurism, and exposure to pornography, while not *por-nei'a*, may also damage a child emotionally.

Awake!

Why *Awake!* Is Published *Awake!* is for the enlightenment of the entire family. It shows how to cope with today's problems. It reports the news, tells about people in many lands, examines religion and science. But it does more. It probes beneath the surface and points to the real meaning behind current events, yet it always stays politically neutral and does not exalt one race above another. Most important, this magazine builds confidence in the Creator's promise of a peaceful and secure new world before the generation that saw the events of 1914 passes away.

Would you welcome more information? Write Watch Tower at the appropriate address on page 5. This is part of a worldwide Bible educational work that is supported by voluntary donations.

Unless otherwise indicated, *New World Translation of the Holy Scriptures—With References* is used.

Awake! (ISSN 0005-237X) is published semimonthly by Watchtower Bible and Tract Society of New York, Inc., 25 Columbia Heights, Brooklyn, N.Y. 11201. Second-class postage paid at Brooklyn, N.Y., and at additional mailing offices. *Postmaster:* Send address changes to *Awake!*, c/o Watchtower, *Wallkill, N.Y. 12589.*
Vol. 72, No. 19 Printed in U.S.A.

object for his own self-gratification.* Small children do not understand the significance of the immoral acts being forced upon them, but almost universally they find the experience upsetting, frightening, humiliating.

Childhood abuse has thus been called "the ultimate betrayal." We are reminded of Jesus' question: "Who is the man among you whom his son asks for bread—he will not hand him a stone, will he?" (Matthew 7:9) But the abuser gives a child, not love and affection, but the cruelest "stone" of all—sexual assault.

Why the Wounds Persist

Proverbs 22:6 says: "Train up a boy according to the way for him; even when he grows old he will not turn aside from it." Clearly, parental influence can last a lifetime. What, though, if a child is trained to believe that she is powerless to prevent sexual intrusion? Trained to perform perversions in exchange for "love"? Trained to view herself as worthless and dirty? Could not that lead to a lifetime of destructive behavior? Not that childhood abuse excuses later inappropriate adult conduct, but it can help *explain* why abuse victims may tend to act or feel a certain way.

Many abuse victims suffer an array of symptoms, including depression. Some also seethe with persistent and at times overwhelming feelings of guilt, shame, and rage. Other victims may suffer emotional shutdown, an inability to express or even feel emotion. Low self-esteem and feelings of powerlessness also afflict many. Sally, who was abused by her uncle, recalls: "Each time he molested me I felt powerless and frozen, numb, stiff, confused. Why was this happening?" Reports psychologist Cynthia Tower: "Studies show that often people who were abused as children will carry through life a perception of themselves as a victim." They may marry an abusive man, project an air of vulnerability, or feel powerless to defend themselves when threatened.

Normally, children have 12 years or so to prepare for the emotions that awaken during puberty. But when lewd acts are forced upon a young child, she may be overwhelmed by the feelings aroused. As one study showed, this may later impede her ability to enjoy marital intimacies. Confesses a victim named Linda: "I find the sexual side of marriage to be the hardest thing in my life. I get the most dreadful sensation that it is my father there, and I get panicky." Other victims may react in just the opposite way and develop compulsive immoral desires. "I led a promiscuous life and would end up having sexual relations with complete strangers," admits Jill.

Abuse victims may also have difficulty in maintaining healthy relationships. Some simply cannot relate to men or to authority

* Since children tend to trust adults, abuse by a trusted family member, older sibling, family friend, or even by a stranger also constitutes a devastating betrayal of trust.

Semimonthly Languages Available by Mail:

Afrikaans, Arabic, Cebuano, Czech, Danish, Dutch, English (also cassettes*), Finnish, French, German, Greek, Iloko, Italian, Japanese, Korean, Norwegian, Portuguese, Slovak, Spanish, Swedish, Tagalog, Yoruba, Zulu

Monthly Languages Available by Mail:

Chichewa, Chinese, Cibemba, Croatian, Hiligaynon, Hungarian, Igbo, Kannada, Malayalam, Myanmar, New Guinea Pidgin, Polish, Romanian, Russian, Sepedi, Serbian, Sesotho, Sinhalese, Slovenian, Swahili, Tahitian, Tamil, Thai, Tswana, Xhosa

* Outside the United States and Canada, write U.S. office concerning certification for the blind and visually impaired.

Average Printing: 12,980,000 Published in 64 Languages

Subscription requests should be sent to Watch Tower at the appropriate address below.

America, United States of, Wallkill, N.Y. 12589
Australia, Box 280, Ingleburn, N.S.W. 2565
Canada L7G 4Y4, Box 4100, Halton Hills (Georgetown), Ontario
England NW7 1RN, The Ridgeway, London
Ghana, Box 760, Accra
New Zealand, P.O. Box 142, Manurewa
Nigeria, P.M.B. 1090, Benin City, Bendel State
South Africa, Private Bag 2067, Krugersdorp, 1740
Zambia, Rep. of, Box 21598, Kitwe

Changes of address should reach us 30 days before your moving date. Give us your old and new address (if possible, your old address label).

© 1991 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

figures. Some will sabotage friendships and marriages by becoming abusive or controlling. Yet others tend to avoid close relationships entirely.

There are even victims who turn their destructive feelings on themselves. "I hated my body because it had responded to the stimulation of the abuse," admits Reba. Tragically, eating disorders,* workaholism, alcohol and drug abuse, are common among abuse victims—desperate attempts to bury their feelings. Some may also act out their self-hatred in more direct ways. "I have cut myself, dug my fingernails into my arms, burned myself," adds Reba. "I felt I deserved to be abused."

Do not jump to the conclusion, however, that anyone who feels or acts in such ways has necessarily been abused sexually. Other physical or emotional factors may be involved. For example, experts say that similar symptoms are common among adults raised in dysfunctional families—where their parents battered them, belittled and humiliated them, ignored their physical needs, or where the parents were drug or alcohol addicts.

Spiritual Damage

The most insidious effect of all that childhood abuse can wreak is the potential spiritual damage. Molestation is a "defilement of flesh and spirit." (2 Corinthians 7:1) By performing perverted acts on a child, by violating her physical and moral boundaries, by betraying her trust, an abuser contaminates a child's spirit, or dominant mental inclination. This can later impede the victim's moral and spiritual growth.

The book *Facing Codependence*, by Pia Mellody, further notes: "Any serious abuse . . . is also spiritual abuse, because it taints the child's trust of a Higher Power." For example, a Christian woman named Ellen asks: "How can I think of Jehovah as a Father when I have this concept of a cruel, raging man for an earthly father?" Says another victim, named Terry: "I never related to Jehovah as a Father. As God, Lord, Sovereign, Creator, yes! But as Father, no!"

Such individuals are not necessarily spiritually weak or lacking in faith. On the contrary, their persistent efforts to follow Bible principles give evidence of spiritual strength! But imagine how some might feel when they read a Bible text such as Psalm 103:13, which says: "As a father shows mercy to his sons, Jehovah has shown mercy to those fearing him." Some may grasp this intellectually. Yet, without a healthy concept of what a father is, it may be hard for them to respond to this text emotionally!

Some may also find it difficult to be "like a young child" before God—vulnerable, humble, trusting. They may hold back their true feelings from God when praying. (Mark 10:15) They may hesitate to apply to themselves the words of David at Psalm 62:7, 8: "Upon God are my salvation and my glory. My strong rock, my refuge is in God. Trust in him at all times, O people. Before him pour out your heart. God is a refuge for us." Feelings of guilt and unworthiness may even undermine their faith. One victim said: "I believe in Jehovah's Kingdom very much. However, I don't really feel I'm good enough to be there."

Of course, not all victims are affected the same way. Some have been drawn to Jehovah as a loving Father and feel no obstacle at all in relating to him. Whatever the case, if you are a victim of childhood sexual abuse, you may find it of great value to discern how it has affected your life. Some may be content to let matters rest. However, if it appears to you that the damage is significant, take heart. Your wounds can be healed.

* See *Awake!* of December 22, 1990.

Reprinted through the courtesy of the editors of *Awake!* magazine
(Issue of October 8, 1991, pages 7-11) (*rpn91 10/08c-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

"A Time to Heal"

Ann was everyone's shoulder to cry on; a rescuer of anyone with a problem. Poised and impeccable in appearance, she gave not even a hint of having secret emotional wounds, until one day she began to remember. "I was at work," recalls Ann, "and I started getting pains and intense feelings of shame. I could hardly stand up! For days I suffered. Then a memory came back of my stepfather molesting me—really, it was rape. And it was not the only time."

THERE is "a time to heal." (Ecclesiastes 3:3) And for many victims of childhood abuse—like Ann—the emergence of long-buried memories is an important part of the healing process.

How, though, could anyone forget something as traumatic as sexual assault? Consider how helpless a child is against the advances of a father or of some other powerful adult. She cannot run. She dare not scream. And she dare not tell—*anyone!* Yet, she may have to face her abuser every day and act as if nothing happened. Maintaining such a pretense would be difficult for an adult; it is nearly impossible for a child. So she uses the tremendous imagination with which children are endowed and *escapes mentally!* She pretends the abuse didn't happen, blanking it out or numbing her senses to it.

Actually, from time to time, all of us block out things we don't want to see or hear. (Compare Jeremiah 5:21.) But abuse victims use this ability as a tool of survival. Some victims report: "I pretended it was happening to someone else and I was just a spectator." "I pretended I was asleep." "I did my math problems in my head."—*Strong at the Broken Places,* by Linda T. Sanford.

Not surprisingly, then, the book *Surviving Child Sexual Abuse* claims: "It is estimated that up to 50 per cent of survivors of child sexual abuse are not aware of these experiences." Some, though, may recall the abuse itself but block out the *feelings* connected with it—the pain, the rage, the shame.

Repression—Tug-of-War in the Mind

Is it not best, then, that these things *stay* buried—that victims simply forget about them? Some may well choose to do so. Others simply cannot. It is as Job 9:27, 28 says: "If I smile and try to forget my pain, all my suffering comes back to haunt me." (*Today's English Version*) The repression of frightening memories is an exhausting mental effort, a ferocious game of tug-of-war that may even have serious health consequences.

As a victim gets older, the pressures of life often weaken her ability to repress the past. A whiff of cologne, a familiar-looking face, a startling sound, or even an examination by a doctor or a dentist may trigger a frightening onslaught of memories and feelings.* Should she not simply try harder to forget? At this point many victims find relief in *trying to remember!* Says a woman named Jill: 'Once the

*Some memories begin their emergence in the form of psychosomatic pains; others are in the form of hallucinations that may be mistaken for demonic activity—intruder sounds, such as doors opening; shadowy figures that move by doorways and windows; the feeling of an invisible presence in bed. Such distress generally ceases when the memories fully emerge.

memories are brought out, they lose their power. To keep them in is more painful and dangerous than to dispose of them.'

The Value of Acknowledging

Why so? For one thing, remembering allows a victim to grieve. Grief is a natural reaction to trauma; it helps us to put distressing events behind us. (Ecclesiastes 3:4; 7:1-3) An abuse victim, though, has been denied her grief, forced to deny her horrifying experience, made to bottle up her pain. Such repression may result in what doctors call posttraumatic stress disorder—a numbed state virtually devoid of emotion.—Compare Psalm 143:3, 4.

As memories begin to return, the victim may virtually *relive* the abuse. Some victims even temporarily regress to a childlike state. "When a flashback is in progress," recalls Jill, "I often have physical symptoms. Sometimes the memories are so oppressive, I feel I am being driven to madness." Long-suppressed childhood rage may now come tumbling forth. "Remembering plunges me into depression and anger," says Sheila. But under these unique circumstances, anger is appropriate. You are grieving, expressing pent-up *righteous* rage! You have a right to hate the wicked acts perpetrated against you.—Romans 12:9.

Says one abuse victim: "When I was able to *really* remember, I had a great sense of relief . . . At least now I knew what I was dealing with. As difficult as it was on me to remember, it did give me back a part of my life that had become scary because it was so unknown and mysterious."—*The Right to Innocence.*

Remembering may also help a victim to get to the root of some of her problems. "I always knew I had deep self-hatred and anger but didn't know why," says one victim of incest. Remembering helps many to realize that what happened was not their fault, that they were victimized.

Of course, not all remember their abuse as dramatically or as vividly as others. And most counselors agree that it is not necessary to recall every detail of one's abuse in order to heal from its effects. Simply acknowledging that abuse occurred can be a big step toward recovery.—See box on page 9.



Facing the past and putting it together again can be one step toward healing

Getting Support

If you are a victim of childhood sexual abuse, do not ride out the storm of returning memories by yourself. It helps to talk out your feelings. (Compare Job 10:1; 32:20.) Some who are extremely distressed may decide to seek the help of a qualified physician, counselor, or mental-health professional. In any case, a trusted friend, a marriage mate, family members, or Christian overseers who will listen with empathy and respect can also be valuable allies.* "My biggest help has been my best friend, Julie," says Janet. "She's allowed me to talk over and over again about a memory. She allows me to feel the emotions that result. She listens and responds with understanding."

Trust is a risky business, and you may feel unworthy of receiving someone's help—or be too ashamed to talk about your abuse. But a true friend is "born for when there is distress" and may very well rise to the occasion if you give him or her a chance. (Proverbs 17:17) Be selective, though, about whom you confide in. Learn to reveal your concerns gradually. If a friend proves to be sympathetic and discreet, *then* you might try disclosing more.

It also helps to take good care of yourself physically. Get sufficient rest. Exercise moderately. Maintain a healthy diet. If possible, simplify your life. Feel free to weep. The pain may seem never ending, but in time it will subside. Remember: You lived through the abuse as a helpless child—and survived! As an adult, you have resources and strengths you didn't have back then. (Compare 1 Corinthians 13:11.) So face your painful memories and put them to rest. Rely on God for strength. Said the psalmist: "However great the anxiety of my heart, your consolations soothe me."—Psalm 94:19, *The New Jerusalem Bible.*

Ways to Recover

- ☐ Remembering and acknowledging the abuse
- ☐ Grieving over the abuse
- ☐ Talking out one's feelings with a supportive listener
- ☐ Overcoming feelings of guilt and shame
- ☐ Coming to terms with one's parents
- ☐ Applying Bible principles to change destructive behavior
- ☐ Healing unhealthy sexual feelings
- ☐ Developing healthy personal and moral boundaries
- ☐ Developing a close relationship with God and fellow Christians

Getting Rid of the Guilt and Shame

Ending self-blame is another important task of recovery. "Even now it's hard for me to think I was innocent," says a victim named Reba. "I wonder, why didn't I stop him?"

Bear in mind, though, that abusers employ the most diabolic means of coercion: authority ('I'm your father!'), threats ('I'll kill you if you tell!'), brute physical force and even guilt ('If you tell, Daddy will go to jail.'). Conversely, some use gentle persuasion or gifts and favors. Some misrepresent sexual activities as a game or as parental affection. "He said that this is what people do when they love each other," recalls one victim. How could a little child resist such emotional blackmail and trickery? (Compare Ephesians 4:14.) Yes, the abuser coldly exploits the fact that children are helpless, vulnerable, "babes as to badness."—1 Corinthians 14:20.

Perhaps, then, you need to remind yourself just how vulnerable and helpless you were as a child. You might try spending time with

* Valuable information on helping abuse victims is found on pages 27-31 in the October 1, 1983, issue of our companion journal, *The Watchtower.* We recommend that all congregation elders refer back to that issue and pay careful attention to any cases referred to them.

some small children or looking at childhood pictures of yourself. Supportive friends can also help by constantly reminding you that the abuse was not your fault.

Still, one woman says: "I get sick when I remember the feelings my father aroused in me." Some victims (58 percent in one study) recall experiencing arousal during the molestation. Understandably, this causes them much shame. The book *Surviving Child Sexual Abuse* reminds us, however, that "physical arousal [is] simply the body's automatic [response] to being touched or stimulated in certain ways" and that a child has "no control over this arousal." The abuser alone thus bears full responsibility for what transpired. *IT WAS NOT YOUR FAULT!*

Take comfort, too, in knowing that God views you as "blameless and innocent" in the matter. (Philippians 2:15) In time any urge to engage in self-destructive behavior may diminish, and you can learn to cherish your own flesh.—Compare Ephesians 5:29.

Coming to Terms With Your Parents

This may prove to be one of the most difficult tasks of recovery. Some continue to be filled with anger, fantasies of revenge—or guilt. One abuse victim said: "I am depressed because I think Jehovah expects me to forgive my molester, and I can't." On the other hand, you may live in morbid fear of your abuser. Or you may have hostile feelings toward your mother if she closed her eyes to the abuse or reacted with denial or anger when abuse was revealed. "My mother told me that I'd have to make allowances for [my father]," recalls one woman bitterly.

It is only natural to feel angry when one has suffered abuse. Nevertheless, the ties that bind families can be strong, and you may not want to cut off all contact with your parents. You may even be willing to consider a reconciliation. Much, though, would depend on the circumstances. Victims are sometimes inclined to forgive their parents outright—not excusing the abuse, but refusing to be consumed with resentment or controlled by fear. Preferring to avoid an emotional confrontation, some are content to 'have their say in their heart' and let matters rest.—Psalm 4:4.

You may come to feel, however, that matters can be resolved only by confronting your parents with the abuse—in person, by phone, or by letter. (Compare Matthew 18:15.) If so,

Releasing the Past

Memories are usually released over a period of weeks, months, or years, each emerging memory bringing on a temporary crisis. *The Right to Innocence* says that at times "you may feel like you are backsliding. You aren't. You are getting better. In actuality, you have gained the strength necessary to face deeper, even more painful feelings and awarenesses." With good reason, though, recovering may temporarily become a person's all-consuming concern. —Proverbs 18:14.

Some victims find it beneficial to read or hear the expressions of other victims. Looking at family photos and childhood memorabilia, visiting childhood sites, and talking to supportive friends and family members may also stir up memories. Particularly effective are writing exercises. Some victims record all they remember of their trauma in a journal. Others pour out their feelings in a letter to their abuser—one that is *not sent*—which often triggers further memories. Prayer too is a powerful tool of recovery. Like the psalmist you can pray: "Examine me, and know my disquieting thoughts, and see whether there is in me any painful way, and lead me in the way of time indefinite."—Psalm 139:23, 24.

be sure you have recovered sufficiently—or at least have enough support—to withstand the emotional storm that might erupt. Since little will be accomplished by a shouting match, try to be firm but *calm*. (Proverbs 29:11) You might proceed by stating (1) what took place, (2) how it has affected you, and (3) what you expect from them now (such as apologies, payment for doctor bills, or changes in conduct). At the very least, bringing matters out in the open may help dispel any lingering feelings that you are powerless. And it just might pave the way for a new relationship with your parents.

For example, your father might acknowledge the abuse, expressing deep remorse. He may also have made sincere efforts to change, perhaps by getting treatment for alcohol addiction or by pursuing a study of the Bible. Your mother may likewise beg your forgiveness for her having failed to protect you. Sometimes a full reconciliation may result. However, do not be surprised if you still feel ambivalent about your parents and prefer not to rush into a close relationship with them. At the very least, though, you may be able to resume reasonable family dealings.

On the other hand, the confrontation may trigger a torrent of denial and verbal abuse from the molester and other family members. Worse, you may discover that he is still a threat to you. Forgiveness may then be inappropriate, a close relationship impossible.—Compare Psalm 139:21.

In any event, it may take considerable time before your hurt feelings subside. You may need to remind yourself repeatedly that final justice belongs to God. (Romans 12:19) Talking things over with a supportive listener or even expressing your feelings in writing may likewise help you work out your anger. With God's help you can work through your anger. With the passage of time, hurtful feelings will no longer dominate your thinking.—Compare Psalm 119:133.

A Spiritual Recovery

Space does not permit us to discuss all the emotional, behavioral, and spiritual issues involved. Suffice it to say that you can do much to facilitate your recovery by "making your mind over" with the help of God's Word. (Romans 12:2) 'Stretch forward to the things ahead,' filling your life with spiritual thoughts and activity.—Philippians 3:13; 4:8, 9.

For example, many abuse victims find much comfort simply by reading through the Psalms. Even greater benefits come, though, by diligently applying Bible principles. In time marital stress can ease. (Ephesians 5:21-33) Destructive behavior can cease. (1 Corinthians 6:9-11) Unhealthy sexual feelings can heal. (Proverbs 5:15-20; 1 Corinthians 7:1-5) You can also learn balance in your personal relationships and build solid moral boundaries.—Philippians 2:4; 1 Thessalonians 4:11.

Make no mistake: Recovery requires real determination and supreme effort! Psalm 126:5, though, assures us: "Those sowing seed with tears will reap even with a joyful cry." Remember, too, that the true God, Jehovah, is interested in your welfare. He is "near to those that are broken at heart; and those who are crushed in spirit he saves." (Psalm 34:18) Says one abuse victim: "When I finally realized that Jehovah was aware of every feeling I had and that he cared—*really cared*—then I finally felt peace inside."

Our loving God, Jehovah, offers even more than peace of mind. He promises a new world of righteousness, where he will wipe out every memory of childhood pain. (Revelation 21:3, 4; see also Isaiah 65:17.) This hope can sustain and strengthen you as you travel the road toward full recovery.

EXHIBIT 12

Reprinted through the courtesy of the editors of Awake! magazine
(issue of April 8, 1992, pages 1, 4-5, 24-7) (*rpn92 04/08a-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.



second largest candy season in the United States after Christmas. One company produces more than a hundred types of Easter rabbits.

According to *The Detroit News*, Jack Santino, professor of folklore and popular culture at Bowling Green State University in Ohio, admitted that the secularization of Easter 'is "typical" of today's consumer-oriented society.' The newspaper added that the Easter "bunny—not the resurrection—has become the focus of Easter."

Just Another Holiday

In the Northern Hemisphere, Easter heralds the beginning of spring and is generally accompanied by a week's vacation from schools and colleges. So where possible, many young people flock to warm-weather resorts for wild beach-parties. Others view the Easter season simply as the end of the ski season—their last chance to enjoy the slopes.

Emblems of Easter have become symbols of fun and games

In Norway, where almost 88 percent of the population belongs to the Lutheran Evangelical state church, only about 14 percent of those surveyed in a recent study said that they would consider going to church on Easter. About 75 percent admitted that they no longer view Easter as a religious holiday. They said they would rather go skiing.

For many, some of the important emblems of Easter have become symbols of fun and games. The egg, for example, is probably the most popular symbol of Easter in many countries. The symbolism of the egg is very religious. Supposedly, the resurrection of Jesus Christ is represented by the new life that emerges from a seemingly lifeless egg. Hence, the custom of decorating eggs with attractive colors and designs is an important feature of the Easter celebration.

But for some, the main value of the Easter egg is to entertain children. In one town the traditional Easter egg hunt at the local church ends up in an egg fight! "For children," notes Robert J. Myers in his book *Celebrations*, "Easter means fun, surprises, and probably enough candy and sweets to last until Halloween!"

In theory, Easter continues to hold the highest position among Christendom's religious holidays. In practice, however, it seems that more and more people regard it as of little significance, as just another holiday. What about you? What does Easter mean to you? Before you answer this question, however, should you not first ask: 'What does Easter mean to God? Is the celebration pleasing to him? Are Christians really required to celebrate Easter?'

Awake!

Why *Awake!* Is Published *Awake!* is for the enlightenment of the entire family. It shows how to cope with today's problems. It reports the news, tells about people in many lands, examines religion and science. But it does more. It probes beneath the surface and points to the real meaning behind current events, yet it always stays politically neutral and does not exalt one race above another. Most important, this magazine builds confidence in the Creator's promise of a peaceful and secure new world before the generation that saw the events of 1914 passes away.

Would you welcome more information? Write Watch Tower at the appropriate address on page 5. This is part of a worldwide Bible educational work that is supported by voluntary donations.

Unless otherwise indicated, *New World Translation of the Holy Scriptures—With References* is used.

Awake! (ISSN 0005-237X) is published semimonthly by Watchtower Bible and Tract Society of New York, Inc., 25 Columbia Heights, Brooklyn, N.Y. 11201. Second-class postage paid at Brooklyn, N.Y., and at additional mailing offices. **Postmaster:** Send address changes to *Awake!*, c/o Watchtower, **Wallkill, N.Y. 12589.** Vol. 73, No. 7

Printed in U.S.A.

What Does Easter Mean to God?

EASTER—the "queen of festivals!" *festum festorum!*—is said to celebrate the resurrection of Christ. But what did Jesus have to say about commemorating his resurrection? Did the apostles command us to celebrate it? Is the celebration of Easter a God-given command or a man-made tradition? You can easily find answers to these questions by examining two sources of information—history and the Bible.

History Speaks

First, what does history have to say? Writing in the fifth century C.E., historian Socrates Scholasticus stated in his *Ecclesiastical History:* "It seems to me that the feast of Easter has been introduced into the church from some old usage, just as many other customs have been established."

The book *Curiosities of Popular Customs* explains that it was the policy of the "Church to give a Christian significance to such of the extant pagan ceremonies as could not be rooted out. In the case of Easter the conversion was peculiarly easy. Joy at the rising of the natural sun, and at the awakening of nature from the death of winter, became joy at the rising of the Sun of righteousness, at the resurrection of Christ from the grave. Some of the pagan observances which took place about the 1st of May were also shifted to correspond with the celebration of Easter. Many new features were added."

In his book *Celebrations,* Robert J. Myers agrees, stating that "many of the pagan rebirth rites, celebrated at the vernal equinox, became part of the feast." These statements are supported by *The New Encyclopædia Britannica,* which says: "As at Christmas, so also at Easter, popular customs reflect many ancient pagan survivals—in this instance, connected with spring fertility rites, such as the symbols of the Easter egg and the Easter hare or rabbit."

Of Pagan Origin?

Evidently, then, Easter as it is celebrated today is saturated with pagan rites and customs. This is not to say, however, that the celebration of Easter has no relationship to some Biblical events.

Semimonthly Languages Available by Mail:
Afrikaans, Arabic, Cebuano, Czech, Danish, Dutch, English (also cassettes), Finnish, French, German, Greek, Hungarian, Iloko, Italian, Japanese, Korean, Norwegian, Portuguese, Slovak, Spanish, Swedish, Tagalog, Yoruba, Zulu

Monthly Languages Available by Mail:
Chichewa, Chinese, Cibemba, Croatian, Hiligaynon, Igbo, Kannada, Malayalam, Myanmar, New Guinea Pidgin, Polish, Romanian, Russian, Sepedi, Serbian, Sesotho, Shona, Sinhalese, Slovenian, Swahili, Tahitian, Tamil, Telugu, Thai, Tswana, Turkish, Twi, Xhosa

© 1992 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Subscription requests should be sent to Watch Tower at the appropriate address below.

America, United States of, Wallkill, N.Y. 12589
Australia, Box 280, Ingleburn, N.S.W. 2565
Canada L7G 4Y4, Box 4100, Halton Hills (Georgetown), Ontario
England NW7 1RN, The Ridgeway, London
Ghana, Box 760, Accra
Jamaica, Box 180, Kingston 10
New Zealand, P.O. Box 142, Manurewa
Nigeria, P.M.B. 1090, Benin City, Edo State
South Africa, Private Bag 2067, Krugersdorp, 1740
Zambia, Rep. of, Box 21596, Kitwe
Zimbabwe, 35 Fife Avenue, Harare

Changes of address should reach us 30 days before your moving date. Give us your old and new address (if possible, your old address label).

Reprinted through the courtesy of the editors of *Awake!* magazine
(Issue of April 8, 1992, pages 1, 4-5, 24-7) (*rpn92 04/08a-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

"I WEPT FOR JOY"

Readers Express Deep Appreciation for "Healing the Wounds of Child Abuse"

A RECENT series of articles in the *Awake!* magazine moved many readers from all over the world to express their heartfelt appreciation for the cover series "Healing the Wounds of Child Abuse" in the October 8th, 1991, *Awake!* Their responses have shown that this carefully prepared material accomplished its purpose, which was threefold: (1) to provide understanding and hope for the victims; (2) to warn parents so they can be vigilant about the safety of their children; (3) to help elders who assist abuse victims to be better informed so that they can give more effective assistance. —Proverbs 21:13; compare 27:23.



A theme that was repeated by many readers was typified by this comment: "I have always appreciated being one of Jehovah's Witnesses. However, my appreciation and love for Jehovah and his 'faithful and discreet slave' (Matthew 24:45-47) have been increased a hundredfold after reading the October 8, 1991, issue of *Awake!*"

"Jehovah Really Understands and Cares Deeply"

A large number expressed gratitude for a most important aspect of the articles: that God listens, cares, knows that the victim was not at fault, and can provide healing. A reader states: "Thanks from the bottom of my heart for the October 8th *Awake!* Your articles helped me by showing me that Jehovah really understands and cares deeply."—Britain.

A woman writes: "Some months ago I wanted to ask you to write about the matter of healing the wounds of child abuse. I did not write but instead prayed to Jehovah about it. You can imagine, then, why I was so delighted when I saw the cover of the October 8th issue. I broke into tears, and thanked our loving God, Jehovah, from the bottom of my heart."—Greece.

Another says: "When I think about what I had to go through, I cry bitterly. That is why I have read with particular attention the series about 'Healing the Wounds of Child Abuse,' which I have found to be extremely useful. They show clearly that you have loving interest in ones who have had to suffer such things in their lives."—Italy.

Many expressed this thought: "I thank Jehovah for providing this information, the *best* articles I have ever read on the topic. I pray this will help not only the victims (survivors) but also those who have had this morbid fear of addressing the issue and found it difficult to talk about the subject."—United States.

"I Feel Life Is Worthwhile Now"

A woman whose daughter was abused had not yet come to terms with the problem of that abuse. "But your articles put me on the right track," she explained. "I've been having therapy weekly for 11 months for anxiety, panic attacks, and depression. Those articles did more for me than all the therapy in the world! I feel life is worthwhile now, whereas before reading the issue, I still felt

guilty for something I could not prevent." —Britain.

Many said that the information was a turning point in their lives: "I can't begin to thank you enough for the articles. They came when I was at about the lowest point I can ever remember. Some days I would curl up in a ball and sob. Thanks to these articles, which I have read and reread, I can see that my pain, and everyone's pain, is important to Jehovah and his organization. This information has given me the will to begin healing. I already feel closer to Jehovah again."—United States.

But child abuse is not only a Western problem, as this sample shows: "When I received the October 8th issue on child abuse, I immediately read it. It took considerable time for me to read the articles because of having difficulty seeing the words through my tears! My feelings and thoughts were right there in the articles. Now I feel happy that somebody understands. I was encouraged to see how Jehovah kindly helps people whose suffering is unseen by others. I am truly grateful that you published these articles. To heal my wounds, I will go on applying what is written in the articles. With love and feelings of gratitude beyond words."—Japan.

Another writes: "I have been contending with the wounds of child abuse all my life. When I got the October 8th magazine, I reasoned that Jehovah knows what we need even before we do and that he really loves us. I could hardly see for the flood of tears, and my heart felt as though it were about to burst for love and appreciation for our loving heavenly Father. This October 8th issue is a magazine that I will treasure 'till the former things will not be called to mind, neither will they come up into the heart.'" (Isaiah 65:17)—United States.

"I Have Been Let Out of Prison!"

A woman deeply troubled much of her life writes: "Thank you for the articles on child abuse. At last, at 53 years of age, I have been let out of prison! The unlocking key for me was the sentence that shows that these young victims 'are powerless to defend themselves when threatened, so God does not hold them responsible.'" Reading the October 8th *Awake!* and understanding that as the magazine stated, *"IT WAS NOT YOUR FAULT!"* helped her to apply Jesus' ransom sacrifice in beginning her healing process.—Britain.

Another woman says: "From the time I was small until my early years in elementary school, I was sexually molested repeatedly. As mentioned in the articles, I escaped mentally. However, the memories kept coming back. I have always thought: 'I am a dirty person. Jehovah would never accept me.' So my prayer to God has always been: 'You may not give me a place in Paradise, but at least please let me stay within your organization until I die.' This is because of thinking, like those victims mentioned in the articles, that 'I'm not really clean enough to be in God's Kingdom' and that my death would be at Armageddon. It was as if feelings of shame and wretchedness were crushing me to death. Thus, the contents of the articles, which were very warm and gentle, helped me a great deal. As I read them, my tears flowed."—Japan.

Another says: "I want to thank you for your sensitive and well-researched articles. For years, the trauma of abuse had fragmented my inner self. It is easy for many to understand the abuse and torture of war and political turmoil. We understand Holocaust survivors. Evil perpetrated by strangers is easier to digest. Yet why do some not comprehend it when the perpetrators are our own fathers, mothers, uncles, sisters, brothers —those who were to comfort, nurture, and protect us? I have seen my own scars and have known the shattering reality of hopelessness. In my healing it has been my spiritual Father, Jehovah, who has time and time again picked

up my shattered self, keeping me from annihilation."—United States.

"I've Suddenly Come to Life!"

A woman who says that for 28 long years she felt as if she had been discarded wrote: "I read straight through the articles the evening I received the issue and shed tears because I was so moved and grateful. I am so happy to think that Jehovah so clearly understands my feelings. I feel as if I've suddenly come to life! Because the articles stress that children in that position bear no responsibility for what happens, I realize that I have no reason at all to reproach myself. My mind has truly been put to rest." Her heart was moved to respond to healing from God's Word.—Japan.

Child rape is also a problem in developing countries, as is evident by this similar response from Africa: "The articles came at a time when I needed them most. What a relief to read statements such as, 'be assured that there is hope, that you can recover' and, *'IT WAS NOT YOUR FAULT!'* As I read the articles, I felt really safe and comforted for the first time in my life. They brought real consolation to my mind, soul, and body. Now I will have the strength to travel the road toward full recovery."—Nigeria.

Another writes: "Words cannot express my appreciation and how I felt after reading the October 8th *Awake!* on child abuse. Tears filled my eyes as I read every paragraph, every page, every scripture. It was written with much thought, tenderness, and love. As a victim, I have been struggling with my feelings and emotions. Now I feel that a measure of the burden of grief has been lifted. Thanks to your articles and to a trusted, patient friend who listens and gives me support, I can let the healing begin." The God of all undeserved kindness, through the priestly service of his Son, is making many such victims "firm" and "strong." (1 Peter 5:6-11)—United States.

One incest victim was so distraught that she tried to kill herself by setting a garage on fire while she was in there. She was rescued and hospitalized. As soon as the October 8th issue came out, it was brought to her. She cried hard when she read it, and then went over the articles again and again for support, helping her to overcome suicidal tendencies. A friend of hers who helped her a great deal wrote: "Sometimes I think *Awake!* should be renamed *Cope* because that's sure what it's helping us to do."—United States.

"Some Can Forget, Others Cannot"

Another appreciative reader has this to say: "The articles on child abuse are so balanced. I appreciate the scriptures used. These articles are so well written that I could commend you on it paragraph by paragraph. I am grateful that you showed that though some can forget, others cannot. I have been having flashbacks for three years and the physical pains that go with each memory. But it does get better by learning to deal with the flashbacks. Thank you again for such a wonderfully balanced series." (United States) These Scriptural articles have helped this victim, and many others, once again to *rejoice* in Jehovah's spiritual provisions.—Philippians 4:4-9.

"I have been a reader of *Awake!* magazine for years," writes one woman. "However, I have never been more touched by an article than by the magazine series entitled 'Healing the Wounds of Child Abuse.' The subject is a difficult one, but you handled it with tact and loving-kindness. Having been an abused child myself, it helped and comforted me immensely. I will save this magazine so that I can read it over often. I really cannot thank you enough for the time, effort, insight, and most of all the love you've shown for those who suffer in a quiet way."—United States.

Facing Reality

It has proved very helpful to victims who cannot forget the crimes committed against

them to be allowed to talk with a sympathetic elder, face the problem realistically, see how Jehovah views the matter, and deal with it Scripturally so that healing in the power of Jesus' ransom can take place. In this regard, a woman states:

"I cannot express just how timely the articles were. I really couldn't believe how accurate the information was. I have suffered depression and bulimia for 20 years, looking for help and answers everywhere: psychiatrists, psychologists, medical doctors, group therapy, weight-loss clinics—all a dead end for me.

"But now I am finding help through information such as that found in the October 8th issue. It is desperately needed. I can't tell you the feelings of hopelessness that I have at times, so overwhelming that death would seem a relief. But now I can see that what happened to me as a child wasn't my fault, that God *doesn't* think I'm dirty. I was a victim. Because of information such as this, I see that Jehovah does care, that I can trust him. After 33 years of life, I feel Jehovah's spirit beginning to unlock the chains of bondage. Thanks for loving us enough to put the effort into such a wonderful gem as this *Awake!* Please continue to publish this type of articles and others, as they are vital for our spirituality."

The following letter from one man sums up the feeling of many. He had suffered more than 50 years of anguish because of being abused as a child. He says: "Jehovah's loving care through his earthly organization never ceases to amaze us and inspire ever deeper devotion and trust in him. After carefully studying the information in the October 8th, 1991, *Awake!* on child abuse, I wept for joy and sang song after song to Jehovah, rock and fortress, our refuge. Keep those articles coming, brothers. Jehovah is using you in ways you can never imagine."

From Overseers

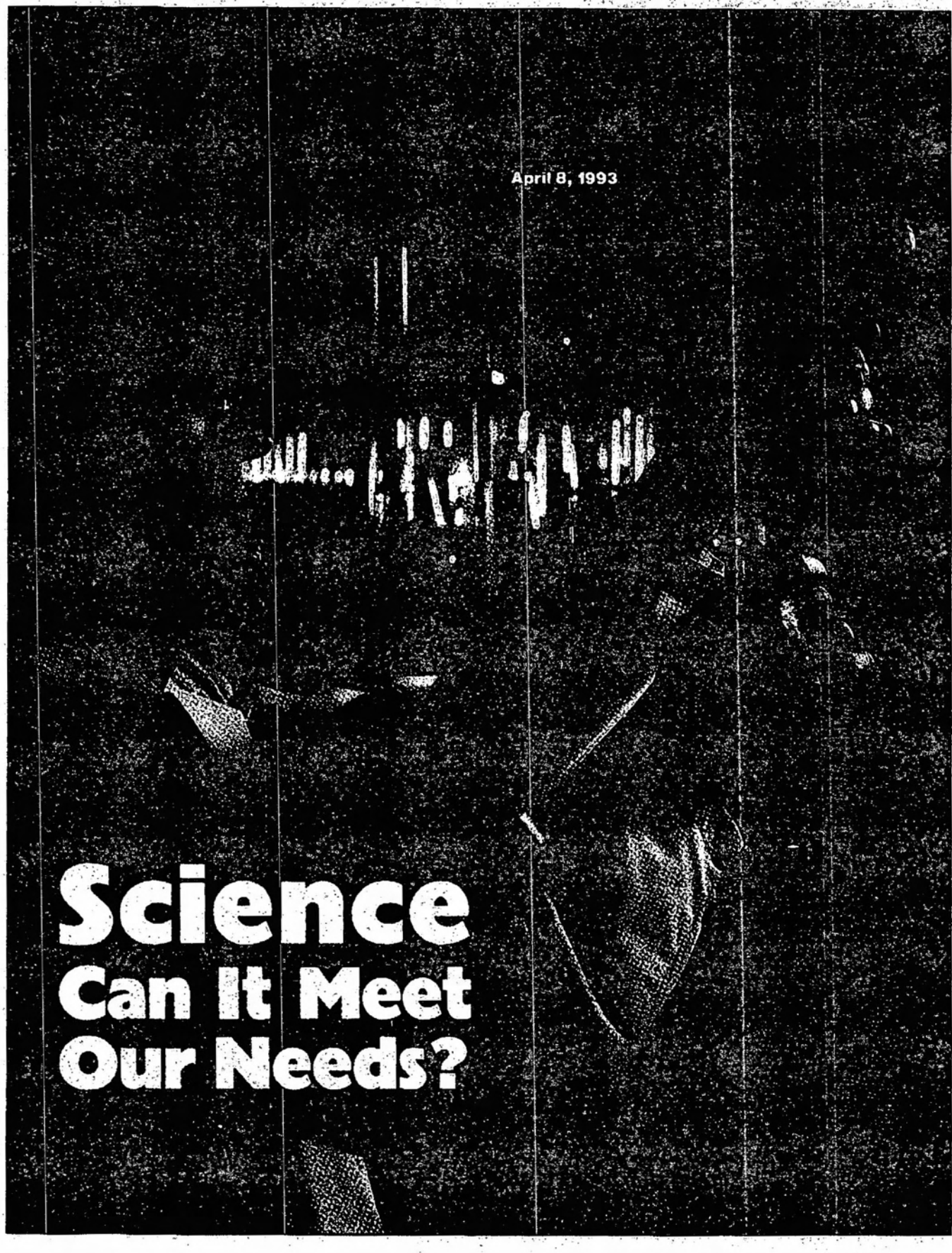
Of interest is this letter from a traveling overseer who supervises the activity of a number of congregations of Jehovah's Witnesses:

"Thank you for the October 8th *Awake!* on 'Healing the Wounds of Child Abuse.' Excellent information was presented that we really need. The articles were very accurate. I have observed time and again that victims have a very difficult time relating to Jehovah as a loving Father. When I see this difficulty, I ask them discreetly, 'Were you mistreated as a child?' The great majority of the time, the answer is yes! In every instance where the person was able to see the connection between the abuse and the way their current depression or turmoil affects them, they began to improve."

Summing up how many elders feel is this brief comment by another: "The October 8th issue on child abuse was excellent and needed. As elders in the congregations, we need to know as much as we can about these problems so as to show the concern and patience the victims need. As this system gets worse, these types of problems are getting more common. Thank you again for the help."

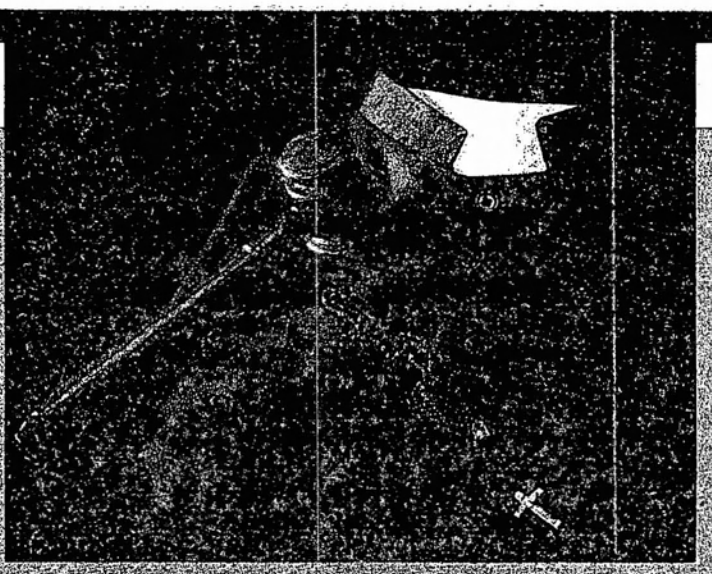
It has warmed our hearts to receive such letters. Coming fully to appreciate that 'it was not their fault,' and as a result of the transforming power of God's Word, such victims of child abuse cope with unhappy memories. They rejoice in the hope ahead, confident that in God's new world, "the former things will not be called to mind, neither will they come up into the heart." (Isaiah 65:17; Romans 12:12) Even now, through the healing power of Jesus' blood, they have a clean standing with God. (Hebrews 9:14) And they need to turn to the elders for help. These elders can act as "a hiding place from the wind" to those in need, speaking consolingly and praying with them. (Isaiah 32:2; 1 Thessalonians 5:14; James 5:14, 15) Thus, abuse victims can be helped to move forward and find joy in all the activities of the Christian congregation.

Reprinted through the courtesy of the editors of *Awake!* magazine
(Issue of April 8, 1993, pages 1, 4-5, 20-1, 31) (*rpn93 04/08a*-E) (*rpn93 04/08b*-E)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.



April 8, 1993

Science
Can It Meet Our Needs?



Victims of Pedophile Priests Speak Out

"DURING the past decade, some 400 Roman Catholic priests have been reported to church or civil authorities for sexual abuse of children," according to *U.S. News & World Report*. Recently, a national gathering of survivors of such abuse was held near Chicago, Illinois. Many spoke openly of how they had been victimized by pedophile priests.

But *NCR* (*National Catholic Reporter*) notes that speakers sounded another theme repeatedly throughout the conference: "The first abuse is sexual; the second and more painful, is psychological. This second abuse occurs when the church refuses to listen to victims of abuse, fails to take their accusations seriously, and moves only to protect the offending priests." "Fairly or unfairly," *NCR* reports, "they portrayed Catholic clergy as belonging to an unhealthy and misguided group more bent on preserving privilege and power than in serving lay needs." Several speakers made ominous comparisons to the Reformation, which split the church wide open in the 16th century.

According to Richard Sipe, a former priest turned psychotherapist and expert on sexual abuse by Catholic clergy, all this institutional denial reveals "a deep, desperate and knowing personal involvement in the problem." He added: "The church knows and has known for a long time a great deal about the sexual activity of its priests. It has looked the other way, tolerated, covered up and simply lied about the broad spectrum of sexual activity of its priests."

Not surprisingly, then, many abuse survivors are suing the church. *NCR* quotes one attorney who specializes in such cases as saying that there are pedophile-priest cases in each of the church's 188 dioceses in the United States. He says that out-of-court settlements have run as high as $300,000 per case. *U.S. News & World Report* says that such suits have already cost the church $400,000,000, a figure that could surge to $1 billion by the year 2000. And the Canadian Press reported recently that some 2,000 survivors of childhood sexual abuse in 22 church-run orphanages and mental institutions in Quebec are suing six religious orders for $1.4 billion in damages.

Interestingly, though, the aforementioned U.S. attorney, who represents 150 victims of pedophile priests in 23 states, says that he has never yet had a client who was eager to go to court. Each one first tried to seek justice "within the pastoral context of the church," *NCR* concludes. "Survivors go to the courts, it appears, not as a first resort, but as a last resort."

such ones may
ing the sugges-
heless, as stated
ed on "the nor-
e experienced by
rms of depres-
that such mala-
treatment."

he funeral of a
ved as an elder
years. When
the hall, I wept
attendance,
nder control.
the Septem-
with the article
d me under-
of weakness
motions. Many
ticle.

S. Z., Germany

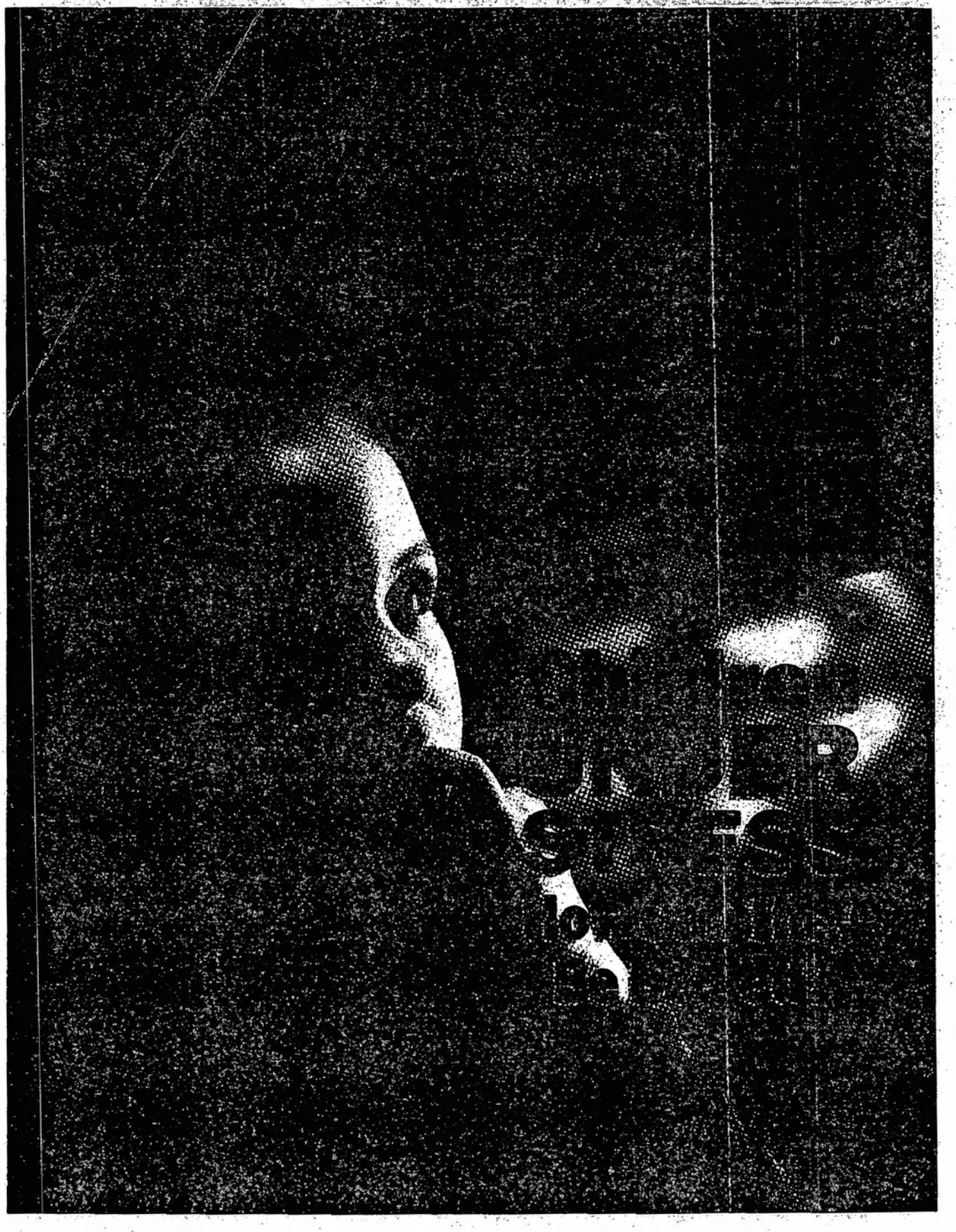
ascinating
extremely inter-
our hands are
rticle helped me
reator.

K. Y., Japan

article "Young
nswer My
2) I found the ar-
ght me that my
rivolous requests
rned that I need
se Jehovah does
y. And he may
ve prefer.

G., United States

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of July 22, 1993, pages 1, 4-7) (*rpn93 07/22a-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.



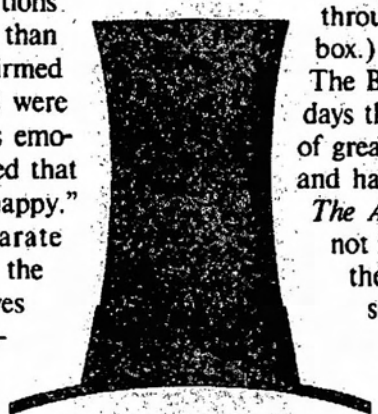
Little People, Big Stresses

"Children's griefs are little, certainly, but so is the child."
—Percy Bysshe Shelley.

LOOK at the drawing below of a top hat. At first glance the hat seems taller than the brim is wide. In reality, however, both height and width are equal. Dimensions can easily be misjudged.

It is just as easy for adults to misjudge the dimensions of a child's stress. 'Children's problems are so trivial,' some reason. But this thinking is illusory. "Adults should not judge troubles by their size," cautions the book *Childstress!*, "but by the size of the pain they produce."

In many cases the proportions of a child's pain are greater than adults realize. This was confirmed by a study in which parents were asked to rate their children's emotional state. Almost all replied that their children were "very happy." Yet, when questioned separate from their parents, most of the children described themselves as "unhappy" and even "miserable." Children face fears that parents greatly minimize.



Old-fashioned top hat

In another study, conducted by Dr. Kaoru Yamamoto, a group of children were asked to rate 20 life events on a seven-point stress scale. Then a group of adults rated those same events according to how they felt a child would rate them. The adults misjudged on 16 of the 20 items! "We all think we know our children," concludes Dr. Yamamoto, "but all too often we don't really see or hear, nor understand, what is really troubling them."

Parents must learn to view life's experiences from a new perspective: through the eyes of a child. (See box.) This is especially vital today. The Bible foretold that "in the last days there will set in perilous times of great stress . . . hard to deal with and hard to bear." (2 Timothy 3:1, *The Amplified Bible*) Children are not immune to such stress; often, they are its prime victims. While some of children's stresses are simply "incidental to youth," others are quite unusual and deserve special attention.—2 Timothy 2:22.

Why *Awake!* Is Published *Awake!* is for the enlightenment of the entire family. It shows how to cope with today's problems. It reports the news, tells about people in many lands, examines religion and science. But it does more. It probes beneath the surface and points to the real meaning behind current events, yet it always stays politically neutral and does not exalt one race above another. Most important, this magazine builds confidence in the Creator's promise of a peaceful and secure new world before the generation that saw the events of 1914 passes away.

Would you welcome more information? Write Watch Tower at the appropriate address on page 5. This is part of a worldwide Bible educational work that is supported by voluntary donations.

Unless otherwise indicated, *New World Translation of the Holy Scriptures—With References* is used.

Awake! (ISSN 0005-237X) is published semimonthly by Watchtower Bible and Tract Society of New York, Inc., 25 Columbia Heights, Brooklyn, N.Y. 11201. Second-class postage paid at Brooklyn, N.Y., and at additional mailing offices. **Postmaster:** Send address changes to *Awake!*, c/o Watchtower, **Wallkill, N.Y. 12589.**
Vol. 74, No. 14 Printed in U.S.A.



Through the Eyes of a Child

Parental Death = Guilt. Recalling momentary angry thoughts toward a parent, a child may harbor concealed feelings of responsibility.

Divorce = Abandonment. A child's logic says that if parents can stop loving each other, they may also stop loving him.

Alcoholism = Tension. Claudia Black writes: "The daily environment of fear, abandonment, denial, inconsistency, and real or potential violence fostered in the alcoholic home is hardly a functional, healthy environment."

Parental Fighting = Fear. A study of 24 students revealed parental fights to be so stressful that bouts of vomiting, nervous facial tics, loss of hair, weight loss or gain, and even an ulcer were the consequences.

Overachievement = Frustration. "Wherever children turn," writes Mary Susan Miller, "they seem to be running for their lives in races lined up for them by adults." Pressured to be the best at school, at home, and even at play, the child never wins, and the race never ends.

Newborn = Loss. Now having to share parental attention and affection, a child may feel that he has lost a parent rather than gained a sibling.

School = Separation Anxiety. For Amy, leaving her mother and going to school was like suffering a little death each day.

Mistakes = Humiliation. With their shaky self-image, children "tend to blow some things up out of all proportion," says Dr. Ann Epstein. Humiliation, she found, was one of the most common triggers of child suicide.

Disabilities = Frustration. Besides the ridicule of uncompassionate peers, the physically or mentally disabled child may have to bear the impatience of teachers and family members who express disappointment over what is simply beyond his ability.

Semimonthly Languages Available by Mail:
Afrikaans, Arabic, Cebuano, Czech, Danish, Dutch, English (also cassettes), Finnish, French, German, Greek, Hungarian, Iloko, Italian, Japanese, Korean, Norwegian, Portuguese, Slovak, Spanish, Swahili, Swedish, Tagalog, Yoruba, Zulu

Monthly Languages Available by Mail:
Chichewa, Chinese, Cibemba, Croatian, Ewe, Gujarati, Hiligaynon, Igbo, Indonesian, Kannada, Malayalam, Myanmar, New Guinea Pidgin, Polish, Romanian, Russian, Sepedi, Serbian, Sesotho, Shona, Sinhalese, Slovenian, Tahitian, Tamil, Thai, Tsonga, Tswana, Turkish, Twi, Ukrainian, Xhosa

© 1993 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Subscription requests should be sent to Watch Tower at the appropriate address below.

America, United States of, Wallkill, N.Y. 12589
Australia, Box 280, Ingleburn, N.S.W. 2565
Canada L7G 4Y4, Box 4100, Halton Hills (Georgetown), Ontario
England NW7 1RN, The Ridgeway, London
Ghana, Box 760, Accra
Jamaica, Box 180, Kingston 10
New Zealand, P.O. Box 142, Manurewa
Nigeria, P.M.B. 1090, Benin City, Edo State
South Africa, Private Bag 2067, Krugersdorp, 1740
Zambia, P.O. Box 33459, Lusaka 10101
Zimbabwe, 35 Fife Avenue, Harare

Changes of address should reach us 30 days before your moving date. Give us your old and new address (if possible, your old address label).

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of July 22, 1993, pages 1, 4-7) (*rpn93 07/22a-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Abusive Parents
The Ultimate Stressors

"Because [children] have little frame of reference outside the family, the things they learn at home about themselves and others become universal truths engraved deeply in their minds."
—Dr. Susan Forward.

A POTTER can take a formless mass of clay, add water in the proper amounts, and shape it into a beautiful vessel. Similarly, parents shape a child's view both of himself and of the world. With love, guidance, and discipline, the child develops into a stable adult.

All too often, however, the impressions on a child's mind and heart are formed by abusive parents. Emotional, physical, and sexual abuse create distorted thinking patterns that become firmly set and difficult to reshape.

Emotional Abuse

Words can hit harder than fists. "I don't remember a day when [my mother] didn't tell me she wished I'd never been born," says Jason. Karen reflects: "I was always given the message that I was bad or not good enough."

Children will usually believe what is said against them. If a boy is constantly called stupid, then he may eventually feel stupid. Call a girl worthless, and she may believe just that. Children have a limited perspective and often cannot discern that which is accurate from that which is abusively exaggerated or false.

Physical Abuse

Joe recalls his physically abusive father: "He'd start punching me until he'd have me up against the wall. He'd keep pounding me so hard that I'd be dazed . . . The scariest part of it was not ever knowing what would provoke his outbursts!"

Jake was routinely beaten by his father. In one such beating, when Jake was just six years of age, his arm was broken. "I wouldn't let him or my sisters or Mom see me cry," Jake remembers. "It was the only pride I had left."

The book *Strong at the Broken Places* notes that childhood physical abuse is comparable to "being in a car accident every day, every week or every month." Such abuse teaches a child that the world is unsafe and that no one can be trusted. Additionally, violence often begets violence. "If children are not protected from their abusers," warns *Time* magazine, "then the public will one day have to be protected from the children."

Sexual Abuse

According to one estimate, 1 in 3 girls and 1 in 7 boys have been forced into a sexual experience by the time they are 18 years old. Most of these children suffer in silence. "Like soldiers missing in action," notes the book *The Child in Crisis,* "they remain lost for years in a private jungle of fear and guilt."

"How I hated my father for abusing me and how guilty I felt for hating him," says Louise. "I felt such shame because a child is supposed to love her parents and I didn't all the time." Such perplexing feelings are understandable when a child's primary protector turns into a perpetrator. Beverly Engel asks in *The Right to Innocence:* "How can we acknowledge that

our own parent, someone who was supposed to love and care for us, could care so little about us?"

Sexual abuse can warp a child's entire view of life. "Every adult who was molested as a child brings from his or her childhood pervasive feelings of being hopelessly inadequate, worthless, and genuinely bad," writes Dr. Susan Forward.

It Doesn't Go Away

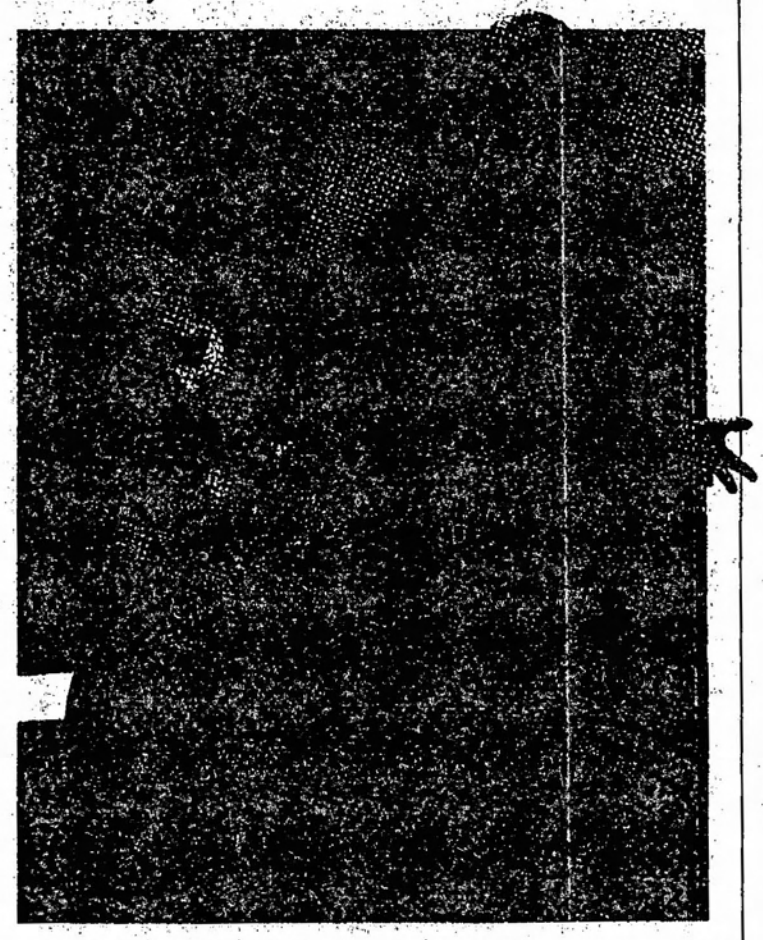
"It is not just the child's body that is abused or neglected," writes researcher Linda T. Sanford. "Troubled families mess with a child's mind." When a child is abused, either emotionally, physically, or sexually, he or she may grow up feeling unlovable and worthless.

Jason, mentioned earlier, had such low self-esteem as an adult that he was declared a suicide risk. Needlessly putting himself in life-threatening situations, he assessed his life as his mother had taught him: 'You should never have been born.'

Reflecting on the effects of being physically abused as a child, Joe says: "It just doesn't go away because you move out or get married. I'm always afraid of something, and I hate myself for it." The tension of the physically abusive household causes many children to grow up with negative expectations and rigid defenses that imprison rather than protect.

For Connie, incest created a distorted self-image that solidified in her adulthood: "I still think a lot of the time that people can look right inside me and see how disgusting I am."

All forms of abuse teach poisonous lessons that may become deeply entrenched by the time of adulthood. True, what is learned can be unlearned. Countless survivors who have recovered from childhood abuse testify to that fact. But how much better if parents realize that from the time of their child's birth, they are shaping much of his concept of himself and the world. A child's physical and emotional welfare is largely in his parents' hands.



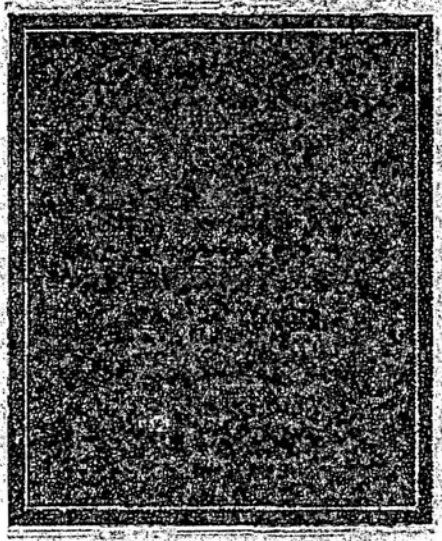
Words can hit harder than fists

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of October 8, 1993, pages 1, 3-14) (*rpn93 10/08a-E*) (*rpn93 10/08b-E*) (*rpn93 10/08c-E*) (*rpn93 10/08d-E*)
(*rpn93 10/08e-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.



Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of October 8, 1993, pages 3-4) (*rpn93 10/08a-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Your Child Is in DANGER!



IN RECENT years a global outcry has arisen over the molestation of children. But the media attention, replete with celebrities who have publicly disclosed their own experiences of childhood abuse, has led to some popular misconceptions. Some believe that all this talk about attacks on children is simply the latest fad. In truth, though, there is little new about such sexual assault. It is nearly as old as human history itself.

An Ancient Problem

Some 4,000 years ago, the cities of Sodom and Gomorrah were famous for depravity. Pedophilia was apparently among the region's many vices. Genesis 19:4 describes a sex-crazed mob of Sodomites ranging "from boy to old man" seeking to rape Lot's two male guests. Consider: Why would mere boys be inflamed with the idea of raping males? Clearly they had already been introduced to homosexual perversions.

Centuries later, the nation of Israel moved into the region of Canaan. So steeped was this land in incest, sodomy, bestiality, prostitution, and even the ritualized sacrifice of little children to demon gods that all these vile acts had to be expressly forbidden in the Mosaic Law. (Leviticus 18:6, 21-23; 19:29; Jeremiah 32:35) Despite divine warnings, rebellious Israelites, including some of their rulers, adopted these despicable practices.—Psalm 106:35-38.

Ancient Greece and Rome, however, were far worse than Israel in this regard. Infanticide was common to both, and in Greece it was a widely accepted practice for older men to have relations with young boys. Boy brothels flourished in every ancient Greek city. In the Roman Empire, child prostitution was so prevalent that special taxes and holidays were set up specifically for that trade. In the arenas, girls were raped and forced into acts of bestiality. Similar atrocities were prevalent in many other ancient nations.

What about modern times? Is mankind too civilized for such horrible sex acts to flourish today? Students of the Bible cannot accept this notion. They well know that the apostle Paul characterized our era as "critical times hard to deal with." He detailed the

rampant self-love, the love of pleasure, and the disintegration of natural family love that overrun modern society and added: "Wicked men and impostors will advance from bad to worse." (2 Timothy 3:1-5, 13; Revelation 12:7-12) Has child molestation, so often perpetrated by "wicked men and impostors," got worse?

An Urgent Problem

Assaults on children are often cloaked in secrecy, so much so that they have been called perhaps the most unreported of crimes. Even so, such crimes have evidently spiraled upward in recent decades. In the United States, a survey on the subject was conducted by the *Los Angeles Times*. It found that 27 percent of the women and 16 percent of the men had been sexually abused as children. Shocking as these statistics are, other careful estimates for the United States have run considerably higher.

In Malaysia, reports of child molestation have quadrupled over the past decade. In Thailand, some 75 percent of the men in one survey admitted to using child prostitutes. In Germany, officials estimate that as many as 300,000 children are sexually abused each year. According to South Africa's *Cape Times*, the number of reports of such assaults soared by 175 percent in a recent three-year period. In the Netherlands and Canada, researchers found that about one third of all women had been sexually abused as children. In Finland, 18 percent of the ninth-grade girls (15 or 16 years old) and 7 percent of the boys reported having had sexual contact with someone at least five years their senior.

In various countries disturbing reports have surfaced about religious cults that abuse children with sadistic sexual practices and torture. Often, those who report that they were victims of such crimes are treated with incredulity, not compassion.

So child molestation is neither new nor rare; it is a long-standing problem that is epidemic today. Its impact can be devastating. Many survivors suffer profound feelings of worthlessness and low self-esteem. Experts in the field have listed some common aftereffects of incest on girls, such as running away, drug and alcohol abuse, depression, attempted suicide, delinquency, promiscuity, sleep disturbances, and learning problems. Long-range effects may include poor parenting skills, frigidity, distrust of men, marriage to a pedophile, lesbianism, prostitution, and child molestation itself.

These aftereffects are not inevitable for a victim; nor could anyone rightly excuse wrong conduct solely on the grounds of having been assaulted in the past. Abuse does not predestine its victims to be immoral or delinquent; nor does it dissolve all their personal responsibility for the choices they make later in life. But these common outcomes for victims are real dangers. They add urgency to the question, How can we protect children from molestation?

Why *Awake!* Is Published *Awake!* is for the enlightenment of the entire family. It shows how to cope with today's problems. It reports the news, tells about people in many lands, examines religion and science. But it does more. It probes beneath the surface and points to the real meaning behind current events, yet it always stays politically neutral and does not exalt one race above another. Most important, this magazine builds confidence in the Creator's promise of a peaceful and secure new world before the generation that saw the events of 1914 passes away.

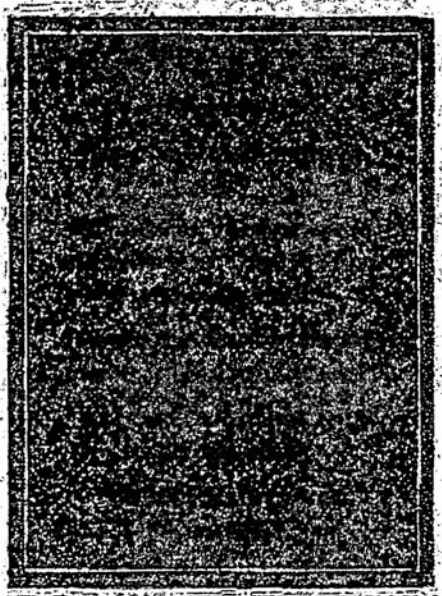
Would you welcome more information? Write Watch Tower at the appropriate address on page 5. This is part of a worldwide Bible educational work that is supported by voluntary donations.

Unless otherwise indicated, *New World Translation of the Holy Scriptures—With References* is used.

Awake! (ISSN 0005-237X) is published semimonthly by Watchtower Bible and Tract Society of New York, Inc., 25 Columbia Heights, Brooklyn, N.Y. 11201. Second-class postage paid at Brooklyn, N.Y., and at additional mailing offices. **Postmaster:** Send address changes to *Awake!*, c/o Watchtower, Wallkill, N.Y. 12589.
Vol. 74, No. 19 Printed in U.S.A.

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of October 8, 1993, pages 5-9) (*rpn93 10/08b-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

How Can We Protect OUR CHILDREN?



AFTER using children to satisfy perverted lusts, after robbing them of their security and their sense of innocence, child molesters still want something else from their victims—SILENCE. To secure that silence, they use shame, secrecy, even outright terror. Children are thus robbed of their best weapon against abuse —the will to tell, to speak up and ask an adult for protection.

Tragically, adult society often unwittingly collaborates with child abusers. How so? By refusing to be aware of this danger, by fostering a hush-hush attitude about it, by believing oft-repeated myths. Ignorance, misinformation, and silence give safe haven to abusers, not their victims.

For example, the Canadian Conference of Catholic Bishops concluded recently that it was a "general conspiracy of silence" that allowed gross child abuse to persist among the Catholic clergy for decades. *Time* magazine, in reporting on the widespread plague of incest, also cited a "conspiracy of silence" as a factor that "only helps perpetuate the tragedy" in families.

However, *Time* noted that this conspiracy is crumbling at last. Why? In a word, education. It is as *Asiaweek* magazine put it: "All experts agree that the best defence against child abuse is public awareness." To defend their children, parents must understand the realities of the threat. Don't be left in the dark by

Semimonthly Languages Available by Mail:
Afrikaans, Arabic, Cebuano, Czech, Danish, Dutch, English (also audiocassettes), Finnish, French, German, Greek, Hungarian, Iloko, Italian, Japanese, Korean, Norwegian, Portuguese, Slovak, Spanish, Swahili, Swedish, Tagalog, Yoruba, Zulu

Monthly Languages Available by Mail:
Chichewa, Chinese, Cibemba, Croatian, Ewe, Gujarati, Hiligaynon, Igbo, Indonesian, Kannada, Malayalam, Myanmar, New Guinea Pidgin, Polish, Romanian, Russian, Sepedi, Serbian, Sesotho, Shona, Sinhalese, Slovenian, Tahitian, Tamil, Thai, Tsonga, Tswana, Turkish, Twi, Ukrainian, Xhosa

© 1993 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Subscription requests should be sent to Watch Tower at the appropriate address below.

America, United States of, Wallkill, N.Y. 12589
Australia, Box 280, Ingleburn, N.S.W. 2565
Canada L7G 4Y4, Box 4100, Halton Hills (Georgetown), Ontario
England NW7 1RN, The Ridgeway, London
Ghana, Box 760, Accra
Jamaica, Box 180, Kingston 10
New Zealand, P.O. Box 142, Manurewa
Nigeria, P.M.B. 1090, Benin City, Edo State
South Africa, Private Bag 2067, Krugersdorp, 1740
Zambia, P.O. Box 33459, Lusaka 10101
Zimbabwe, 35 Fife Avenue, Harare

Changes of address should reach us 30 days before your moving date. Give us your old and new address (if possible, your old address label).

misconceptions that protect child abusers and not children.—See box below.

Educate Your Child!

Wise King Solomon told his son that knowledge, wisdom, and thinking ability could protect him "from the bad way, from the man speaking perverse things." (Proverbs 2:10-12) Isn't that just what children need? The FBI pamphlet *Child Molesters: A Behavioral Analysis* says this under the heading "The Ideal Victim": "For most children sex is a taboo subject about which they receive little accurate information, especially from their parents." Don't let your children be "ideal victims." Educate them about sex.* For example, no child should reach puberty unaware of how the body will change during this time. Ignorance will make them confused, ashamed—and vulnerable.

A woman we'll call Janet was sexually abused as a child, and years later her own two children were sexually abused. She recalls: "The way we were brought up, we never talked

* See *Awake!* of February 22, 1992, pages 3-11, and July 8, 1992, page 30.

Common Misconceptions

Misconception: Child abusers are usually strangers, deranged misfits who abduct children and use physical force to abuse them.

In the vast majority of cases—from 85 to 90 percent by some estimates—the abuser is a person the child knows and trusts. Rather than using force, abusers often manipulate the child into sexual acts gradually, taking advantage of the child's limited experience and reasoning ability. (Compare 1 Corinthians 13:11 and Proverbs 22:15.) These abusers are not the drooling loners of the stereotype. Many are quite religious, respected, and well liked in the community. According to the U.S. Federal Bureau of Investigation, "to assume that someone is not a pedophile simply because he is nice, goes to church, works hard, is kind to animals, and so on, is absurd." Recent research suggests that it is also wrong to assume that all abusers are male or that all victims are female.

Misconception: Children fantasize or lie about sexual abuse.

Under normal circumstances children lack the experience or sophistication in sexual matters to invent explicit claims of abuse, although some small children may become confused about details. Even the most skeptical of researchers agree that most claims of abuse are valid. Consider the book *Sex Abuse Hysteria—Salem Witch Trials Revisited*, which focuses on false claims of abuse.* This book admits: "Genuine sex abuse of children is widespread and the vast majority of sex abuse allegations of children . . . are likely to be justified (perhaps 95% or more)." Children find it enormously difficult to report abuse. When they do lie about abuse, it is most often to deny that it happened even though it actually did.

Misconception: Children are seductive and frequently bring the abuse on themselves by their conduct.

This notion is particularly warped, since, in effect, it blames the victim for the abuse. Children have no real concept of sexuality. They have no idea of what such activity implies or of how it will change them. They are therefore incapable of consenting to it in any meaningful way. It is the abuser, and the abuser alone, who bears the blame for the abuse.—Compare Luke 11:11, 12.

Misconception: When children disclose abuse, parents should teach them to refrain from talking about it and to put it behind them.

Who is best served if the child keeps silent about the abuse? Is it not *the abuser?* In fact, studies have shown that denial with emotional suppression may be the least effective way to deal with the trauma of abuse. Of the nine coping methods used by one group of adult survivors studied in England, the ones who denied, avoided, or suppressed the issue suffered the greater emotional maladjustment and distress in adult life. If you experienced a terrifying assault, would you want to be told not to talk about it? Why tell a child such a thing? Allowing the child the normal reaction to such a terrible event, such as grief, anger, mourning, will give him the opportunity eventually to put the abuse in the past.

* In some divorce cases, contending adults have been known to use an accusation of child abuse as a weapon.

about sex. So I grew up embarrassed about it. It was shameful. And when I had kids, it was the same. I could talk to other people's kids but not to my own. I think that's unhealthy because children are vulnerable if you don't talk to them about these things."

Abuse prevention can be taught early. When you teach children to name such body parts as the vagina, the breasts, the anus, the penis, tell them that these places are good, they are special—but they are private. "Other people are not allowed to handle them—not even Mommy or Daddy—and not even a doctor unless Mommy or Daddy is there or has said it is OK."* Ideally, such statements should come from *both parents or each adult guardian.*

In *The Safe Child Book,* Sherryll Kraizer notes that while children should feel free to ignore, scream at, or run from an abuser, many children who are abused explain later that they didn't want to seem rude. Children thus need to know that some grown-ups do bad things and that not even a child has to obey *anyone* who tells him or her to do something wrong. At such times a child has a perfect right to say no, just as did Daniel and his companions to the Babylonian adults who wanted them to eat unclean food.—Daniel 1:4, 8; 3:16-18.

One widely recommended teaching tool is the "What if . . . ?" game. You might, for example, ask: "What if your teacher told you to hit another child? What would you do?" Or: "What if (Mommy, Daddy, a minister, a policeman) told you to jump off a tall building?" The child's answer may be inadequate or simply wrong, but don't correct harshly. The game need not include shock or scare tactics; in fact, experts recommend that it be played in a gentle, loving, even playful manner.

Next, teach children to fend off displays of affection that are inappropriate or that make them feel uncomfortable. Ask, for example, "What if a friend of Mommy and Daddy wanted to kiss you in a way that made you feel funny?"* It is often best to encourage the child to act out what he or she would do, making it a "Let's pretend" game.

In the same way, children can learn to resist other tactics of abusers. For example, you might ask: "What if someone says, 'You know, you're my favorite. Don't you want to be my friend?'" When the child learns to resist such ploys, discuss others. You might ask: "If someone says, 'You don't want to hurt my feelings, do you?' What will you say?" Show the child how to say no through words and clear, firm body language. Remember, abusers often test how children respond to subtle advances. So a child must be taught to resist firmly and say, "I'm telling on you."

Be Thorough in Your Training

Do not limit such training to a onetime talk. Children need much repetition. Use your own

* Of course, parents must bathe and change very little children, and at such times parents wash the private parts. But teach your children to bathe themselves early on; some child-care experts recommend that they learn to wash their own private parts by the age of three if possible.

* Some experts caution that if you force your child to kiss or hug every person who asks for such displays of affection, you may undermine this training. Thus, some parents teach children to make polite excuses or substitutions when unwanted demands are made of them.

He Cried Out for Help

"PLEA to Jehovah Halts Molester's Attack on Youth," declared a headline in the U.S. newspaper *The Arizona Republic* on May 5, 1993. The alleged molester abducted the 16-year-old youth at gunpoint, taking him to the perpetrator's apartment. When the youth cried out "Jehovah, help me!" the molester was shaken and let the boy go free. The police later apprehended the man.

While calling upon Jehovah's name is certainly appropriate under such circumstances, it does not mean that God's servants will be free from attack in these critical "last days." (2 Timothy 3:1-5, 13) Christian parents must therefore train their children to be cautious with *all* strangers, regardless of apparent authority.

judgment in determining just how explicit the training should be. But be thorough.

Be sure, for example, to forestall any attempt by an abuser to create a secret pact. Children should know that it is *never* all right for an adult to ask them to keep a secret from either parent. Reassure them that it is *always* proper for them to tell—even if they had promised not to. (Compare Numbers 30: 12, 16.) Some abusers blackmail the child if they know that the child has disobeyed some family rule. "I won't tell on you if you won't tell on me" is the message. So children should know that they will never get in trouble for telling—even under these circumstances. It is safe to tell.

Your training should also be threat-resistant. Some abusers have killed small animals in front of a child and threatened to do the same to the child's parents. Others have warned their victim that they will abuse younger siblings. So teach children that they should *always* tell on an abuser, no matter what scary threats are made.

In this regard the Bible can be a helpful teaching tool. Because it so vividly stresses Jehovah's almighty power, it can take the bite out of abusers' threats. Children need to know that no matter what threats are made, Jehovah is able to help his people. (Daniel 3:8-30) Even when bad people hurt those Jehovah loves, he can always undo the damage afterward and make things better again. (Job, chapters 1, 2; 42:10-17; Isaiah 65:17) Assure them that Jehovah sees everything, including the people who do bad things and the good people who do their best to resist them.—Compare Hebrews 4:13.



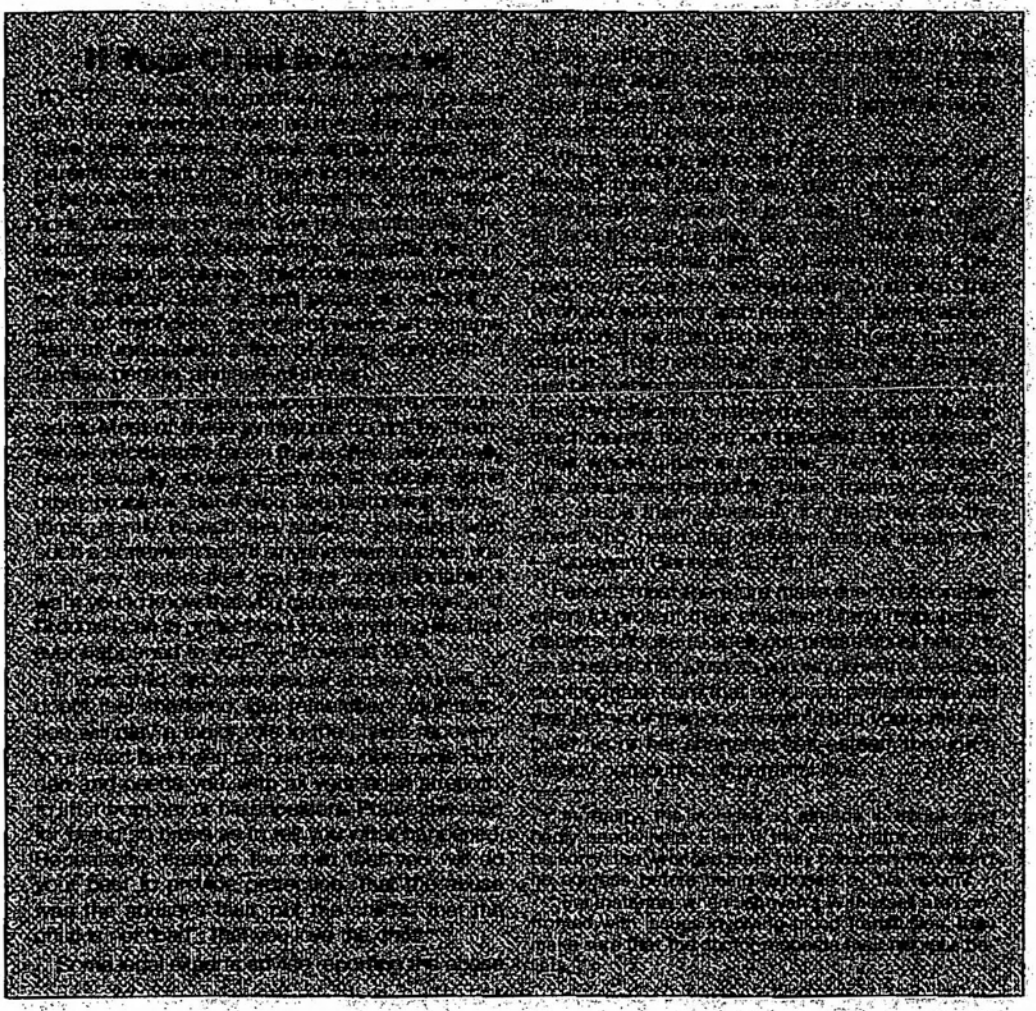
Teach children to use words and clear, firm body language to resist improper advances

Cautious as Serpents

It is the rare pedophile who uses physical force to molest a child. They generally prefer to befriend children first. Jesus' advice to be "cautious as serpents" is thus appropriate. (Matthew 10:16) Close supervision by loving parents is one of the best safeguards against abuse. Some molesters look for a child alone in a public place and strike up a conversation to spark the child's curiosity. ("Do you like motorcycles?" "Come see the puppies out in my truck.") True, you cannot be with your children at all times. And child-care experts recognize that children need some freedom to move around. But wise parents are cautious about granting children too much freedom prematurely.

Make sure you get to know *well* any

Reprinted through the courtesy of the editors of *Awake!* magazine
(Issue of October 8, 1993, page 9) (*rpn93 10/08c-E*)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.



adults or older youths who are close to your children, using extra caution when deciding who should care for your children in your absence. Be wary of baby-sitters who make your children feel funny or ill at ease. Likewise, beware of teenagers who seem to have an excessive interest in younger children and have no friends their own age. Thoroughly check out day-care facilities and schools. Tour the entire premises and interview the staff, observing carefully how they interact with children. Ask if they mind if you drop in to check on your children at unexpected times; if this is not allowed, look elsewhere.—See *Awake!* of December 8, 1987, pages 3-11.

The sad truth is, however, that not even the best of parents can control everything that happens to their children.—Ecclesiastes 9:11.

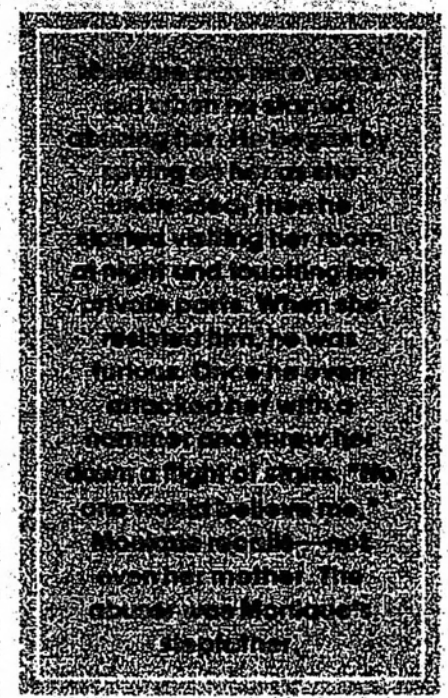
If parents work together, there is one thing they *can* control: the home environment. And since the home is where most child abuse occurs, that will be the focus of the next article.

Reprinted through the courtesy of the editors of *Awake!* magazine
(issue of October 8, 1993, pages 10-13) (*rpn93 10/08d*-E)
© 2004 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved.

Prevention IN THE HOME

IT IS NOT the stranger in a trench coat, the loner lurking in the bushes, who poses the greatest threat to children. It is a member of the family. The vast majority of sexual abuse occurs in the home. So how can the home be made more resistant to abuse?

In his book *Slaughter of the Innocents*, historian Dr. Sander J. Breiner examines the evidence of child abuse in five ancient societies—Egypt, China, Greece, Rome, and Israel. He concludes that while abuse did exist in Israel, it was relatively rare compared to the other four civilizations. Why? Unlike their neighbors, the people in Israel were taught to have respect for women and children —an enlightened view they owed to the Holy Scriptures. When the Israelites applied divine law to family life, they prevented child abuse. Today's families need these clean, practical standards more than ever.



Moral Laws

Does Bible law have an impact on your family? For instance, Leviticus 18:6 reads: "You people must not come near, any man of you, to any close fleshly relative of his to lay bare nakedness. I am Jehovah." Similarly the Christian congregation today enforces strong laws against all forms of sexual abuse. Anyone who sexually abuses a child risks being disfellowshipped, put out of the congregation.* —1 Corinthians 6:9, 10.

All families should know and review such laws together. Deuteronomy 6:6, 7 urges: "And these words that I am commanding you today must prove to be on your heart; and you must inculcate them in your son and speak of them when you sit in your house and when you walk on the road and when you lie down and when you get up." Inculcating these laws means more than occasionally lecturing your children. It involves a regular give-and-take discussion. From time to time,

* Sexual abuse of a child occurs when someone uses a child to gratify his or her own sexual desires. It often involves what the Bible calls fornication, or *porneʹa*, which could include fondling of genitalia, sexual intercourse, and oral or anal sex. Some abusive acts, such as the fondling of breasts, explicitly immoral proposals, showing pornography to a child, voyeurism, and indecent exposure, may amount to what the Bible condemns as "loose conduct."—Galatians 5:19-21; see *The Watchtower* of March 15, 1983, footnote on page 30.

both mother and father should reaffirm God's laws on incest and the loving reasons for these laws.

You might also use such stories as that of Tamar and Amnon, David's children, to show children that in sexual matters there are boundaries that no one—close relatives included—should ever cross.—Genesis 9:20-29; 2 Samuel 13:10-16.

Respect for these principles can be shown even in practical living arrangements. In one Oriental country, research has shown that much incest occurs in families where children sleep with parents even when there is no economic necessity for this. Similarly, it is generally unwise to have opposite-sex siblings share a bed or a room as they grow older, if this is at all avoidable. Even when cramped living conditions are a fact of life, parents should use good judgment in deciding on where each family member should sleep.

Bible law forbids drunkenness, suggesting that it can lead to perversion. (Proverbs 23:29-33) According to one study, some 60 to 70 percent of incest victims reported that their abusing parent had been drinking when the abuse started.

A Loving Family Head

Researchers find that abuse is more common among families with domineering husbands. The widely held view that women exist merely to fulfill male needs is Scripturally wrong. Some men use this unchristian opinion to justify turning to a daughter for anything they cannot get from a wife. This type of oppression can cause women in these circumstances to lose their emotional balance. Many lose even the natural urge to protect their own children. (Compare Ecclesiastes 7:7.) One study, on the other hand, found that when workaholic fathers were largely absent from the home setting, sometimes mother-son sexual abuse has festered.

> One survivor of years of incest said: "Abuse kills children, it kills their trust, their right to feel innocent. That's why children have to be protected. Because now I have to rebuild my whole life. Why make more children do that?" Why indeed?

What about your family? Do you as husband take the role of head seriously, or do you abdicate it to your wife? (1 Corinthians 11:3) Do you treat your wife with love, honor, and respect? (Ephesians 5:25; 1 Peter 3:7) Do her views count? (Genesis 21:12; Proverbs 31:26, 28) And what about your children? Do you see them as precious? (Psalm 127:3) Or do you view them as mere burdens, readily

Listen to the Children!

IN BRITISH COLUMBIA, Canada, a recent study examined the careers of 30 child molesters. The results were chilling. The 30 individuals had, between them, abused 2,099 children. Fully half of them held positions of trust—teachers, ministers, administrators, and child-care workers. One molester, a 50-year-old dentist, had abused nearly 500 children over a 26-year period.

However, *The Globe and Mail* of Toronto notes: "In 80 per cent of cases, one or more sectors of the community (including friends or colleagues of the offender, families of victims, other children, some victims) denied or minimized the abuse." Not surprisingly, "the report suggests that denial and disbelief allow abuse to continue."

Some of the victims had told on the abusers. However, "parents of young victims were unwilling to accept what their children were telling them," *The Globe and Mail* quotes the report as saying. Similarly, a government official in Germany recently cited a report that child victims of sexual abuse have to approach adults with their story as many as seven times before they are believed.

THE WATCHTOWER®

ANNOUNCING JEHOVAH'S KINGDOM

January 1, 1997 | Average Printing Each Issue: 20,980,000 | Vol. 118, No. 1

THE PURPOSE OF *THE WATCHTOWER* is to exalt Jehovah God as Sovereign Lord of the universe. It keeps watch on world events as these fulfill Bible prophecy. It comforts all peoples with the good news that God's Kingdom will soon destroy those who oppress their fellowmen and that it will turn the earth into a paradise. It encourages faith in God's now-reigning King, Jesus Christ, whose shed blood opens the way for mankind to gain eternal life. *The Watchtower*, published by Jehovah's Witnesses continuously since 1879, is nonpolitical. It adheres to the Bible as its authority.

IN THIS ISSUE

3 Why Should We All Praise God?

6 Let All Glorify Jehovah!

12 The Greater Glory of Jehovah's House

23 Giving Up Much for Something Greater

26 Let Us Abhor What Is Wicked

30 They Did Jehovah's Will
Finding a Wife for Isaac

32 Who Is to Blame for War?

WATCHTOWER STUDIES

FEBRUARY 3-9: Let All Glorify Jehovah! Page 6. *Songs to be used:* 1, 165.

FEBRUARY 10-16: The Greater Glory of Jehovah's House. Page 12. *Songs to be used:* 31, 118.

Now published in 125 languages.

SEMIMONTHLY LANGUAGES AVAILABLE BY MAIL: Afrikaans, Albanian, Amharic, Arabic, Bengali, Bicol, Bislama, Bulgarian, Cebuano,* Chichewa, Chinese, Chinese (Simplified), Cibemba, Croatian, Czech,* Danish,** Dutch,* Efik, English** (also Braille), Estonian, Ewe, Fijian, Finnish,** French,** Ga, Georgian, German,** Greek,* Gujarati, Hebrew, Hiligaynon, Hindi, Hiri Motu, Hungarian,* Igbo, Ilocano,* Indonesian, Italian,** Japanese* (also Braille), Kannada, Korean* (also Braille), Latvian, Lingala, Lithuanian, Macedonian, Malagasy, Malayalam, Marathi, Myanmar, Nepali, New Guinea Pidgin, Norwegian, Pangasinan, Papiamento, Polish,* Portuguese* (also Braille), Rarotongan, Romanian,* Russian,* Samar-Leyte, Samoan, Sepedi, Serbian, Sesotho, Shona, Sinhalese, Slovak, Slovenian, Solomon Islands Pidgin, Spanish,** Sranantongo, Swahili, Swedish,** Tagalog,* Tahitian, Tamil, Telugu, Thai, Tigrinya, Tshiluba, Tsonga, Tswana, Turkish, Twi, Ukrainian,* Venda, Vietnamese, Wallisian, Xhosa, Yoruba, Zulu

MONTHLY LANGUAGES AVAILABLE BY MAIL: Armenian, Cambodian, Chitonga, Greenlandic, Gun, Hausa, Icelandic, Iloko, Kiluba, Kinyarwanda, Kirundi, Kwanyama/Ndonga, Luganda, Luvale, Maltese, Marshallese, Monokutuba, Moore, Niuean, Otetela, Palauan, Persian, Ponapean, Punjabi, Sanga, Silozi, Tongan, Trukese, Tuvaluan, Urdu, Yapese

* Study articles also available in large-print edition.
** Audiocassettes also available.

© 1997 Watch Tower Bible and Tract Society of Pennsylvania. All rights reserved. Milton G. Henschel, President

If you would like to learn about Jehovah's Witnesses or their publications, please write to Watch Tower at the appropriate address below.

America, United States of: Wallkill, NY 12589. ***Australia:*** Box 280, Ingleburn, N.S.W. 2565. ***Bahamas:*** Box N-1247, Nassau, N.P. ***Barbados:*** Fontabelle Rd., Bridgetown. ***Canada:*** Box 4100, Halton Hills [Georgetown], Ontario L7G 4Y4. ***England:*** The Ridgeway, London NW7 1RN. ***Germany:*** Niedernhaller Str., Am Steinfels, D-65618 Selters. ***Ghana:*** Box 760, Accra. ***Guyana:*** 50 Brickdam, Georgetown 16. ***Hawaii 96819:*** 2055 Kam IV Rd., Honolulu. ***Hong Kong:*** 4 Kent Road, Kowloon Tong. ***India:*** Post Bag 10, Lonavla, Pune Dist., Mah. 410 401. ***Ireland:*** Newcastle, Greystones, Co. Wicklow. ***Jamaica:*** Vidal Terrace, Martin Mount, Old Harbour. ***Japan:*** 1271 Nakashinden, Ebina City, Kanagawa Pref., 243-04. ***Kenya:*** Box 47788, Nairobi. ***Liberia:*** P.O. Box 10-0380, 1000 Monrovia 10. ***New Zealand:*** P.O. Box 142, Manurewa. ***Nigeria:*** P.M.B. 1090, Benin City, Edo State. ***Philippines, Republic of:*** P.O. Box 2044, 1060 Manila. ***South Africa:*** Private Bag X2067, Krugersdorp, 1740. ***Trinidad and Tobago, Republic of:*** Lower Ropsey Street & Laxmi Lane, Curepe. ***Zambia:*** Box 33459, Lusaka 10101. ***Zimbabwe:*** P. Bag A-6113, Avondale.

The Bible translation used is the *New World Translation of the Holy Scriptures*—With References, unless otherwise indicated.

Would you welcome more information or a free home Bible study? Please send your request to Watch Tower, using the appropriate address above.

Publication of "The Watchtower" is part of a worldwide Bible educational work supported by voluntary donations.

Changes of address should reach us 30 days before your moving date. Give us your old and new address (if possible, your old address label).

The Watchtower (ISSN 0043-1087) is published semimonthly by Watchtower Bible and Tract Society of New York, Inc., 25 Columbia Heights, Brooklyn, NY 11201-2483. Periodicals Postage Paid at Brooklyn, NY, and at additional mailing offices. **Postmaster:** Send address changes to Watchtower, Wallkill, NY 12589.

Printed in U.S.A.

Depending on the law of the land where he lives, the molester may well have to serve a prison term or face other sanctions from the State. The congregation will not protect him from this. Moreover, the man has revealed a serious weakness that henceforth will have to be taken into account. If he seems to be repentant, he will be encouraged to make spiritual progress, share in the field service, even have parts in the Theocratic Ministry School and nonteaching parts in the Service Meeting. This does not mean, though, that he will qualify to serve in a position of responsibility in the congregation. What are the Scriptural reasons for this?

For one thing, an elder must be "self-controlled." (Titus 1:8) True, none of us have perfect self-control. (Romans 7:21-25) But a dedicated adult Christian who falls into the sin of child sexual abuse reveals an unnatural fleshly weakness. Experience has shown that such an adult may well molest other children. True, not every child molester repeats the sin, but many do. And the congregation cannot read hearts to tell who is and who is not liable to molest children again. (Jeremiah 17:9) Hence, Paul's counsel to Timothy applies with special force in the case of baptized adults who have molested children: "Never lay your hands hastily upon any man; neither be a sharer in the sins of others." (1 Timothy 5:22) For the protection of our children, a man known to have been a child molester does not qualify for a responsible position in the congregation. Moreover, he cannot be a pioneer or serve in any other special, full-time service.—Compare the principle at Exodus 21:28, 29.

Some may ask, 'Have not some committed other types of sin and apparently repented, only to repeat their sin later?' Yes, that has happened, but there are other factors to consider. If, for example, an individual makes immoral advances to another adult, the adult should be able to resist his or her advances. Children are much easier to deceive, confuse, or terrorize. The Bible speaks of a child's lack of wisdom. (Proverbs 22:15; 1 Corinthians 13:11) Jesus used children as an example of humble innocence. (Matthew 18:4; Luke 18:16, 17) The innocence of a child includes a complete lack of experience. Most children are open, eager to please, and thus vulnerable to abuse by a scheming adult whom they know and trust. Therefore, the congregation has a responsibility before Jehovah to protect its children.

Well-trained children learn to obey and honor their parents, the elders, and other adults. (Ephesians 6:1, 2; 1 Timothy 5:1, 2; Hebrews 13:7) It would be a shocking perversion if one of these authority figures were to misuse that child's innocent trust so as to seduce or force him or her to submit to sexual acts. Those who have been sexually molested in this way often struggle for years to overcome the resulting emotional trauma. Hence, a child molester is subject to severe congregational discipline and restrictions. It is not his status as an authority figure that should be of concern but, rather, the unblemished purity of the congregation.—1 Corinthians 5:6; 2 Peter 3:14.

If a child molester sincerely repents, he will recognize the wisdom of applying Bible principles. If he truly learns to abhor what is wicked, he will despise what he did and struggle to avoid repeating his sin. (Proverbs 8:13; Romans 12:9) Further, he will surely thank Jehovah for the greatness of His love, as a result of which a repentant sinner, such as he is, can still worship our holy God and hope to be among "the upright" who will reside on earth forever. —Proverbs 2:21.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 • FAX (925) 416-0971

Q. Besides your mother and Kelly?
A. Yes.
Q. Who is that?
A. I can't remember her first name. Carolyn. Carolyn Inman. Well, Conti, I guess.
Q. Do you know when your father married Carolyn?
A. I don't know the exact year.
Q. Do you know how long he's been to Kelly?
A. I don't know the exact year.
Q. Following the divorce did you reside principally with your mother or your father?
A. With my mother.
Q. Did you spend weekends with your father? Time with your father during your adolescence after age 12?
A. It was on and off.
Q. Have you ever been married?
A. No.
Q. Are you presently a member of any religion?
A. No.
Q. Were you raised around the Jehovah Witness faith?
A. Yes.
Q. Were you ever baptized as one of Jehovah Witnesses?
A. No.

Q. Were you ever an unbaptized publisher?
A. Yes.
Q. What age did you become an unbaptized publisher?
A. I couldn't give you the exact age. I wouldn't -- I wouldn't know.
Q. Before age 12?
A. Yes.
Q. And how long did that continue in your status as an unbaptized publisher; if you know?
A. I wouldn't be able to give you the exact date.
Q. Did you ever give talks in the theocratic ministry school?
A. Yes.
Q. Same answer about timing on that? You couldn't guess?
A. I wouldn't know.
Q. But it was when --
A. It was when I was an unbaptized publisher.
Q. What congregations of Jehovah Witness did you attend?
A. Just North Fremont.
Q. At the time of your parents' divorce were your mother and father Jehovah Witnesses?
A. Yes.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes;

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. My dad was.

Q. So the first time this took place was when you were about nine years old?

A. (Witness nods head affirmatively.)

Q. How many times did it take place; the bear hugs?

A. I couldn't give you a number.

Q. Frequently?

A. Very frequently.

Q. Every meeting?

A. I would -- I could safely say that.

Q. Did you ever complain about these bear hugs to anyone?

A. I would try to get away.

Q. What would you do to get away?

A. Squirm and try to get away.

Q. Were you able to get away?

A. (Witness shakes head in the negative.)

Q. Did you ever say anything to your father about it when you were nine years old?

A. It seemed like it was acceptable conduct.

Q. So you didn't say anything?

A. Besides trying to get away, no.

Q. How long did the bear hugs and sitting on his lap last in terms of, if you can reference it, with your

age? Starting with nine years old how long did it continue?

A. Up until he moved away.

Q. Do you know when that was?

A. Shortly after my parents divorced.

Q. Did the abuse ever increase to be more than just bear hugs?

A. Yes.

Q. When did it increase to be more? How old were you?

A. Still nine.

Q. What happened?

A. He would take me to his house after meetings.

Q. Were these day meetings or night meetings?

A. Sunday meetings.

Q. Sunday meetings?

What happened when he would take you to his house after a Sunday meeting?

A. He would bear hug me. He wouldn't let me go. He would touch me. Put his hands up my shirt.

Q. This started when you were age nine?

A. (Witness nods head affirmatively.)

Q. While you were age nine did he do anything else besides bear hug you and put his hands up your shirt?

A. I don't know at what age it was when it

progressed into something different. I don't know exactly what age I was.

Q. What did it progress to?

A. It got more violent.

Q. What do you mean by "violent"? What would he do?

A. He would use pens, and he would make me touch him.

Q. What would he do with the pen?

Do you want to take a break?

A. I will finish your question.

He used to just put them inside me.

Q. In your vagina?

A. (Witness nods head affirmatively.)

MR. McCabe: Why don't we take a rest break. I'm sorry.

(RECESS TAKEN FROM 10:30 A.M. to 10:35 A.M.)

BY MR. McCABE:

Q. So you're not sure what age you were when it escalated to this point, using a pen and other touching; is that correct?

A. That's correct.

Q. But some time after you were nine?

A. Yes.

Q. Was it some time after you were 12?

A. No.
Q. Before you were 12?
A. Yes.
Q. Can you tell me about how many times this incident took place where he would use pens?
A. Several times a month.
Q. Over what time period? Number of years? All within one year?
A. After it escalated?
Q. Yes.
A. Couple years.
Q. When did the abuse stop?
A. When he moved.
Q. He moved about the time your parents divorced?
A. (Witness nods head affirmatively.)
Q. That was in 1997?
A. That's correct.
Q. The abuse started when you were nine years old, so about 1994?
A. (Witness nods head affirmatively.)
Q. Were there occasions of abuse anywhere else other than what you have described at the Kingdom Hall and at his home?
A. No.
Q. Was there any other type of abuse other than

what you have already described?

A. Oral. He used to make me touch him and he used to lick me.

Q. Was he clothed or unclothed when you touched him?

A. Unclothed.

Q. What did he make you touch?

A. His genital area.

Q. Did he disrobe? How was he dressed?

A. He was unclothed.

Q. Completely?

A. Yes.

Q. What about you? Did he unclothe you?

A. Yes.

Q. How often did this happen?

A. Several times a month.

Q. Did you ever go to meetings at the Fremont Kingdom Hall by yourself?

A. No.

Q. Did you always go with your dad or your mom?

A. Yes.

Q. Or both of your parents while they were married?

A. Yes.

Q. Where did you usually sit? Did you sit with

Q. Is there any other abuse with Jonathan Kendrick that you haven't told me about?

A. He took pictures.

Q. What would he take pictures of?

A. Me.

Q. Undressed?

A. Undressed.

Q. How old were you when he did that?

A. Nine.

Q. Was that a continuing part of his pattern?

A. Yes.

Q. Now, the incidents of taking photos, where did they take place?

A. At his house.

Q. And the incidents involving him being unclothed or you being unclothed, inappropriate touching, did that all take place at his house, too?

A. The inappropriate touching started at the Kingdom Hall.

Q. Okay. Well, I'm talking about other than the bear hugs.

A. Yes. It took place at his house.

Q. Was there any other inappropriate touching at the Kingdom Hall that you didn't tell me about other than the bear hugs and sitting on his lap?

A. And grabbing me.
Q. Where would he grab you?
A. Around my top section.
Q. Grab your breast or your arms or --
A. Yeah.
Q. -- shoulders?
A. Yes.
Q. All three?
A. Yes.
Q. But at all times that you were at the Kingdom Hall one or both of your parents were there; is that correct?
A. One. Yeah. One or both of my parents were there.
Q. Okay. Who was the first person you told that this was going on?
A. My dad asked me about it in 2003.
Q. What did he ask you?
A. He said -- well, he asked me if something had ever happened to me.
Q. What did you tell him?
A. I said, "Yes."
Q. Did you tell him the details that you have told me here today?
A. No.

A. No.

Q. Was he married at the time?

A. No.

Q. Did he live alone?

A. Yes.

MR. SIMONS: And while we were off the record I mentioned that there is one more thing that I'm afraid that Ms. Conti has to tell you about.

MR. McCABE: Okay.

Q. Is there something else that we haven't covered yet that you need to tell me?

A. He used to lick me, but he also used to make me -- he used to make me orally please him.

Q. How often did that happen?

A. After it started it was quite frequent.

Q. Do you know when it first started how old you were?

A. Probably 10.

Q. Did he orally copulate you?

A. (Witness nods head affirmatively.)

Q. Same amount of frequency?

A. (Witness nods head affirmatively.)

Q. What would happen after these incidents?

A. He would take me home.

Q. And...

A. And my dad would pick me up.
Q. Your dad would pick you up?
A. (Witness nods head affirmatively.)
Q. Where would your dad pick you up?
A. Back at the Kingdom Hall.
Q. Do you know, what was the purpose for you going to Jonathan Kendrick's home in your parent's eyes? Do you have any idea?
A. I think they saw him as a trusted person to babysit me.
Q. What would your parents do when you were with Jonathan Kendrick?
A. I don't know. I wasn't with them.
Q. And starting from about age nine he would take you to his house several times a month?
A. (Witness nods head affirmatively.)
Q. Every month?
A. (Witness nods head affirmatively.)
Q. Until 1997?
A. (Witness nods head affirmatively.)
Q. Was there ever a time when you didn't recall that these things took place? That you blocked it out of your memory?
A. Yeah. Claudia Francis had told me of a time that I don't remember.

EXHIBIT 18

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	CASE NO. HG11558324

VIDEOTAPED DEPOSITION OF KATHLEEN CONTI

NORWALK, CALIFORNIA

OCTOBER 21, 2011

ATKINSON-BAKER, INC.
COURT REPORTERS
(800)288-3376
www.depo.com

REPORTED BY: PAULETTE RADCLIFF, CSR No. 12111

FILE NO. A50931C

A. No.

Q. How would you describe your relationship with Candace, say, birth to age ten?

A. Very close.

Q. Close as you can imagine for a mother and daughter? 10:11:22

A. I would say so, yes.

Q. Was she a happy girl?

A. I think she was happy, yeah, she was happy.

Q. Okay. Because of your experience did you have heightened sensitivities about your daughter, protecting her? 10:11:39

A. Only within the normal range of trying to protect your child.

Q. And you did try to protect your daughter; didn't you? 10:12:03

A. Uh-huh.

Q. You would describe yourself as being a good mother?

A. Yes. 10:12:12

Q. Do you recall -- let me back up. Did you attend meetings of the Jehovah's witness faith at the north Fremont Kingdom Hall, Fremont, California?

A. Yes.

Q. Okay. Tell me about what meetings you 10:12:40

Q. Yes.
A. Yes, uh-huh.
Q. Did you ever hear that Jonathan Kendrick was a child abuser before your daughter told you?
A. No. 10:15:58
Q. Did you ever have any suspicions that he might be someone who would be a danger to children?
A. No.
Q. Did you ever see him do anything that aroused your intent in any way that he might be a 10:16:11
danger to children?
A. Two events at the very end of our marriage. I wasn't aware that he -- he would come over to the house and spend time in the garage with my husband. It was a paint booth. My husband had the garage as a 10:16:52
paint booth for cars, and it was always an attraction for the brothers to come over. Jonathan wasn't the only one who would come over, but he was over at this time and you would have to go out of the house to go to the garage. The door wasn't connected to the 10:17:19
house, inside the house, so Candace and I were opening the door to see -- say hello, and Jonathan grabbed her by the arm, and I believe he had been drinking. I knew that that was an issue at the end, and he hurt her, and I didn't think it -- that seem 10:17:53

there a period of time where you knew he wasn't?

A. I believe that he may have not when he was getting a divorce. I think maybe he wasn't a ministerial servant. I can't say for sure, but I think maybe he wasn't at the end. 10:21:34

Q. Do you know when Mr. Kendrick got a divorce?

A. No, I don't remember.

Q. Was it before your divorce?

A. I don't remember that.

Q. Do you ever recall Mr. Kendrick inappropriately touching Candace at the kingdom hall at north Fremont congregation of Jehovah's witnesses? 10:21:58

A. I don't remember that. I just remember that he was very friendly with her.

Q. Do you remember seeing him give her bear hugs at the kingdom hall? 10:22:25

A. I don't remember.

Q. Do you ever remember seeing Candace sitting on his lap at the kingdom hall?

A. No, but there is a period of time that I wasn't there at the hall at the end. It was quite a few months I was not there. 10:22:53

Q. That would be '96 up to July 1997?

A. I believe that would be during '95 '96 and '97. 10:23:23

A. I don't remember.

Q. Do you know if Candace ever went with Neil to Kendrick's home?

A. I don't remember that.

Q. Did Candace ever associate with Kendrick's step-daughter that you're aware of? 11:37:32

A. No.

Q. During the time you lived with Neil up until you separated in July 1996, did Candace ever go with Kendrick to Kendrick's home? 11:37:51

A. No.

Q. And you're certain of that?

A. Not on my time.

Q. My question --

A. By herself? 11:38:07

Q. That was my question, yes?

A. Oh, no. Not that I know of, no.

Q. You wouldn't have allowed it?

A. No.

Q. You would not have allowed it; correct? 11:38:16

A. Yes.

Q. That's correct?

A. Yes, that's correct.

Q. Do you blame Neil for allowing Kendrick to molest Candace? 11:38:27

A. No.
Q. Why not?
A. Because I think, and I'm just saying I think, that Neil was under the impression that everybody could be trusted in a congregation. That's what I think.
Q. Do you believe Neil allowed Candace to go to Kendrick's home with Kendrick?
A. Say that again?
Q. Do you believe Neil allowed Candace to go to Kendrick's home alone with Kendrick? 11:39:15
A. I don't know.
Q. Earlier Mr. McCabe asked you whether you had ever seen anything happen with respect to Kendrick that suggested he might be a danger to children, and you initially said there were two events towards the end of your marriage, and you described the first one where he grabbed Candace by the arm. What is the other one? 11:39:32
A. The other one has nothing to do with Candace. It had to do with a incident when Jonathan had visited, was visiting with us, and Neil and myself and Jonathan sitting in their front room, and Jonathan grabbed me, and he started playing like he was going to spank me, because I was bad or 11:39:44 11:40:17

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

NEAL RICHARD CONTI

Tuesday, October 25, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

concerning Candace, and some of the events that occurred during her childhood, and then also some things that are more current. 10:10:18 10:10:23 10:10:26

Do you understand that part? 10:10:28

A. Yes, I do. 10:10:29

Q. This is part of a lawsuit that Candace has brought against, among others, the Watchtower Bible and Tract Society of New York and the North Congregation. 10:10:30 10:10:34 10:10:41

Do you understand that part? 10:10:43

A. Yes. 10:10:44

Q. Okay. Are you -- 10:10:45

Were you aware, before today, of the existence of this lawsuit? 10:10:49 10:10:52

A. When I got the subpoena, through that. Yeah. 10:10:55 10:11:00

Q. Have you ever discussed it with Candace? 10:11:02

A. No. No. 10:11:04

Q. As we go through here for the next couple of hours, it may occur that I ask you a question that you don't understand, either because I used words that aren't familiar to you, or I garbled the question, or you didn't hear it. 10:11:09 10:11:11 10:11:14 10:11:16 10:11:20

If for any reason you're not sure of the question, ask me to repeat it or rephrase it. Because that's my job. 10:11:21 10:11:23 10:11:26

Q. And have you worked in the electronics field since completing that training? 10:14:41 10:14:43

A. Yes. 10:14:46

Q. At one time I think you worked at National Semiconductor? 10:14:47 10:14:50

A. Still do. Well, we were bought out by Texas Instruments, but it's still the same company. 10:14:50 10:14:52

Q. And what is the nature of your work? 10:14:54

A. Electronics. We do, we build, semiconductors. And so, I build tests of apparatus to test them, to customer evaluation of boards, things like that. 10:14:57 10:14:59 10:15:03 10:15:07

Q. Do you do engineering work? 10:15:08

A. Yes. 10:15:12

Q. Are you presently a member of the Jehovah's Witnesses? 10:15:12 10:15:15

A. Yes. 10:15:16

Q. And are you serving at present as a Ministerial Servant? 10:15:17 10:15:20

A. Yes, I am. 10:15:22

Q. Which congregation? 10:15:23

A. The Niles Congregation in Fremont. 10:15:24

Q. Were you ever a member of the North Fremont Congregation? 10:15:27 10:15:29

A. Yes, I was. 10:15:29

Q. During approximately what time period? 10:15:30

A. Nineteen eighty... I started attending in 1986. I was baptised in '87. And I was in that congregation until I moved to Salinas in 2003. 10:15:37 10:15:38 10:15:47

Q. Did you ever serve as a Ministerial Servant at the North Fremont Congregation? 10:15:56 10:15:59

A. No, I did not. 10:16:00

Q. Did you hold any position of administrative responsibility in that congregation? 10:16:01 10:16:04

A. No, I did not. 10:16:07

Q. Were you acquainted with Jonathan Kendrick? 10:16:12 10:16:13

A. Yes. 10:16:15

Q. How did you meet Mr. Kendrick? 10:16:15

A. He was a member of the congregation. 10:16:18

Q. And do you recall whether he participated with you in various congregation activities? 10:16:21 10:16:24

A. Yes. 10:16:27

Q. What kinds of activities? 10:16:28

A. Field ministry typically. 10:16:30

That's our most important aspect of what we do. So.... 10:16:32 10:16:36

Q. Did he attend various meetings that you also attended? 10:16:38 10:16:40

A. Yes. 10:16:42

Q. Do you recall that Mr. Kendrick served at the North Congregation as a Ministerial Servant? 10:19:06 10:19:09

A. Yes. During that time. 10:19:13

Q. Did you become aware at some point that he was removed as a Ministerial Servant? 10:19:14 10:19:16

A. Yes. 10:19:18

Q. How did you learn that? 10:19:21

A. Just the duties that he had performed previously, he was not doing those anymore. 10:19:22 10:19:24

Q. Did you learn from any source as to why Mr. Kendrick was removed as a Ministerial Servant? 10:19:32 10:19:33

A. I don't believe so, no. 10:19:36

Q. Did you ever discuss it with Mr. Kendrick? 10:19:38

A. No. 10:19:40

Q. Did you ever, up till today, learn that Mr. Kendrick was involved in some sexual touching of his stepdaughter Andrea? 10:19:51 10:19:56 10:20:01

A. I recall, how to put this, scuttlebutt, hearsay in the congregation. But I don't recall when that was. 10:20:12 10:20:19 10:20:21

I don't -- 10:20:22

I don't think it was necessarily back maybe when it happened. Believe it might have been afterwards. 10:20:23 10:20:26 10:20:29

I don't... I don't know. 10:20:29

some of the activities they might have been involved with. 10:48:59 10:49:00

Again, this is all -- 10:49:01

You know, it's not hearsay but it's -- I'd never talked to her about any of this. 10:49:03 10:49:05

So, only time she called me and talked to me was when she needed money to pay for her telephone, is what she told me. Keep her cell phone running. 10:49:07 10:49:09 10:49:12

So.... 10:49:12

Q. Did you learn about Candace's arrest and some of these other things, the drugs and the bad relationships, through Dorothy? 10:49:17 10:49:21 10:49:23

A. My mom's car was parked outside of her garage for a month, for two months. I thought that was quite suspicious. And I was never invited into her house for that period of time. 10:49:29 10:49:32 10:49:38 10:49:43

So, finally I went over and saw Candace's car in my mom's garage and asked my mom at that time. 10:49:46 10:49:50

So, Candace had already been in jail for two months. I knew she had been in jail, but my mom didn't tell me. My mom likes to keep things to herself, spare the family of any pain and suffering. 10:49:54 10:49:56 10:50:00 10:50:06

Q. Since she reached adulthood, let's say the last five or six years, how would you describe your relationship with Candace? 10:50:12 10:50:15 10:50:17

A. It's been very strained. 10:50:18

Q. And what do you attribute that to? 10:50:22

A. She didn't like my third wife, Carolyn, at all. And that's pretty much when she stopped talking with me. And.... 10:50:24 10:50:27 10:50:35

And we didn't associate at all at that point. 10:50:39 10:50:42

Q. So, would that have gone back, that strained relationship gone back, to Candace's high-school years? 10:50:42 10:50:47 10:50:49

A. Yes. Yes. 10:50:50

Actually, it started in junior high, yeah. 10:50:51

Q. Do you recall Candace being friends with Toi Register? 10:51:22 10:51:26

A. That was someone in the congregation way back. I remember the name. 10:51:38 10:51:40

Q. Do you remember a Brianna Becker? 10:51:45

A. Yeah, I remember the name. Yeah. 10:51:49

Q. Do you have any idea where Brianna Becker is today? 10:51:53 10:51:56

A. I have no idea. 10:51:57

Q. Or anyone from her family? 10:51:58

A. I think her mother and brother are still in Northern California but I don't know. I don't know. I don't know. 10:52:02 10:52:04 10:52:11

EXHIBIT 20

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

MICHAEL LEE CLARKE

Tuesday, November 8, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

So, if for some reason you should say an mmm-hmm or an mmm-mmm, I may come back and say: "Is that a yes?" or "Is that a no?" And that's not meant to be in any way rude. It's just to clarify for the record. All right? 11:37:12 11:37:15 11:37:18 11:37:20 11:37:23

A. Understood. 11:37:24

Q. Okay. 11:37:25

You also understand that your testimony today is under penalty of perjury, just as if you were in a court. 11:37:25 11:37:27 11:37:30

A. Understood. Yes. 11:37:31

Q. Are you an Elder in the Jehovah's Witnesses North Fremont Congregation? 11:37:32 11:37:38

A. Yes. 11:37:39

Q. And for what period of time have you served as an Elder in that congregation? 11:37:40 11:37:41

A. Since 1989. 11:37:45

Q. Did you serve as an Elder in any other congregation? 11:37:48 11:37:50

A. Yes. 11:37:51

Q. Where else have you served as an Elder? 11:37:52

A. Mt. Eden Congregation Hayward. San Leandro North Congregation. 11:37:57 11:38:01

Q. When did you first become an Elder with any of these congregations? 11:38:07 11:38:09

MR. SIMONS: All right.

Q. So, my question to you, Mr. Clarke, is: Is it the practice of Jehovah's Witnesses that information contained in congregation files and papers and reports and minutes, concerning sexual abuse of a minor, must be kept strictly confidential -- as you say in Paragraph 11 of your Affidavit -- to the extent that it cannot be discussed with persons other than your fellow Brother Elders? 11:48:28 11:48:29 11:48:35 11:48:39 11:48:41 11:48:47

A. Yes. 11:48:51

Q. Where does that practice originate? 11:48:52

A. It would -- 11:49:02

It would be in instructions we received in letters. 11:49:04 11:49:14

Q. And that would be letters of instruction from the Watchtower Bible and Tract Society of New York before 2001, 11:49:24 11:49:35 11:49:36

Correct? 11:49:37

A. Not sure but -- 11:49:40

I'm not sure about the date, but we receive many letters. 11:49:43 11:49:45

Q. Okay. 11:49:47

It would include, for whatever period of time Watchtower of New York was providing these letters, it would include that period of time. 11:49:48 11:49:54 11:49:55

A. Yes. 12:01:52

Q. And do you have some recollection, although it might not be complete, of the events that are recorded in this letter? 12:01:54 12:01:56 12:01:59

A. After reviewing the letter, yes, I have some recollection. 12:02:01 12:02:03

Q. It says in the first paragraph: ("We telephoned 11-12-93 and it was suggested that we submit in writing our questions.") 12:02:06 12:02:08 12:02:13

Is the "we" who telephoned yourself and Mr. Abrahamson? 12:02:16 12:02:18

A. I -- That's the logical conclusion because him and I were the two that met with the family. 12:02:20 12:02:22 12:02:25

So, I believe we did a conference call. The two of us, plus Watchtower. 12:02:25 12:02:28

Q. Okay. Who did you speak to at Watchtower when you made that call? 12:02:30 12:02:32

A. Legal Department. I didn't get a name. 12:02:35

Q. Do you know who it was that suggested that you submit the... the questions in writing? 12:02:40 12:02:42

A. Legal. The person I spoke to. But I couldn't tell you his name. 12:02:46 12:02:49

Q. Okay. You recall it was a man. 12:02:50

A. Yes. 12:02:53

Before the meeting of November 11th with Mr. Kendrick and Evelyn Kendrick and Andrea Kendrick, did you and Mr. Abrahamson discuss whether or not you should meet separately with Andrea or Evelyn Kendrick? 12:08:36 12:08:41 12:08:45 12:08:47

A. No. 12:08:53

Q. Did you have, back in 1993, any guidelines from Body of Elder letters or your own experience or any other source as to how to gather information to investigate a report of sexual abuse of a child? 12:08:57 12:09:05 12:09:08 12:09:13

A. No. 12:09:20

Q. So, is it fair to say that you accepted at face value whatever information was given to you in this meeting at the Kendrick home? 12:09:31 12:09:34 12:09:39

A. Yes. 12:09:44

Q. Mr. Kendrick told you that "since he was sorry and his family was willing to forget the abuse," that he felt "he would not have to report it to the congregation elders." Is that correct? 12:09:45 12:09:51 12:09:57 12:10:00

A. Mmm.... That's what he said, yes. 12:10:09

Q. And is that something he said in the meeting on November 11th? Or is it something he said in the telephone conversation? 12:10:16 12:10:19 12:10:22

Or do you recall when he said that? 12:10:25

A. It would have been at the meeting that we had on November the 11th. 12:10:28 12:10:31

Q. Did Mr. Kendrick also tell you that his daughter Andrea was now using the abuse, that she had experienced, as a tool to threaten when she wanted something? 12:10:41 12:10:44 12:10:53 12:10:59

A. Yes. 12:10:59

Q. Mr. Kendrick told you that. 12:11:00

A. Both him and his wife, Evelyn. 12:11:02

Q. Okay. And was that also in the meeting with Andrea present in the Kendrick home? 12:11:05 12:11:07

A. Yes. 12:11:10

Q. And did Mr. Kendrick tell you anything else about why he had chosen November of 1993 to talk to you about this abuse of Andrea, other than "his conscious continued to bother him"? 12:11:13 12:11:15 12:11:17 12:11:19

A. Well, the letter mentions that it had become... it had become known to a friend of the stepdaughter's. 12:11:21 12:11:24 12:11:26

And I believe he indicated, in addition to his conscious, that this would be a reason for us to -- to come over and talk to him about it. 12:11:29 12:11:33 12:11:37

Q. Are you referring to Toi Register? 12:11:38

A. Um... is that her name? Yes. 12:11:39

Q. Okay. 12:11:40

And you discuss that, in the bottom paragraph of the November 16th -- I'm sorry,

There's information here concerning Toi Register having had her chest, quote, "accidentally touched," end quote, by Mr. Kendrick. 12:11:42 12:11:47 12:11:50

Was it Mr. Kendrick that told you that? 12:11:51

A. Boy. This was repeated to us by.... 12:11:53

I don't know where that information -- how we gathered it. It might have been mentioned by the stepdaughter. We -- 12:11:53 12:11:56 12:12:01

We did not talk with Toi Register. 12:12:06

Q. Okay. 12:12:10

Was there any reason that you did not talk to Toi Register to see if the touching of her chest by Brother Kendrick was actually accidental, as opposed to intentional? 12:12:11 12:12:13 12:12:19 12:12:23

A. I don't remember why we did not talk with her. 12:12:24 12:12:26

Q. Were you concerned on November 15th, 1993, that there might be other young girls who Brother Kendrick had been touching in their breasts? 12:12:32 12:12:35 12:12:43

A. Can you please repeat that? 12:12:45

Q. Yeah. 12:12:49

During this meeting of November 11th, you learned that there had been some touching of Toi Register and some touching of Andrea by Mr. Kendrick. 12:12:53 12:12:58 12:13:06 12:13:08

Were you concerned at that time that there might be other children who, other girls who, he had been touching? 12:13:18 12:13:20 12:13:24

A. I don't recall what I was thinking back then. 12:13:29 12:13:40

Q. Did you or Mr. Abrahamson do anything to find out whether there were other girls that he had been touching? 12:13:42 12:13:44 12:13:46

A. I... I don't recall, no. 12:13:48

Q. Did you notify law enforcement of the information that you received about the touching of these two girls by Mr. Kendrick? 12:13:49 12:13:52 12:13:55

A. No. 12:13:57

Q. Why not? 12:14:02

A. Um... Legal, our Legal Department, advised me. 12:14:08 12:14:09

MR. MC CABE: I'm gonna object. This, I'm not gonna ask -- 12:14:13 12:14:16

I'm gonna ask you not to say what they advised you. But you can just say that you contacted the Legal Department and you acted accordingly. 12:14:20 12:14:24 12:14:33

MR. SCHNACK: I'll join in that objection. 12:14:37

MR. SIMONS: Yeah, and that -- If it's -- If the answer is on advice of counsel, from the Legal Department, that's fine. 12:14:39 12:14:45 12:14:48

Q. So, Mr. Clarke, is the reason that you didn't notify law enforcement in 1993, of the information you had received concerning Jonathan Kendrick's sexual abuse of Andrea Kendrick and touching of Toi Register, was that reason because of the advice of -- that you had received from Counsel? 12:21:41 12:21:42 12:21:44 12:21:48 12:21:52 12:22:01 12:22:03

MR. MC CABE: I'm going to object to that question because it asks to invade the attorney-client privilege; and it also assumes facts not in evidence, that there was a mandatory reporting statute in 1993 for clergy, when I think the facts show that that didn't come into play until 1996. 12:22:05 12:22:06 12:22:09 12:22:12 12:22:16 12:22:20

MR. SCHNACK: I'll join in the objections. 12:22:22

MR. SIMONS: Let me withdraw the question and ask you this. 12:22:24 12:22:25

Q. Why didn't you report the sexual abuse of Andrea Kendrick and the possible sexual abuse of Toi Register to law enforcement in 1993? 12:22:27 12:22:30 12:22:37

MR. SCHNACK: I'm going to object to the extent it requires him to divulge attorney-client communications. 12:22:40 12:22:41 12:22:45

MR. MC CABE: Join. 12:22:45

THE WITNESS: On the advice of counsel. We were... 12:22:48 12:22:51

for?

A. Picking up children, hugging children, kissing children, things of that nature.

Q. Was Mr. Kendrick prohibited from going into territories to do preaching and spreading the word?

A. No.

Q. Was he prohibited from going into neighborhoods to spread the word when he was in the company of children?

A. We....

I don't recall how we limited that. I could just say that when he came out or met to go out into the ministry, we did our best to make sure he worked with an adult, and preferably one of us, you know, one of the Elders.

Q. Did you have any concern that Mr. Kendrick would be at risk to molest another girl in a setting outside of the direct activities of the congregation?

A. Please repeat?

I'm sorry.

MR. SCHNACK: I was going to say, I was going to object to it. I don't know what you mean by "direct activities" as opposed to "indirect activities."

A. Is it this (indicating)? 12:57:56

Q. That. Very good. 12:57:57

Question 6: "Are members of congregation aware of sin?" And the answer was "no." 12:57:59 12:58:02

Correct? 12:58:04

A. Yes. Other than the family. 12:58:08

Q. What was the reason that the congregation was not notified that Mr. Kendrick had been involved in child sexual abuse? 12:58:14 12:58:16 12:58:24

A. We don't make that public to the congregation. That's confidential. 12:58:27 12:58:30

Q. And what -- 12:58:35

And that's the policy and the practice of Jehovah's Witnesses that you learned as an Elder. 12:58:37 12:58:40

Correct? 12:58:45

A. Yes. 12:58:47

Q. Where does that policy and practice originate from? 12:58:48 12:58:51

A. Letters. 12:58:57

Q. Letters from Watchtower Bible and Tract Society of New York, Inc.? 12:58:58 12:59:01

A. Yes. 12:59:01

Q. During your many years of service as an Elder, has that policy changed? 12:59:18 12:59:20

A. No. 12:59:25

Printed on Recycled Paper
20% Post Consumer Waste

EXHIBIT 21

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

-oOo-

CERTIFIED COPY

JANE DOE, Plaintiff, -vs- THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	)	No. HG11558324

DEPOSITION OF GARY A. ABRAHAMSON

Tuesday, August 23, 2011

Taken Before Karen Scott
Certified Shorthand Reporter
State of California
C.S.R. No. 4027

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation

(925) 416-1800 ◆ FAX (925) 416-0971

use words and answer out loud with words. So if from time to time, as you just did, you affirmatively or negatively indicate something with an uh-huh or an huh-uh, I'm going to ask you, is that a yes or is that a no.

A Thank you.

Q And I am certainly not intending to be rude by that, but I need the court reporter to have a word answer. Very good?

A I'll do that.

Q You understand that you have promised to tell the truth today just as if you were in a court?

A Yes.

Q First of all, I want to ask you some questions about the Fremont Congregation of Jehovah's Witnesses North Unit.

Are you familiar with that organizational name?

A We wouldn't say "North Unit," but the North Congregation of Fremont, yes.

Q I have been provided through counsel with various documents, including some Articles of Incorporation that were filed with the Secretary of State. They refer formally to the name Fremont, California Congregation of Jehovah's Witnesses North

Unit.

Do you know whether or not that is the official title of the corporation that you call the Fremont North?

A Yes. We used to use that term "unit," probably back when these bylaws were established, so it probably would be very accurate back then.

Q All right. Do you know what the official name of the corporation is now if it's different?

A I would think it's the same.

Q The corporation was incorporated in 1975, according to the documents that I have received. Does that sound correct to your knowledge?

A That sounds correct.

Q How long have you been an elder in the -- in this congregation?

A Since I moved into the congregation, and I believe it was 1986.

Q Before that time, 1986, did you serve as an elder in any other congregation?

A Yes. Before that time I served in the congregation -- I believe it would be called the Mountain View Congregation and perhaps Central, Central Mountain View.

Q Can you tell me approximately the year in

responsibilities you have in that general area?

A In that general area the responsibilities I have are as what we call a service overseer. So I would be concerned with the literature that comes into the congregation and its distribution as well as the coverage of our territory in the preaching work, also be concerned about the different Bible studies that are being conducted in the congregation.

Q Are there other elders in the Fremont North Congregation at present?

A Yes.

Q Approximately how many?

A I would say 12.

Q And what is the approximate size of the congregation today?

A About 110.

Q If we were to go back in time to the mid-1990s, do you have an estimate then as to the number of elders, approximately?

A I would estimate eight, but it's just an estimation.

Q And the size of the congregation at that time, approximately 15 to 20 years ago.

A I'm sure those records might be available, but I would hesitate to guess.

Q Do you have a general impression as to whether the membership has grown larger in that specific congregation since the mid-1990s, smaller or is about the same?

A There have certainly been a lot of new ones that have come in but others have moved away, so it might be fair to say that it was around the same.

Q You mentioned the term "service overseer." What is a service overseer?

A A service overseer is a -- an appointment as an -- he must be an elder, and it's an appointment to oversee the departments that I mentioned to you, literature, and we call our -- preaching work is our service to God. So anything that involves the preaching work would be something that I would be quite interested in.

Q To become an elder, is there a process of, I'll call it like a ladder, steps in a ladder that one must go through in preparation for assuming that title and position?

A Well, what we use are the Bible requirements. All of Jehovah's Witnesses, before they're baptized, must take a knowledge, repent, act upon the knowledge, obey what they find from the Scriptures. But in addition to that, elders would be

of the meetings on the scheduled -- or I should say in addition to the quarterly meetings.

A And you're asking when the Body of Elders would meet together to discuss something?

Q Yes.

A Might be as frequent as once a month to once every two months.

Q Are there regular gatherings of the entire congregation?

A At our meetings, yes.

Q And how frequently in Fremont North would there be regular gatherings of the entire congregation?

A During that period?

Q Yes, mid-1990s.

A Yes. They would gather for five meetings a week, and generally these would take place on three different days.

Q Would the nature of each of the five meetings a week be the same or would there be a different purpose for some of the meetings than others?

A Yes, different purpose.

Q What would the various purposes be for the meetings?

A Well, we would have a public talk which is designed for new ones, and also the congregation benefits from that as well. Then we would have a discussion of the Watchtower article for the week, which we're encouraged to study beforehand, and we can freely comment; new ones can comment as well.

And then we have what is called the Theocratic Ministry School, where it gives us training in our ministry. And then we have a service meeting which helps us in our field service, to different aspects of that. And then we had a congregation book study and that was usually midweek.

Q In addition to the five meetings a week, are there regular services of some kind in what I will call a religious setting?

A Okay. The only other meetings that we have throughout the week would be meetings for field ministry, where we get together for a few minutes, discuss the presentation, get direction from the brother taking the lead, meaning what territory we would go in.

Q In some religions there is a regular service, if you will, administered or presided over by a pastor or minister or priest depending on the various religious organizations. Is there such a

and we encourage them to attend with their parents.

Q And is it correct that many children or minors will attend these meetings and have throughout your years of service as an elder?

A Depending upon how many are in the area and your definition of "many."

Q Would it be accurate to say that children, some children, regularly attend each of the five meetings?

A Yes.

Q In your experience, do children sometimes attend the meetings without their parents being present?

A Yes, they do, but of course they would have to arrange transportation to get there, and so somebody would take oversight of that individual to get them to the meeting and to return them home.

Q When you say "somebody," can you tell me what kind of somebody you're thinking of?

A The parents would arrange for somebody.

Q A person, another member of the congregation?

A Could -- yeah, undoubtedly.

Q During the years that you have served as an elder, has it come to your attention that there is

from time to time the risk of children being subject to sexual abuse by adults?

A We're very cautious about that as an organization. We have had a lot of instruction to watch individuals like that very carefully.

Q Who has provided the instruction that you are referring to?

A It's been provided in the Watchtower magazine.

Q What is the general nature of your understanding of -- when you say to watch these individuals very carefully, what are you referring to specifically? What do you watch?

A Okay. We watch them, that if they need to use the rest -- well, that that individual -- are we talking about a known sex offender?

Q Well, I don't know. That's why I am asking you. When you said, we watch over those individuals very carefully, I wasn't sure who you were referring to --

A Okay.

Q -- on either end.

A Maybe be specific.

Q Okay.

A Yeah.

Q What has been the general practice, as far as you are aware, in observing within the congregation to attempt to identify anyone who may be a risk for abusing children sexually?

A I don't quite understand that question.

Q Fair enough. Has it been the practice within the congregation during your years of service to have some observations within the interactions of the members of the congregation in an effort to identify any possible children who may be at risk for sexual abuse?

A Well, I think you would say all children would be at risk for sexual abuse.

Q Why would you say that?

A Because we live in a world that's very corrupt.

Q What has been the practice within the North Congregation of attempting to identify specific children, if there has been such practice, who may be at risk for sexual abuse?

A Identifying the children?

Q Yes.

A Well, we treat -- we feel all of our children are precious, so we would watch after all of the children.

Q Do you understand it's the -- it refers to the kind of conduct that an adult may engage in to develop a bond with the child as a prelude to selecting and then sexually molesting or abusing them?

A Yes. That's been quite identified in our magazines.

Q Have you -- strike that. Let me go back.

In your years of service as an elder, has there been any specific practice or policy that has been followed in an effort to identify grooming behavior on the part of adults with regard to children in the congregation?

A We are all familiar with the material that has been published in the Watchtower magazine. We try to apply the counsel of that material. If -- it says for us to be careful about even close family members, aunts, uncles, things like that. If there is something suspicious that we have noted, we would definitely talk to the individual.

Q How would you have determined what might or might not be suspicious activity on the part of an adult with regard to a child in terms of the subject that we're discussing?

A Perhaps they -- you notice that there is a brother or sister, a lot of the children congregating

around them, and maybe that might be an indicator that they're grooming, and so ask yourself, what -- are they ever alone with children, what would be the circumstance. But again, we don't -- they're not guilty until they show themselves that they are.

Q In terms of what conduct you might be sensitive to as potential grooming behavior, has your knowledge changed in that regard from the period -- let us go back to the mid-1990s to the present?

A I think we would be a little more educated on some of the red flags.

Q And in what way?

A In perhaps identifying traits and being aware of situations. And again, it's primarily through the parents, helping the parents, because we're not there in their homes and they know who they invite in their homes. They know who they trust their children with. So it's really up to the parents to monitor.

And if we came by some knowledge that this individual is very suspicious and their child was involved with that, then we would talk to that parent.

Q When you say "traits," what traits are you referring to in your last answer?

A I used the word traits?

category, so give your counsel time to object.

Did you speak to Evelyn Kendrick concerning any allegations involving sexual abuse of her daughter Andrea by Mr. Kendrick, Jonathan Kendrick?

MR. McCABE: Objection. Instruct the witness not to answer on the same basis.

MR. SIMONS: Again, can we agree that any questions involving reports or communications from Evelyn Kendrick would fall under the umbrella of your objections?

MR. McCABE: Yes.

BY MR. SIMONS:

Q Did you at any time notify any secular law enforcement agency of any information concerning possible sexual abuse of children by Mr. Kendrick?

A I did not.

Q Do you know whether anyone within the congregation Body of Elders did so?

A I am not aware of anybody doing so, no.

Q What was the policy that was in place in the mid-1990s regarding reporting possible sexual abuse of a child by an adult to secular law enforcement agencies?

A I'm -- I don't know for sure. I would have to look it up. I know currently we are to call the

secular authorities, but back -- but we actually would call legal first and find out what the laws of California state and they would direct us.

Q All right. And when you say "legal," who are you referring to?

A To New York and the legal department.

Q Which legal department in New York again specifically are you referring to?

A I think there is just the one.

Q Is that part of the Watchtower New York corporation to your understanding?

A Yes, I believe it would be.

Q We had talked earlier about the congregation of Jehovah's Witnesses. Is the legal department at present, to your understanding, if you have one, part of the Jehovah's Witnesses congregation entity, or is it part of The Watchtower Bible and Tract New York corporation, if you know?

A I don't know.

Q Fair enough. Back in the 1990s, would the legal department have been part of the New York corporation?

A I would not know.

Q Without telling me anything specific that may have been said -- I don't want the content of any

congregation that he is reproved, he's been reproved by the congregation committee.

Q And what does the term "reproved" refer to as you are using it there?

A Disciplined.

Q When a person is removed from an office, such as ministerial servant, is the congregation advised that that individual -- and again, I'm talking about the membership advised -- that that individual no longer is serving as a ministerial servant?

A Yes.

Q Is the congregation told -- again, the members told -- why that individual is no longer serving as a ministerial servant?

A No.

Q During your many years of service as an elder, has there been any change in any of those processes that we have just discussed, the notification of disfellowship or reproval or of removal from an office and the fact that the reason for such action is not disclosed? Has that been the standard practice during all your years of service?

A Yes.

Q Was there any inquiry from a congregation in Oakley to the Fremont North Congregation concerning

term?

A Officially by -- I was --

Q Aside from anything you learned through counsel. Again --

A Okay.

Q -- those conversations are always not included in my questions.

A Okay. So, no.

(Document referred to herein marked for identification Exhibit No. 2)

BY MR. SIMONS:

Q If you can turn to Exhibit 2. And let me perhaps ask you some questions generally about these Body of Elder letters.

What do you understand is the purpose of the various letters, not the individual letters but of the -- what do you understand is the purpose of providing of Bodies of Elders letters to elders such as yourself?

A If there were some adjustments that needed to be made, maybe areas that we hadn't previously addressed could be addressed and then they're giving us more detail.

Q All right. Is one of the functions of an elder to carry out the policies of the national entity

corporation that was formerly Watchtower New York and is now Congregation of Jehovah's Witnesses?

A Yes. You agree to that when you are baptized.

Q What specifically do you agree to at that time in your oath or affirmation?

A That you recognize The Watchtower Bible and Tract Society or the Christian Congregation of Jehovah's Witnesses is dispensing spiritual truth and that you are bound to live up to the Bible counsel that is revealed through the entity.

Q In some of these Body of Elder letters, for example, Exhibit 1, the March 10th, 1983 letter concerning the form, it appears that the content is not theological, if you will, but is specifically addressing an administrative task, the main incent -- completion of this particular form.

Do you understand that elders are required to comply with the instructions set forth in Body of Elder letters such as Exhibit 1?

A Yes.

Q What is the basis of that understanding? In other words, why do you believe that?

A Could you rephrase your question?

Q Yes. Why do you understand the elders are

required to follow the instructions contained in Bodies of Elder letters such as Exhibit 1?

A What is the benefit to the elders?

Q No. What is the reason that you as an elder are required to follow the instructions contained in a Body of Elder letter such as Exhibit 1?

A Right. So when you are on a Body of Elders, you are representing Jehovah God and the organization as it is used on Earth today, so we accept that and we would try conscientiously to do everything that we can to perform what's outlined in the letters.

Q Do Bodies of Elders in the individual congregations have the discretion to depart from instructions contained in Bodies of Elders letters that have been sent previously by Watchtower New York and now by the congregation?

A No.

Q Let's turn to Exhibit 2. Do you recall receiving or reviewing this September 20th, 1984 Body of Elder letter?

A No.

Q In reviewing it, are you familiar with the procedures set forth in this letter?

A I have briefly glanced at it, so I could not answer that it hasn't been updated since then. I

EXHIBIT 22

EXHIBIT 22

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

GARY A. ABRAHAMSON, VOLUME II

PAGES 113 TO 142

Tuesday, October 25, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

(Plaintiff's Exhibit No. 11 marked for identification.) 09:13:38 09:13:38

MR. SIMONS: Q. Have you actually seen this Order before? 09:13:44 09:13:45

A. If I had it would only be through counsel. 09:13:52

Q. Okay. 09:13:54

Do you understand that those questions, that we had some disagreement about and that you were instructed not to answer, are going to come up again today, and that at least for some of those questions, there has been an Order by the Court that they would be answered? 09:13:57 09:13:58 09:14:01 09:14:07 09:14:09 09:14:11

A. Yes. 09:14:12

Q. Okay, fair enough. Thank you. 09:14:13

Let me start with the first question that we dealt with, and that was involving Jonathan Kendrick in his removal as a Ministerial Servant. 09:14:14 09:14:22 09:14:25

Why was Mr. Kendrick removed as a Ministerial Servant? 09:14:28 09:14:31

A. He was removed because of improper conduct. He was no longer irreprehensible or free from accusation. 09:14:32 09:14:34 09:14:38

Q. And what was the conduct that was involved in that removal? 09:14:41 09:14:44

A. It was the conduct of, he admitted to 09:14:47

touching briefly and inadvertently his stepdaughter's breast, which was over the clothing. 09:14:51 09:14:56

Q. Um-hum. 09:14:59

Did he make this admission to you? 09:15:01

A. He did make the admission to myself, myself and another brother. 09:15:04 09:15:08

Q. Okay. Where did that admission occur? 09:15:10

A. It occurred at their house. 09:15:15

Q. Not the conduct but the conversation in which he admitted it. 09:15:18 09:15:21

A. The conversation. Right. Right. 09:15:23

Q. Okay. And when you say "at their house," was that -- 09:15:24 09:15:26

A. The Kendricks' house. 09:15:26

Q. Okay. 09:15:28

At the time that that conversation occurred, was that the house that Evelyn Kendrick, Andrea Kendrick, and Jonathan Kendrick were all residing at? 09:15:30 09:15:33 09:15:36 09:15:40

A. Correct. 09:15:41

Q. Although Andrea, I guess, is not a Kendrick. 09:15:41 09:15:44

A. That would be true. 09:15:45

Q. Yes. Okay. 09:15:46

Who was present during this conversation? 09:15:47

A. The three of them, plus myself and another brother, Michael Clarke. 09:15:50 09:15:53

Q. And how was it that you came to the Kendrick home to have this conversation? 09:15:56 09:16:00

A. It was prearranged. 09:16:03

Q. Was there something that generated the conversation and the arrangements to go and meet with the Kendricks? 09:16:06 09:16:12 09:16:15

A. Yes. 09:16:18

Q. What was that? 09:16:19

A. Well, they, uh -- 09:16:27

I think Jonathan went to Brother Clarke and confessed it. So, as a body we met and decided to form an investigating committee. 09:16:29 09:16:31 09:16:35

Q. All right. And when you say "as a body we met," are you talking about the Elders of the North Congregation? 09:16:36 09:16:39 09:16:41

A. Yes, I am. 09:16:42

Q. Do you know who the original conversation, the very first conversation that occurred involving this touching, was with in terms of someone from the Kendrick family and someone from the Body of Elders? 09:16:46 09:16:49 09:16:52 09:16:56

A. I do not know. Cannot remember if I ever knew. 09:17:00 09:17:03

Q. Okay. How did you first hear about it? 09:17:04

A. She was on a couch, so, it's wherever some couch would fit. 09:20:56 09:21:02

Q. Did Evelyn Kendrick say anything to you in this meeting that was different or a disagreement with anything that Jonathan Kendrick said? 09:21:07 09:21:11 09:21:17

A. I don't believe so. 09:21:20

Q. Did you ever speak to Evelyn Kendrick about this subject outside the presence of Jonathan Kendrick? 09:21:24 09:21:26 09:21:29

A. No. 09:21:31

Q. Did you ever speak to Andrea outside the presence of Jonathan Kendrick? 09:21:32 09:21:34

A. No. 09:21:37

Q. Do you know whether any of the Elders spoke to Andrea outside the presence of Jonathan Kendrick? 09:21:38 09:21:40 09:21:44

A. I would not know. 09:21:46

Q. How about Evelyn? 09:21:48

A. I would not know. 09:21:49

Q. Was the community, meaning the congregation -- 09:22:04 09:22:07

Are those words interchangeable, "community" and "congregation"? Is there a.... 09:22:10 09:22:12

A. I imagine you could use that word. We're not accustom to that word. 09:22:16 09:22:19

Printed on Recycled Paper
20% Post Consumer Waste

EXHIBIT 23

EXHIBIT 23

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD.FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	CASE NO. HG11558324

VIDEOTAPED DEPOSITION OF CLIFFORD WILLIAMS

NORWALK, CALIFORNIA

OCTOBER 21, 2011

ATKINSON-BAKER, INC.
COURT REPORTERS
(800)288-3376
www.depo.com

REPORTED BY: PAULETTE RADCLIFF, CSR No. 12111

FILE NO. A50931C

A. No, she did not.

Q. Did she tell you that abuse had taken place at Mr. Kendrick's home?

A. No, she did not never mention anything about his home. 12:16:30

Q. Did she tell you what type of abuse, other than the hugs at the kingdom hall and assembly hall?

A. No, she didn't.

Q. Okay. After you got the first telephone call, what did you do in response to her report that 12:16:40 Jonathan Kendrick had abused her as a child?

A. She gave me the number of someone in the Oakley congregation. I don't remember the overseer's name. I had a conversation with him, and he did confirm that Jonathan Kendrick was a convicted sex 12:16:56 offender.

Q. And the person that you talked to in the Oakley congregation, you can't remember his name?

A. No, I can't.

Q. Okay. Did you -- were you led to believe 12:17:14 that that person was a elder?

A. Yes, he was.

Q. After this phone call with the elder in the Oakley congregation where he confirmed that Jonathan Kendrick was a registered sex offender or convicted 12:17:27

or not for purposes of notifying law enforcement?

A. No.

Q. Who would be the person to determine that?

A. She would.

Q. Did you feel that she was truthful with you? 12:27:22

A. Initially yes.

Q. Did that view change?

A. Yes.

Q. When did it change?

A. When she -- just by -- just the change in 12:27:41
attitude.

Q. Okay. What are you describing when you say "change in attitude"?

A. Just her emotional makeup.

Q. And tell me what you observed or heard in 12:28:18
terms of this change in her emotional makeup?

A. Maybe now a little more distant.

Q. Distant from you?

A. Yes.

Q. What do you mean by a "little more distant"? 12:28:35

A. Initially she wanted -- when she brought this up, she wanted to make sure that this would never happen to anybody else, and I explained to her the protocol that's in place that if this was true, that it would not happen to anybody else. 12:29:04

Q. Okay. How does that change or how does that then lead to her change in her emotional makeup?

A. Because she just didn't seem satisfied that the protocol was enough.

Q. And what did she either say or how did she express to you by her body language or her words that the protocol was not enough? 12:29:28

A. She just was not satisfied with that.

Q. What was the protocol that you described to her would prevent this from ever happening again? 12:29:53

A. That if he was, which he is convicted, that if he was in a congregation, that the overseers or elders would make sure that he would never be in the presence of a child alone, and that even if he moved to another congregation, the overseers or elders in that congregation, they would be informed that he has problem with children and that he should never be alone in the meetings or out in the field service alone with a child. 12:30:19

Q. Has that protocol been in place for all of these many decades that you have served as an elder? 12:30:39

A. Yes.

Q. And is that protocol one that is just limited to the southern California area here in the different congregations that you've served in? 12:30:56

EXHIBIT 24

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

****

JANE DOE,

CERTIFIED COPY

Plaintiff,

vs.

NO. HG 11558324

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al,

Defendants.

_____/

VIDEOCONFERENCE DEPOSITION OF PAUL INMAN

FEBRUARY 21, 2012

TAKEN BEFORE JULIE L. BANTLEY
CERTIFIED SHORTHAND REPORTER
STATE OF CALIFORNIA
C.S.R. LICENSE NO. 11422

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 • FAX (925) 416-0971

servant in the Jehovah's Witnesses North Fremont Congregation?

A. Yes.

Q. Do you know the approximate years that you served as a ministerial servant?

A. No. I guess -- if you're asking for a guess, is that --

Q. Well, I'm asking for an approximation, which is --

A. Approximation?

Q. -- yeah, different than a guess. If you have no idea whatsoever, that would be a guess. If you have an estimate, including maybe the decades, then I'm entitled to your estimate.

A. '88, maybe, to '91.

Q. All right. Did you also serve as an elder in the North Fremont Congregation?

A. Yes.

Q. And do you recall the approximate time frame in which you served as an elder?

A. '91 to '94.

Q. When was it that you moved to Florida?

A. 2004.

Q. And before moving to Florida did you continue to live in California?

Q. Do you recall doing field service with Mr. Kendrick on any occasions?

A. I do not recall, but I probably did because I worked with everybody.

Q. Did you know the Conti family during the time that you were at North Fremont?

A. Yes.

Q. Did you know Neal Conti?

A. Yes.

Q. How did you come to meet Neal Conti?

A. Same way.

Q. During the time that you knew Neal Conti, was he married?

A. Yes.

Q. During those years that you were in the North Fremont Congregation were you married to Carolyn?

A. Yes.

Q. And did that marriage result in a separation between the two of you in August of 1994?

A. Yes.

Q. Do you recall whether or not your disfellowshipping occurred before or after the separation of yourself and Carolyn?

A. Before.

Q. During the time that you were an elder at North

Fremont did you learn of a sexual molestation of a minor girl by Jonathan Kendrick?

A. No.

Q. Up until I just raised this issue and excluding any conversations you may have had with Mr. McCabe -- well, actually let me stop for a moment.

Jim, in the beginning of the deposition you listed the parties you are representing. Are you also representing Mr. Inman for today's deposition?

MR. McCABE: That's correct.

MR. SIMONS: Okay.

Q. Mr. Inman, I'm going to ask you questions about some conversations, but I do not want you to include in any answer any conversation you had with Mr. McCabe in his role as your attorney for this deposition. Do you understand that?

A. Yes.

Q. Okay. In other words, any conversation you may have had with him, treat it as if it does not exist for purposes of my question.

A. I understand.

Q. Thank you. Other than what you may have gathered from my question a moment ago about Mr. Kendrick, had you ever heard from anyone that he was involved in the molestation of his step-daughter?

Printed on Recycled Paper
20% Post Consumer Waste

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

DEPOSITION OF MANUEL IGLESIAS

Monday, January 23, 2012

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

Q. So, in either of the depositions that you have had in the past, were they cases in which someone was suing you or you were suing someone else or you were directly involved in the case?

A. Yes.

Q. Okay.

Can you describe for me what kind of cases you had your deposition taken in twice before?

A. Work related.

Q. And are you an Elder in a congregation of Jehovah's Witnesses at the present time?

A. Yes.

Q. Which congregation?

A. Oakley.

Q. How long have you been an Elder in the Oakley Congregation?

A. My memory's bad. I don't remember.

Q. Is it more than 20 years?

A. No.

Q. Do you recall whether or not you were an Elder in the Oakley Congregation in 2003?

A. Yes.

Q. Before the Oakley Congregation, were you ever an Elder in any other congregation?

A. No.

Q. Has he been a member of the Oakley Congregation the entire time that you have been acquainted with him?

A. Yes.

Q. Has Mr. Kendrick ever been disfellowshipped during the time that he was in Oakley?

A. No.

Q. Has he been reproved during the time that he's been in Oakley?

A. Yes.

Q. Can you tell me approximately the time frame of that reproval?

A. I can't remember.

Q. Was it more than a year ago?

A. Yes.

Q. Do you recall why he was reproved?

A. Yes.

*** Q. Why?

MR. MC CABE: I'm going to object to that. Calls for confidential information which is subject to the privilege of priest-penitential communications.

THE WITNESS: That information is private.

MR. SIMONS: All right. We have had some discussions with the Court on what is and is not confidential, and let's see, who's representing the

witness?

MR. MC CABE: We both are. We both are.

MR. SIMONS: All right.

So, you know, in my view, the ruling of the Court already establishes that this is not a confidential communication. But I heard your objection. Nonetheless, I did not hear an instruction not to answer. So, where are we?

MR. MC CABE: I'm not instructing him not to answer.

MR. SCHNACK: And I'm joining in the objection, but I'm also not instructing him not to answer.

MR. SIMONS: Q. Okay, your attorney is not instructing you "not" to answer that question.

So, we've made an objection. There's no judge or jury here. We're not in the courtroom. So, the testimony you give may be subject to some later proceedings.

*** However, I'd ask you again to answer my question; what was Mr. Kendrick reproved for?

A. That's private information.

Q. Okay. So, are you refusing to answer the question even though your attorney has is not instructing you to do so?

A. Yes.

Q. Has Jonathan Kendrick been married during the time that he's been a member of the Oakley Congregation?

A. Yes.

Q. And to whom has he been married?

A. Linda Kendrick. Linda is his wife.

Q. Are they still married, to your knowledge?

A. Yes.

Q. Is Linda Kendrick a member in good standing of the congregation?

A. Yes.

Q. Do you recall a time when an individual named Joshua Hood came to you with a report of sexual abuse of his daughter by Jonathan Kendrick?

A. I remember some, some talks with Josh.

Q. Okay. Did you know Joshua Hood before those talks occurred?

A. Vaguely.

Q. In what context did you know him?

A. He was Linda's son.

Q. Was Joshua Hood a member of the congregation?

A. No.

Q. How was Joshua Hood's report first brought to your attention?

A. I can't remember.

Q. Okay. Did you talk to Joshua Hood yourself?
A. Yes.
Q. And was that in person or on the phone?
A. I can't remember.
Q. All right.
A. I'm sorry.
Q. That's fine.

Do you recall having more than one conversation with Joshua Hood about the subject of sexual abuse of a child by Jonathan Kendrick?

A. I can't remember, I'm sorry.
Q. All right.

Before you had your first conversation with Joshua Hood on the subject, were you aware, from communications provided to you from the North Fremont Congregation, that Jonathan Kendrick had a prior history of the molestation of a child?

A. No.
Q. As we sit here today, have you learned, from communications from the North Fremont Congregation, that Jonathan Kendrick was reproved there for molestation of a child?
A. Can you repeat the question?
Q. Yes.

As you sit here today, are you aware that

A. Yes.

Q. Okay. Other than Jonathan Kendrick and Joshua Hood, did you, Mr. Dominguez and Mr. Bentley speak with anyone else regarding the accusation in terms of the family, the Hood-Kendrick family?

A. I can't remember.

Q. For example, did you talk to the mother of the child? Melissa?

A. I can't remember.

Q. Did you talk to Linda Hood Kendrick?

A. As a group of three?

Q. Yes.

A. I can't remember.

Q. Before this investigation, had you participated in any other judicial investigations of any kind?

A. Yes.

Q. Had any of those involved sexual abuse claims involving a child?

A. No.

Q. What did Mr. Kendrick tell you when you interviewed him?

MR. MC CABE: I'm going to object to that as, calls for him to testify about confidential communications made in a penitential matter.

Under the Evidence Code he doesn't have to testify to it.

MR. SCHNACK: I join in the objection.

MR. SIMONS: Q. (Indicating.)

A. That was private information.

Q. The attorneys have not instructed you not to answer that question. So, I'm going to ask you again to provide an answer with the understanding that this is a deposition, not a trial; and questions as to whether this is evidence that may ever be heard in a trial are matters that will be taken up by a judge at a later date.

I will repeat the question.

*** What did Mr. Kendrick tell you at the time that you interviewed him as part of this investigation?

A. It's private information.

Q. So, you're going to refuse to answer that question even though your attorneys have not so instructed you.

A. Yes.

Q. Well, I apologize for bringing you a fairly long distance at some inconvenience.

I really think that the questions, the two questions that have come up, are so central to the rest of the questions that I need to ask you... which are not particularly numerous but are directly related to this

Q. Did you have any discussion with either Mr. Dominguez, Mr. Sanchez, Mr. Bentley or any of the other Elders at Oakley as to whether or not the information that you had received... concerning the accusation of sexual abuse of a child by Mr. Kendrick... should be reported to the police?

A. I can't remember.

Q. Do you recall having any conversation about whether or not anyone should have any communication to the police concerning Mr. Kendrick?

A. I don't remember.

MR. SIMONS: All right, well, that doesn't get us much farther, but I think that's all we're going to do today.

We're going to have some judicial determination, that means by a judge, of whether or not the questions... that you have indicated are private, in your mind... need to be answered.

I do need to ask you this one last question though.

*** If there is an Order from a Court that the questions -- involving what you have deemed are private matters -- must be answered, will you comply with that Order?

MR. MC CABE: I would object. That calls for

predicting the future, speculation.

But if you can answer that question, answer.

THE WITNESS: Yeah; I won't. That's private information.

MR. SIMONS: All right, very good.

Thank you, sir.

(Deposition adjourned at 12:23 p.m.)

MANUEL IGLESIAS

---oOo---

EXHIBIT 26

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

CLAUDIA NANCY FRANCIS

Monday, October 24, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

Q. Are you a member of any congregation of Jehovah's Witnesses at present? 10:07:15 10:07:18

A. Yes, I am. 10:07:20

Q. Which congregation? 10:07:22

A. We are in the Mountain View French Congregation. 10:07:23 10:07:25

Q. Were you a member at any time of the North Fremont Congregation? 10:07:26 10:07:29

A. Yes. 10:07:29

Q. Can you give me an estimate as to the years? 10:07:30 10:07:32

A. We were there from 1989 until four years ago. Is that 2006? '7? 10:07:35 10:07:41

Q. '7? Somewhere in there? 10:07:45

A. Yeah. 10:07:47

Q. All right. Was your husband ever a, either, Ministerial Servant or Elder at the North Congregation? 10:07:48 10:07:54 10:07:57

A. Yes, he was. 10:07:58

Q. Did he hold both titles there? 10:07:58

A. Yes, he did. 10:08:02

Q. Do you have an estimate as to the years approximately that he was a member at -- I mean, I'm sorry, a Ministerial Servant at North Fremont? 10:08:04 10:08:07 10:08:11

A. Honestly I don't have an exact year. I 10:08:16

a moment? 10:30:35

A. Let's continue. 10:30:36

Q. Okay. If you need a break at any time, just, we're all -- 10:30:37 10:30:39

A. Thank you. 10:30:40

Q. -- perfectly patient and understand this is some very personal and, to a certain degree, unpleasant information. 10:30:41 10:30:42 10:30:48

So, again, I apologize for going through it with you. 10:30:49 10:30:50

When Mr. Kendrick gave you this remark that you've just described and then slammed the door and left, was that the first time that you had heard from any source of a possible molestation of Andrea? 10:30:52 10:30:59 10:31:02 10:31:05

A. Yes. I had no... um-um (shakes head). 10:31:10

Q. Okay. 10:31:14

A. Things like that are handled in a congregation, in a confidential style. Very confidential. A person's dignity is kept intact. And it's not for publication. 10:31:14 10:31:16 10:31:20 10:31:25

Q. What, if anything, did you understand was the reason that Mr. Kendrick was removed as a Ministerial Servant at the time that the announcement of that removal was made? 10:31:29 10:31:32 10:31:36 10:31:39

A. I had no idea. 10:31:40

Q. Did you ask anyone? 10:31:42

A. Um-um (shakes head). 10:31:44

Q. Did you ask Mr. Kendrick, for example? 10:31:46

A. Nope. 10:31:50

Q. Did you ask your husband? 10:31:50

A. Nope. 10:31:52

Q. Why not? 10:31:52

A. You just don't do that. 10:31:53

Q. Okay. 10:31:56

A. We're -- It's none of my business. And we're -- 10:31:57 10:32:01

We're called "brothers and sisters." We normally don't go around stabbing each other in the back or slitting our throats. It's based on love. And, um, it's -- 10:32:01 10:32:04 10:32:07 10:32:13

It's unfortunate. But it's... I'm going to go up on a limb here. 10:32:15 10:32:22

I have a son who is no longer a Jehovah's Witness. He is what is called "disfellowshipped." 10:32:24 10:32:28

What he did was never, ever announced or broadcast. Unless I would speak of it to a friend, no one would ever know. 10:32:32 10:32:37 10:32:41

That's just not done. That's the way it's handled, with privacy and respect. 10:32:44 10:32:48

Q. Okay. 10:32:49

A. Yes; I believe. Yes. 10:36:55

And now I believe he's a sex addict. And 10:36:58
a predator. 10:37:01

And he would complain that Evelyn -- 10:37:09
Evelyn moved out of the bedroom, so, he -- they didn't 10:37:10
sleep together for seven years. Something like that. 10:37:13

And so, it really fried him when Andrea 10:37:17
was bringing her boyfriend home, having sex with him, 10:37:20
he was in the house. 10:37:24

It's like: She's getting it and he isn't. 10:37:25
I know that would be his way of looking at it, thinking 10:37:28
it. So.... 10:37:30

Q. In the information that I have received, 10:37:35
there's a reference to Jonathan Kendrick purchasing a 10:37:37
black bra for a -- for a girl. 10:37:45

A. Oh, yeah. 10:37:48

Q. And do you recall that occasion? 10:37:49

A. Yes, I do. 10:37:50

Q. What do you recall? 10:37:51

A. He lived with us for about six months, 10:37:55
when he and Evelyn broke up and they lost the home. 10:37:57
So, he stayed with us. 10:38:01

And he had gotten his tax check back. And 10:38:03
he wanted to spend some money on the kids. So, he took 10:38:08
my son and... and Brianna Becker to Sears. And he 10:38:13

bought each kid something. 10:38:23

And he brought -- bought David, I think 10:38:25
it's, a Skil saw that makes those curvy (indicating). 10:38:28

Because I like home projects and working 10:38:32
with wood ,and I'd always said "Oh, I wish I had a saw 10:38:35
like that; I would just" to -- you know, "love to be 10:38:38
able to make this and that." 10:38:40

And he bought David one. Why did he buy 10:38:42
one of those Skil saws? What do you call those things 10:38:44
that they make the -- the blades go around and they 10:38:46
make curves. 10:38:50

Well, he must have bought that for me. 10:38:50
Why would you buy a, you know, a 10-year-old kid a 10:38:52
Skil saw? 10:38:55

But he brought Brianna Becker a black bra. 10:38:55
And I thought: That is weird. 10:38:59

He goes "Well," every -- "every girl 10:39:02
needs," you know, "a black bra." 10:39:04

But I never reported it. I never acted on 10:39:09
it. I just thought: That's weird. 10:39:12

Q. How did you learn about this purchase? 10:39:15

A. He told me. 10:39:17

Q. Was there a receipt that you actually saw? 10:39:19

A. I had the receipt. I threw it out. Not 10:39:21
after this (indicating). 10:39:24

But I was going through stuff and... in the closet or to find a picture or something. And I'm thinking: Claudia, why don't you -- hang it, just get rid of this. 10:39:25 10:39:29 10:39:33 10:39:36

So, unfortunately I do not have that, otherwise I would have presented it to you. 10:39:37 10:39:38

Q. Did you ever see Candace with Jonathan Kendrick? 10:39:51 10:39:52

A. Yes. 10:39:54

Q. Can you recall some of the occasions when you may have seen them together? 10:39:56 10:39:58

A. Well, when he -- I believe it was when he was living with us. 10:39:59 10:40:03

He bought her a pair of rollerblades. And so, one day he came rollerblading over to our house with her in tow. 10:40:03 10:40:07 10:40:15

And I thought: That is very strange; why are you, you know, a 42-year-old guy, rollerblading with a 9-year-old girl or 10-year-old or whatever. 10:40:15 10:40:17 10:40:21

But, you know, they rollerbladed over to the house. And they were kind of wobbling and "Oh, look what I got Candace"; and "We're," you know, "just trying it out." 10:40:24 10:40:27 10:40:30 10:40:34

And I thought that was strange but it's not my place. 10:40:37 10:40:39

I never thought anything further other than, you know, you raise an eyebrow or you frown about that. What? 10:40:42 10:40:44 10:40:48

Q. Did you hear Jonathan Kendrick ever make comments or remarks about his feelings towards Candace? 10:40:49 10:40:55

A. He'd say "She's my absolute favorite. She's my number one." Something like that. 10:41:00 10:41:02

And I'd think: You know, that's awful strange. 10:41:06 10:41:09

But he was a flamboyant personality. He was outspoken. He was opinionated. He would make flamboyant remarks. I don't mean in a gay flamboyancy way. I mean just outrageous sometimes. 10:41:10 10:41:14 10:41:18 10:41:23

But he was an outrageous personality. And so, when "She's my number one," I mean, I could say that about someone else's 9-year-old boy, "Oh, I just love that kid, I could just eat him up." 10:41:27 10:41:31 10:41:35 10:41:39

You know what I mean? I... I... 10:41:42

When you are an affectionate, outgoing type of personality, it can be borderline. How do you take something like that as a friend? Do you assume the worst? Or do you just take it with a grain of salt because they're an outrageous personality? 10:41:46 10:41:50 10:41:53 10:41:57 10:42:02

So, but, you have to remember, these are snippets that happened over years of progress, which 10:42:04 10:42:07

changes things a little bit. 10:42:13

If you put a little drop of blue ink in a 10:42:15

tall glass of water, it's not really blue right away. 10:42:19

If you put the whole thing in at once, you get an 10:42:22

obvious picture. 10:42:25

So, these things were gradual. 10:42:27

Q. And based on what you told me, the blue 10:42:32

ink that you're missing is, you didn't know that he had 10:42:35

molested Andrea? 10:42:37

A. No. Um-um. 10:42:39

Q. Okay. When was the last time that you had 10:42:40

any contact with Mr. Kendrick, including telephone or 10:42:45

e-mail, any kind of contact at all? 10:42:50

A. The last contact, including e-mail? 10:42:55

Q. Yes, any kind. 10:42:58

A. The last contact I had -- him -- was -- 10:43:00

with him was an e-mail. I don't remember -- 10:43:05

Well, I can't remember what year he got 10:43:11

married. But he remarried. And he had continued 10:43:15

contact with me. 10:43:19

And he would call and want to talk to me. 10:43:23

Or -- And then he called and wanted -- wanted my 10:43:26

e-mail address. I gave him my e-mail address. 10:43:29

And then he would start to write, 10:43:32

intermittently, e-mails to me. 10:43:34

And uh... yeah. 10:47:40

I can't come up with a list of specifics. 10:47:46
I'd have to think about that in order to provide you 10:47:48
with bullet points. 10:47:50

But, yes, the answer is yes. 10:47:52

Q. Let me ask you just one more question 10:47:54
about Mr. Kendrick. Did you ever see a photograph of 10:47:56
him in his underwear -- 10:47:59

A. Yes. 10:48:01

Q. -- with some children in it? 10:48:02

A. Yes. 10:48:03

Q. How did you see that photograph? 10:48:03

A. Well, this, I believe this was after he 10:48:05
told me that Evelyn -- but he said Evelyn "accused" him 10:48:09
of molesting Andrea; not that he did. He was -- 10:48:13

I was with him in a storage unit when he 10:48:16
was moving stuff out. He was moving up to Oakley. And 10:48:20
so, I was -- 10:48:26

The boys were with me. We were in a 10:48:27
storage unit. And I opened up a desk drawer. There 10:48:29
was all sorts of pictures there. 10:48:33

I kind of picked up a picture, and it was 10:48:34
Jonathan, way younger, laying on the floor, kind of 10:48:36
like this (indicating) on the floor, with his legs out 10:48:40
on the side, in his underwear. 10:48:42

And there were two young children in front of him, on the floor, in their underwear. Like 3 and 4 years old. 10:48:44 10:48:46 10:48:52

And I picked that up. I said "Jonathan, what is this?" 10:48:52 10:48:55

He goes "Oh, those are just friends of mine" (indicating). And he puts it back in the desk drawer. And that bothered me. 10:48:56 10:48:58 10:49:01

I mean, I know he lived a rough life style back then, you know. I mean, we all knew he was very, very, very, very, very regularly immoral. 10:49:07 10:49:10 10:49:13

So, who he hung around with and what his exploits were, I mean, I did not know. 10:49:16 10:49:19

I just know that that, "that," bothered me. Who lays down, posing on the floor, with two young children in their underwear? 10:49:22 10:49:26 10:49:30

Yeah. I thought (indicating). 10:49:33

Q. Did you learn at some point that Mr. Kendrick was sent to prison? 10:49:37 10:49:38

A. I did after the fact. 10:49:42

Q. How did you learn that? 10:49:43

A. They had friends that we knew up in Oakley. This is a bizarre story but it's the truth. We hadn't been, never were, friends with their friends. But I knew them. 10:49:49 10:49:54 10:49:58 10:50:03

EXHIBIT 27

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

DEPOSITION OF SERGEANT JEFFREY JOHN BALDWIN

Monday, January 23, 2012

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

BAY AREA COURT REPORTERS

21573 Foothill Boulevard, Suite 215
Hayward, California 94541

(510) 889-9400

depos@bayareacourtreporters.com
www.bayareacourtreporters.com

SERGEANT JEFFREY JOHN BALDWIN

placed under oath by the Certified Shorthand Reporter, was examined and testified as follows:

EXAMINATION BY RICHARD J. SIMONS

MR. SIMONS: Q. And please state your full name.

A. Jeffrey John Baldwin.

Q. And what is your current employment?

A. I work for the Contra Costa County Office of the Sheriff in Martinez, California. I'm a Sergeant and I am currently assigned to the Detention Division.

Q. How long have you been with Contra Costa County Sheriff's Department?

A. 15 years and 9 months.

Q. And did you have law-enforcement experience before that?

A. Yes.

Q. What was your professional experience in law enforcement before joining the Sheriffs?

A. Oh, before joining the Sheriff's Department?

Q. Yeah.

A. I'm sorry, I misunderstood your question.

No.

I was in the teaching field.

In terms of the comment with respect to the sexual battery, I could only assume that maybe that was derived from a review of the rap sheet.

Q. Okay.

After obtaining the information from Fremont P.D. that we've just discussed, what was the next investigative step that you took?

A. I attempted to speak with the two Elders, of the church that Jonathan belonged to... that visited him while he was in the hospital... and see whether or not they were able to provide me any further information on any diclosures that he may have made regarding the case.

Q. All right. One of the Elders was Manuel Iglesias?

A. Correct.

Q. And the other was Jim Dominguez?

A. Correct.

Q. And what efforts did you make to contact Mr. Iglesias?

A. I attempted to call him via phone call and was never, ever able to make contact with him. I believe I left messages as well with no responses back.

Q. Did you verify that the number that you had for him was accurate?

A. No. I just assumed it was.

EXHIBIT 28

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALMEDA

----------X

JANE DOE, NO. HG11558324

Plaintiff,

-v-

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendant.

----------X

DEPOSITION

OF

MARIO F. MORENO

PATTERSON, NEW YORK

FEBRUARY 15, 2012

3:30 P.M.

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

Nancy Anne Flynn, RPR
FILE NO.: A508ED2

attorney for the entire time?

A Yes.

Q The legal department's function includes providing information and advice to various elders from congregations who may contact the legal department with questions concerning issues that they have come across in their congregations; is that a fair statement?

A Can I have that either restated or read back.

Q Yes, let me restate it for you. Has part of the work of the legal department during the years that you have been a member of it, included providing advice and information to elders from local congregations who may contact you regarding any situation or other -- what's the word I'm looking for -- occurrence, that they have to address?

A Providing legal advice and counsel.

Q And in cases going back from 1993 through the 1990s, in cases where an elder from a local congregation contacts the legal department, has the information or advice that has been provided to them been from licensed attorneys?

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALMEDA

----------X

JANE DOE, No. HG11558324

Plaintiff,

-v-

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

----------X

VIDEO DEPOSITION

OF

ALLEN SHUSTER

PATTERSON, NEW YORK

FEBRUARY 15, 2012

10:01 A.M.

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

Nancy Anne Flynn, RPR
FILE NO.: A508ED2

deposition format it's important that we only speak one at a time as the court reporter can only follow one of us at a time. So even if you know where my question is going, allow me to finish, and I promise to do so eventually, and I will also do my best not to interrupt your answers, okay? 10:05

A Okay. 10:05

Q Before the deposition began, counsel and I spoke about your role here today. Your deposition is being taken in response to our Notice for your deposition as an individual, and then in addition, you have been designated as the person most qualified to testify with regard to certain issues that have been the subject of Deposition Notices for the Watchtower Bible and Tract Society of New York, Inc. 10:05 10:06 10:06 10:06 10:06 10:06 10:06

So I think with counsel's kind permission, I will go through the Deposition Notices and just clarify which categories you will be testifying as the representative of the Watchtower New York, Inc. 10:06 10:06 10:06 10:06

And that would include for the February 15, 2012 1:00 P.M. Deposition Notice, the matters related to the August 1st, 1995 10:06 10:07 10:07

Q As part of the service department currently, are you within the Watchtower Bible and Tract Society of New York, Inc.? 10:15

A No. 10:15

Q Is the service department presently operated through the Christian Congregation of Jehovah's Witnesses? 10:15

A Yes. 10:16

Q Has that been true since 2001? 10:16

A That's correct. 10:16

Q Is there currently a line of communication -- actually let me rephrase that. 10:16

Is there currently a line of authority between Watchtower Bible and Tract Society of New York and Christian Congregation of Jehovah's Witnesses? 10:16

MR. SCHNACK: I am going to object to the form of the question. I don't know what you mean by line of authority between those two entities. 10:16

You can answer if you can. 10:16

MR. SIMONS: I think your objection is well taken. It's not well phrased. 10:16

Q Do any persons holding positions within 10:16

Watchtower Bible and Tract Society of New York exercise supervisory authority over your service department within Christian Congregation? 10:16

A When you say exercise authority, can you put that in context, what do you mean by exercise authority? 10:17

Q Are persons who are serving within Watchtower Bible and Tract Society New York, Inc. presently holding authority to implement or impose policies, procedures or decisions upon Christian Congregation of Jehovah's Witnesses? 10:17

A I believe so. 10:17

Q And tell me what your understanding is of the relationship between those two entities? 10:17

A I mentioned earlier that there is a branch committee. I do believe some of those members of the branch committee are members of the New York corporation. 10:17

Q What is the general role of the branch committee? 10:18

A They oversee the spiritual activities as well as the administering of the properties at the three complexes here in New York State. 10:18

Q Is the service committee one of multiple 10:18

committee, makes recommendations as to who should be added in the case of deaths. And so those recommendations are made to the governing body of Jehovah's Witnesses. 10:19 10:19 10:20 10:20

Q And what is the governing body within the administrative structure? I'm not asking for spiritual or theological information here, I'm really look administratively, what is the governing body? 10:20 10:20 10:20 10:20 10:20

A The governing body is a committee that oversees the worldwide activity of Jehovah's Witnesses. 10:20 10:20 10:20

Q Does the branch committee have any sort of written policies, procedures that it follows? 10:20 10:20

A Yes. 10:20

Q Is there some form of either a manual or other documentary compilation that the branch committee is guided by in its work? 10:20 10:21 10:21

A Yes. 10:21

Q What is that called? 10:21

A It's called branch organization. 10:21

Q And is that, is the appropriate term a manual or would it be some other term? 10:21 10:21

A I think the terminology is guidelines, 10:21

branch committee guidelines. 10:21

Q Is that series of guidelines applicable to the service department of the Christian Congregation? 10:21

A Parts of it are. 10:21

Q What other areas -- well, let me ask you, have you ever seen the branch committee guidelines? 10:21

A Yes. 10:22

Q And do you use it daily in your, or at least from time to time, in your work? 10:22

A From time to time. 10:22

Q What are the general subject matters covered under the branch committee guidelines? 10:22

A Matters having to do with branch facilities, branch personnel, the managing of the spiritual activities within a specific branch or branch territory. Just general operation guidelines. 10:22

Q Are the branch committee guidelines the same for every branch throughout the world or are there separate branch committee guidelines for different geographical areas? 10:23

A Same throughout the world. 10:23

Q Are the contents of the branch committee 10:23

guidelines approved by the governing body? 10:23

A Yes. 10:23

Q And would those branch committee 10:23

guidelines apply to the Bible and Tract Society of 10:23

New York, Inc.? 10:23

A I guess my question would be, when you -- 10:23

can you say that one more time? 10:23

Q Yes. 10:23

A I want to make sure I have the question 10:23

correct. 10:23

Q Do the branch committee guidelines apply 10:23

to the entities within the Watchtower Bible and 10:23

Tract Society of New York, Inc., the divisions I 10:23

should say? 10:23

A I would think so. 10:23

Q Do they also apply to the Christian 10:23

Congregation? 10:24

A Yes. 10:24

Q I know there are other entities such as 10:24

Watchtower of Pennsylvania. Would the branch 10:24

committee guidelines apply to these other entities 10:24

as well? 10:24

A Yes. 10:24

Q Other than the service department, what 10:24

department? 10:45

A When you say a different, a different 10:46
person as opposed to the victim? 10:46

Q Correct, an individual member of the 10:46
congregation makes a report to an elder of suspicion 10:46
of sexual abuse of a child by a different 10:46
congregation member, is that communication deemed to 10:46
be confidential? 10:46

MR. SCHNACK: Are you talking about 10:46
outside of the service department at this 10:46
point? 10:46

MR. SIMONS: No, within the service 10:46
department. 10:46

MR. SCHNACK: Okay, because the question 10:46
didn't include that. Why don't you rephrase it 10:46
so we're certain what you are asking. 10:46

Q Within the service department's 10:46
implementation of its policies and role, are 10:46
communications by a member of a congregation to an 10:46
elder which report suspected childhood sexual abuse 10:46
by a different member of that congregation, are 10:47
those communications deemed to be confidential? 10:47

A Within the context of the work that is 10:47
done within the service department? 10:47

Q Yes. 10:47

A They are regarded as confidential. 10:47

Q Is the basis of that determination one that is contained in writings of some kind? 10:47

A You mean in the sense of guidelines or direction or memoranda? 10:47

Q Yes, any of those. 10:47

A Over the years I worked in the service department, which is some 31 years, I am certain that there have been references made on occasion that matters should be kept confidential. I cannot tell you an exact date of a memorandum. 10:47 10:48 10:48

MR. SIMONS: Let me mark the letter of July 1st, 1989 as the next exhibit. 10:48 10:48

(July 1, 1989 letter was marked as Deposition Exhibit Number 5 for identification.) 10:49 10:49 10:49

Q This is a somewhat lengthy document. The portions that I am going to ask you about I've highlighted. That will maybe assist you in focusing on this. 10:49 10:49 10:49 10:49

MR. SCHNACK: You want him to read through it or do you want to just start asking questions? 10:49 10:50 10:50

MR. SIMONS: If he wants to read through it I don't want to interrupt him. 10:50

MR. SCHNACK: It's up to you how you want to conduct the deposition. 10:50

Q Have you seen this letter of July 1st, 1989 before? 10:50

A Yes. 10:50

Q When do you recall first being aware of this letter? 10:50

A Shortly before July 1st, 1989. 10:50

Q Did you participate at all in the drafting of this letter? 10:50

A I'm not certain. 10:51

Q Do you know any of the individuals who participated in the drafting of this letter? 10:51

A I don't think I could name someone specific. 10:51

Q Is this what is known as a Body of Elder letter? 10:51

A Yes. 10:51

Q Is the content of this letter, Exhibit 5, one that requires the approval of anyone within the Jehovah's Witnesses organization before it can be circulated to elders throughout the United States? 10:52

A Yes. 10:52

Q What approval or approvals, if there is more than one, must be made before a Body of Elder letter such as this could be circulated, at the time frame we're talking about, July 1st, '89? 10:52

A Within the time frame of 1989? 10:52

Q Yes. 10:52

A There would have been a group of elders within the service department that would have reviewed this letter. It would have been a collaborative effort. You're talking about the service department, right? 10:52

Q I'm talking about within the organization completely? 10:52

A Within the organization. Undoubtedly the legal department would have input into this. It would have been approved by a committee of the governing body. 10:52

Q Has this Body of Elder letter of July 1st, 1989 been revoked? 10:53

A When you say revoked, you mean in total or in part? 10:53

Q First in total. 10:53

A No. 10:53

Q Have parts of it been modified or revoked? 10:53

A I would have to review the letter and read it to tell. 10:53

Q All right, okay. 10:53

MR. SCHNACK: Do you want him to do that? 10:53

MR. SIMONS: Yes, I do. 10:53

MR. SCHNACK: Go ahead, take your time. 10:54

THE WITNESS: The entire letter? 10:54

MR. SIMONS: Yes. If you need something to mark the exhibit with to go back and explain later what areas you think have been revoked, feel free to mark it up, that's okay. 10:54

A What was stated then in 1989, some 22 years ago, I think is essentially the same now. There's maybe one exception. And that's on page four at the very top, the first sentence, "If the alleged wrongdoer confesses to the sin or crime, no one else should be present besides the members of the committee." Just in addition to that, in the case of a child, being a minor, likely in most cases his parent or parents would be present. But other than that, essentially it's the same. 11:01

Q Okay. In the event that an accused 11:02

And so the intent is to administer spiritual assistance to help that one, and if they can be helped, and if they prove that they are repentant, they have regret for what they have done, then it can be deemed by that judicial committee that they can remain part of the membership of Jehovah's Witnesses, which is regarded as a clean organization. And so if that is the case then, what is administered is a reproof, that's the terminology that we use, a reproof, which means again, the use of the Bible, reading various scriptures that in effect reprove that one, or to set that one straight. 11:34 11:34 11:34 11:34 11:34 11:35 11:35 11:35 11:35 11:35 11:35 11:35

Q In my field as a lawyer we have an agency called the State Bar which licenses and disciplines lawyers and they have a public reproval and a private reproval. Does Jehovah's Witnesses have those two categories of reproval? 11:35 11:35 11:35 11:35 11:35

A Not technically, no. 11:36

Q Are all reproval public? 11:36

A No. 11:36

Q Are all reproval private? 11:36

A No. 11:36

Q What determines whether or not a member 11:36

who has been the subject of reproval has that reproof reported to the congregation? 11:36

A My apologies, your question one more time? Just to make sure I have it clearly in my mind. 11:36

Q Okay. Let me back up and see if we can get to the question more clearly. 11:36

If a person is disfellowshipped that's announced to the congregation, correct? 11:36

A Yes. 11:36

Q Are reproofs announced to the congregation? 11:36

A In some cases. 11:36

Q What kinds of cases are those? 11:36

A As in the case of where there is some threat to other members of the congregation; in the case of notoriety among the community. It's for the purpose of letting others know that may have become aware of this conduct that the matter has been addressed, that the one is still repentant, is still a member of the congregation, and that certain scriptural reproof has been administered. 11:37

So it's for the purpose of protecting others in the congregation. 11:37

Q Who determines whether or not a member constitutes a continuing threat to engage in unclean conduct such as sexual abuse of a child? 11:37 11:37 11:38

A The judicial committee. 11:38

Q Does the judicial committee have any written or other stated guidelines for making that determination which are provided to it from the service department? 11:38 11:38 11:38 11:38

A That's a little vague question. 11:38

Q Let me rephrase it. How does the judicial committee make the determination as to whether or not the individual constitutes a continuing threat? 11:38 11:38 11:38 11:38

A How do they determine it? 11:38

Q Yes, by what standard or guidelines or criteria? 11:38 11:39

A By guidelines, standards and criteria that have been given to them by the organization, Jehovah's Witnesses' organization. We referenced earlier the KS textbooks, that primarily. There is also information in a publication that's available to all of Jehovah's Witnesses, not just elders, it's called Organized to Do Jehovah's Will, that publication. 11:39 11:39 11:39 11:39 11:39 11:39 11:39

established that elders abide by? 11:47

Q Is the policy that no discipline is warranted in the absence of either two witnesses, two credible witnesses or a confession, is that policy one that is approved by the governing body? 11:47 11:47 11:47 11:48

A Yes. 11:48

Q You mentioned the Watchtower now being utilized in certain study committees. Am I correct that there are various kinds of regular meetings and study sessions that congregations hold within Jehovah's Witnesses? 11:48 11:48 11:48 11:48

A Yes, we do. 11:48

Q Are there regular meetings held by congregations at the Kingdom Halls? 11:48 11:48

A Yes. 11:48

Q And how frequently would regular sessions at the Kingdom Hall be held in most congregations, at least in your knowledge and experience? 11:48 11:48 11:49

A You mean meetings that a congregation would have as opposed to meetings that Kingdom Hall would have? 11:49 11:49 11:49

Q Yes. 11:49

A Yes, a congregation typically would have two meetings a week, one during mid week and 11:49 11:49

typically one on the weekend. 11:49

Q And do each of these meetings have a different purpose or is the purpose the same? 11:49

A Different purpose. 11:49

Q What are the purposes of the two meetings in the mid week and the weekend meetings? 11:49

A Well, both are open to the public so anyone is invited to attend these meetings. The mid week meeting is made up of three different types of meetings: One is called the Congregation Bible Study and there is a publication that Jehovah's Witnesses use, it varies from year to year, that is considered for 25 minutes or half hour; and then we have what is called a Theocratic Ministry School that helps to train the congregants as to how to perform public speaking or public reading, speaking to others about the Bible. 11:49 11:49 11:49 11:49 11:50 11:50 11:50 11:50

And then the last part of the meeting is called a service meeting, and information from a periodical called Our kingdom Ministry is reviewed, and again, having to do with the ministry. That's what Jehovah's Witnesses do, is we speak to others about God and bear witness about him and tell others about what we consider to be good news from the 11:50 11:50 11:50 11:50 11:50 11:50 11:51

Bible. 11:51

Q Are the mid week meetings that are held at Kingdom Halls attended customarily by children as well as adults? 11:51

A Yes. 11:51

Q What does the weekend meeting usually consist of. 11:51

A It consists of two meetings, a public talk addressed to the public, and then a consideration of the study edition of the Watchtower. There are articles that are taken each week from that Watchtower and considered during the course of that hour, on a variety of subjects. 11:51

Q And are the weekend meetings customarily held at the Kingdom Hall? 11:51

A Yes, in this country. 11:52

Q Are there other meetings routinely held, in your experience and knowledge, that would be smaller study groups held perhaps in homes of individuals who are congregation members? 11:52

A Not a study group. We do have places, homes, private homes, where we gather for a very, very brief period of time, ten to fifteen minutes, to meet prior to engaging in the public ministry. 11:52

Q Are the weekend meetings customarily attended by children? 11:52

A The public talk and Watchtower study at the congregation, at the Kingdom Hall? 11:52

Q Yes. 11:53

A Yes. 11:53

Q When you say public ministry, is service work and public ministry, are those concepts the same? 11:53

A Service work meaning? 11:53

Q Does service work as it's customarily used in your vocabulary include the public ministry that you were about to describe for me? 11:53

A We don't use the terminology "service work." We do use the word service, it's field service or field ministry, and yes, it's synonymous with the ministry. 11:53

Q So it's service, not service work? 11:53

A Right. 11:53

Q Thank you. My apologies. And how often are congregations involved, say, on a weekly basis in field service? 11:53

A Typically we have meetings all during the week in the homes, usually in the mornings, 11:54

Q Thank you. Let me now move on to Exhibit 6 and Exhibit 7 (handing). You might want to return Exhibit-- 01:41

A May I just add something else too? 01:41

Q Sure, go ahead. 01:41

A In the case of Kendrick it was not as if there wasn't discipline, because there was. He was removed from his position as a ministerial servant. Even though today we might view it differently as to the gravity of his sin, the fact is he was removed from his position as a ministerial servant. 01:41

Q Today if Mr. Kendrick or someone like him was subjected to discipline for sexual molestation of a child, would the congregation be informed of the reason for any discipline imposed? 01:42

A No, they would not. 01:42

Q And under the policies in place in 1993, the congregation was not informed of Mr. Kendricks' sexual misconduct with a minor. Correct? 01:42

A That's correct. Could I just ask you a question here? Mr. Simons, you mentioned now would the congregation be informed. Informed of what? 01:42

Q Informed of the reason for the discipline, in other words, that there had been 01:42

sexual molestation of a minor by Mr. Kendricks. 01:42

A That would be correct, they would not be informed of the reason. But they would be informed that such and such has been reproved by a judicial committee. 01:42 01:42 01:43 01:43

Q One can be reproved for many reasons? 01:43

A Yes. 01:43

Q Was Mr. Kendrick previously reproved for loud and boisterous conduct according to the information you have seen in reviewing the records pertaining to him? 01:43 01:43 01:43 01:43

A I do seem to recall some form of reproof, but I don't remember whether it was prior to or after these events. 01:43 01:43 01:43

Q The fact of reproval does not in and of itself inform the congregation that the individual removed may constitute a threat of sexual molestation to children within the congregation; would you agree with that? 01:43 01:43 01:43 01:43 01:43

A In itself it wouldn't. But there are other things that elders will do to ensure that the child is in a safe place and that he's no longer subject to the perpetrator. For example, elders are instructed to sit down with the parents and review 01:43 01:43 01:43 01:44 01:44

understood when one is baptized he becomes an ordained minister. 01:54

Q All right. Let's turn to paragraph eight then, which refers to field ministry. And you advice that field ministry is not controlled or monitored by the elders or the congregation. The field ministry activity and the time and manner in which it is performed is a personal matter and there is no hour or literature placement requirement. 01:54

And has that been true throughout the time that you have served as an elder? 01:54

A Yes, that has been true. 01:54

Q And so is it correct that when Jonathan Kendrick or Candace Conti would perform field service that that field service was not monitored by elders or the congregation? 01:55

A I'm not in a position to know what was done by the elders in the North Congregation Fremont back in 1993. 01:55

Q Assuming that they were following the general policies and procedures and methods of performing field service that you refer to in paragraph eight, then that would be a fair assumption though, correct? 01:55

A Having in mind that today, yes, the elders would have monitored the activities of a child abuser because we have specifically directed them to do that. In 1993 when our policies were being developed, as any religious organization, as any school system, we were struggling to come up with policies in order to protect children. I think given the time period, many, many organizations did not have policies in place. But seeing the need and seeing the need to protect our young people as best we can, we have developed some very good policies in more recent years. 01:55 01:55 01:55 01:55 01:56 01:56 01:56 01:56 01:56 01:56

Q Continuing on in paragraph eight at line six, there is the statement that "Congregation publishers are not required to complete or turn in forms or reports regarding field ministry activity." 01:56 01:56 01:56 01:56

Are there periodic reports from the congregation elders themselves to the service department concerning the field ministry activity undertaken by the congregation? 01:56 01:56 01:56 01:57

A Yes. 01:57

Q And was that true in the early 1990s as well? 01:57 01:57

A Yes, it was. 01:57

them some structure. 02:29

Q Who if anyone would have been required to approve the content of articles in the Awake before they were published? This is back in '85 and '93 and that time period. 02:29 02:30 02:30

A It would be individuals that work in our writing department. 02:30 02:30

Q Were articles on the subject matter of protecting children from sexual abuse subject to approval from anyone other than persons in the writing committee back in the time frame that we're talking about, '85 to '93, as to the articles? 02:30 02:30 02:30 02:30 02:30

MR. SCHNACK: You mean the writing department. 02:30 02:30

MR. SIMONS: Writing department, thank you. 02:30 02:30

A I know on occasion that the writing committee would send, writing department that is, they would send articles to others outside the writing department for their purview. 02:30 02:30 02:30 02:31

Q Would an article setting forth a policy on something such as childhood sexual abuse such as the January 22, 1985 article in Awake have been reviewed and approved by the governing body or a 02:31 02:31 02:31 02:31

committee of the governing body prior to its publication? 02:31

A My understanding is that they would. 02:31

Q What is that understanding based on? 02:31

A Whether all of the members of the then existing governing body would review articles from the Awake or the Watchtower, I can't say for certainty. But what I do say for certainty is that some members of the governing body would review it, yes. 02:31

Q What is your understanding based on? 02:31

A Based on my knowledge. 02:32

Q Your last answer was that you just understand it. Can you tell me a little bit more about how you acquired the knowledge of the governing body's role in terms of approval of Awake policy articles or Watchtower policy articles? 02:33

A I just know that the writing department, it's directly overseen by the writing committee of the governing body, and that there have been members in the past of the governing body who are in the writing, on the writing committee, and also work in the writing department. And I know the process that's reviewed by a number of writers, and it's 02:33

members of the governing body, on the service committee? 02:54

A Yes, there are. 02:54

Q How many members total are there in the service committee? 02:54

A On the service committee, let's see, at least four. 02:55

Q And how many members of the service committee are members of the governing body? 02:55

A All of them. 02:55

Q When a congregation member is found either by two witnesses or by confession or by both to have committed sexual abuse of a child, does the local congregation elders have the option to ban that individual from field service? 02:55

A The elders have the responsibility to protect children from that perpetrator, yes, to ban them from the individual ministry that they have. I think all of us as Christians, as Jehovah's Witnesses, have an obligation to bear witness about God, that's who we are, we are Jehovah's Witnesses. So what he would have, his personal responsibility is up to him in witnessing, but if he were to engage in public ministry with 02:56

others, then the elders have a responsibility to monitor his activities, make sure he does not work with children alone, or if he is in the presence of children, then another adult should be in his presence. 02:56

Q And was that true even back in the early 1990s? 02:56 02:57

A It was true in the sense that any concerned elder who is aware of someone's conduct of that nature would want to be very concerned about his activities around children. We did not have any guidelines to the effect that we have now, in 1993. 02:57 02:57 02:57

Q Is one who is disfellowshipped permitted to engage in field service? 02:57 02:57

A He is not officially recognized by Jehovah's Witnesses as a member. His membership ceases once he is disfellowshipped. So what he does on his own in the form of witnessing is not the responsibility of the congregation of Jehovah's Witnesses. 02:57 02:57 02:57 02:57 02:57 02:57

Q Would a disfellowshipped person be allowed to take the Awake and Watchtower and go door to door? 02:58 02:58 02:58

A It would not be sanctioned by the 02:58

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF EVELYN KENDRICK IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

I, EVELYN KENDRICK, hereby declare:

1. That I was married to Jonathan Kendrick in 1993, and am now divorced from him;

2. That I have a daughter Andrea born on July 16, 1979, who resided with us during the time Mr. Kendrick and I were married;

3. I was present at the meeting at our residence that occurred on November 11, 1993, and is the subject of Mr. Clarke's letter of November 15, 1993, attached to this Declaration as Exhibit 1. Mr. Kendrick, Andrea, and Elder Gary Abrahamson were also present. During the meeting, Andrea told the Elders that Jonathan Kendrick had given her Vicodin, watched T.V. with her in her bedroom, and then put his hand inside Andrea's bra, with skin-to-skin contact on her breast. Andrea also told the Elders that Kendrick placed his hand inside her pants and touched her genital area.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 26 day of March, 2012, at Hayward, California.

Evelyn Kendrick

EVELYN KENDRICK

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF WILLIAM H. BOWEN IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY

Date:	**5/3/12**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1232647**

I, WILLIAM H. BOWEN, hereby declare:

1. I was an active member of the Jehovah's Witnesses Organization until age 43. I served at the Organization's home office in Brooklyn, New York from 1977 to 1979. I served as a Pioneer (full time missionary) from 1974 to 1976 and 1979 to 1981. I was appointed with the approval of the Governing Body of Watchtower Bible and Tract Society of New York, Inc. to be a Ministerial Servant in 1979, and to be an Elder in 1985. These positions are of administrative responsibility within Jehovah's Witnesses. Jehovah's Witnesses are viewed as 'lay ministers' and do not have any formal clergy or pastors and have no paid full time employees in Congregations or administration. I served as an Elder from 1985 to 1992 and again from 1994 to 2001. I served as Presiding Overseer,(Coordinator) a position equivalent to administrative coordinator, for two congregations in early 1990's and late 1990's. I served as a Theocratic Ministry School Overseer

from 1985 to 1989, Secretary from 1990-1991 and 1994-1998, Watchtower Overseer from 1995-1998, Book Study Overseer during the duration I was an elder, and many other managerial positions within the congregation. I have taught and participated in Elder training and instruction in the procedures and policies of Jehovah's Witnesses in the KINGDOM MINISTRY SCHOOLS and Pioneer Schools. I have worked as an overseer or assistant at the convention level and also worked in the Administration Office at District Conventions represented by Jehovah's Witnesses world headquarters in New York State, and in many branches of Circuit Assemblies and District Conventions including Food Service, Public Relations, Parking, Rooming, Volunteer Service, Accounting, and Security and Attendant Departments. I have presided or participated in over one hundred judicial, special and appeal committees relating to Judicial Matters, which is the internal administrative procedures for investigation and discipline of Jehovah's Witnesses accused of misconduct or other improprieties.

2. Since 2001, I have been the Executive Director of a non-profit organization called Silentlambs, with its office in Nashville, TN. The purpose of Silentlambs is to provide support for victims of sexual abuse suffered as a child in Jehovah's Witnesses activities and Congregations. I have researched extensively the policies and procedures of Jehovah's Witnesses from public and accessible private sources, I have been interviewed internationally for numerous published articles and documentaries on the polices and practices of Jehovah's Witnesses, including New York Times, Newsweek, VH1, Dateline, Fifth Estate, Panorama, Associated Press, Christianity Today, etc...

3. During the time I served in administrative positions for the Jehovah's Witnesses' Organization, I had access to internal confidential documents and communications, I attended Elder training on several occasions and received instructions on how to handle matters within the congregation involving abuse survivors including reports of child molestation within the Organization's congregations; and became personally familiar with the organizations policies and procedures on the subject matters of reporting, preventing, investigating and maintaining secrecy concerning child sexual abuse within the Jehovah's Witnesses membership and Congregations; on the relationships of Jehovah's Witnesses Elders to secular law enforcement; and on disciplinary policies and procedures for those accused of sexual abuse of children.

4. The Governing Body of Jehovah's Witnesses is the ruling council of the Jehovah's Witnesses Organization, and represents the Organization's leadership and administration. All Jehovah's Witnesses' policies and procedures for any corporation or entity of the religion are set by the Governing Body. The "Organized to Accomplish Our Ministry" manual states on Pages 26-27, "These and other legal corporations are used by the modern day Governing Body of Jehovah's Witnesses to facilitate the preaching of the good news world-wide and to care for the spiritual needs of the entire congregation of God in all parts of the earth." A true and correct copy of the cover and excerpts of the Manual are attached as Exhibit 1 to this Declaration.

5. All Elders or other Jehovah Witness members involved in the reporting, investigation or disciplinary phases of childhood sexual abuse accusations and conduct must follow the procedures and policies established and communicated by the Governing Body through its various corporate agencies. These corporate entities include the Legal Department of the Watchtower Bible and Tracts Society of New York, Inc.; the Service Department that was formerly a part of Watchtower New York until 2001; and a separate corporation established in 2001 known as The Christian Congregation of Jehovah's Witnesses that has succeeded in administering the Service Dept. functions formerly held by the New York corporation. I have reviewed the deposition of Alan Schuster taken in this matter on February 15, 2012, who I know personally, and agree with his testimony on page 38 at lines 14 through 19 that the policies of the Jehovah's Witnesses as expressed in Body of Elder letters, including the letter of July 1, 1989, would have been approved by the Governing Body.

6. When an Elder or other member in a position of authority in a Jehovah's Witness congregation receives a report of child molestation or sexual assault, Jehovah's Witness policy as set forth in the July 1, 1989 Body of Elder letter requires Elders first call the Service and Legal Departments of the WBTSNY, Inc. Thereafter, all acts or omissions of the Elders are directed by and through the Service and Legal Department. The Service and Legal Departments direct the investigation by congregation Elders for all allegations of child abuse;

7. Jehovah's Witnesses practice and policy discourages members' associations with non-members. Members customarily associate only with other congregation or Jehovah's Witness

members for all non-work, recreational, or social activity for their members. Children and adults participate together frequently in meetings held in members or Elders' homes, or at the Kingdom Halls which are the official property of the entities organized by the Governing Body. Children and adults go together in small groups into residential neighborhoods and other public places to perform the "service" work, or religious solicitations that are the largest time commitment and activity of the members. Because nearly all of these activities are conducted outside of the homes of members, it is common for members of a congregation to trust other adults to transport children to meetings, Kingdom Hall for services, and into neighborhoods for service work.

8. The Jehovah's Witnesses, through the Governing Body, have a punishment called "Disfellowshipping." When a member is disfellowshipped, no other member of the Congregation is allowed to talk to them or engage in activities with the disfellowshipped member. Disfellowshipping is an administrative procedure that would, if applied to a child molester, prevent that individual from having contact with or participating in activities with children of the Congregation and Jehovah's Witnesses community. Disfellowshipping Jonathan Kendrick in this case after his molestation of at least one minor girl would have prevented his association with Plaintiff Jane Doe and advised her parents and the entire Congregation that he was unfit to be associated with.

9. The written and practiced policy of Jehovah's Witnesses applicable to protecting children from known childhood sexual abusers within the membership is set forth by the Governing Body in the Body of Elders letter of July 1, 1989. I agree with the testimony of Mr. Shuster in his deposition at page 38, line 20, to page 39, line 24, stating this letter remains the policy today. That policy, as stated in the letter of July 1, 1989, is to keep information identifying a known specific child molester secret from Congregation members, law enforcement, and other possible victims.

10. As of the present time, Silentlambs has received reports from over 7,000 individuals that they were sexually abused as children in the organization of Jehovah's Witnesses. **During my service as an Elder, I learned that there is a database kept by WBTSNY of childhood sexual abuse offenders and victims. I personally reported child molesters to this database by telephone to the Service and Legal Departments. In 2002 I was made aware by managerial level personnel that the database at**

that time contained over 23,720 reports of confessed/confirmed child molesters within the United States, Canada and parts of Europe. My own experience with Silentlambs is that sexual abuse of children is and has been for many decades a widespread problem within Jehovah's Witnesses, as in many other organizations and groups where adults and youth participate.

11. All of the policies and procedures concerning maintaining secrecy as to the identities of known childhood sexual abusers within the Jehovah's Witnesses Congregations are the policies set forth by the Governing Body to apply to all associated with the Jehovah's Witness organization. In my experience and opinion, the true purpose of these policies and procedures is not religious, but purely secular and financial. The secrecy policy has been applied to protect the organization and its leaders from exposure to legal liability for the harm caused to children abused within the activities of the Witnesses, as well as to protect the Jehovah's Witnesses religion and its corporate entities from adverse publicity that could negatively affect membership levels, and in turn reduce financial income. The Body of Elder letter of July 1, 1989 sets forth these purposes explicitly and repeatedly, and the same concerns were taught in the Elders training sessions I participated in. The policy of secrecy is set and enforced by the Governing Body with full knowledge that sexual abusers of children, if not identified and adequately protected against, will continue to abuse other children.

12. The evidence I have reviewed in this case includes the depositions of Elders Abrahamson, Clarke, Iglesias, Inman, and Lammerdin; the deposition of Mr. Shuster; the depositon of Claudia Francis; the documents produced by Defendants in response to written discovery requests or marked as exhibits to depositions; the deposition of Candace Conti and of her parents, Neal Conti and Kathleen Conti; the Declaration of Evelyn Kendrick; and the deposition of Contra Costa County Sheriff Baldwin. This evidence establishes for my analysis and opinions that Jonathan Kendrick continued to sexually approach and abuse children after the first report to the Elders in 1993 of his abuse of his step daughter. This is found in the criminal records and felony conviction of Kendrick for sexual abuse of a minor victim while he and his spouse Linda Kendrick were members of the Oakley Congregation of Jehovah's Witnesses; the report of the Plaintiff in this case; and also the report of "grooming" activity of purchasing a bra for a 10 year old girl as set forth in the deposition testimony of Claudia

Francis. This type of recurring conduct is facilitated and enabled because of the policy of the Jehovah's Witnesses to keep secret past sexual abuse of children by its members.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I have personal knowledge of the facts set forth herein, and that I am competent to testify as to the facts set forth herein.

Executed this 9 day of APRIL, 2012, at Nashville, Tennessee

WILLIAM H. BOWEN

Exhibit 1
to William H. Bowen's Declaration

ORGANIZED TO ACCOMPLISH OUR MINISTRY

"You, though, keep your senses in all things, suffer evil, do the work of an evangelizer, fully accomplish your ministry."—2 Tim. 4:5.

and to care for all His "belongings," or Kingdom interests on earth. (Matt. 24:45-47; Luke 12:42-44) Rather than being an individual Christian, the 'faithful slave' today is the remnant, still living on earth, of the composite body of Christ's anointed footstep followers. Such remaining ones are a part of spiritual Israel, the anointed congregation of God. (Gal. 6:16; compare Isaiah 43:10.) This remnant is faithfully discharging the responsibilities of the "slave" during this time of the end by taking the lead in the preaching of "this good news of the kingdom" throughout all the earth and by providing spiritual food at the proper time for the household of faith.—Matt. 24:14.

USE OF RELIGIOUS CORPORATIONS

During these last days of the present wicked system of things, the "belongings" of the Master have increased abundantly throughout all the earth. This has placed a heavy responsibility on the 'faithful slave.' In discharging its responsibility to provide spiritual food at the proper time and in order to get the good news of the Kingdom preached before the end comes, the remnant on earth, as "the faithful and discreet slave" class, has formed certain agencies, or legal entities. It has proved to be the course of wisdom for the 'faithful slave' to organize certain corporations that are recognized by the laws of various countries. These religious corporations own and operate printing facilities that produce and distribute Bibles and Bible literature on a worldwide basis for use in the Kingdom ministry.

The first in time and the principal corporation used in this way is the Watch Tower Bible and Tract Society of Pennsylvania. This nonprofit religious society was incorporated in 1884, is made

up of dedicated, baptized Christians and is exclusively devoted to advancing the interests of true worship in the earth. The Watch Tower Society has extended its works worldwide, establishing branch offices in various countries. Also, in compliance with local governmental regulations, a number of other religious societies have been legally formed, such as the Watchtower Bible and Tract Society of New York, Inc. (1909) and the International Bible Students Association in London, England (1914). All these legal instrumentalities cooperate with one another. These and other legal corporations are used by the modern-day Governing Body of Jehovah's Witnesses to facilitate the preaching of the good news worldwide and to care for the spiritual needs of the entire congregation of God in all parts of the earth.

STRUCTURE UNDER BRANCH ORGANIZATION

Whenever a branch office is established, a Branch Committee of three or more elders is appointed to care for the various responsibilities involved in looking after the work in the country or countries under the jurisdiction of that particular branch. One member of the committee serves as the coordinator of the Branch Committee.

Local congregations under each branch organization are arranged into circuits and a number of circuits make up a district. Circuits and districts may be of various sizes depending on geographical and language considerations, as well as the number of congregations within the area assigned to a branch. A circuit overseer is appointed to serve the congregations in each circuit. District overseers visit the different circuits, serve at circuit assemblies and spend some time serving

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF DR. ANNA SALTER IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY

Date:	**5/3/12**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1232647**

I, ANNA SALTER, hereby declare:

1. That I have been retained by the plaintiff in the above-entitled action to testify on issues of standards of institutional policies and practices involving the prevention of child molestation and sexual abuse, and the scientific and professional knowledge available on the subjects of sexual predators of children and child victims of sexual abuse;

2. That I earned a Ph.D. in Clinical Psychology and Public Practice from Harvard University in 1977; served as the Director of Child Psychology Consulting Services at Mary Hitchcock Memorial Hospital in Hanover, New Hampshire from 1984 to 1988; served as a faculty member in the Psychiatry Dept. at Dartmouth Medical School from 1981 and 1988, with the title of Assistant Professor; and have engaged in private practice specializing in sexual abuse issues since 1988, working with and studying both offenders and victims;

3. That I have conducted workshops and trainings for nearly 30 years on the issue of childhood sexual abuse recognition and response, in 50 states and 10 countries; including workshops and trainings for many national, state, and local organizations, groups, and religious entities, and have served as a consultant to many such organizations as to the development and implementation of programs and policies on the same subject.

4. That I have authored 3 published books on the issue of child sexual abuse, including the book Predators: Pedophiles, Rapists, and Other Sex Offenders: Who They Are, How They Operate, and How We Can Protect Our Children (2003);

5. That I am a member of the American Psychological Association (APA), The Association for the Treatment of Sexual Abuse (ATSA), and the International Association for Correctional and Forensic Psychology (IACFP).

6. Based upon my training, clinical experience, research and work in the authoring of books, and experience as a trainer, I am familiar with the standards adopted by and followed by community, religious, and youth organizations nationally during the past three decades concerning childhood sexual abuse prevention, education, training, and procedures when abuse is suspected or reported.

7. I have reviewed the depositions of Elders Abrahamson, Clarke, and Lammerdin taken in this action, the depositions of Neal Conti and Kathleen Conti; and reviewed the documents produced by the Jehovah's Witnesses concerning the case of "Jane Doe" and her sexual abuse by Jonathan Kendrick, and Mr. Kendrick's past conduct, marked as exhibits to those depositions;

8. The standard of care before and during 1993 to 1995 for the prevention of child molestation and sexual abuse in religious institutions where children are allowed to participate, which is established by many sources including the adoption of training and educational programs by organizations such as The Boy Scouts of America, the passing of resolutions by national groups including The National Council of Churches, and many other public and private organizations, was that there exists an obligation to educate and train participants in such groups or activities, including volunteer adults, children, and administrative personnel, in the recognition, prevention, reporting, and

possible signs of childhood sexual abuse; and a further obligation to address reports of childhood sexual abuse immediately to actively prevent further opportunities for abuse of any child within the organization by any adult confirmed to have committed an act of child molestation. Failure to notify those individuals in positions of leadership or authority within the local chapter, group, congregation, or club of a confirmed report violates this standard, and the failure to notify parents and other adults within the group or congregation violates this standard. These violations have been generally known to child care professionals, to Administrators, Directors, and Officers of national community, religious, or youth activity groups, and to law enforcement agencies to be significant, in that they expose children in the group or congregation to further abuse. It has been well known for decades to such professionals, and among persons in positions of leadership and authority in the national organizations which serve or include children, 1) That child sex abuse predators frequently commit additional acts of abuse; 2) That the "grooming" process, which is the identification and approach by a predator to a vulnerable child, is usually not noticed or recognized by lay persons who are unaware of a potential child molester's past conduct; 3) That children frequently do not complain or report acts of grooming or abuse by adults, for many reasons; 4) That child sexual abuse is usually committed outside the presence of witnesses; and 5) That non-familial pedophiles and child sexual abusers are most frequently possessed of personality traits that do not cause others to "suspect" them. It was generally well known to organizations including religious groups by the early 1990s that continuing to allow adults who have sexually molested even one child to participate in activities with youth without either warning other participants of the possible risk, or acting affirmatively to prevent any unsupervised contact between children and the confirmed abuser, exposes children to further acts of sexual abuse.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

///

///

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 4 day of April, 2012, at Madison Wisconsin.

ANNA SALTER, PHD.

10398910

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
APR 19 2012
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

BY FAX

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MANDATORY SETTLEMENT CONFERENCE STATEMENT

Date: 4/26/12
Time: 1:30 p.m.
Dept: 14
Trial Date: 5/21/12

STATEMENT OF FACTS

Defendant Jonathan Kendrick sexually molested and abused Plaintiff Jane Doe when she was a minor child. Defendant Kendrick gained access to Plaintiff through their mutual involvement in the North Fremont Congregation of Jehovah's Witnesses, which was managed and supervised by The Watchtower Bible and Tract Society of New York, Inc. Defendant Kendrick repeatedly molested Plaintiff during and after meetings at Fremont's North Congregation. Several times a month, over the period when Plaintiff was 9 to 11 years old, Kendrick would force Plaintiff to engage in skin-to-skin contact, mutual oral copulation, penetration with pens, and posing for nude photographs.

Plaintiff's abuse occurred between 1994 and 1996, while she attended, participated in, and was a member of the Jehovah's Witnesses North Congregation in Fremont. Kendrick had been a volunteer, active member, and participant in the North Congregation and Congregation leadership, at one time holding the title of "Ministerial Servant". Defendant Kendrick used his position of trust and

authority within North Congregation to accomplish his molestation and sexual abuse of Plaintiff as well as to gain access to other minors for the same purpose.

At the time Defendant Kendrick abused Plaintiff, Defendants North Congregation and Watchtower New York had actual notice that Defendant Kendrick was a risk to children. In 1993, the year before Defendant Kendrick began his molestation of Plaintiff, Defendant Kendrick confessed to Elders at North Congregation that he molested his 13-year-old stepdaughter. Two North Congregation Elders called a meeting at the Kendrick home with Defendant Kendrick, his wife, and his stepdaughter. During this meeting, Elders Gary Abrahamson and Michael Clarke confirmed that the molestation had indeed taken place, and were told of the molestation of another minor girl – a report they did not investigate at all. Elders Abrahamson and Clarke called and sent a written report to Defendant Watchtower New York with that information and a request for instruction on how to proceed. Defendant Watchtower New York responded to Defendant North Congregation in a letter; advising that Defendant Kendrick should be "deleted" from his position as Ministerial Servant and that the Elders should speak to him. New York also instructed the Elders to comply with their written policy of secrecy, in place since 1989, and to notify no one of the confirmed child abuse committed by Kendrick. That written policy, still in effect today, prohibits Elders from notifying parents, Congregation administrators, or law enforcement of childhood sexual abuse committed within Jehovah's Witnesses.

Although a known child molester, Kendrick remained a member in good standing within North Congregation after 1993. He continued to participate daily with other Congregation members, including children, and specifically including Plaintiff, in Jehovah's Witnesses activities including religious services and meetings, door-to-door religious solicitations, study groups, and Congregation social events. He used that position to molest and groom other victims until he moved to the Oakley congregation in 1998. There, he was convicted of 2 counts of Penal Code 288a for his sexual abuse of an 8 year old girl, and registered as a sex offender. Kendrick remains a Jehovah's Witness member in good standing today.

///

I. LIABILITY OF THE DEFENDANTS.

A. North Congregation and Watchtower New York

Defendants North Congregation and Watchtower New York negligently supervised, managed, and controlled Defendant Kendrick in his membership and participation in the North Congregation, and negligently failed to warn Plaintiff, her family, and other members of the Congregation, of the propensity and risk that Defendant Kendrick would sexually molest or abuse minor girls, a propensity and history of which Defendants had actual notice. During the same time period, Defendants North Congregation and Watchtower New York were negligent in failing to exercise reasonable care to protect Plaintiff and other minors, who were members of, or participants in, activities at North Congregation from the risk of sexual abuse or molestation by perpetrators, including Defendant Kendrick. As a result of the conduct of the Defendant North Congregation's Elders Abrahamson and Clarke, acting under the authority of Defendant Watchtower New York and its Managing Agents, and of their personal conscious disregard of the safety of children including Plaintiff, Plaintiff suffered the injury and harm of childhood sexual abuse committed upon her by Defendant Kendrick between 1994 and 1996.

Defendant Watchtower New York is also exposed to punitive damages. Its implementation and adherence to the secrecy policy established and enforced by the "Governing Body," its managing agent, and its conscious disregard of the known risk of sexual abuse to children, constitute malice. On April 10, Plaintiff filed her Motion to Amend Complaint to allege specific acts of malice supporting a claim for punitive damages. This Motion is scheduled for Hearing on May 3.

B. Jonathan Kendrick

Defendant Kendrick is liable for the multiple willful and intentional acts of molestation and sexual abuse he committed upon Plaintiff between 1994 and 1996. In his Statement filed April 4, Kendrick, in pro per, relayed that he is unable to afford counsel and will no longer be participating in litigation in this case, including the Mandatory Settlement Conference. Plaintiff has no expectation that Mr. Kendrick will appear at trial or ever be financially responsible for any of the harm he has done.

C. Defenses

Defendants generally deny they were negligent, and have an expert prepared to testify that the standard of care for national religious organizations in the 1990s did not require protection against or training about child sexual abuse. They also seek to allocate a high percentage of fault to Kendrick. Their defense psychologist has questioned whether or not Candace was ever abused, but also contends that her family situation and drug use are the real causes of any emotional or psychological issues she currently has.

II. INJURIES AND DAMAGES.

Candace Conti suffered multiple occurrences of sexual abuse. She was particularly vulnerable to this abuse because of her family situation- her parents were in an acrimonious and dysfunctional marriage, and as her family LCSW testified, Candace was the "caretaker" of the family. The same circumstances which made her vulnerable to the abuse also forced her to live with her abuse a secret until early adulthood. Candace's parents separated in 1996. Her mother, also a sexual abuse victim in Jehovah's Witnesses, lived with psychiatric conditions leading to alcoholism and mental instability, and moved to Florida- leaving Candace behind. Her father soon remarried another Jehovah's Witness, and his consuming involvement in Jehovah's Witnesses and his new family left him no time or emotion for his daughter. Their relationship has been estranged since Candace was a young teen. Candace lived with the sole stable adult in her life- her grandmother. She attended many different schools, and, because she is a bright girl, did obtain a High School Diploma. She self-medicated with drugs, including meth. Her life was one of superficial social relationships and dead ends, until she was involved in the criminal justice system for drug related offenses. In June, 2010, she became sober, entered regular counseling, and now lives in Stockton while preparing to attend school to work with animals as a veterinary tech. Plaintiff's counselors and experts believe she will likely need therapy and support services over her lifetime, at a cost of $200-250,000. Her diagnosis includes Post Traumatic stress disorder, depression, and anxiety, with substance abuse history.

///

///

III. **SETTLEMENT NEGOTIATIONS.**

Prior to considering any legal remedy, at the time she first reported her abuse to Jehovah's Witnesses' officials, Candace asked to have the policy of secrecy regarding the identity of known child molesters in local Congregations changed. The Witnesses have refused to amend their policy, and continue to keep secret the identity of known child molesters active in their Congregations. Until this policy is changed to allow parents, children, law enforcement, and congregation leaders be notified of known sex abusers practicing their predatory evils on unsuspecting children and families, the case is not subject to settlement.

Dated: April 18, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On April 19, 2012, I served the within **PLAINTIFF'S MANDATORY SETTLEMENT CONFERENCE STATEMENT** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below:

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[X] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[X] By Email By transmitting a true copy thereof to the email address(es) shown below:

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
jim@mccabelaw.net
Attorneys for Defendants
CHURCH DEFENDANTS

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
SchnackR@jacksonlewis.com
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

Jonathan Kendrick, In Pro Per
200 Honey Lane
Oakley, CA 94561
925/679-0411 Telephone

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 19, 2012, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

4 RUD

10398934

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
APR 19 2012
CLERK OF THE SUPERIOR COURT
By Esther C. Deputy

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANTS NORTH FREMONT CONGREGATION AND WATCHTOWER NEW YORK'S MANDATORY SETTLEMENT CONFERENCE STATEMENT

Date: April 26, 2012
Time: 1:30 p.m.
Dept. 14

Pre-Trial Conference: May 18, 2012
Trial: May 21, 2012

Defendants North Fremont Congregation and Watchtower of New York respectfully submit this joint settlement conference statement solely for purposes of the scheduled mandatory judicial settlement conference and associated settlement discussions, subject to California Code

BY FAX

of Civil Procedure sections 1775.10 and 1775.12, Evidence Code sections 703.5, 1115-28, and 1152, and *Rojas v. Superior Court (Coffin)* (2004) 33 Cal.4th 407 (derivative material prepared for the purpose of, in the course of, or pursuant to mediation is not discoverable). Trial is set for May 21, 2012, in this case in which Plaintiff alleges she was sexually abused as a minor and is seeking to hold two church entities and the perpetrator of the alleged abuse liable.

The Parties. Plaintiff Jane Doe is represented by Richard J. Simons of Furtado Jaspovice & Simons.

Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") is a congregation of Jehovah's Witnesses that meets at the Kingdom Hall located at 1660 Peralta Boulevard, Fremont, California. The North Fremont Congregation is represented by James M. McCabe of The McCabe Law Firm, APC.

Defendant Watchtower Bible and Tract Society of New York, Inc. is a New York not-for-profit religious corporation (hereinafter "Watchtower of New York") represented by Robert J. Schnack of Jackson Lewis LLP. (The North Fremont Congregation and Watchtower of New York may be referred to collectively as the "Church Defendants.") Defendant Jonathan Kendrick is the alleged perpetrator of childhood sexual abuse of the plaintiff ("Kendrick") and is now *pro se*.

Relevant Factual Background. In 1990, Jonathan Kendrick was a member of the North Fremont Congregation. At that time, he was appointed as a ministerial servant in that congregation. Ministerial servants assist the elders in the congregation with ministerial functions, such as making sure that the congregation has sufficient literature (Bibles, Watchtower and *Awake!* magazines and other Jehovah's Witnesses publications) for its preaching work, keeping track of the territories covered by the congregation in its preaching work, upkeep of the Kingdom Hall property, and collecting and counting the funds anonymously placed in donation boxes in the Kingdom Hall.

In late 1993, Kendrick confessed that about two months previously he had "inadvertently touched" the breast of his 15-year-old step-daughter, Andrea. Kendrick said he had touched her breast over her clothing while she slept on a couch in the living room of the Kendrick home, and

the touching stopped when Andrea woke up. After Kendrick confessed, two elders of the North Fremont Congregation had a meeting at the Kendrick home with Kendrick, his wife Evelyn, and Andrea. During the meeting, Kendrick admitted touching Andrea's breast through her clothing but denied any wrongful intent, saying it was accidental. Kendrick, his wife Evelyn, and Andrea appeared to the elders to have made peace and reconciled about the matter. Even so, the elders in the North Fremont Congregation removed Kendrick from his position as a ministerial servant, a public announcement was made to the congregation that Kendrick was no longer serving as a ministerial servant, and Kendrick never again held any position of responsibility or authority in any congregation of Jehovah's Witnesses.

Plaintiff alleges in her Complaint in this case that she was sexually abused by Kendrick, as a member of the North Fremont Congregation, from 1996 to 1997. She would have been between the ages of 10 and 12 at that time. During her deposition testimony, she changed that time period of alleged abuse by Kendrick to 1994 to 1996, when she was between ages 9 and 10½ years old (the alleged abuse stopped at the time her parents separated in July 1996).

The North Fremont Congregation and Watchtower of New York heard nothing about this alleged abuse until 2009, when the then 24-year-old Plaintiff informed Clifford Williams, an elder in the North Congregation of Jehovah's Witnesses, Downey, California, that Kendrick had fondled her on an Amtrak train in the presence of her father and once in the garage of her father's house. Plaintiff also informed Williams at that time that Kendrick had hugged her very tightly at the North Fremont Congregation's Kingdom Hall and at an Assembly Hall of Jehovah's Witnesses.

During her deposition, Plaintiff expanded the scope and nature of her alleged abuse by Kendrick. She said that he would force her to sit on his lap during meetings at the Kingdom Hall, with her parents present. She also stated that, from ages 9 until 12, her parents allowed Kendrick to take her to his home from Sunday meetings at the Kingdom Hall several times a month. Once at his home, Kendrick allegedly abused her by undressing her, touching her genitals, penetrating her vagina with a pen, licking her, making her touch his genitals, as well as having oral sex with her. Plaintiff further alleges that Kendrick then delivered her back to her

parents at the Kingdom Hall or at her home. During the time of this alleged abuse, Kendrick was a divorced man living by himself.

Plaintiff's parents, Kathleen and Neal Conti, deny ever letting Plaintiff go home with Kendrick from the Kingdom Hall after meetings. The elders in the North Fremont Congregation deny ever seeing Plaintiff leave the Kingdom Hall with Kendrick. In fact, they say that they would have stopped that from happening, if they had ever seen it.

Discussion of Liability Issues. At the time of the alleged abuse, Kendrick was not an agent of either the North Fremont Congregation or Watchtower of New York. He was not in any position of responsibility or authority within either the congregation or Watchtower of New York. Therefore, Watchtower of New York and the North Fremont Congregation cannot be liable for any alleged conduct by Kendrick that did not occur on Kingdom Hall property or during congregation activity.

If, *arguendo*, the abuse occurred, it was by one congregation member against another congregation member. Neither of the Church Defendants can be held liable for abuse of this nature.

Further, the Church Defendants had no legal duty to report abuse of a minor to the authorities before January 1, 1997,—clergy first became mandated reporters at that time— and did not report the touching of Kendrick's step-daughter. Nonetheless, a police report was evidently made by the family and Kendrick was prosecuted.

The minister-communicant privilege is still recognized by California law. The Church Defendants could not have disclosed the 1993 incident without violating that privilege, which belonged to both Kendrick and the Church Defendants.

The fact that Kendrick later pleaded guilty to a misdemeanor arising out of the 1993 incident with Andrea was never disclosed to the Church Defendants. The Church Defendants had no notice of "child sexual abuse" by Kendrick in 1993. They had a confession by Kendrick that he had inadvertently or accidentally touched Andrea's breast over her clothes, and Andrea and her mother, Evelyn Kendrick, never told the two elders anything different from what Kendrick had confessed to them (the elders).

The elders of the North Fremont Congregation removed Kendrick from any position of responsibility or authority in 1993 and watched him during church meetings and functions to see whether he acted inappropriately with any children at the Kingdom Hall. Kendrick was not allowed to engage in congregation activity around children without supervision. The elders and Plaintiff's parents never saw Kendrick abuse Plaintiff in the Kingdom Hall. The elders never saw Plaintiff leave the Kingdom Hall with Kendrick. Plaintiff's parents never allowed Kendrick to take Plaintiff to his home.

Settlement Issues. If Plaintiff was abused, it was committed by Kendrick, a third party not under the control or supervision of the Church Defendants. Kendrick denies abusing Plaintiff. Further, even if, *arguendo*, the jury should find that Kendrick abused Plaintiff in the Kingdom Hall by hugging her and having her sit on his lap while her parents were present, the damages for that alleged conduct would be minimal at best. Also, if the jury finds the Church Defendants liable for abuse of Plaintiff *off of* Kingdom Hall property (such as in Kendrick's private home), the Church Defendants will have little option except to appeal such a verdict. The Church Defendants could not let such a potential precedent go unchallenged.

Finally, Plaintiff's description of the location, nature, and extent of her alleged abuse is contradicted by, among other things, her parents and the elders and thus lacks credibility. No demand for settlement has yet been made by Plaintiff; however, the Church Defendants will participate in the mandatory settlement conference in good faith.

Date: April 19, 2012

JACKSON LEWIS LLP

By: _____
Robert J. Schnack

Attorneys for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

Date: April 19, 2012

THE McCABE LAW FIRM, APC

By: _____
James M. McCabe

Attorneys for Defendant
NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Jackson Lewis LLP, 801 K Street, Suite 2300, Sacramento, California 95814.

On April 19, 2012, I served the foregoing document(s) **DEFENDANTS NORTH FREMONT CONGREGATION AND WATCHTOWER NEW YORK'S MANDATORY SETTLEMENT CONFERENCE STATEMENT** on all interested parties in said action, through their attorneys of record by placing a true and correct copy thereof, addressed as shown below, by the following means:

☐ **PERSONAL SERVICE** - by personally delivering a true and correct copy thereof to the person at the address set forth below, in accordance with Code of Civil Procedure section 1011(a).

☒ **MAIL** - by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid for deposit in the United States Post Office mail box, at my business address shown above, following Jackson Lewis LLP's ordinary business practices for the collection and processing of mail, of which I am readily familiar, and addressed as set forth below. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

☐ **OVERNIGHT DELIVERY** - by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Overnite Express or delivering to an authorized courier or driver authorized by Overnite Express to receive documents, addressed as set forth below.

☐ **FACSIMILE TRANSMISSION** - by transmitting a true and correct copy by facsimile from facsimile number (916) 341-0141 to the person(s) at the facsimile number(s) set forth below, which transmission was confirmed as complete. A copy of the transmission record is attached hereto.

☐ **ELECTRONIC MAIL** - by forwarding a true and correct copy thereof by e-mail from e-mail address _____ to the person(s) at the e-mail address(es) set forth below.

SERVICE LIST:

Richard J. Simons, Esq. (SBN 072676) Furtado, Jaspovice & Simons 22274 Main Street Hayward, CA 94541	*Attorneys for Plaintiff* (510) 552-1080 Telephone (510) 582-8254 Facsimile
Lawrance A. Bohm Bohm Law Group 4600 Northgate Boulevard, Suite 210 Sacramento, CA 95834	*Attorney for Defendant Jonathan Kendrick* (916) 927-5574 Telephone (916) 927-2046 Facsimile

The Mccabe Law Firm, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107

Attorney for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

Telephone: (619) 224-2848
Facsimile: (619) 224-0089

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 19, 2012, at Sacramento, California.

Lori Gilmette

Lori Gilmette

10251995

FILED
ALAMEDA COUNTY
APR 19 2012
CLERK OF THE SUPERIOR COURT
By Esther Ca
Deputy

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
Douglas M. Egbert (SBN 265062)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation;

Defendants.

Case No.: HG11558324

STIPULATION TO CONTINUE DEADLINE TO FILE AND SERVE OPPOSITION AND REPLY PAPERS TO MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY; [PROPOSED] ORDER

Date: 5/3/12
Time: 3:00 p.m.
Dept: 22

BY FAX

Trial: May 21, 2012

Plaintiff and defendant Watchtower Bible and Tract Society of New York, Inc., through their undersigned counsel of record, all hereby stipulate to: (1) continue the deadline for defendant to file and serve its opposition to the Motion of Plaintiff Jane Doe to Amend Complaint and For Order Permitting Financial Discovery to April 27, 2012; and (2) continue the deadline for plaintiff to file and serve her reply in support of her motion to April 30, 2012.

///

The parties are NOT requesting that the May 3, 2012 hearing on the motion be continued.

IT IS SO STIPULATED.

Date: April 19, 2012

JACKSON LEWIS LLP

By: _____
Robert J. Schnack
Douglas M. Egbert

Attorneys for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK

Date: ~~March~~ 4/19, 2012

FURTADO, JASPOVICE & SIMONS

By: _____
Rick Simons

Attorneys for Plaintiff JANE DOE

ORDER

Based on the foregoing stipulation and otherwise finding good cause therefor,

IT IS HEREBY ORDERED that: (1) the deadline for defendant to file and serve its opposition to the Motion of Plaintiff Jane Doe to Amend Complaint and For Order Permitting Financial Discovery is continued to April 27, 2012; and (2) the deadline for plaintiff to file and serve her reply in support of her motion is continued to April 30, 2012.

IT SO ORDERED.

DATED: _____, 2012

_____
Honorable Robert McGuiness
Judge of the Superior Court

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Jackson Lewis LLP, 801 K Street, Suite 2300, Sacramento, California 95814.

On April 19, 2012, I served the foregoing document(s) **STIPULATION TO CONTINUE DEADLINE TO FILE AND SERVE OPPOSITION AND REPLY PAPERS TO MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY; [PROPOSED] ORDER** on all interested parties in said action, through their attorneys of record by placing a true and correct copy thereof, addressed as shown below, by the following means:

☐ **PERSONAL SERVICE** - by personally delivering a true and correct copy thereof to the person at the address set forth below, in accordance with Code of Civil Procedure section 1011(a).

☒ **MAIL** - by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid for deposit in the United States Post Office mail box, at my business address shown above, following Jackson Lewis LLP's ordinary business practices for the collection and processing of mail, of which I am readily familiar, and addressed as set forth below. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

☐ **OVERNIGHT DELIVERY** - by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Overnite Express or delivering to an authorized courier or driver authorized by Overnite Express to receive documents, addressed as set forth below.

☐ **FACSIMILE TRANSMISSION** - by transmitting a true and correct copy by facsimile from facsimile number (916) 341-0141 to the person(s) at the facsimile number(s) set forth below, which transmission was confirmed as complete. A copy of the transmission record is attached hereto.

☐ **ELECTRONIC MAIL** - by forwarding a true and correct copy thereof by e-mail from e-mail address _____ to the person(s) at the e-mail address(es) set forth below.

SERVICE LIST:

Richard J. Simons, Esq. (SBN 072676) Furtado, Jaspovice & Simons 22274 Main Street Hayward, CA 94541	*Attorneys for Plaintiff* (510) 552-1080 Telephone (510) 582-8254 Facsimile
Lawrance A. Bohm Bohm Law Group 4600 Northgate Boulevard, Suite 210	*Attorney for Defendant Jonathan Kendrick* (916) 927-5574 Telephone

Sacramento, CA 95834 (916) 927-2046 Facsimile

The Mccabe Law Firm, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107

Attorney for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

Telephone: (619) 224-2848
Facsimile: (619) 224-0089

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 19, 2012, at Sacramento, California.

Lori Gilmette

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 14 Honorable Thomas Rasch , Commissioner

Cause called for Settlement Conference on April 26, 2012.

Plaintiff Jane Doe represented by Richard Simons.
Defendant Jonathan Kendrick not appearing.
Defendant Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Robert J. Schnack & James McCabe.
Defendant The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
Defendant The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack & James McCabe.
Defendant The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Robert J. Schnack & James McCabe.
Defendant The Watchtower Bible and Tract Society of Pennsylvania, a Corporation represented by Robert J. Schnack & James McCabe.

Document Registered: Judge's Memo to Clerk

Case not settled.
Maintain all future hearing dates in Department 22 :
Motion to Amend Complaint set on 5/3/12 at 3pm.
Case Management Conference set on 5/18/12 at 8:30am.
Jury Trial set on 5/21/12 at 8:30am.

Minutes of 04/26/2012
Entered on 04/27/2012

Executive Officer / Clerk of the Superior Court

By Melinda Guerrero digital
Deputy Clerk

JUDGE'S MEMO TO CLERK

9690372

Civil Pre-Trial Settlement Conference
Calendar For : 04/26/2012 01:30 P.M. Dept 14

1 HG11558324 Doe VS The Watchtower Bible and Tract Socie Settlement Conference

PLT : Jane Doe	ATT: Simons, Richard J.
DEF : ~~The~~ Watchtower Bible and Tract Society of New Yo	ATT: Schnack, Robert J
DEF : ~~The~~ Watchtower Bible and Tract Society of Pennsy	ATT: Schnack, Robert J
DEF : The Governing Body of Jehovah's Witnesses, an un	
DEF : The North Congregation of Jehovah's Witnesses, F	ATT: Schnack, Robert J
DEF : Kingdom Hall of Jehovah's Witnesses, a Corporati	ATT: Schnack, Robert J
DEF : Jonathan Kendrick	Pro-Per

McGuiness

	Present	Absent	With Attorney	Settlement Paper Filed
Plaintiff:	☒	☐	☒	☑
Defendant:	☒	☐	☒	☑

☐ Case Settled ☒ Case Not Settled

☐ Vacate Jury Trial ☒ Maintain Jury Trial on 5-21-12 at 8:30A in Dept. 22

☐ Vacate Jury Trial, Maintain date for Court Trial on _____ at _____ in Dept. ____

☐ Case referred back to Dept. _____

☒ Maintain/Vacate Hearing of: Mtn Amend Complaint (Type) on 5-3-12 (Date) at 3pm (Time) in Dept. 22

☒ Maintain/Vacate Hearing of: CMC (Type) on 5-~~01~~18-12 (Date) at 8:30A (Time) in Dept. 22

☐ Compliance Hearing set: _____ at 1:30pm in Dept 14

☐ Continue for Further PTSC on _____ at 1:30pm in Dept 14

4/26/12
DATE

Thomas A. Rumsey
JUDGE/COMMISSIONER

JUDGE'S MEMO TO CLERK

10238274

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY

APR 27 2012

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

DATE May 3, 2012
TIME 3:00 P.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

BY FAX

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATUS OF THE CASE 1

III. PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT TO PLEAD PUNITIVE DAMAGES SHOULD BE DENIED 1

A. General Law on Motions to Amend Complaint 1

B. Plaintiff Has Unreasonably Delayed Bringing this Motion for Leave to Add a Claim for Punitive Damages 2

C. Watchtower Will Suffer Severe and Unfair Prejudice if the Amendment to Allege Punitive Damages is Permitted 4

IV. BACKGROUND FACTS OF CASE 4

A. Relevant Facts about Jehovah's Witnesses 6

B. Jonathan Kendrick 7

C. Watchtower Had No Notice of Child Abuse by Kendrick 7

V. DISCUSSION 9

A. Punitive Damages Claims Against Watchtower 9

B. Punitive Damages Can Only be Given if the Actions Were Done by an Officer, Director, or Managing Agent of Watchtower 10

C. There Was No Conscious Disregard or Malice by Watchtower 12

D. The July 1, 1989, Letter to All Bodies of Elders is Consistent with the Law 13

E. The Problems with Dr. Salter 14

F. Plaintiff Cannot Meet her Burden under CCP Section 425.14 16

VI. CONCLUSION 18

TABLE OF AUTHORITIES

CASES:

College Hospital, Inc. v. Superior Court (1994) 8 Cal.4th 704 12

Cruz v. Homebase (2000) 83 Cal.App.4th 160 ..... 11, 12

Davis v. Hearst (1911) 160 Cal. 143 17

Doe v. Superior Court of Los Angeles County (2005) 132 Cal. App. 4th 1504 13

Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379 16

Estate of Murphy (1978) 82 Cal.App.3d 304 2

Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 828 14

Flores v. Arroyo (1961) 56 Cal.2d 492 16

Gelfo v. Lockheed Martin Corp. (2006) 140 Cal.App.4th 34 11

George F. Hillenbrand, Inc. v. Ins. Co. of N. America (2002) 104 Cal.App.4th 784 12

Gombos v. Ashe (1958) 158 Cal.App.2d 517 17

Hulsey v. Koehler (1990) 218 Cal.App.3d 1150 2

Juarez v. boy Scouts of America (2000) 81 Cal.App.4th 377 14

Lackner v. North (2006) 135 Cal.App.4th 1188 12

Magpali v. Farmers Group, Inc. (1996) 48 Cal.App.4th 471 ..... 1, 2

McAfee v. Ricker (1961) 195 Cal.App.2d 630 16

Mock v. Mich. Millers Mut. Ins. Co. (1992) 4 Cal.App.4th 306 12

Murdock v. Pennsylvania (1943) 319 U.S. 105 6

P & D Consultants, Inc. v. City of Carlsbad (2010) 190 Cal.App.4th 1332 2

Pamela L. v. Farmer ((1980) 112 Cal.App.3d 206 14

Paz v. State of California, (2000) 22 Cal.App. 4th 550 14

People v. Bassett (1968) 69 Cal.2d 122 15

People v. Edwards (1988) 203 Cal.App.3d 1358 13

People v. Sundlee (1977) 70 Cal.App.3d 477 15

Record v. Reason (1999) 73 Cal.App.4th 472 2

Roth v. Shell Oil Co. (1960) 185 Cal.App.2d 676 16

Rowe v. Superior Court (1993) 15 Cal.App.4th 1711 16

Shumate v. Johnson Publishing Co. (1956) 139 Cal.App.2d 121 17

Sturges v. Charles L. Harney, Inc. (1958) 165 Cal.App.2d 306 17

Taylor v. Superior Court of Los Angeles County (1979) 24 Cal.3d 890 17

White v. Ultramar, Inc. (1999) 21 Cal.4th 563 ..... 10, 11, 12

Wolfsen v. Hathaway (1948) 32 Cal.2d 632 ..... 16, 17

STATUTES:

Code of Civil Procedure section 425.14 ..... 1, 9, 12, 16

Civil Code section 3294 ..... 1, 9, 10, 11, 16

Evidence Code section 801 15

Evidence Code section 1034 13

Texas Family Code section 261.101 14

OTHER:

Restatement (Third) of Torts: General Principles (Tentative Draft No. 1, 2001)

section 7 cmt. f, section 8 cmt. b 14

Dobbs, The Law of Torts (2000) 269 14

I. INTRODUCTION

Plaintiff's Motion to Allege Punitive Damages against Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") should be denied because: (1) If a claim for punitive damages is added to the Complaint at this late date, Watchtower will be prejudiced because a continuance of the May 21, 2012, trial date will be required, additional experts will have to be retained, previously served designation of expert witnesses will have to be amended, and expense for trial preparation will be increased; and (2) Plaintiff has failed to demonstrate the existence of sufficient evidence to establish a *prima facie* right to recover punitive damages against Watchtower in accordance with California Code of Civil Procedure ("CCP") section 425.14 and California Civil Code section 3294.

II. STATUS OF THE CASE

The trial in this matter is scheduled for May 21, 2012. The expert witness discovery cutoff date is May 7, 2012. The pretrial conference is scheduled for May 18, 2012. The non-expert discovery cutoff date is April 23, 2012. This motion to allege punitive damages filed on April 9, 2012, is scheduled for hearing on May 3, 2012, two weeks and four days before trial. No notice of motion for bifurcation pursuant to CCP section 598 has been filed. Assuming that such a motion would be heard on the last day permitted under CCP section 598 (30 days before trial—April 20, 2012), the last day such a motion could have been filed was March 28, 2012. If Plaintiff's motion for leave to file an Amended Complaint to plead punitive damages is allowed, a motion for bifurcation would be necessitated.

III. PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT TO PLEAD PUNITIVE DAMAGES SHOULD BE DENIED

A. General Law on Motions to Amend Complaint

"Although courts are bound to apply a policy of great liberality in permitting amendments to the Complaint at any stage of the proceedings, up to and including trial, this policy should be applied only '[w]here no prejudice is shown to the adverse party.'" (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 487 (citations omitted).) "A different result

is indicated '[w]here inexcusable delay and probable prejudice to the opposing party' is shown." (*Id.* (citing *Estate of Murphy* (1978) 82 Cal.App.3d 304, 311).)

Where a party was aware of the facts giving rise to the basis of the claim, a court is justified in denying a motion to amend the Complaint sought after a long, unexcused delay or where there has been a lack of diligence. (*See Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159; *Record v. Reason* (1999) 73 Cal.App.4th 472, 486-487.) And when an amendment would necessitate the continuance of a trial or would require an increased burden on discovery, the amendment is properly denied. (*See Magplai, supra,* 48 Cal.App.4th at pp. 486-488; *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345.) This amendment to add a claim for punitive damages will require a continuance of the trial and unreasonably increase Watchtower's burdens of discovery.

B. Plaintiff Has Unreasonably Delayed Bringing this Motion for Leave to Add a Claim for Punitive Damages

CCP section 425.14 provides that "[n]o claim for punitive or exemplary damages may be pleaded against a religious corporation or religious corporation sole" unless permitted by court order after the plaintiff brings a motion to amend the Complaint. Watchtower indisputably is a religious corporation. Plaintiff's delay in filing its motion to amend the Complaint to allege punitive damages is inexcusable and will unfairly prejudice Watchtower if allowed by the court at this late date.

The Complaint, filed by Plaintiff on January 28, 2011, alleged that the Church Defendants were aware that the alleged perpetrator, Jonathan Kendrick, had been reproved for his conduct of sexually abusing at least one girl but continued to allow Kendrick access to children, including Plaintiff. (*See*, ¶ 7 of Plaintiff's Complaint.) Plaintiff further alleged that despite knowledge of Kendrick's alleged dangerous and exploitative propensities, Watchtower negligently failed to supervise Kendrick or to warn Plaintiff or her family, enabling him to commit acts of alleged molestation against Plaintiff. (*See*, ¶¶ 6-7 of Plaintiff's Complaint.)

Plaintiff attached various responses and documents to her motion as Exhibits 1, 2, 3, 4, 7, 8, 9, and 10-16, in support of her claim to amend her Complaint to seek punitive damages.

The last of those responses and documents was produced to Plaintiff by Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") on January 9, 2012. (Watchtower Ex. B, North Fremont Congregation's Responses to Plaintiff's Special Interrogatories, Set Three.) The documents that form Exhibits 10-16 to Plaintiff's claim for punitive damages, i.e., the articles published by Watchtower concerning child abuse, were produced to Plaintiff by Watchtower in Watchtower's June 13, 2011, Responses to Plaintiff's Request for Production of Documents, Set One. Plaintiff's Exhibit 8, the excerpt from Organized to Accomplish Our Ministry was produced to Plaintiff by Watchtower in Watchtower's June 27, 2011, Amended Responses to Plaintiff's Request for Production of Documents, Set One (Watchtower Ex. C). The July 1, 1989, letter to all bodies of elders (Watchtower Ex. D) was produced to Plaintiff by Watchtower on June 27, 2011, in Watchtower's Amended Responses to Plaintiff's Request for Production of Documents, Set One (Watchtower Ex. C). Plaintiff has also attached portions of depositions taken between August 25, 2011, and February 15, 2012, in support of her motion (Plaintiff's Exhibits 17 through 29) and declarations of three individuals dated March 26, April 4, and April 9, 2012 (Plaintiff's Exhibits 30-32).

In summary, Plaintiff knew most of the facts upon which she bases her motion to amend to add a punitive damages claim well before the time she filed her motion. Documents produced by Watchtower which Plaintiff contends confirm her allegations were provided by the end of June 2011. Depositions concluded in mid-February 2012 (over two months ago) provide some further alleged details in support of Plaintiff's allegations in their Complaint.

The trial in this case was originally scheduled to commence on March 26, 2012. The current trial date of May 21, 2012, was set in the Court's Amended Notice of Hearing dated December 8, 2011.

Plaintiff's delay in pursuing this proposed amendment to allege a claim for punitive damages is inexcusable because such an amendment could have been made at least nine months ago, following Watchtower's June 27, 2011, discovery responses. There is no justification for Plaintiff's delay after the February 15, 2012, depositions, until just 13 days before the discovery

cutoff to have this issue decided by the court. Plaintiff should have filed this motion to amend to allege a claim for punitive damages long ago.

The court should deny Plaintiff's motion against Watchtower on the grounds that Plaintiff has inexcusably delayed in seeking this amendment.

C. Watchtower Will Suffer Severe and Unfair Prejudice if the Amendment to Allege Punitive Damages is Permitted

If this amendment is permitted, Watchtower will suffer severe and unfair prejudice. There will be a need to continue the May 21, 2012, trial to permit Watchtower to evaluate and analyze the claim against it for punitive damages. Plaintiff's initial expert designation was served on March 26, 2012, and Watchtower's initial expert witness designation was served on April 2, 2012. Since there was no claim of punitive damages at that point in time, no experts were designated by Watchtower on the issue of punitive damages. Additional experts may need to be retained to address the punitive damages allegation, including but not limited to experts to value Watchtower's assets. The need to retain additional experts will increase Watchtower's pre-trial and trial expenses.

Watchtower would ordinarily file a motion to strike or a motion for summary adjudication on the punitive damages claim. However, since the law and motion cutoff date is set for May 7, 2012, Watchtower will be precluded from bringing such a motion if this amendment is permitted at this late date.

Therefore, it is respectfully submitted that Plaintiff's motion should be denied for inexcusable delay, as well as the severe and unfair prejudice that will be suffered by Watchtower if the motion is granted.

IV. BACKGROUND FACTS OF CASE

Plaintiff alleges that she was sexually abused by Jonathan Kendrick (hereinafter "Kendrick") on several occasions between the years 1994 and 1997. (Watchtower Ex. A, Deposition of Jane Doe, p. 30:4-20.) She further alleges that Kendrick would "bear hug" Plaintiff and make her sit on his lap at the Kingdom Hall. (Watchtower Ex. A, Deposition of Jane Doe, pp. 25:25-26:24.) She was about nine years old when this allegedly began. (*Ibid.*, p.

27:2-4.) She says she would squirm and try to get away, unsuccessfully. (*Ibid.*, p. 27:12-18.) After meetings at the Kingdom Hall, according to Plaintiff, Kendrick took her to his home where he molested her. (*Ibid.*, 28:6-29:14.)

The bases for Plaintiff's Motion to Allege Punitive Damages is her assertion that Watchtower and the North Fremont Congregation had advance knowledge that Kendrick had committed sexual abuse, and that Watchtower and the North Fremont Congregation failed to notify Plaintiff's parents, parents of other children, the congregation in general, and local authorities. (*See*, Plaintiff's Proposed First Amended Complaint, ¶16.) She claims that the Governing Body of Jehovah's Witnesses authorized a policy of "secrecy" in Watchtower's July 1, 1989, letter to all Bodies of Elders that allowed Kendrick to maintain access to children after his "confirmed" abuse of his step-daughter, Andrea. (*See*, Plaintiff's Motion, pp. 1-2.)

Significantly, Plaintiff's expert, Anna Salter, Ph.D. states that the standard of care in 1993 to 1995 to prevent child molestation in religious institutions where children participate was to educate and train participants in the (church's) activities in recognition, prevention, reporting, and possible signs of abuse, and to address reports of childhood sexual abuse immediately. The "[f]ailure [of a church] to notify those individuals in positions of leadership authority within the local ... congregation ... of a confirmed report violates this standard, and the failure to notify parents and other adults within the group or congregation violates this standard." (Watchtower Ex. E, pp. 2-3 ¶ 8)

The evidence, however, simply does not support Plaintiff's allegations that the report of Kendrick's prior abuse was "confirmed" or was of such a nature to support a claim that Defendants Watchtower or the North Fremont Congregation had notice that Kendrick's nature was such that he posed a danger to youth, or specifically, to Plaintiff. Nor does the evidence support the malevolence Plaintiff paints as to the July 1, 1989, bodies of elders letter. (Watchtower Ex. D) Rather, that letter explained church policies that were intended to maintain the clergy-penitent privilege that is recognized in California as well as and in most states throughout the United States.

A. Relevant Facts about Jehovah's Witnesses

At baptism, every one of Jehovah's Witnesses—men, women, boys, and girls—becomes a congregation member, also known as a "publisher," and is considered an ordained minister of the good news. (Watchtower Ex. F, *The Watchtower*, December 1, 1975, pp. 705, 706, 728-734 "What Does It Mean to Be a 'Minister'?") Thus, within the Jehovah's Witnesses' faith, the term publisher or ordained minister simply refers to a rank and file congregation member.

Appointed elders are the individuals who have the authority and responsibility for the spiritual supervision and care of a congregation, including teaching, confessions, spiritual advice, and discipline involving congregation members. (Watchtower Ex. F, *The Watchtower*, December 1, 1975, p. 705, 706, 728-734 "What Does It Mean to Be a 'Minister'?") A male congregation member who is already a ministerial servant may be appointed to serve as an elder if he meets the Scriptural qualifications outlined at 1 Timothy 3:1-7 and Titus 1:5-9. (Watchtower Ex. G, Deposition of Gary Abrahamson, pp.17-18.) A male congregation member may be appointed to serve as a "ministerial servant" if he meets the Scriptural qualifications as outlined at 1 Timothy 3:8-10, 12, 13. (*Ibid.*, pp. 26-27.)

Jehovah's Witnesses—men, women and children—are known for their public ministry, which they perform on behalf of their God Jehovah, in response to Scriptural admonishment (e.g., Matthew 28:19-20). They are not required by Watchtower, the North Fremont Congregation, or congregation elders to engage in their personal public ministry, or to fill out forms or make reports related to their personal public ministry. Rather, Jehovah's Witnesses are encouraged to make such reports, for use by the religion in providing encouraging annual summaries of the activities of all Jehovah's Witnesses worldwide. (Watchtower Ex. H, Organized to Accomplish Our Ministry, pp. 100-110.)

Congregation members are not approved to represent the congregation, Watchtower, or any other legal church when they engage in their public ministry. (Watchtower Ex. I, Declaration of Allen Shuster ¶¶ 7-16.) As the U.S. Supreme Court recognized in *Murdock v. Pennsylvania* (1943) 319 U.S. 105, 108, Jehovah's Witnesses "claim to follow the example of Paul, teaching 'publickly, and from house to house.' Acts 20:20. They take literally the

mandate of the Scriptures, 'Go ye into all the world, and preach the gospel to every creature.' Mark 16:15. In doing so they believe that they are obeying a commandment of God."

B. Jonathan Kendrick

In 1988, at the age of 34, Defendant and alleged perpetrator Jonathan Kendrick was baptized as one of Jehovah's Witnesses, and became a member of the North Fremont Congregation. (Watchtower Ex. J, publisher record card of Jonathan Kendrick on file with Oakley, California.) Kendrick was a member of that congregation from the time he was baptized until he moved to the English Congregation of Jehovah's Witnesses, Oakley, California (hereinafter "Oakley Congregation") about January 1998. (Watchtower Ex. K, August 31, 1998, letter from the North Fremont Congregation to Watchtower.) Kendrick served as a ministerial servant in the North Fremont Congregation until he was deleted or removed in December 1993, for having touched the breasts of his 15-year-old stepdaughter. (Watchtower Ex. L, November 15, 1993, letter from the North Fremont Congregation to Watchtower; Watchtower Ex. M, December 3, 1993, letter from Watchtower to the North Fremont Congregation.)

Kendrick held no position of authority in any congregation during the time Plaintiff alleges she was abused (1994-1996), or at any time *after* December 1993. In addition, the abuse about which Plaintiff complains, other than the "bear hugs" at the Kingdom Hall, occurred either in Kendrick's home or one time on an Amtrak train in the presence of her father.

C. Watchtower Had No Notice of Child Abuse by Kendrick

In about July 1993 when Kendrick's stepdaughter Andrea was 15 years old, she awoke from sleeping on the couch in their living room when she felt her breasts being touched, and she saw that it was Kendrick who had touched her. (Watchtower Ex. L, November 15, 1993, letter from the North Fremont Congregation to Watchtower.)

Plaintiff now has chosen to rely on a hearsay declaration by Evelyn Kendrick (Plaintiff's Ex. 30), rather than a declaration from Andrea herself as to what allegedly was told to the elders in November 1993 about the 1993 incident. If the objected-to hearsay declaration of Evelyn Kendrick is allowed by the Court for Plaintiff's motion to file an amended complaint, then one

must accept her hearsay statement that Andrea said that Kendrick had touched her bare breasts. If that hearsay is not admitted, we are left with what Kendrick confessed to the two elders about the incident.

Kendrick confessed only to having briefly and inadvertently touched his stepdaughter's breast over her clothing. (Watchtower Ex. N, Deposition of Gary Abrahamson, Volume II, October 25, 2011, pp. 119:15-120:2; Watchtower Ex. O, Declaration of Michael Lee Clarke; Watchtower Ex. P, Declaration of Gary A. Abrahamson.) When Kendrick made that confession, his wife Evelyn and stepdaughter Andrea were present, along with elders Gary Abrahamson and Michael Clarke. (Watchtower Ex. N, deposition of Gary Abrahamson, Volume II, October 24, 2011, pp. 120:25-121:2; Watchtower Ex. O, Declaration of Michael Lee Clarke; Watchtower Ex. P, Declaration of Gary A. Abrahamson.) Thus, when the North Fremont Congregation elders spoke with Kendrick in the presence of Andrea and her mother, he did not admit to anything beyond that described above.

Under these circumstances, no so-called judicial committee of elders was formed. However, Kendrick was deleted or removed from his position as a ministerial servant due to the allegation of inadvertent touching of another person's private bodily part (breast). An announcement was made to the entire congregation that he was no longer serving in that capacity, and he never again held any position of responsibility or authority in any congregation of Jehovah's Witnesses.

Thus, Dr. Salter's statement that there was a "confirmed" allegation of child molestation preceding Kendrick's alleged abuse of Plaintiff is false. As a result, her assertion of the Church Defendants' violations of standards among religious and other institutions where there is a "confirmed report" of child abuse, and where the accused is a "confirmed abuser," do not apply in this case.

Dr. Salter refers to what she calls "standards of care" regarding the prevention of child abuse, but provides no sources of those supposed standards, nor does she show how they apply to the Church Defendants and the facts of this case. In her reference to the necessity for training and education in the prevention of child abuse, she completely ignores all of the literature and

research provided to all Jehovah's Witnesses by Watchtower over the last several decades on those issues. She ignores the absence of any statutory duty of ministers or churches to report suspected child abuse to law enforcement authorities as of the date of occurrence, and the absence of any duty, statutory or otherwise, to report suspected child abuse to church attenders. She also ignores California's statutorily-imposed obligation of a clergyman to preserve the confidentiality of information provided by a penitent. Clearly, Dr. Salter's biased and factually unsupported declaration is no justification for allowing Plaintiff to claim punitive damages in this case.

V. DISCUSSION

A. Punitive Damages Claims Against Watchtower

Plaintiff does not have sufficient evidence to establish a *prima facie* right to recover punitive damages under CCP section 425.14. The basic elements of such claims are set forth in Civil Code section 3294, which provides in pertinent part:

> Section 3294. Exemplary damages; when allowable; definitions
>
> (a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.
>
> (b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.
>
> (c) As used in this section, the following definitions shall apply:
>
> (1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
>
> (2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

> (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

(Emphasis added.)

For Watchtower to be liable for punitive damages, Plaintiff must demonstrate that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights and safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." (Civ. Code section 3294(b).) Even assuming for the moment that the term "employer" applies to Watchtower, Plaintiff has not established sufficient evidence of advance knowledge or any malicious or oppressive conduct by Watchtower, or that Watchtower acted with conscious disregard of the rights or safety of others. Kendrick was removed from his position in December 1993, an announcement to that effect was made to the congregation, and Kendrick never again occupied any appointed position in any congregation. It seems clear that there is no justification for allowing a punitive damages claim in this case.

B. Punitive Damages Can Only be Awarded if the Actions Were Done by an Officer, Director, or Managing Agent of Watchtower

Part of Plaintiff's Proposed First Amended Complaint is that elders Abrahamson and Clarke failed to investigate the second report of child abuse by Kendrick that they received in 1993. (Plaintiff's Proposed First Amended Complaint, ¶14.) This assertion relates to the claim that Toy Register, a friend of Kendrick's stepdaughter Andrea, said that Kendrick had touched her breast on one occasion. (Plaintiff's Ex. 20 and Watchtower Ex. O, Deposition of Michael Clarke, p. 35:1-9.) Plaintiff asserts that Watchtower should be liable for punitive damages, in part for the failure of elders Abrahamson and Clarke to follow up on the reference to Toi Register. (Plaintiff's Proposed First Amended Complaint ¶ 14.) This aspect of Plaintiff's assertion cannot stand. The declaration of Toi Register Harris shows that she has no recollection of this occurrence and *never* had a problem with Kendrick. (Watchtower Ex. P, Declaration of Toi Register Haynes.) Thus, Plaintiff's hearsay offering is not just objectionable due to its

hearsay nature; it is also inconsistent with the facts provided by the person allegedly involved, Toi Register Haynes.

The California Supreme Court stated in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, that "[t]he entire basis of the doctrine of vindictive [punitive] damages is that the *person*, himself, *who is sued* has been guilty of recklessness or wickedness which amounts to a criminality that should be punished for the good of society, and as a warning to the individual; but to award such damages against the master for the criminality of the servant is to punish a man for that of which he is not guilty." (*Id.* at p. 569 (emphasis in original) (citations omitted).) "An award of punitive damages against a corporation therefore must rest on the malice of the corporation's employees." (*Cruz v. Homebase* (2000) 83 Cal.App.4th 160, 167.) A corporation thus avoids punitive damages for the acts of its "low-level employees which does not reflect the corporate 'state of mind' or the intentions of corporate leaders." (*Id.*) Thus, section 3294 requires that the complained of behavior "must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code section 3294(b).)

The employee must be "sufficiently high in the corporation's decision-making hierarchy to be an 'officer, director or managing agent.'" (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 63.) The term "managing agent" includes "only those corporate employees who exercise substantial independent authority and judgment in their corporate decisionmaking so that their decisions ultimately determine corporate policy." (*White*, *supra,* 21 Cal.4th at pp. 566-567.) "'Corporate policy' is the general principles which guide a corporation, or rules intended to be followed consistently over time in corporate operations. A 'managing agent' is one with substantial authority over decisions that set these general principles and rules." (*Cruz, supra*, 83 Cal.App.4th at p. 167-168.) It is not enough that the individual has the ability to hire or fire employees to qualify as a managing agent; rather, he must have "substantial discretionary authority over decisions that ultimately determine corporate policy." (*White*, *supra,* 21 Cal.4th at p. 573.)

Although the determination of whether one is a managing agent is often a question of fact, when there is insufficient evidence in the plaintiff's favor as a matter of law, the punitive damages claim will not be allowed to go to a jury. (*See Gelfo, supra,* 140 Cal.App.4th at p. 63.)

As a matter of law, elders Abrahamson and Clarke do not qualify as managing agents of Watchtower because they did not have "broad discretionary powers and exercise substantial discretionary authority" over Watchtower's corporate activities. (*White, supra,* 21 Cal.4th at p. 577.) Furthermore, a congregation elder's supervisory capacity, which is a limited sphere of authority over congregation members, does not make such an elder Watchtower's managing agent. (*See Cruz, supra,* 83 Cal.App.4th at p. 168.) Nor does the elder's authority as a member of a judicial committee of elders to disfellowship or otherwise discipline congregation members make him Watchtower's managing agent. (*See White, supra,* 21 Cal.4th at pp. 566-567 ("the mere ability to hire and fire employees" is not enough to qualify as managing agent).) In short, Plaintiff cannot prove that the North Fremont Congregation's elders possessed the requisite authority to affect Watchtower's business and corporate policies so as to be considered Watchtower's managing agents.

C. There Was No Conscious Disregard or Malice by Watchtower

"'Malice' is defined as conduct 'intended by the defendant to cause injury to the plaintiff,' or '*despicable* conduct which is carried on by the defendant with a *willful* and conscious disregard of the rights or safety of others.'" (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725 (emphasis in original).). "Oppression means 'despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.'" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.) A plaintiff must, therefore, prove that "the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." (*Mock v. Mich. Millers Mut. Ins. Co.* (1992) 4 Cal.App.4th 306, 329.) Furthermore, "[t]he mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a

level which decent citizens should not have to tolerate." (*George F. Hillenbrand, Inc. v. Ins. Co. of N. America* (2002) 104 Cal.App.4th 784, 815 (citations omitted).)

In this case, the Church Defendants' conduct did not show malice or an indifference to Plaintiff's rights. Plaintiff seeks to make out a case of malice by saying that Watchtower's policy regarding child abuse allegations as expressed in its July 1, 1989, letter to all bodies of elders was promulgated and adhered to despite knowledge that some children would be abused as a result. As is discussed in detail in the next section, the July 1, 1989, letter is in harmony with California law and thus cannot be the basis of finding malice on Watchtower's part.

D. The July 1, 1989, Letter to All Bodies of Elders is Consistent with the Law

The July 1, 1989, letter to all bodies of elders in the United States (Watchtower Ex. D) concerns the need to keep confidential matters confidential. The policy is in keeping with California Evidence Code section 1034 which provides: "Subject to Section 912 [waivers], a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege."

That statutory provision, often referred to as the "Clergy-Penitent Privilege," creates an obligation on the part of clergymen to keep penitential communications confidential. While there are obvious exceptions to the Clergy-Penitent Privilege, it is the clergyman's duty to maintain the privilege of the penitent, unless and until the privilege is waived by the penitent.

Doe v. Superior Court of Los Angeles County (2005) 132 Cal.App.4th 1504, involved application of the Clergy-Penitent Privilege in the context of a childhood abuse allegation. The term "penitential communication" was key to the decision, and the Court held that in order to be privileged, a statement must meet three elements: "1) it must be intended to be in confidence; 2) it must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed to hear such communications; and 3) such member of the clergy has a duty under the discipline or tenets of the church, religious denomination or organization to keep such communications secret." (*Doe*, supra, at 1516 (quoting *People v. Edwards* (1988) 203 Cal.App.3d 1358, 1362–1363).)

The 1989 letter, which is Plaintiff's Ex. 1 in Plaintiff's motion, honors and recognizes that privilege, and seeks to enforce the privilege as it is recognized throughout the United States.

Plaintiff criticizes Watchtower's letter for instructing elders to call Watchtower's Legal Department immediately upon learning of the abuse of a child. Plaintiff is apparently unaware that the Clergy-Penitent Privilege differs widely across the nation, making a standard that can be articulated to all elders across the nation impossible. For example, in Texas, the Texas Family Code section 261.101, mandates that clergy report all suspected child abuse regardless of the existence of a claim of clergy-penitent communication. Thus, Texas elders would be instructed by Watchtower's Legal Department to report all suspected abuse of children to the police no matter how they gained their information. In California, the duty of elders to report to the police depends upon the source of the information and the applicability of the Clergy-Penitent Privilege. Thus, the law of California recognizes and respects the clergy-penitent privilege. Plaintiff's criticism of the letter attached as Plaintiff's Ex. 1 ignores this law as she seeks to paint Plaintiff's Ex. 1 as a mere attempt to avoid civil liability. Plaintiff's critique is both contrary to law and out of sync with the true intent of the letter, which intent is obvious from its content.

E. The Problems with Dr. Salter

Dr. Salter's opinion invades the province of the Court. Without citing to a single statute, court decision, promulgated rule, or other source of standards, she opines that a duty existed in 1993-1995 to notify various persons and entities about a confirmed abuser in a congregation's midst. (Watchtower Ex. E, ¶ 8.) However, it remains the province of the legislature and the courts, not psychologists, to determine whether a duty arises. (*See, e.g., Paz v. State of California* (2000) 22 Cal.4th 550, 557; *Restatement (Third) of Torts: General Principles* (Tentative Draft No. 1, 2001) section 7 cmt. f, section 8 cmt. b; Dobbs, The Law of Torts (2000) 269 note 1, at 270 ("Judges, not juries, ordinarily determine whether a duty exists and the standard it imposes.").)

The cases offered by Plaintiff to support her claim that Defendants are liable to Plaintiff because they failed to warn or report their "knowledge of the employee or volunteer's history of

sexual abuse and failed to warn or protect children exposed to the abuser" (Plaintiff's Memorandum of Law, p. 6, part II A) are inapplicable to the facts of this case. They impose liability on a principal whose *employee* (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828), *spouse* (*Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206), or appointed *volunteer agent—Boy Scout leader* (*Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377) were known to the defendants in those cases to have abused children in the past. None involved a mere congregation member. None involved a person about whom an allegation was unconfirmed or involved a confession by the perpetrator, given in the presence of the accuser and the accuser's mother, that he had "briefly and inadvertently" touched her breast over her clothing. (Watchtower Ex. N., Deposition of Gary Abrahamson, Volume II, October 25, 2011, p. 120.) None involved a situation in which the perpetrator was accused of having touched the breast of a 15-year-old girl and was now in the presence of children much younger—under age 10. None involved an unconfirmed past allegation against a person now in the presence of children.

For Plaintiff's expert to be allowed to provide her opinion that churches must report "confirmed" child abuse to parents, other adults, and public officials, the Court must rule that her opinion is now the law in California, and the California Clergy-Penitent Privilege is no longer good law.

The opinion of Plaintiff's is invalid for another reason. Her opinion fails to meet the California standards for acceptance of expert opinions. Cal. Evid. Code section 801. The foundation of her opinion is inadequate as a matter of law. (*See, e.g., People v. Bassett* (1968) 69 Cal.2d 122; *People v. Sundlee* (1977) 70 Cal.App.3d 477 (expert may not base opinion on conjecture).) Plaintiff's expert assumes incorrectly that the allegation about Andrea being abused by her stepfather was "confirmed."

If Plaintiff's Ex. 30 is accepted over Defendant's objection as to hearsay, then we must assume that the elders had before them an allegation by Andrea's mother about what Andrea had apparently told them. (Plaintiff Ex. 30, p. 1 ¶ 3.) In the face of that allegation, they received the alleged perpetrator's own statement about what happened, given in the presence of

Andrea and her mother. Even if that objected-to declaration is accepted by this Court, the allegation of the abuse remains unconfirmed in light of the alleged perpetrator's own rendition of the facts.

Dr. Salter's opinion is further objectionable since she failed to qualify to provide an expert opinion about the status of the law concerning reporting alleged child abuse to authorities or to others in 1993. Further, she did not provide an expert opinion on the propriety of clergy violating the clergy-penitent privilege in order to disseminate information about what the penitent confessed to the elders.

F. Plaintiff Cannot Meet her Burden under CCP Section 425.14

Plaintiff's burden is to convince this Court that "plaintiff will meet the clear and convincing standard of proof under Section 3294 of the Civil Code." (CCP section 425.14.)

In *Rowe v. Superior Court* (1993) 15 Cal.App.4th 1711, a case cited by Plaintiff, the court interpreted the plaintiff's burden and the Court's function under CCP section 425.14 thus:

> We therefore must read the statute to require only that a plaintiff demonstrate the existence of sufficient evidence to establish a prima facie case for punitive damages, having in mind the higher clear and convincing standard of proof. In the words of the *Hung* court, it is only necessary that plaintiff provide "a sufficient prima facie showing of facts to sustain a favorable decision if the evidence submitted is credited." The trial court is not required to make any factual determination or to become involved in any weighing process beyond that necessarily involved in deciding whether a prima facie case for punitive damages exists. Once the court concludes that such a case can be presented at trial it must permit the proposed amended pleading to be filed. If it concludes that no such case exists, then it properly rejects the proposed pleading amendment. In making this judgment, the trial court's consideration of the defendant's opposing affidavits does not permit a weighing of them against the plaintiff's supporting evidence, but only a determination that they do not, *as a matter of law*, defeat that evidence.

(*Rowe*, *supra*, 15 Cal.App.4th at p. 1723 (citations omitted) (emphasis in original.)

Because Plaintiff relies on inadmissible hearsay evidence (Plaintiff Ex. 30, Declaration of Evelyn Kendrick) and ill-founded and inadmissible opinions of her expert Dr. Salter (Watchtower Ex. E, Declaration of Anna Salter, Ph.D.), she cannot sustain her burden of proof.

Plaintiff must also demonstrate that Defendant acted with "malice." The law does not favor punitive damages, and they should be granted with the greatest of caution. (*Dyna-Med,*

Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379.) An award of punitive damages may not be based on mere speculation, but depends on a definite showing of a willingness to vex, harass, annoy, or injure consistent with a wrongful personal intention to injure. (*Wolfsen v. Hathaway* (1948) 32 Cal.2d 632, 647, overruled by *Flores v. Arroyo* (1961) 56 Cal.2d 492; *Roth v. Shell Oil Co.* (1960) 185 Cal.App.2d 676, 682; *McAfee v. Ricker* (1961) 195 Cal.App.2d 630, 633.)

The only malice contemplated by Civil Code section 3294 is malice in fact. The phrase "express or implied" refers only to the evidence by which such malice is established; express malice means that the malice is established by express or direct evidence that proves the existence of hatred and ill will; implied malice refers to indirect evidence from which a jury may infer the existence of malice in fact. (*Davis v. Hearst* (1911) 160 Cal. 143; *Wolfsen, supra*, 32 Cal.2d 632; *Shumate v. Johnson Publishing Co.* (1956) 139 Cal.App.2d 121; *Sturges v. Charles L. Harney, Inc.* (1958) 165 Cal.App.2d 306.)

In order to warrant the allowance of punitive damages, not only must the act complained of be willful in the sense of being intentional, but it must also be accompanied by some aggravating circumstance amounting to malice in fact, which implies an act that was conceived in the spirit of mischief or with criminal indifference toward the defendant's obligations owed to others. (*Gombos v. Ashe* (1958) 158 Cal.App.2d 517, 527, disapproved of by *Taylor v. Superior Court of Los Angeles County* (1979) 24 Cal.3d 890.)

Plaintiff's case for punitive damages is that Watchtower in its letter of July 1, 1989, instructed its elders to beware of disseminating confidential communications, and had elders call Watchtower's Legal Department for legal direction. Plaintiff claims that the 1989 letter evidences Watchtower's reckless disregard for the obligations that it owed to children. Despite Plaintiff's mischaracterization of Watchtower's 1989 policy letter, Plaintiff cannot make out a case of malice. Watchtower's letter constitutes proper and appropriate guidance to elders to obtain legal advice before determining whether they have a legal obligation to divulge confidential communications to others, in particular, to the police or other local authorities. Despite Plaintiff's "expert" declaration to the contrary, which would create new duties to

disseminate confidential information to many persons within in a congregation, the 1989 letter shows Watchtower's careful consideration of its duty to follow all laws.

Plaintiff also mischaracterizes Watchtower's knowledge about Kendrick's past in order to support her quest for punitive damages. As shown above, that knowledge was sufficient to constitute an allegation of misconduct, not a proven or substantiated case of child abuse.

In sum, the facts in this case simply do not support a finding of malice or disregard for Plaintiff so as to support Plaintiff's motion to add a punitive damages claim against Watchtower.

VI. CONCLUSION

Watchtower respectfully requests that this court deny Plaintiff's request to amend her Complaint to plead a claim for punitive damages against it, on two valid grounds: First, Plaintiff's inexcusable delay in seeking to amend the Complaint to add this claim will cause Watchtower to suffer severe and unfair prejudice as a result of an amendment at this late date. Second, Plaintiff's motion does not meet the requirements of CCP section 425.14 and Civil Code section 3294 to state and demonstrate a triable punitive damages claim against Watchtower because: (1) the conduct alleged by Plaintiff was not performed by "an officer, director, or managing agent" of Watchtower, and (2) Plaintiff has not established that Watchtower's conduct was malicious or oppressive or that they acted with conscious disregard of the rights or safety of others.

DATED: April 27, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On April 27, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to NORCO Overnight Delivery Services for delivery to the address(es) listed on the Service List.

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 27, 2012, at Sacramento, California

Lori Gilmette

Lori Gilmette

SERVICE LIST
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

Counsel for Defendant
North Congregation of Jehovah's Witnesses, Fremont, California

THE McCABE LAW FIRM, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Defendant In Pro Per

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
Telephone: (925) 484-1008

10238278

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant
WATCHTOWER BIBLE AND
TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY

APR 27 2012

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG115558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S LODGMENT OF FOREIGN CASES IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

DATE May 3, 2012
TIME 3:00 p.m.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

FOREIGN CASE	**TAB**
Murdock v. Pennsylvania (1943) 319 U.S. 105	A

BY FAX

DATED: April 27, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

TAB A

63 S.Ct. 870
Supreme Court of the United States.

MURDOCK
v.
COMMONWEALTH OF PENNSYLVANIA
and seven other cases.
Nos. 480-487. | Argued March 10, 11, 1943. |
Decided May 3, 1943.

On Writs of Certiorari to the Superior Court of the Commonwealth of Pennsylvania.

Robert Murdock, Jr., Anna Perisich, Willard L. Mowder, Charles Seders, Robert Lamborn, Anthony Maltezos, Anastasia Tzanes and Ellaine Tzanes were convicted of violating an ordinance of the City of Jeannette, Commonwealth of Pennsylvania prohibiting the sale of goods, wares and merchandise of any kind within the city by canvassing for, or soliciting without a license. The convictions were affirmed by the Superior Court of Pennsylvania, 149 Pa.Super. 175, 27 A.2d 666, and they bring certiorari.

Reversed and remanded with directions.

See, also, Jones v. City of Opelika, 319 U.S. 105, 63 S.Ct. 891, 87 L.Ed. 1292; Douglas v. City of Jeannette, 319 U.S. 157, 63 S.Ct. 882, 87 L.Ed. 1324.

Mr. Justice REED, Mr. Justice FRANKFURTER, Mr. Justice JACKSON, and Mr. Justice ROBERTS, dissenting.

West Headnotes (10)

[1] **Constitutional Law**
⇐First Amendment

The Fourteenth Amendment of the Federal Constitution makes the First Amendment applicable to the states. U.S.C.A.Const. Amends. 1, 14.
66 Cases that cite this headnote

[2] **Constitutional Law**
⇐Solicitation; Distribution of Literature
Constitutional Law
⇐Charities or Religious Organizations

Spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism which is entitled to protection under Constitution guaranteeing "freedom of speech", "freedom of press" and "freedom of religion". U.S.C.A.Const.Amends. 1, 14.
62 Cases that cite this headnote

[3] **Constitutional Law**
⇐Non-Transportation Use; Parades and Demonstrations

A state can prohibit the use of a street for distribution of purely commercial leaflets even though such leaflets may have a civic appeal or a moral platitude appended to them. U.S.C.A.Const. Amends. 1, 14.
3 Cases that cite this headnote

[4] **Constitutional Law**
⇐Solicitation; Distribution of Literature

The state may not prohibit distribution of handbills on the streets in pursuit of a clearly religious activity merely because the handbills invite the purchase of books for improved understanding of religion, or because handbills seek in a lawful fashion to promote the raising of funds for religious purposes. U.S.C.A.Const. Amends. 1, 14.
30 Cases that cite this headnote

[5] **Constitutional Law**
⇐Particular Issues and Applications

The mere fact that religious literature is sold by itinerant preachers rather than donated does not transform evangelism into a "commercial enterprise", and the constitutional rights of those spreading their religious beliefs through the printed and spoken word are not to be gauged by standards governing retailers or wholesalers of books. U.S.C.A.Const.Amends. 1, 14.
127 Cases that cite this headnote

[6] **Constitutional Law**
⇐Solicitation; Distribution of Literature

Constitutional Law
⇐Charities or Religious Organizations
Licenses
⇐Uniformity as to Occupations or Privileges of Same Class

Where defendants went about from door to door in city distributing literature and soliciting people to purchase religious books and pamphlets, and in connection with such activities defendants used a phonograph on which they played a record expounding certain of their views on religion, defendants were engaged in a "religious venture" rather than in a "commercial venture", for purpose of determining validity of licensing ordinance. U.S.C.A.Const. Amends. 1, 14.
125 Cases that cite this headnote

|7| **Constitutional Law**
⇐Taxation

The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. U.S.C.A.Const. Amends. 1, 14.
16 Cases that cite this headnote

|8| **Constitutional Law**
⇐Taxation

A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution. U.S.C.A.Const. Amends. 1, 14.
12 Cases that cite this headnote

|9| **Constitutional Law**
⇐Licenses
Constitutional Law
⇐Charities or Religious Organizations
Constitutional Law
⇐Distribution of Materials in Public Places
Licenses
⇐Constitutionality and Validity of Acts and Ordinances

The fact that city ordinance requiring religious colporteurs to pay a license tax as a condition to the pursuit of their activities was nondiscriminatory did not render it constitutional, since the protection afforded by the Constitution is not so restricted and freedom of press, freedom of speech and freedom of religion are in a preferred position. U.S.C.A.Const. Amends. 1, 14.
102 Cases that cite this headnote

|10| **Constitutional Law**
⇐Licenses
Constitutional Law
⇐Charities or Religious Organizations
Constitutional Law
⇐Distribution of Materials in Public Places

City ordinance requiring colporteurs to pay a license tax as a condition to the pursuit of their activities violates Constitution guaranteeing "freedom of press", "freedom of speech" and "freedom of religion" where the fee is not a nominal one imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuse of solicitors. U.S.C.A.Const. Amends. 1, 14.
124 Cases that cite this headnote

Attorneys and Law Firms
****871 *106** Mr. Hayden C. Covington, of Brooklyn, N.Y., for petitioners.

Mr. Fred B. Trescher, of Greensburg, Pa., for respondent.

Opinion

Mr. Justice DOUGLAS delivered the opinion of the Court.

The City of Jeannette, Pennsylvania, has an ordinance, some forty years old, which provides in part:

'That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business ****872** and shall pay to the Treasurer of said Borough therefore the following sums according to the time for which said license shall be granted.

'For one day $1.50, for one week seven dollars ($7.00), for two weeks twelve dollars ($12.00), for three weeks twenty dollars ($20.00), provided that the provisions of this ordinance shall not apply to

persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.'

Petitioners are 'Jehovah's Witnesses'. They went about from door to door in the City of Jeannette distributing literature and soliciting people to 'purchase' certain religious books and pamphlets, all published by the *107 Watch Tower Bible & Tract Society.1 The 'price' of the books was twenty-five cents each, the 'price' of the pamphlets five cents each.2 In connection with these activities petitioners used a phonograph3 on which they played a record expounding certain of their views on religion. None of them obtained a license under the ordinance. Before they were arrested each had made 'sales' of books. There was evidence that it was their practice in making these solicitations to request a 'contribution' of twenty-five cents each for the books and five cents each for the pamphlets but to accept lesser sums or even to donate the volumes in case an interested person was without funds. In the present case some donations of pamphlets were made when books were purchased. Petitioners were convicted and fined for violation of the ordinance. Their judgments of conviction were sustained by the Superior Court of Pennsylvania, 149 Pa.Super. 175, 27 A.2d 666, against their contention that the ordinance deprived them of the freedom of speech, press, and religion guaranteed by the First Amendment. Petitions for leave to appeal to the Supreme Court of Pennsylvania were denied. The cases are here on petitions for writs of certiorari which we granted along with the petitions for rehearing of Jones v. Opelika, 316 U.S. 584, 62 S.Ct. 1231, 86 L.Ed. 1691, 141 A.L.R. 514, and its companion cases.

*108 [1] The First Amendment, which the Fourteenth makes applicable to the states, declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press * * *.' It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional. Yet the license tax imposed by this ordinance is in substance just that.

Petitioners spread their interpretations of the Bible and their religious beliefs largely through the hand distribution of literature by full or part time workers.4 They claim to follow the example of Paul, teaching 'publickly, and from house to house.' Acts 20:20. They take literally the mandate of the Scriptures, 'Go ye into all the world, and preach the gospel to every creature.' Mark 16:15. In doing so they believe that they are obeying a commandment of God.

The hand distribution of religious tracts is an age-old form of missionary evangelism-as old as the history of printing presses.5 It has been a potent force in various religious movements down through the years.6 This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the **873 Gospel to thousands *109 upon thousands of homes and seek through personal visitations to win adherents to their faith.7 It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

[2] The integrity of this conduct or behavior as a religious practice has not been challenged. Nor do we have presented any question as to the sincerity of petitioners in their religious beliefs and practices, however misguided they may be thought to be Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. *110 Reynolds v. United States, 98 U.S. 145, 161, 167, 25 L.Ed. 244, and Davis v. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types. The manner in which it is practiced at times gives rise to special problems with which the police power of the states is competent to deal. See for example Cox v. New Hampshire 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049, 133 A.L.R. 1396, and Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031. But that merely illustrates that the rights with which we are dealing are not absolutes. Schneider v. State, 308 U.S. 147, 160, 161, 60 S.Ct. 146, 150, 84 L.Ed. 155. We are concerned, however, in these cases merely with one narrow issue. There is presented for decision no question whatsoever concerning punishment for any alleged unlawful acts during the solicitation. Nor is there involved here any question as to the validity of a registration system for colporteurs and other solicitors. The cases present a single issue-the constitutionality of an ordinance which as construed and applied requires religious colporteurs to pay a license tax as a condition to the

pursuit of their activities.

[3] [4] [5] [6] The alleged justification for the exaction of this license tax is the fact that the religious literature is distributed with a solicitation of funds. Thus it was stated **874 in Jones v. Opelika, supra, 316 U.S. at page 597, 62 S.Ct. at page 1239, 86 L.Ed. 1691, 141 A.L.R. 514, that when a religious sect uses 'ordinary commercial methods of sales of articles to raise propaganda funds', it is proper for the state to charge 'reasonable fees for the privilege of canvassing'. Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital. As we stated only the other day in Jamison v. Texas, 318 U.S. 413, 63 S.Ct. 669, 672, 87 L.Ed. 869, 'The state can prohibit the use of the street for *111 the distribution of purely commercial leaflets, even though such leaflets may have 'a civil appeal, or a moral platitude' appended. Valentine v. Chrestensen, 316 U.S. 52, 55, 62 S.Ct. 920, 922, 86 L.Ed. 1262. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes.' But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. As we have said, the problem of drawing the line between a purely commercial activity and a religious one will at times be difficult. On this record it plainly cannot be said that petitioners were engaged in a commercial rather than a religious venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets. And the Pennsylvania court did not rest the judgments of conviction on that basis, though it did find *112 that petitioners 'sold' the literature. The Supreme Court of Iowa in State v. Mead, 230 Iowa 1217, 300 N.W. 523, 524, described the selling activities of members of this same sect as 'merely incidental and collateral' to their 'main object which was to preach and publicize the doctrines of their order.' And see State v. Meredith, 197 S.C. 351, 15 S.E.2d 678; People v. Barber, 289 N.Y. 378, 385-386, 46 N.E.2d 329. That accurately summarizes the present record.

[7] We do not mean to say that religious groups and the press are free from all financial burdens of government. See Grosjean v. American Press Co., 297 U.S. 233, 250, 56 S.Ct. 444, 449, 80 L.Ed. 660. We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. Magnano Co. v. Hamilton, 292 U.S. 40, 44, 45, 54 S.Ct. 599, 601, 78 L.Ed. 1109, and cases cited. Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.

**875 [8] It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant *113 if it does not do so. But that is to disregard the nature of this tax. It is a license tax-a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Co., 309 U.S. 33, 56-58, 60 S.Ct. 388, 397, 398, 84 L.Ed. 565, 128 A.L.R. 876), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. Id., 309 U.S. at page 47, 60 S.Ct. at page 392, 84 L.Ed. 565, 128 A.L.R. 876 and cases cited. A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that

the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; Schneider v. State, supra; Cantwell v. Connecticut, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213, 128 A.L.R. 1352; Largent v. Texas, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. 873; Jamison v. Texas, supra. It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax. 316 U.S. at pages 607-609, 620, 623, 62 S.Ct. at pages 1243, 1244, 1250, 1251, 86 L.Ed. 1691, 141 A.L.R. 514. In that case, as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee ***114** imposed as a regulatory measure to defray the expenses of policing the activities in question.8 It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled 'to purchase, through a license fee or a license tax, the privilege freely granted by the constitution.'9 Blue Island v. Kozul, 379 Ill. 511, 519, 41 N.E.2d 515, 519. So it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment.

****876** The taxes imposed by this ordinance can hardly help but be as severe and telling in their impact on the freedom ***115** of the press and religion as the 'taxes on knowledge' at which the First Amendment was partly aimed. Grosjean v. American Press Co., supra, 297 U.S. at pages 244-249, 56 S.Ct. at pages 446-449, 80 L.Ed. 660. They may indeed operate even more subtly. Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped.

[9] The fact that the ordinance is 'nondiscriminatory' is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

It is claimed, however, that the ultimate question in determining the constitutionality of this license tax is whether the state has given something for which it can ask a return. That principle has wide applicability. State Tax Commission v. Aldrich, 316 U.S. 174, 62 S.Ct. 1008, 86 L.Ed. 1358, 139 A.L.R. 1436, and cases cited. But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. The privilege in question exists apart from state authority. It is guaranteed the people by the federal constitution.

[10] Considerable emphasis is placed on the kind of literature which petitioners were distributing-its provocative, ***116** abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. See Douglas v. City of Jeannette, 319 U.S. 157, 63 S.Ct. 877, 87 L.Ed. 1324, concurring opinion, decided this day. But those considerations are no justification for the license tax which the ordinance imposes. Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.

Jehovah's Witnesses are not 'above the law'. But the present ordinance is not directed to the problems with which the police power of the state is free to deal. It does not cover, and petitioners are not charged with, breaches of the peace. They are pursuing their solicitations peacefully and quietly. Petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation. Cf. Chaplinsky v. New Hampshire, supra. Nor do we have here, as we did in Cox v. New Hampshire, supra, and Chaplinsky v. New Hampshire, supra, state regulation of the streets to protect and insure the safety, comfort, or convenience of the public. Furthermore, the present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations. See Cantwell v. Connecticut, supra, 310 U.S. at 306, 60 S.Ct. at page 904, 84 L.Ed. 1213, 128 A.L.R. 1352. As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors. See ***117** Cox v. New Hampshire, supra, 312 U.S. at pages 576, 577, 61 S.Ct. at pages 765, 766, 85 L.Ed. 1049, 133 A.L.R. 1396. Nor can the present ordinance strued to apply only to solicitation from survive if we assume that it has been con- ****877** house to house.10 The ordinance is not narrowly drawn to prevent or control abuses or evils arising from that activity. Rather, it sets aside the residential areas as a prohibited zone, entry of which is denied petitioners unless the tax is paid. That restraint and one which is city wide in scope (Jones v. Opelika) are different only in degree. Each is an abridgment of freedom of press and a restraint on the free exercise of religion. They stand or fall together.

The judgment in Jones v. Opelika has this day been vacated. Freed from that controlling precedent, we can restore to their high, constitutional position the liberties of itinerant evangelists who disseminate their religious beliefs and the tenets of their faith through distribution of literature. The judgments are reversed and the causes are remanded to the Pennsylvania Superior Court for proceedings not inconsistent with this opinion.

Reversed.

The dissenting opinions of Mr. Justice REED and Mr. Justice FRANKFURTER in Jones v. City of Opelika, 63 S.Ct. at page 891 cover these cases also.

For dissenting opinion of Mr. Justice JACKSON, see 63 S.Ct. 882.

Parallel Citations
63 S.Ct. 870, 146 A.L.R. 81, 87 L.Ed. 1292

Footnotes

1 Two religious books-Salvation and Creation-were sold. Others were offered in addition to the Bible. The Watch Tower Bible & Tract Society is alleged to be a non-profit charitable corporation.

2 Petitioners paid three cents each for the pamphlets and, if they devoted only their spare time to the work, twenty cents each for the books. Those devoting full time to the work acquired the books for five cents each. There was evidence that some of the petitioners paid the difference between the sales price and the cost of the books to their local congregations which distributed the literature.

3 Purchased along with the record from the Watch Tower Bible & Tract Society.

4 The nature and extent of their activities throughout the world during the years 1939 and 1940 are to be found in the 1941 Yearbook of Jehovah's Witnesses, pp. 62-243.

5 Palmer, The Printing Press and the Gospel (1912).

6 White, The Colporteur Evangelist (1930); Home Evangelization (1850); Edwards, The Romance of the Book (1932) c. V; 12 Biblical Repository (1944) Art. VIII; 16 The Sunday Magazine (1887) pp. 43-47; 3 Meliora (1861) pp. 311-319; Felice, Protestants of France (1853) pp. 53, 513; 3 D'Aubigne, History of The Reformation (1849) pp. 103, 152, 436-437; Report of Colportage in Virginia, North Carolina & South Carolina, American Tract Society (1855). An early type of colporteur was depicted by John Greenleaf Whittier in his legendary poem, The Vaudois Teacher. And see, Wylie, History of the Waldenses.

7 The General Conference of Seventh-Day Adventists who filed a brief amicus curiae on the reargument of Jones v. Opelika has given us the following data concerning their literature ministry: This denomination has 83 publishing houses throughout the world issuing publications in over 200 languages. Some 9,256 separate publications were issued in 1941. By printed and spoken word the Gospel is carried into 412 countries in 824 languages. 1942 Year Book, p. 287. During December 1941 a total of 1018 colporteurs operated in North America. They delivered during that month $97,997.19 worth of gospel literature and for the whole year of 1941 a total of $790,610.36-an average per person of about $65 per month. Some of these were students and temporary workers. Colporteurs of this denomination receive half of their collections from which they must pay their traveling and living expenses. Colporteurs are specially trained and their qualifications equal those of preachers. In the field each worker is under the supervision of a field missionary secretary to whom a weekly report is made. After fifteen years of continuous service each colporteur is entitled to the same pension as retired ministers. And see Howell, The Great Advent Movement (1935), pp. 72-75.

8 The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized. While a state may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Co., supra, 309 U.S. at pages 56-58, 60 S.Ct. at pages 397, 398, 84 L.Ed. 565, 128 A.L.R. 876) it may, for example, exact a fee to defray the cost of purely local regulations in spite of the fact that those regulations incidentally affect commerce. 'So long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress, they are not forbidden.' Clyde-Mallory Lines v. Alabama, 296 U.S. 261, 267, 56 S.Ct. 194, 196, 80 L.Ed. 215, and cases cited. And see Sough Carolina v. Barnwell Bros., Inc., 303 U.S. 177, 185-188, 625, 58 S.Ct. 510, 513-515, 82 L.Ed. 734.

9 That is the view of most state courts which have passed on the question. McConkey v. Fredericksburg, 179 Va. 556, 19 S.E.2d 682; State v. Greaves, 112 Vt. 222, 22 A.2d 497; People v. Banks, 168 Misc. 515, 6 N.Y.S.2d 41. Contra: Cook v. Harrison, 180 Ark. 546, 21 S.W.2d 966.

10 The Pennsylvania Superior Court stated that the ordinance has been 'enforced' only to prevent petitioners from canvassing 'from door to door and house to house' without a license and not to prevent them from distributing their literature on the streets. 149 Pa.Super. at page 184, 27 A.2d at page 670.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On April 27, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S LODGMENT OF FOREIGN CASES IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to NORCO Overnight Delivery Services for delivery to the address(es) listed on the Service List.

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 27, 2012, at Sacramento, California

Lori Gilmette

SERVICE LIST
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

Counsel for Defendant
North Congregation of Jehovah's Witnesses, Fremont, California

THE McCABE LAW FIRM, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Defendant In Pro Per

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
Telephone: (925) 484-1008

10238282

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant
WATCHTOWER BIBLE AND
TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
APR 27 2012
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S OBJECTIONS TO EVIDENCE CITED BY PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

DATE May 3, 2012
TIME 3:00 P.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") hereby submits the following objections to evidence cited by Plaintiff in her Notice of Motion of

BY FAX

Plaintiff Jane Doe to Amend Complaint and for Order Permitting Financial Discovery and its supporting memorandum of law and lodgment of exhibits.

OBJECTION NO. 1

Material objected to: Plaintiff's Exhibit 27, Excerpt of deposition of Sergeant Jeffrey John Baldwin, page 33 (attached hereto as Exhibit A), wherein the officer testifies that he tried to call Manuel Iglesias and Jim Dominguez, and left messages for them – but did not verify the numbers he had called.

Ground(s) for Objection: Lack of relevance (Evid. Code §210 and §350), and lack of foundation (Evid. Code §403).

Court's ruling on Objection No. 1: **Sustained:** _____

Overruled: _____

OBJECTION NO. 2

Material objected to: Plaintiff's Exhibit 26, Excerpts of Deposition of Claudia Nancy Francis, page 34, lines 15 to 22 (attached hereto as Exhibit B), concerning Kendrick's alleged purchase of a black bra for a 10-year old girl.

Ground(s) for Objection: Hearsay (Evid. Code §1200, *et seq.*).

Court's ruling on Objection No. 2: **Sustained:** _____

Overruled: _____

OBJECTION NO. 3

Material objected to: Plaintiff's Exhibit 30, Declaration of Evelyn Kendrick (Attached hereto as Exhibit C), page 1, line 23 to line 26 concerning what Andrea told elders.

Ground(s) for Objection: Hearsay (Evid. Code §1200, *et seq.*).

Court's ruling on Objection No. 3: **Sustained:** _____

Overruled: _____

OBJECTION NO. 4

Material objected to: Plaintiff's Exhibit 31, Declaration of William Bowen (Attached hereto as Exhibit D), in its entirety, concerning Bowen's opinion about the "true purpose" of Watchtower's policies and procedures.

Ground(s) for Objection: Lack of relevance (Evid. Code §210 and §350), and lack of foundation (Evid. Code §403; also, the First Amendment to the U.S. Constitution proscribes the Court's examination of any such alleged "true purpose" of church policies). Bowen's opinions add nothing beyond what the evidence about which he comments states on its face.

Court's ruling on Objection No. 4: **Sustained:** _____

Overruled: _____

OBJECTION NO. 5

Material objected to: Plaintiff's Exhibit 32, Declaration of Anna Salter (Attached hereto as Exhibit E), in its entirety, concerning Salter's opinions about the "standard of care before and during 1993 to 1995 for the prevention of child molestation and sexual abuse in religious institutions where children are allowed to participate" and criticizing Watchtower's policies and procedures.

Ground(s) for Objection: Lack of foundation (Evid. Code §403). Lack of adequate qualifications to state such standard of care (Evid Code §720). Improper opinion. (Evid. Code §§801, 803). Salter's opinions seek to usurp the duties of the Court in determining what constitutes legal duty.

Court's ruling on Objection No. 5: **Sustained:** _____

Overruled: _____

DATED: April 27, 2012

JACKSON LEWIS LLP

By _____

Robert J. Schnack
Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

PROOF OF SERVICE
Hood v. WATCHTOWER, et al.
CASE NO. RG12619034

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On April 27, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S OBJECTIONS TO EVIDENCE CITED BY PLAINTIFF'S MOTION TO AMEND THE COMPLAINT** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to NORCO Overnight Delivery Services for delivery to the address(es) listed on the Service List.

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 27, 2012, at Sacramento, California.

Lori Gilmette

SERVICE LIST
Hood v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. RG12619034

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

Counsel for Defendants
Jehovah's Witnesses in Freemont and Jehovah's Witnesses in Brentwood

THE McCABE LAW FIRM, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Defendant In Pro Per

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
Telephone: (925) 484-1008

10238266

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
APR 2 7 2012
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG115558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

DATE May 3, 2012
TIME 3:00 p.m.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege

BY FAX

Punitive Damages; and

2. Attached as Defendant's Exhibit A to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages are true and correct copies of pages 1, 2, and 25-30 of the deposition of Plaintiff Jane Doe.

3. Attached as Defendant's Exhibit B to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is the North Congregation of Jehovah's Witnesses, Fremont, California's (hereinafter "North Fremont Congregation") Responses to Plaintiff's Special Interrogatories, Set Three.

4. Attached as Defendant's Exhibit C to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is Watchtower's Amended Responses to Plaintiff's Request for Production, Set One (exhibits excluded).

5. Attached as Defendant's Exhibit D to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is a true and correct copy of the July 1, 1989, letter from Watchtower to all bodies of elders in the United States.

6. Attached as Defendant's Exhibit E to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is the Declaration of Dr. Anna Salter, Ph.D. dated April 4, 2012.

7. Attached as Defendant's Exhibit F to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is the December 1, 1975, issue of *The Watchtower* pp. 705, 706, 728-34.

8. Attached as Defendant's Exhibit G to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages are true and correct copies of pp. 1, 2, 17, 18, 46, and 47 of the deposition of Gary Abrahamson, Volume I, taken August 23, 2011.

9. Attached as Defendant's Exhibit H to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is

Organized to Accomplish Our Ministry, pp. 1, 2, 100-110.

10. Attached as Defendant's Exhibit I to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is the Declaration of Allen Shuster dated April 26, 2012.

11. Attached as Defendant's Exhibit J to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is Jonathan Kendrick's publisher record card from the English Congregation of Jehovah's Witnesses, Oakley, California.

12. Attached as Defendant's Exhibit K to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is a true and correct copy of the August 31, 1998, letter from the North Fremont Congregation to Watchtower.

13. Attached as Defendant's Exhibit L to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is a true and correct copy of the November 15, 1993, letter from the North Fremont Congregation to Watchtower.

14. Attached as Defendant's Exhibit M to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is a true and correct copy of the December 3, 1993, letter from Watchtower to the North Fremont Congregation.

15. Attached as Defendant's Exhibit N to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages are true and correct copies of pp. 113-116, 119-121, and 142-144 of the deposition of Gary Abrahamson, Volume II, taken October 25, 2011.

16. Attached as Defendant's Exhibit O to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages are true and correct copies of pp. 1-4, 35, and 64-66 of the deposition of Michael Clarke taken November 8, 2011.

17. Attached as Defendant's Exhibit P to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is the Declaration of Toi Register Haynes dated April 25, 2012.

18. Attached as Defendant's Exhibit Q to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is the Declaration of Michael Lee Clarke dated April 23, 2012.

19. Attached as Defendant's Exhibit R to Defendant Watchtower's Lodgment of Exhibits in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages is the Declaration of Gary Abrahamson dated April 23, 2012.

DATED: April 27, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On April 27, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to NORCO Overnight Delivery Services for delivery to the address(es) listed on the Service List.

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 27, 2012, at Sacramento, California

Lori Gilmette

Lori Gilmette

SERVICE LIST
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

Counsel for Defendant
North Congregation of Jehovah's Witnesses, Fremont, California

THE McCABE LAW FIRM, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Defendant In Pro Per

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
Telephone: (925) 484-1008

10238270

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY

APR 27 2012

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG115558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

DATE May 3, 2012
TIME 3:00 p.m.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower) hereby lodges the following documents in Support of Opposition To Plaintiffs' Motion To Allege Punitive Damages.

Exhibit A: True and correct copies of pp. 1, 2, and 25-30 of the deposition of Plaintiff Jane Doe.

BY FAX

Exhibit B: The North Congregation of Jehovah's Witnesses, Fremont, California's (hereinafter "North Fremont Congregation") Responses to Plaintiff's Special Interrogatories, Set Three.

Exhibit C: Watchtower's Amended Responses to Plaintiff's Request for Production, Set One (exhibits excluded).

Exhibit D: A true and correct copy of the July 1, 1989, letter from Watchtower to all bodies of elders in the United States.

Exhibit E: Declaration of Dr. Anna Salter, Ph.D. dated April 4, 2012.

Exhibit F: December 1, 1975, issue of *The Watchtower* pp. 705, 706, 728-734.

Exhibit G: True and correct copies of pp. 1, 2, 17, 18, 46, and 47 of the deposition of Gary Abrahamson, Volume I, taken August 23, 2011.

Exhibit H: Organized to Accomplish Our Ministry, pp. 1, 2, 100-110.

Exhibit I: Declaration of Allen Shuster dated April 26, 2012.

Exhibit J: Jonathan Kendrick's publisher record card from the English Congregation of Jehovah's Witnesses, Oakley, California.

Exhibit K: A true and correct copy of the August 31, 1998, letter from the North Fremont Congregation to Watchtower.

Exhibit L: A true and correct copy of the November 15, 1993, letter from the North Fremont Congregation to Watchtower.

Exhibit M: A true and correct copy of the December 3, 1993, letter from Watchtower to the North Fremont Congregation.

Exhibit N: True and correct copies of pp. 113-116, 119-121, and 142-144 of the deposition of Gary Abrahamson, Volume II, taken October 25, 2011.

Exhibit O: True and correct copies of pp. 1-4, 35, and 64-66 of the deposition of Michael Clarke taken November 8, 2011.

Exhibit P: Declaration of Toi Register Haynes dated April 25, 2012.

///

///

Exhibit Q: Declaration of Michael Lee Clarke dated April 23, 2012.

Exhibit R: Declaration of Gary Abrahamson dated April 23, 2012.

DATED: April 27, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit A

0001

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.
_____/

DEPOSITION OF JANE DOE
AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

0002

INDEX OF EXAMINATION

EXAMINATION BY: PAGE
MR. McCABE 5

****

DEPOSITION OF JANE DOE

0003

INDEX OF EXHIBITS

NO. PAGE DESCRIPTION
NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

0004

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

DEPOSITION OF JANE DOE

0005

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. Yes.
Q. What kind?
A. I had a dog. Dog and cats.
Q. Nothing exotic?
A. No.
Q. Do you have any restrictions placed on you about your activities as a result of your being on probation?
A. Can you be more specific?
Q. Place of residence; anything like that? Do you have to keep them informed?
A. Yes. I do.
Q. Anything else that you're required to do other than your upcoming hearing?
A. I check in every month. And I just now received a probation officer.
Q. When you check in every month, do you do that by telephone?
A. No. Electronic check in.
Q. Electronic.
Where is your probation officer located?
A. I just now got my probation officer. I haven't received any of the information on it.
Q. Is it going to be in the L.A. area or up here?

0025

A. In the L.A. area.
Q. I guess we can move onto questions I don't want to ask you, but we need to get into.
This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?
A. Jonathan Kendrick.
Q. How did you know Jonathan Kendrick?
A. He was a member of the North Fremont Congregation.
Q. Was he a friend of your family?
A. Yes.
Q. Was he someone who would visit your parents' home?
A. Yes.
Q. Your parents visit his home?
A. No.
Q. When did the abuse first take place?
A. I don't know the exact date or exact time. Around the age of nine.
Q. You were nine years old?
A. (Witness nods head affirmatively.)
Q. This is while your parents were still married?
A. Yes.
Q. Where did this abuse take place?

0026

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.
Q. Where in the Kingdom Hall?
A. Just in the Kingdom Hall.
Q. In the main auditorium?
A. Yeah.
Q. What took place in the Kingdom Hall? What did he do to you?
A. He would grab me and hold onto me.
Q. Where would he grab you?

A. Just like bear hug me. Hold me.
Q. Were other people present when this happened?
A. Yes.
Q. Who was present?
A. The attendees of the North Fremont Congregation.
Q. So like during a meeting?
A. Yes.
Q. During the time the meeting was going on or before or after?
A. Before, after.
Q. Other than the bear hug what did he do?
A. He used to make me sit on his lap during meeting.
Q. Were your parents at these meetings?

DEPOSITION OF JANE DOE

0027

A. My dad was.
Q. So the first time this took place was when you were about nine years old?
A. (Witness nods head affirmatively.)
Q. How many times did it take place; the bear hugs?
A. I couldn't give you a number.
Q. Frequently?
A. Very frequently.
Q. Every meeting?
A. I would -- I could safely say that.
Q. Did you ever complain about these bear hugs to anyone?
A. I would try to get away.
Q. What would you do to get away?
A. Squirm and try to get away.
Q. Were you able to get away?
A. (Witness shakes head in the negative.)
Q. Did you ever say anything to your father about it when you were nine years old?
A. It seemed like it was acceptable conduct.
Q. So you didn't say anything?
A. Besides trying to get away, no.
Q. How long did the bear hugs and sitting on his lap last in terms of, if you can reference it, with your

DEPOSITION OF JANE DOE

0028

age? Starting with nine years old how long did it continue?
A. Up until he moved away.
Q. Do you know when that was?
A. Shortly after my parents divorced.
Q. Did the abuse ever increase to be more than just bear hugs?
A. Yes.
Q. When did it increase to be more? How old were you?
A. Still nine.
Q. What happened?
A. He would take me to his house after meetings.
Q. Were these day meetings or night meetings?
A. Sunday meetings.
Q. Sunday meetings?
What happened when he would take you to his house after a Sunday meeting?
A. He would bear hug me. He wouldn't let me go.

He would touch me. Put his hands up my shirt.
Q. This started when you were age nine?
A. (Witness nods head affirmatively.)
Q. While you were age nine did he do anything else besides bear hug you and put his hands up your shirt?
A. I don't know at what age it was when it

0029

progressed into something different. I don't know exactly what age I was.
Q. What did it progress to?
A. It got more violent.
Q. What do you mean by "violent"? What would he do?
A. He would use pens, and he would make me touch him.
Q. What would he do with the pen?
Do you want to take a break?
A. I will finish your question.
He used to just put them inside me.
Q. In your vagina?
A. (Witness nods head affirmatively.)
MR. McCabe: Why don't we take a rest break. I'm sorry.
(RECESS TAKEN FROM 10:30 A.M. to 10:35 A.M.)
BY MR. McCABE:
Q. So you're not sure what age you were when it escalated to this point, using a pen and other touching; is that correct?
A. That's correct.
Q. But some time after you were nine?
A. Yes.
Q. Was it some time after you were 12?

0030

A. No.
Q. Before you were 12?
A. Yes.
Q. Can you tell me about how many times this incident took place where he would use pens?
A. Several times a month.
Q. Over what time period? Number of years? All within one year?
A. After it escalated?
Q. Yes.
A. Couple years.
Q. When did the abuse stop?
A. When he moved.
Q. He moved about the time your parents divorced?
A. (Witness nods head affirmatively.)
Q. That was in 1997?
A. That's correct.
Q. The abuse started when you were nine years old, so about 1994?
A. (Witness nods head affirmatively.)
Q. Were there occasions of abuse anywhere else other than what you have described at the Kingdom Hall and at his home?
A. No.
Q. Was there any other type of abuse other than

0031

what you have already described?

A. Yes.
Q. Have you mentioned the abuse issues to that person?
A. No.
Q. The primary care physician would be at Kaiser in Downey?

A. Yes.
MR. MCCABE: I think that's all I have.
MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

_____
Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____
Certified Shorthand Reporter
State of California
License No. 2816

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit B

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S RESPONSE TO SPECIAL INTERROGATORIES

SET THREE

PROPOUNDING PARTY: PLAINTIFF JANE DOE

RESPONDING PARTY: NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA (erroneously sued as "Jehovah's Witnesses on Peralta Blvd. Fremont" and "Kingdom Hall of Jehovah's Witnesses")

SET NUMBER: THREE

Defendant North Congregation of Jehovah's Witnesses, Fremont, California, erroneously sued as "Jehovah's Witnesses on Peralta Blvd. Fremont" and "Kingdom Hall of Jehovah's Witnesses," (hereinafter "this Defendant") provides the following answers to plaintiff

Jane Doe's (hereinafter "Plaintiff") interrogatories pursuant to CAL. CIV. PROC. CODE § 2030. In answering these interrogatories, you have been furnished with such information as is presently available. This may include hearsay and other forms of evidence that are neither reliable nor admissible. The answers are, in addition, given without prejudice to producing at trial subsequently discovered information or information omitted from the answers as a result of good faith oversight.

PRELIMINARY STATEMENT

This Defendant objects to the disclosure of any information or document created after the time period of the occurrence of the tortious conduct alleged in the Plaintiff's complaint.

In addition, to the extent that the Plaintiff seeks information and documents which are privileged and protected, this Defendant objects to the disclosure of information related to religious faith, custom or law, or to internal church organization. Information and documents that are protected from discovery by the First Amendment of the U.S. Constitution and its California analog are not subject to civil court inquiry. *See*, *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696.

Without waiving its other objections, rights or applicable privileges, this Defendant answers Plaintiff's interrogatories to the extent possible as follows:

RESPONSES TO SPECIAL INTERROGATORIES

INTERROGATORY NO.14:

Please state the current or last known address, telephone number, and email address of Paul Inman.

//

//

//

RESPONSE NO. 14:

Subject to and without waiving the above objections, the Plaintiff's Special Interrogatory seeks information which the congregation does not have in its possession after a careful and diligent search for this information.

DATED: December , 2011

THE McCABE LAW FIRM, APC

James M. McCabe
Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. HG11558324

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is 4817 Santa Monica Ave., Ste. B, San Diego, CA 92107

On December 6, 2011, I served the following document(s) described as **DEFENDANT NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S RESPONSES TO PLAINTIFF'S SPECIAL INTERROGATORIES SET 3** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST.

☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with The Law Offices of James M. McCabe's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Ocean Beach, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (619) 224-0089 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 6, 2011 at Ocean Beach, California

_____
Employee of the McCabe Law Firm

SERVICE LIST
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. HG11558324

Richard J. Simons, Esq.
Furtado, Jaspovice & Simons
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

(ATTORNEY FOR PLAINTIFF)

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
(916) 341-0404 - Main
(916) 341-0141 - Fax

Attorney for Watchtower

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit C

THE McCABE LAW FIRM, APC
James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Watchtower Bible and Tract Society of New York, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S AMENDED RESPONSES TO PLAINTIFFS' REQUEST FOR DOCUMENTS

PROPOUNDING PARTY: PLAINTIFF JANE DOE

RESPONDING PARTY: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SET NUMBER: ONE AMENDED

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter, "this Defendant") by and through its undersigned counsel and pursuant to CAL. CIV. PROC. CODE § 2031, hereby responds to Plaintiff Jane Doe's ("Plaintiff") Request for Production of Documents as follows:

with Jonathan Kendrick or any alleged incident(s) between Jonathan Kendrick and plaintiff.)

Privilege log: The following documents responsive to this request are not produced based on the minister-communicant privilege, California Evidence Code §1034.

1. December 3, 1993, letter from elders in the U.S. Service Department to elders in the North Congregation of Jehovah's Witnesses, Fremont, California (2 Pages).
2. November 15, 1993, letter from elders in the North Congregation, Fremont, California, to elders in the U.S. Service Department (2 Pages).

REQUEST FOR PRODUCTION NO. 6:

Any and all documentary, tangible, or electronically created or stored materials of any kind, evidencing procedures, policies, protocols, guidelines, or other information promulgated by or provided to persons participating in or supervising Jehovah's Witnesses' activities, including the Jehovah's Witnesses on Peralta Blvd., Fremont, on the subjects of prevention of the sexual abuse of minors during or arising out of Jehovah's Witness activities, or the protection of minors against such abuse, including policies, procedures, or guidelines developed, circulated, or promulgated between 1990 and the present.

RESPONSE NO. 6:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege. California Evidence Code § 1034. In addition, this Defendant objects to this request to the extent that it requests documents related to religious faith, custom or law, or to internal church organization which are protected from discovery by the First Amendment of the U.S. Constitution and it's California analog, which bar civil court inquiry into such matters. *See, Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. Further, this Defendant objects to this request as overbroad as to time since the relevant time period in this complaint ended in 1997.

Subject to and without waiving these objections, this Defendant produces the following attached documents responsive to the request:

- February 8, 1981, *Awake!,* pp. 16-19 "Incest—The Hidden Crime"
- June 22, 1982, *Awake!,* pp. 7-8 "'Baby Pros and Kiddie Porn'"; pp. 9-10 "Rape at Home"; pp. 11-12 "To End Child Abuse"
- October 1, 1983, *The Watchtower,* pp. 27-31 "Help for the Victims of Incest"
- November 22, 1983, *Awake!,* pp. 5-6 "Child Abuse—The Spin-off Epidemic"
- January 22, 1985, *Awake!,* pp. 3-4 "Child Molesting—Every Mother's Nightmare"; pp. 4-6 "Child Molesting'—Who Would Do a Thing Like That?'"; pp. 6-10 "Child Molesting—You Can Protect Your Child"
- July 22, 1985, *Awake!,* pp. 26-8 "From Our Readers—Response on Child Molesting"
- Portion of December 5, 1985, letter To Circuit and District Overseers in the United States that relates to child abuse.
- December 22, 1986, *Awake!,* pp. 7-11 "The Pornography Plague—Resist It!"
- Redacted portion (dealing with child abuse) of Lesson No. 15 from Fall 1987 Kingdom Ministry School.
- December 8, 1987, *Awake!,* pp. 4-6 "The Day-Care Controversy" [Sidebar, page 6] "Day Care and Sexual Abuse"
- Redacted portion (dealing with child abuse and subpoenas) of July 1, 1989, letter To All Bodies of Elders in the United States.
- January 8, 1990, *Awake!,* p. 25 "'The Most Pervasive Form of Child Abuse'"
- October 8, 1991, *Awake!,* p. 3 "The Innocent Victims of Child Abuse"; pp. 4-6 "The Secret Wounds of Child Abuse"; pp. 7-11 "'A Time To Heal'"
- March 23, 1992, letter To All Bodies of Elders in the United States.
- April 8, 1992, *Awake!,* pp. 24-27 "'I Wept for Joy'"
- Addendum No. 1 from 1991 Kingdom Ministry School (as referenced in March 23, 1992, letter)
- October 8, 1992, *Awake!,* p. 32, "Answer to a Prayer."
- April 8, 1993, *Awake!,* pp. 20-21 "Millions Are Suffering—Can They Be Helped?"; p. 31 "Victims of Pedophile Priests Speak Out"
- Redacted portion (dealing with child abuse) of Circuit Overseer Meets With Elders Program From September 1993 through August 1994
- July 22, 1993, *Awake!,* pp. 6-7 "Abusive Parents—The Ultimate Stressors"
- October 8, 1993, *Awake!,* pp. 3-4 "Your Child Is in Danger!"; pp. 5-9 "How Can We Protect Our Children?"; [Sidebar, page 6] "Common Misconceptions"; pp. 10-14 "Prevention in the Home"
- February 3, 1993, letter To All Bodies of Elders in the United States.
- November 22, 1993, *Awake!, p. 30,* "Help at the Right Time."
- December 22, 1993, *Awake!,* p. 30 "From Our Readers--Children Under Stress."

- Redacted portion (dealing with child abuse) from January 25, 1994, letter To All Circuit and District Overseers
- January 1, 1994, *The Watchtower*, pp. 20-5, "*The Watchtower* and *Awake!*—Timely Journals of Truth."
- Redacted portion (dealing with child abuse) from 1994 Kingdom Ministry School.
- Redacted portion (dealing with child abuse) of January 25, 1994, letter To All Circuit and District Overseers.
- Redacted portion (dealing with child abuse) from September 25, 1995, letter To All Traveling Overseers in the United States
- August 1, 1995, letter to All Bodies of Elders in the United States
- Redacted portion (dealing with child abuse) of Circuit Overseer Meets With Elders Program From September 1995 Through February 1996
- November 1, 1995, *The Watchtower*, pp. 25-29, "Comfort for Those with A Stricken Spirit."
- January 1, 1997, *The Watchtower*, pp. 26-29, "Let Us Abhor What is Wicked."
- February 1, 1997, *The Watchtower*, p. 29, "Questions From Readers."
- March 14, 1997, letter To All Bodies of Elders
- April 8, 1997, *Awake!*, pp. 11-15, "Sexual Exploitation of Children—A Worldwide Problem."

REQUEST FOR PRODUCTION NO. 7:

Any and all records, files, photographs, or other information, documents, or tangible materials of any kind, concerning Candace Conti, her mother Kathleen Conti, or any present or past member of her immediate family.

RESPONSE NO. 7:

This Defendant objects to this request to the extent that it seeks documents protected from discovery by the minister-communicant privilege, California Evidence Code §1034.

In addition, this Defendant objects to this request to the extent that it overbroad as to time since the relevant time period in this complaint ended in 1997. Finally, this Defendant objects to this request to the extent that it seeks information that would invade the privacy of persons not party to this litigation.

JANE DOE v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
Alameda Superior Court Case No. HG11558324

VERIFICATION

I am a duly authorized representative of Defendant Watchtower Bible and Tract Society of New York, Inc. in the above-entitled action. I have read the foregoing DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S AMENDED RESPONSES TO PLAINTIFF'S REQUEST FOR DOCUMENTS from and know the contents thereof. I certify that the same is true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24th day of June, 2011, at Patterson, New York.

Mario F. Moreno

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit D

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

CABLE WATCHTOWER

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

July 1, 1989

TO ALL BODIES OF ELDERS IN THE UNITED STATES

CONFIDENTIAL

Dear Brothers:

We are writing to help all of you as individual elders be aware of a growing concern regarding the handling of your duties that may involve legal issues or questions. **Due to its importance, the presiding overseer should arrange for a special meeting of the body of elders to read and consider this letter carefully.**

In spreading the Kingdom message, it is appropriate that we be bold and outspoken. Jesus commanded that "what you hear whispered, preach from the housetops." (Matthew 10:27) Even when worldly authorities demand that we keep silent, we reply as did the apostles: "We cannot stop speaking about the things we have seen and heard." (Acts 4:20) The Christian congregation will continue to declare the Kingdom message boldly until Jehovah says the work is done.

Elders share the obligation to shepherd the flock. However, they must **be careful not to divulge information about personal matters to unauthorized persons.** There is "a time to keep quiet," when "your words should prove to be few." (Ecclesiastes 3:7; 5:2) Proverbs 10:19 warns: "In the abundance of words there does not fail to be transgression, but the one keeping his lips in check is acting discreetly." Problems are created when elders unwisely reveal matters that should be kept confidential. Elders must give special heed to the counsel: "Do not reveal the confidential talk of another." (Proverbs 25:9) Often the peace, unity, and spiritual well-being of the congregation are at stake. Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society.

While we as Christians are ready to forgive others who may wrong us, those in the world are not so inclined. Worldly persons are quick to resort to lawsuits if they feel their "rights" have been violated. Some who oppose the Kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress. Thus, elders must especially guard the use of the tongue. Jesus faced opposers who tried to "catch him in speech, so as to turn him over to the government." (Luke 20:20) He instructed us to be "cautious as serpents and yet innocent as doves" in such situations. (Matthew 10:16) Where such a threat exists, our position as elders should be in line with David's words: "I will set a muzzle as a guard to my own mouth, as long as anyone wicked is in front of me."—Psalm 39:1.

In recent years, this matter has come to be a cause for increasing concern. The spirit of the world has sensitized people regarding their legal "rights" and the legal means by which they can exact punishment if such "rights" are violated. Hence, a growing number of vindictive or disgruntled ones, as well as opposers, have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the Society. **Many of these lawsuits are the result of the misuse of the tongue.** As elders, remember that ill-advised statements or actions on your part can sometimes be interpreted legally as violating others' "rights."

The need for elders to maintain strict confidentiality has been repeatedly stressed. Please see The Watchtower of April 1, 1971, pages 222-4, and September 1, 1987, pages 12-15. The September 1977 Our Kingdom Service, page 6, paragraph 36, and the ks77 text- book, page 65, also provide helpful direction and counsel. That material strongly emphasized the elders' responsibility to avoid revealing confidential information to those not entitled to it.

The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended. Substantial monetary damages could be assessed against the elders or congregation. In some cases where the authorities are involved, certain complications could lead to a fine or imprisonment. These possibilities underscore **the need for elders to be discerning and to follow carefully directions provided by the Society.**

I. WHAT TO DO IN SPECIFIC CASES

A. Judicial Committee Matters

Judicial committees must follow carefully the Society's instructions in carrying out their duties. (Note ks77, pages 66-70; ks81, pages 160-70.) Anything submitted in writing to the committee by the alleged wrongdoer or by witnesses should be kept in strict confidence. If it is necessary to continue at a later time a committee hearing, the members of the committee should submit to the chairman any personal notes they have taken. The chairman will keep these notes in a secure place to prevent breaches of confidentiality. The notes may be returned to the individual elders when the hearing resumes. Upon conclusion of the case, the chairman should place only necessary notes and documents, a summary of the case, and the S-77 forms in a sealed envelope for the congregation file. Nothing should be preserved outside of this sealed envelope (including unnecessary personal notes) by any elder on the committee. Obviously, no committee will ever allow judicial proceedings to be tape recorded or allow witnesses testifying before the committee to take notes.

B. Child Abuse

Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. Victims of such abuse need to be protected from further danger.—See "If the Worst Should Happen," Awake! January 22, 1985, page 8.

C. Search Warrants and Subpoenas

1. A search warrant is a court order authorizing the police to search premises to locate evidence that may be used in a criminal prosecution. No elder should ever consent to the search of a Kingdom Hall or any other place where confidential records are stored. However, armed with a search warrant the police do not need consent and may even use force to accomplish their task. Likely before obtaining a search warrant, the police or other governmental officials will make inquiries regarding confidential records, make request to obtain the records, or indicate that they will seek a search warrant if the elder(s) involved does not cooperate. In any such situation, the Society's Legal Department should be called immediately.

At any time an elder is confronted with a search warrant (whether given advance notice or not), the elder should first ask to read the warrant. After reading it he should ask if he can call for legal guidance and then call the Society's Legal Department. If for some reason the Legal Department cannot be contacted, the elders involved should make every effort to obtain the assistance of a local attorney for the purpose of protecting the confidentiality of the records. It may be impossible to stop determined officers from conducting the search authorized by the warrant. Conscientious elders will want to do all they reasonably and peaceably can to preserve the confidentiality of the congregation in harmony with the principle set out in Acts 5:29.

2. Subpoenas are demands for records or for the appearance of an individual at a trial or deposition to give testimony. Subpoenas may be issued by a court or in some cases by a governmental agency or an attorney. If an elder receives a subpoena, he should contact the Society's Legal Department immediately. Never turn over records, notes, documents, or reveal any confidential matter sought by subpoena without receiving direction from the Legal Department.

D. Crimes and Criminal Investigations

In some cases the elders will form judicial committees to handle alleged wrongdoing that also could constitute a violation of Caesar's criminal laws (e.g., theft, assault, etc.). Generally, a secular investigation into a matter that is a concern to the congregation should not delay conducting a judicial hearing. To avoid entanglement with the secular authorities who may be investigating the same matter, the strictest confidentiality (even of the fact that there is a committee) must be maintained.

If the alleged wrongdoer confesses to the sin (crime), no one else should be present besides the members of the committee. When evidence supports the accusation but genuine repentance is not displayed resulting in a decision to disfellowship, this should be handled in the normal course regarding advice of appeal rights and announcements to the congregation. In cases of serious criminal wrongdoing (e.g., murder, rape, etc.), or where the criminal conduct is widely known in the community, the body of elders should contact the Society before proceeding with the judicial committee process.

B. When Servants and Publishers Move

A considerable number of publishers, including **elders and ministerial servants move from one congregation to another.** Sometimes the circumstances surrounding their departure are unsettled. Some appointed brothers may be experiencing problems that have brought their qualifications into question. It is not uncommon for a body of elders to hold back in giving counsel, allowing a brother to move without discussing his problem. Thereafter, they decline to recommend his reappointment in his new congregation. Often such a brother protests, requiring extensive correspondence between the bodies of elders. Much personal, and sometimes embarrassing, information must then be passed on. Such mishandling of things greatly increases the potential for serious repercussions. Problems can be avoided by the body of elders assuming its responsibility to inform a brother that he will not be favorably recommended, fully explaining the reasons why. **Every effort should be made to resolve any difference before he leaves, eliminating any need for controversy involving his new congregation.** The body should assign two elders to meet with him before he moves, letting him know whether they are recommending him to the new congregation.

This would likewise apply to publishers who move at a time when their personal conduct requires investigation by the elders. **If serious accusations of wrongdoing have been made against an individual and he moves to another congregation before matters are finalized, usually it is best for the elders in the original congregation to follow through in handling matters, if possible and if distance permits.** They are acquainted with the individual and the circumstances surrounding the alleged wrongdoing; this ordinarily puts them in the best position to get the facts and to handle the case. Handling matters in this way will eliminate the need to reveal confidential information unnecessarily about the private lives of individuals.

F. When Lawsuits Are Threatened

If the congregation or the elders (in their capacity as elders) are threatened with a lawsuit, the Society's Legal Department should be contacted immediately. No statements should be made by any member of the body of elders about the merits or validity of an actual or threatened lawsuit without authorization from the Society.

G. Child Custody

Elders may learn that a publisher is facing a dispute over child custody in a divorce proceeding. If the parental rights of such is challenged on the basis of our Christian beliefs, or on the assertion that our beliefs are harmful to a child's best interests, the elders should immediately write to the Society's Legal Department. In a rare emergency, a telephone call may be necessary. The Legal Department will assess the facts and determine the degree of its involvement, if any. Elders have no authority to make any promises about the Society's paying legal fees or handling specific cases. There is no need to contact the Society if there is no indication that the beliefs and practices of Jehovah's Witnesses will be attacked in a child custody dispute.

When you write to the Society's Legal Department about a specific case, please provide the following information:

1. The names of the parents and their attorneys.
2. The number of children involved and their ages.
3. A brief description of the facts, including the presence of any apostates.
4. An assessment of the Christian parent's spiritual condition—Is he or she new in the truth? Active? Inactive? Balanced?
5. The status of the legal proceedings—Has the matter gone to trial? Has the trial date been set? If so, when?

II. POINTS TO REMEMBER

A. Appreciate the Importance of Maintaining Confidentiality

Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out favorably, valuable time and energy that could have been devoted to Kingdom interests will be lost.

B. Do Not Make Statements to Secular Authorities Until You Receive Legal Advice from the Society

You are not legally required to make immediate responses to secular authorities about matters that could involve the disclosure of confidential information. Voluntarily allowing the Kingdom Hall or confidential records to be searched, where no search warrant is produced, could infringe on the legal rights of the congregation or of others. No statements should be made until you have an understanding of your legal position from the Society's Legal Department.

C. Be Extremely Careful with Written Material

All material related to judicial matters should be kept in a safe place, accessible only to elders. **Final reports on the handling of judicial matters should be placed in a sealed envelope in the congregation file.** A judicial committee should avoid sending to an individual any kind of correspondence that accuses him of specific wrongdoing. (Note ks77, pages 68-9.) **Nothing should be put in writing to any disfellowshipped person to advise him of his status or the reasons for it without specific direction from the Society.** The rules and procedures of Jehovah's Witnesses do not require such written disclosures. Anything in writing submitted to a judicial committee should be kept in strict confidence. If a judicial committee disfellowships an individual, he should be informed **orally** of the action taken and of the right to appeal. If the wrongdoer refuses to attend the hearing, two members of the judicial committee should attempt to contact the individual at his home and inform him **orally** of the decision. If this is not possible, the two elders may be able to inform him by telephone.

D. Guard the Use of Your Tongue

Think before you speak. Do not discuss private and judicial matters with members of your family, including your wives, or with other members of the congregation. Be extremely careful not to inadvertantly disclose private information when others are present, such as when speaking on the telephone with others listening in or nearby. (Note ks77, page 65.) At times, complicated judicial cases may necessitate consultation with an experienced, mature elder in another congregation or with the circuit overseer. Unless the circuit overseer is the elder consulted, only the pertinent details should be discussed and names should not be used.

Elders bear a heavy responsibility in ministering to the needs of the Christian congregation, and observing confidentiality as they do so. (1 Corinthians 16:13) We trust that the information in this letter will help you carry this burden. Please be assured of our love and prayers, and may Jehovah continue to bless you as you shepherd his flock.—1 Peter 5:1-3.

Your brothers,

Watchtower B.T.S. Society
OF NEW YORK, INC.

P.S. Due to the importance of the information that is presented herein it is suggested that the body of elders jointly read and consider this letter as soon as possible after its receipt in the congregation. Please do not make any copies of this letter, nor should it be read by others. It should be kept in the congregation's confidential files for any future reference that may be required by the body of elders.

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit E

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	**No. HG11558324** ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22 **DECLARATION OF DR. ANNA SALTER IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY** **Date:** 5/3/12 **Time:** 3:00 p.m. **Dept:** 22 **Reservation No:** 1232647

I, ANNA SALTER, hereby declare:

1. That I have been retained by the plaintiff in the above-entitled action to testify on issues of standards of institutional policies and practices involving the prevention of child molestation and sexual abuse, and the scientific and professional knowledge available on the subjects of sexual predators of children and child victims of sexual abuse;

2. That I earned a Ph.D. in Clinical Psychology and Public Practice from Harvard University in 1977; served as the Director of Child Psychology Consulting Services at Mary Hitchcock Memorial Hospital in Hanover, New Hampshire from 1984 to 1988; served as a faculty member in the Psychiatry Dept. at Dartmouth Medical School from 1981 and 1988, with the title of Assistant Professor; and have engaged in private practice specializing in sexual abuse issues since 1988, working with and studying both offenders and victims;

3. That I have conducted workshops and trainings for nearly 30 years on the issue of childhood sexual abuse recognition and response, in 50 states and 10 countries; including workshops and trainings for many national, state, and local organizations, groups, and religious entities, and have served as a consultant to many such organizations as to the development and implementation of programs and policies on the same subject.

4. That I have authored 3 published books on the issue of child sexual abuse, including the book Predators: Pedophiles, Rapists, and Other Sex Offenders: Who They Are, How They Operate, and How We Can Protect Our Children (2003);

5. That I am a member of the American Psychological Association (APA), The Association for the Treatment of Sexual Abuse (ATSA), and the International Association for Correctional and Forensic Psychology (IACFP).

6. Based upon my training, clinical experience, research and work in the authoring of books, and experience as a trainer, I am familiar with the standards adopted by and followed by community, religious, and youth organizations nationally during the past three decades concerning childhood sexual abuse prevention, education, training, and procedures when abuse is suspected or reported.

7. I have reviewed the depositions of Elders Abrahamson, Clarke, and Lammerdin taken in this action, the depositions of Neal Conti and Kathleen Conti; and reviewed the documents produced by the Jehovah's Witnesses concerning the case of "Jane Doe" and her sexual abuse by Jonathan Kendrick, and Mr. Kendrick's past conduct, marked as exhibits to those depositions;

8. The standard of care before and during 1993 to 1995 for the prevention of child molestation and sexual abuse in religious institutions where children are allowed to participate, which is established by many sources including the adoption of training and educational programs by organizations such as The Boy Scouts of America, the passing of resolutions by national groups including The National Council of Churches, and many other public and private organizations, was that there exists an obligation to educate and train participants in such groups or activities, including volunteer adults, children, and administrative personnel, in the recognition, prevention, reporting, and

possible signs of childhood sexual abuse; and a further obligation to address reports of childhood sexual abuse immediately to actively prevent further opportunities for abuse of any child within the organization by any adult confirmed to have committed an act of child molestation. Failure to notify those individuals in positions of leadership or authority within the local chapter, group, congregation, or club of a confirmed report violates this standard, and the failure to notify parents and other adults within the group or congregation violates this standard. These violations have been generally known to child care professionals, to Administrators, Directors, and Officers of national community, religious, or youth activity groups, and to law enforcement agencies to be significant, in that they expose children in the group or congregation to further abuse. It has been well known for decades to such professionals, and among persons in positions of leadership and authority in the national organizations which serve or include children, 1) That child sex abuse predators frequently commit additional acts of abuse; 2) That the "grooming" process, which is the identification and approach by a predator to a vulnerable child, is usually not noticed or recognized by lay persons who are unaware of a potential child molester's past conduct; 3) That children frequently do not complain or report acts of grooming or abuse by adults, for many reasons; 4) That child sexual abuse is usually committed outside the presence of witnesses; and 5) That non-familial pedophiles and child sexual abusers are most frequently possessed of personality traits that do not cause others to "suspect" them. It was generally well known to organizations including religious groups by the early 1990s that continuing to allow adults who have sexually molested even one child to participate in activities with youth without either warning other participants of the possible risk, or acting affirmatively to prevent any unsupervised contact between children and the confirmed abuser, exposes children to further acts of sexual abuse.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

///

///

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 4 day of April, 2012, at Madison, Wisconsin.

ANNA SALTER, PHD.

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit F

The WATCHTOWER

Reasonableness Makes Life More Enjoyable

Profiting from Jonah's Experience

Christian Greatness Comes from Serving

DECEMBER 1, 1975

ANNOUNCING JEHOVAH'S KINGDOM

The WATCHTOWER

December 1, 1975
Vol. 96, Number 23

A watchtower enables a person to see far into the distance and announce to others what is coming. Can a magazine serve similarly in our day? Yes, from its first issue (July 1879) onward, *The Watchtower*, published by Jehovah's witnesses, has done just that.

How can it benefit you? Consider: Do you long for a better world, one of true justice and free from sorrow, hatred and war? Do you want to live at a time when genuine peace and love prevail among people of all races? Then this magazine can aid you. Using God's Word, the Bible, as its authority, it points out the clear evidence that the present wicked system of things will soon end, destroyed by God. But it also announces the coming in of a righteous new order. There, under the rule of God's kingdom, his heavenly government, people will enjoy life forever in true peace, health and happiness on a paradise earth.

Faithfulness to the Word of God lifts *The Watchtower* above the contradicting religious teachings and philosophies of men. It stays strictly neutral as regards political affairs. It wholeheartedly upholds the highest moral standard—that of man's Maker, Jehovah God. From this source, it shows solutions to the problems of daily life.

We know that many sincere persons would appreciate a discussion of these things in their own home with a qualified person. A minister of Jehovah's witnesses will be glad to call on you free of charge. To arrange for this, simply write the publishers of this magazine or contact Jehovah's witnesses locally.

PUBLISHED BY
WATCH TOWER BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA
117 Adams Street, Brooklyn, N.Y. 11201, U.S.A.
N. H. KNORR, *President* GRANT SUITER, *Secretary*

IN THIS ISSUE

Reasonableness Makes Life More Enjoyable	707
Profiting from Jonah's Experience	709
Appreciating the Creator's Handiwork	712
Jehovah, an Appreciative God	713
Insight on the News	715
Christian Greatness Comes from Serving	716
Serving Unitedly as an Association of Brothers	722
What Does It Mean to Be a "Minister"?	728
A Long Search Ended	734
Questions from Readers	735

Average Printing Each Issue: 10,000,000

Now Published in 78 Languages

Semimonthly Editions:

Afrikaans	Dutch	Ijoko	Spanish
Arabic	English	Italian	Swahili
Cebuano	Finnish	Japanese	Swedish
Chinese	French	Korean	Tagalog
Chishona	German	Malagasy	Thai
Cibemba	Greek	Norwegian	Xhosa
Cinyanja	Hiligaynon	Portuguese	Yoruba
Danish	Ibo	Sesotho	Zulu

Monthly Editions:

Armenian	Hindi	Melanesian-Pidgin	Serbian
Bengali	Hiri Motu	Pampango	Silozi
Bicol	Hungarian	Pangasinan	Sinhalese
Bohemian	Icelandic	Papiamento	Slovenian
Croatian	Indonesian	Polish	Tamil
Efik	Kanarese	Romanian	Tshiluba
Ewe	Kikongo	Russian	Tsonga
Fijian	Kiluba	Samar-Leyte	Tswana
Ga	Lingala	Samoan	Turkish
Greenlandic	Malayalam	Sango	Twi
Gun	Marathi	Sepedi	Ukrainian
Hebrew			Urdu

Five cents a copy

Watch Tower Society offices	Yearly subscription rates for semimonthly editions in local currency
America, U.S., 117 Adams St., Brooklyn, N.Y. 11201	$1.50
Australia, 11 Beresford Rd., Strathfield, N.S.W. 2135	$1.50
Canada, 150 Bridgeland Ave., Toronto, Ontario M6A 1Z5	$1.50
England, Watch Tower House, The Ridgeway, London NW7 1RN	£1.50
Hawaii, 1228 Pensacola St., Honolulu 96814	$1.50
New Zealand, 8-A Western Springs Rd., Auckland 3	$1.50
Nigeria, West Africa, P.O. Box 194, Yaba, Lagos State	₦1.05
Philippines, P.O. Box 2044, Manila 2800	P8
South Africa, Private Bag 2, P.O. Elandsfontein, 1406	R1,10

(Monthly editions cost half the above rates.)

Remittances for subscriptions should be sent to the office in your country. Otherwise send your remittance to Brooklyn.

Notice of expiration is sent at least two issues before subscription expires. Second-class postage paid at Brooklyn, N.Y. and at additional mailing offices.

CHANGES OF ADDRESS should reach us thirty days before your moving date. Give us your old and new address (if possible, your old address label). Write Watchtower, 117 Adams St., Brooklyn, New York 11201, U.S.A.

The Bible translation used in "The Watchtower" is the modern-language "New World Translation of the Holy Scriptures," unless otherwise indicated.

Printed in U.S.A.

essary. For example, when both Ananias and his wife expired through divine action, it was "the younger men" who carried them off and buried them. (Acts 5: 5, 6, 10) The apostle Peter, after urging his fellow elders to serve as humble examples to the flock, said: "In like manner, you younger men, be in subjection to the older men." (1 Pet. 5:1-5) Timothy, who was quite young in comparison to the apostle Paul, is spoken of as among those serving Paul as his "assistants" or "helpers" or 'ministering' to him. (Acts 19:22, *NE; AT; JB; NW*) Onesimus, the runaway slave, whom the aged Paul called "my child," had 'looked after or waited on Paul,' "ministering" to him, as a son would for a father, while Paul was in prison. (Philem. 9, 10, 13, *NE; AT; NW;* compare 2 Timothy 1:16-18.) By working humbly along with these older, more experienced servants of God, the younger men gained rich benefits and training.

[23] Though their tasks may have appeared to be of little honor or prestige, their course is one that exemplifies the right attitude for all to have, of whatever age they may be. The apostle Peter, therefore, after counseling younger men to be subordinate to their elders, goes on to say: "But all of you gird yourselves with lowliness of mind toward one another, because God opposes the haughty ones [superior appearing ones, *Int*], but he gives undeserved kindness to the humble ones."—1 Pet. 5:5.

[24] How pleasant it is to serve together when a humble and modest spirit prevails in a congregation! What a force for persons effectively working together as a body the spirit of brotherhood proves to be when it is manifested by Christian elders, eliminating tendencies toward time-wasting contention or angry debates! (1 Tim. 2:8) Surely there is much here for all of us to meditate upon. Do we seek the genuine greatness that comes from such humble service motivated by brotherly love? Let us each show it by our being helpful, considerate, interested in all, including the lowly ones, granting to all their due measure of personal dignity and worth. (Rom. 12:10, 15, 16) We thereby prove ourselves true disciples of the One who excels in service, God's Son, Christ Jesus.

23. Are only younger ones to display such lowliness of mind?

24. What grand benefits result from this course, and how does it contribute markedly to Christian unity?

What Does It Mean to be A "MINISTER"?

WHEN you see or hear the word "minister" in some languages, of what do you think? In the language of some lands, the corresponding word refers only to a political official, such as a "Minister of Justice" or a "Prime Minister." But in lands with languages that are based on or strongly influenced by Latin (where the term originated), the word "minister" may also call to one's mind a religious official, generally a Protestant or Evangelical clergyman.

[2] Actually, the word "minister" as used

1, 2. (a) What ideas does the word "minister" bring to mind in different countries? (b) What do we need to note about the modern use of the word as compared with its earlier use?

today and as understood by most people has a meaning quite different from what it had in the early centuries of the Common Era. And in the same way it has a meaning that is quite different from the meaning of the Greek word *di-a'ko-nos* as used in the inspired Greek Scriptures of the Bible, though this Greek word is often translated in various languages as "minister." What is the difference, and how did it come about?

[3] Back in the early centuries of the Common Era the Greek word *di-a'ko-nos* and the Latin word *mi-nis'ter* meant basically the same thing: a servant, such as an attendant, a waiter, or other personal servant. And so, when the Bible began to be translated into Latin, *mi-nis'ter* was the word generally chosen for rendering *di-a'ko-nos*. But in course of time the idea of humble service began to disappear from the term as it was used. In considerable measure this was because of the apostasy from true Christianity that took place.

[4] Speaking to Ephesian elders, the apostle Paul forewarned them that, after his going away, "oppressive wolves will enter in among you and will not treat the flock with tenderness, and from among you yourselves men will rise and speak twisted things to draw away the disciples after themselves." Such selfish men would not operate on the principle that "there is more happiness in giving than there is in receiving." (Acts 20:29, 30, 35) Their course would betray that they were not God's servants but servants of his adversary.—2 Cor. 11:12-15, *Int.*

[5] This foretold apostasy is what eventually produced Christendom, with its many religions and its clergy and laity divisions. However, there were no such distinctions in the early congregation, as M'Clintock and Strong's *Cyclopædia* (Vol. VIII, pp. 355, 356) points out with regard to "elders":

> "As no specific account is given of the mode of their first appointment, we are left to infer that it may have occurred as a natural designation of respect for seniority . . . , somewhat after the analogy of eldership among the Jews."

The *Cyclopædia* goes on to say that later "the apostles recognized, possibly appointed," elders, and adds:

> "There would exist in every body of elders the necessity of a presidency or primacy for the purpose of general superintendence and direction. Thus one of the number would be designated, either by seniority or formal choice, as a *primus inter pares* [first among equals], who should serve as overseer (ἐπίσκοπος) of the body and the flock under them."

Further, the *Cyclopædia* states concerning the overseer's position:

> "Nothing in its original character would prevent its being held in rotation by several elders in the same church or diocese, yet a successful administration of it would tend to its perpetuation in the same individual. Hence it soon became an office for life."

So, one elder or overseer came to exercise permanent primacy over the others, excluding others from privileges enjoyed. In this way congregational direction by a body of elders was gradually eliminated.[*]

[6] Thus a "monarchical" arrangement developed, that is, a system where administrative authority and privilege were vested

---

3, 4. (a) What was the original sense of the Latin word *mi-nis'ter*, and so what use was made of it in translating the Bible? (b) What change took place in the use of the term, and due to what circumstances?

5. What did the Scripturally foretold apostasy result in, and what effect did it have on the superintendence and direction of the Christian congregations?

[*] Douglas' *New Bible Dictionary* (p. 158) also suggests that "monarchical episcopacy [overseership] appeared in the local congregations when some gifted individual acquired a permanent chairmanship of the board of presbyter-bishops [elder-overseers]."

Also, the *Jerusalem Bible*, in its footnote on Titus 1:5, says that "in the earliest days each Christian community was governed by a body of elders," and refers to "the transformation of a local assembly ruled by a body . . . into an assembly ruled by a single bishop [overseer]."

6. (a) What is meant by a "monarchical" arrangement as regards the congregations, and what contributed to the development of such an arrangement? (b) Do the Scriptures show that concentration of authority in one person is the Christian way to maintain genuine unity of faith and belief? If not, then what is the means by which to do so?

in one person to the exclusion of others. (Compare 1 Corinthians 4:8.) Jerome (of the fourth century C.E.) is quoted as saying that the supremacy of a single overseer (*e·pi'sko·pos*) came about 'by custom rather than by the Lord's actual appointment,' being a means used to prevent divisions. Hence, the view was that unity could best be maintained by placing great authority in one person who would, by his increased power, be able to 'keep in line' any who disagreed. (Compare 1 Samuel 8:4-7, 19, 20.) By contrast, the apostle Peter urged fellow elders to shepherd the flock in their mutual care, not "as lording it over those who are God's inheritance, but becoming examples to the flock," humbly submitting to one another. (1 Pet. 5: 1-6) The apostle Paul also shows that it would be by 'holding firmly to the faithful word in his teaching' that an overseer would be able to "exhort by the teaching that is healthful and to reprove those who contradict." They were to show faith in the power of the truth and of God's holy spirit.—Titus 1:7, 9-11, 13; compare 2 Timothy 2:24-26.

[7] Because of the apostasy, the Bible terms used for those serving their brothers in responsible positions in the congregation in time came to take on a different meaning. The Greek term *e·pi'sko·pos*, meaning "overseer," originally described each and all of the elders who had the duty of looking out for or overseeing the interests of the congregation, caring for their spiritual welfare like a shepherd. (Acts 20:28) But the English word "bishop" (drawn from *e·pi'sko·pos* through the Latin *e·pi'sco·pus*) came to stand for a religious official who exercised dominant authority over many congregations in a wide area. This culminated in the development of the papacy in which one overseer, the bishop of Rome, claimed primacy and the sole right to preside over and direct all Christian overseers and congregations everywhere.

[8] Similarly with the word "minister." In Latin this word was used to translate the Greek *di·a'ko·nos* and, hence, originally meant a "servant," and, in a religious sense, one of the body of congregational "servants" that worked along as assistants to the body of elders. Since then "minister" has come to refer to a religious official who generally has sole and complete administrative authority over a congregation or church (though larger groups might have 'assistant pastors'). He is thus viewed as God's special servant (minister) in that congregation. In many countries today the word "minister" is used almost exclusively of Protestant clergymen, as distinguished from Catholic priests (the term "priest" being drawn from the Greek *pre·sby'te·ros* [elder] through the Latin *pres'by·ter*). In Latin America, for example, if a person introduces himself as a "minister" he is often thought of as a Protestant preacher, one who teaches a congregation from a pulpit in a Protestant church building.

[9] Thus a term that initially expressed humility and lowliness has come to be one that implies a relatively high position in the community. In ancient times a Latin-speaking person who introduced himself as a *minister* might mean thereby that he worked as somebody's house servant, like a butler or maid. But today the title of "minister" is generally one of considerable worldly eminence and prestige, according the person a standing along with men such as doctors, lawyers and professional men in various fields. This is very different from the sense in which the word *di·a'ko-*

7. What effect did the apostasy have on the use of the Scriptural terms for those having congregational assignments of responsibility? And how was this true of the Greek term for "overseer"?

8. What similar change took place as regards the term "minister"?

9. Contrast the modern idea conveyed by the word "minister" with the meaning the term had in Latin back in the early centuries of the Common Era.

nos is used in quotations of Jesus' statements. As we have seen in preceding articles, in his statements a *di·a'ko·nos* (servant or minister) is placed along with a "slave" and as the opposite of those viewed as "great" or "first." (Matt. 20:26-28) So, just as with the word "bishop" (*e·pi'sko·pos,* overseer), ecclesiastical usage has obscured the original meaning of the Latin word *mi·nis'ter* in the minds of most persons.

[10] What does it mean for us if we are sincere students of God's Word? It means that whenever we read the term "minister" in a translation of the Bible we need to adjust our thinking and recall the original meaning of that term, otherwise we will fail to get the point of Jesus' counsel and of the inspired expressions of his apostles and disciples. Rather than our getting the mental picture of a person in fine or formal dress, having unusual speaking ability and administrative ability, we would get a more fitting mental picture of a *di·a'ko·nos* or minister (in the original Latin sense of the term) as being that of an unpretentious servant of God walking down a dusty road in the heat of the sun, or perhaps of someone wearing an apron as he served others at a table.—Compare 2 Corinthians 10:10; 1 Corinthians 2:1-5; Luke 17:8.

[11] It is also worthy of mention that many, in fact, most, languages have no term that corresponds to the English word "minister" in its religious sense. Latin-based languages, such as Italian, French, Spanish and Portuguese, do have such a term. But in languages such as German or Dutch or in the languages of Scandinavia (Norwegian, Swedish, Danish) and in the Slavic languages (Polish, Russian and others), as well as in languages of Asia and other parts of the world, there is no corresponding word for "minister." In Germany the ordained clergyman is called "religious servant."

[12] To illustrate, in the English edition of the book *Jehovah's Witnesses in the Divine Purpose,* page 223, reference is made to the claim that "all of Jehovah's witnesses who regularly and customarily teach and preach the gospel are ministers." In the German edition, the last portion of this statement says that they are "preachers, that is clergymen," and the English word "ministers" is inserted in brackets (*Prediger* bzw. *Geistliche* [ministers]). On the same page, in quoting from a communication of the Selective Service System of the United States, in which the term "ministers of religion" is used, the German edition of this book again uses the German word for "preachers" and follows it by the German word for "clergymen" in brackets (*"Prediger"* [Geistliche]").

[13] Similarly in other cases, when the New World Translation of the Bible was translated into such languages as Danish, German, Dutch and Japanese, in all instances where the English words "minister," "ministry," and the verb forms of "to minister" were used, it was necessary to translate these by terms meaning "servant," "service," or forms of "to serve" in those languages.

[14] In Japanese, for example, a composite word, *ho·shi·sha* ("humbly-serving person") is used to translate *di·a'ko·nos.* The expression "ministerial servants" found in the English edition of the *New World Translation* is rendered in Danish by a Danish word meaning "congregational ser-

10. (a) What do these ecclesiastical perversions make necessary for us as students of God's Word? (b) If a Bible translation uses the word "minister" to translate the Greek word *di·a'ko·nos,* what mental picture should the word then bring to our minds?

11, 12. (a) How extensive is the use of the term "minister" in a religious sense throughout the world? (b) How does the German translation of the book *Jehovah's Witnesses in the Divine Purpose* illustrate problems that can arise in translating this term?

13, 14. (a) Where the *New World Translation* has been translated into languages not based on or influenced by Latin, what terms are used in place of "minister" and "ministry"? (b) In place of "ministerial servant," what expressions do some of these translations use?

vants"; in Swedish the expression "assisting servant" is used; while in German the term *Dienstamtgehilfe* appears, meaning, literally, "service office assistant."

16 Words are simply vehicles used to convey ideas from one mind to another. The important thing is that the correct idea be transmitted. Among Christians in particular, unity of thought and harmony of viewpoint is vital. As the inspired apostle says at 1 Corinthians 1:10: "You should all speak in agreement, and . . . there should not be divisions among you, but [you should] be fitly united in the same mind and in the same line of thought."

16 This gives added reason for our keeping in mind the Bible thought of a humble servant, rather than the common thought of a religious preacher, if we read or make use of the term "minister" as standing for the Greek term *di-a'ko-nos*. As part of a worldwide congregation, we will try not to formulate our ideas of Christianity or of its standards on the basis of any one term, especially if that term is peculiar to certain languages, but is not found in others. We will always seek to use expressions that are understandable and that clearly express the correct thought. To the degree possible and to the extent that translation allows, these should be expressions that are easily grasped by people of all kinds, wherever they may live or whatever language they may speak. For, as the apostle Paul also said: "Unless you through the tongue utter speech easily understood, how will it be known what is being spoken? You will, in fact, be speaking into the air."—1 Cor. 14:9.

WHERE DOES "ORDINATION" FIT IN?

17 As used in English, the word "ordain" means "to invest with ministerial or sacerdotal [priestly] functions: introduce into the office of the Christian ministry by the laying on of hands or by other forms: set apart by the ceremony of ordination." —*Webster's Third New International Dictionary*.

18 All those becoming genuine disciples of Christ Jesus become "servants" of God. According to the old meaning of the Latin word, they could all be called "ministers," for the Latin word originally meant the same thing: "servants." As we have seen, however, the Bible does show that some are "servants" in an *appointive* sense, having a congregational 'appointment' to serve in a particular assignment of service, as in the instance of elders or assistant servants.—Titus 1:5; 1 Tim. 3:1-13.

19 These do not receive such appointment through baptism. The apostle Paul was not referring to baptism when he wrote Timothy, "Never lay your hands hastily upon any man," but was referring to the action of appointing a man to a congregational assignment of service and the responsibility that went with it. (1 Tim. 5:22; compare 1 Timothy 3:1-15.) Paul himself, along with Barnabas, had been 'set apart' for a certain work by holy spirit. The body of elders at Antioch, in recognition of this, then "laid their hands upon them."—Acts 13:1-5; compare the action of the apostles in 'appointing' the "seven certified men" to handle a certain assignment of service, as recorded at Acts 6:1-6.

20 So, while all true Christians (brothers and sisters alike) serve (or "minister"), only some of them are appointed to a particular service in a congregation. But this

15, 16. (a) While not quibbling about words, what proper concern should Christians have as to the use of Bible terms? (b) How will they manifest this in their presentation of the good news to people of all nations?
17. What does the word "ordain" mean?

18, 19. (a) In what sense might all true disciples of Christ Jesus be said to be "ministers"? (b) Do all those who become baptized servants of God receive an "appointment" to particular assignments of congregational service and responsibility?
20, 21. How do the examples of Paul, Timothy and Archippus illustrate that certain congregation members are "servants" or "ministers" in an appointive sense, by congregational assignment?

does not mean that the brothers and sisters who do not have such an appointment are a laity class. When the apostle Paul said: "I set no store by life; I only want to finish the race, and complete the task [*di·a·ko·ni'a;* the service, *Int;* the ministry, *NW*] which the Lord Jesus assigned to me, of bearing my testimony to the gospel," he was evidently referring to the special assignment of service he received to "bring [Jesus'] name before the nations" or Gentiles. (Acts 20:24; 9:15, *NE;* compare Acts 21:19; 1 Timothy 1:12; Colossians 1:25.) At Romans 11:13 he says: "Forasmuch as I am, in reality, an apostle to the nations, I glorify my ministry [*di·a·ko·ni'a;* service, *Int*]."—Compare also Acts 1:15-17, 20-25.

21 Similarly, when Paul wrote to Timothy, "do all the duties of your calling [fully accomplish your ministry (*di·a·ko·ni'a*), *NW*]," he was referring to the particular assignment of service entrusted to Timothy in Ephesus, where he was left to help correct certain congregational problems. (2 Tim. 4:5; *NE;* 1 Tim. 1:3, 4) At Colossians 4:17 (*NE*) Paul gave "this special word" to Archippus: "Attend to the duty [*di·a·ko·ni'a;* ministry, *NW*] entrusted to you in the Lord's service, and discharge it to the full." While all the other disciples there in Colossae were servants of God, Archippus had evidently received some kind of specific assignment of service, doubtless accompanied by the laying on of hands by a body of elders.

"ORDAINED" SERVANTS IN CONGREGATIONS

22 What do we see then? That, though Jesus had many disciples, he selected twelve, 'choosing' and 'appointing' them, as apostles. (Mark 3:14, 15; Luke 6:12, 13; John 15:16) We see that Paul and Barnabas were specially "appointed" from among the disciples in Antioch to carry the good news to the nations. (Acts 13:47) Also, that Paul told the Ephesian elders that they were "appointed" by holy spirit to serve the rest of the congregation. (Acts 20:17, 28) In all these cases such appointment came, not at the time of their baptism, but subsequent thereto. So today there are, in the congregations of God's people, men (usually baptized for some time) who are appointed to serve the congregation in certain assigned capacities. Those who have received such congregational appointments to particular services may be said to be "ordained," in the sense in which the word is used today.*

23 In view of all of this, what should one do if, as at times occurs, a governmental agency inquires into the profession or position of citizens? By them, the expression "ordained minister" is understood to mean one who is an appointed caretaker and server of spiritual things to a congregation, one who acts as a "pastor" or shepherd of a congregation. Dictionaries, for example, give the generally understood ecclesiastical definition of a "minister" as "one authorized to conduct religious services." By the term "minister" such governmental agencies do not describe or mean the service that every individual Christian may perform in his or her personal efforts to share the good news with others. In answering the inquiries, then, one would reasonably reply in harmony with what the official inquirers are seeking to know, rather than imposing one's own definition on such terms.

22. In the sense that the word "ordained" is used today, to whom would it apply, in harmony with Scriptural precedents set by Christ Jesus and his apostles?

* Acts 14:23 speaks of the work of Paul and Barnabas in cities of Asia Minor and says that they "appointed older men [elders] for them in [each] congregation." Here, for the word "appointed," the *Authorized Version* says "ordained."

23, 24. (a) How do governmental agencies generally understand the expression "ordained minister" as applying, and if this expression came up in an inquiry by them, how should one reply? (b) Would it be reasonable to refer to people in a territory where public witnessing is done as one's "congregation" and to their doorsteps as one's "pulpit"?

[24] People would not expect, for example, a house-to-house publisher to say that the "congregation" that he serves consists of the families in a territory where witnessing is done, inasmuch as the people living in that area may not themselves recognize or accept the one doing the witnessing as their "minister," and may, in fact, belong to a religion of their own. Similarly, would they properly understand the reply if we refer to the doorstep of the people there as the "pulpit" of the bearer of the good news, even if he gives what he calls a 3-minute or a 5-minute "sermon"? Such "pulpit" is generally understood to be the speaker's stand in the building to which the public in general are invited to come.

[25] Of course, if one actually has been appointed by the duly authorized men to a particular position of service, he can so reply and can give, as the time of his "ordination," the date—not of his baptism—but of the time when the Christian appointive body, in effect, 'laid hands upon him' by giving him such appointment.

[26] In the early Christian congregation all baptized believers were "anointed" with holy spirit, having a heavenly calling. Yet not all were apostles, prophets, teachers, elders or ministerial servants. So not all received an official appointment to some particular service after their baptism. Yet all served together, even as a body has many members that all cooperate together and have "the same care for one another," as the apostle points out at 1 Corinthians 12:12-30.

[27] So, then, whether we have qualified for and received such an official appointment to a particular service and responsibility or not, may all of us serve together shoulder to shoulder to accomplish God's will for our time. Let us all treasure and zealously use the privilege we hold in common of speaking the truth to others, sharing with others the good news that has brought light and hope into our lives.

25. If one does have a congregational appointment to service, what date could he give as his date of "ordination"?

26. Did all early Christians have a congregational appointment (or "ordination") to a particular assignment of service, and did this affect their unity?

27. What healthful attitude, then, should all of us gladly take today as regards our service to God and to our fellowman?

A Long Search Ended

JESUS CHRIST on one occasion said: "Keep on seeking, and you will find." (Matt. 7:7) Hence, the person who sincerely and diligently seeks to come into an approved relationship with the Creator will succeed in this. At times, however, this may call for much perseverance in not giving up the search for truth.

This is illustrated in the case of a woman living in a predominantly Moslem country of the Middle East. As a little girl, Melek (Angel) was taught that God provided four books to instruct mankind about his will. These books are the Tevrat (the Law or five books of Moses), Zebur (the Prophets and Hagiographa), Incil (the New Testament or Christian Greek Scriptures) and the Koran. Her curiosity in the Tevrat, Zebur and Incil having been aroused by the instructor, Melek asked him why only the Koran was used even though the other three books had also come from God. He encouraged her not to concern herself about them, pointing out that the Koran was given last and therefore superseded the Tevrat, Zebur and Incil. Melek, however, was not satisfied with this answer.

As she progressed through school, Melek asked other religious instructors about the Tevrat, Zebur and Incil. The answer was always the same, 'These three books are unnecessary.' Upon finishing school, Melek moved to a larger city. There she inquired at various bookstores about the Tevrat, Zebur and Incil, but all her searching was in vain.

Though many years passed, Melek's desire to find the three other holy books mentioned by her instructor did not diminish. Late one night she approached three young women waiting at a bus stop. "What are you three young girls

doing out so late at night?" she asked. "We are coming from studying the holy books," they replied. Hopefully, Melek inquired, "Which holy books?" Although now sixty years of age, she was overjoyed when they replied, "Why, the Tevrat, Zebur and Incil." "Those are the books I have been looking for for almost fifty years!" she exclaimed.

But Melek's happiness quickly turned to dismay. Just then the bus pulled up and the girls had to leave. There was no time to exchange addresses or even names.

After having searched for so long, Melek, however, was not going to give up easily. For weeks thereafter she would go to the same bus stop on the same night, waiting and waiting in the hope that she would meet the girls again. But her efforts were fruitless.

Then, one day, Melek entered a tailor's shop. Who should be sitting right across from her? Why, it was one of the three girls! Melek rushed up to her, embraced her, kissed her and declared, "You are the one who has the three holy books. Would you please give them to me?" The young woman, one of Jehovah's witnesses, replied that she would both give them to her and study them with her. Her life's search ended, Melek herself is now helping others to benefit from the three holy books that make up the complete Bible.



● How can Acts 7:16, which ascribes to Abraham the purchase of a burial place in Shechem, be harmonized with Genesis 23:15-19?

It might seem that there is a conflict, with Acts 7:16 saying Abraham bought a burial place in Shechem but Genesis 23:15-19 reporting that he purchased such a plot in Machpelah near Hebron. There are a number of possible explanations. Let us note some of the details.

Soon after Abraham entered the Promised Land (1943 B.C.E.) he resided for a time in Shechem, which was in the northern area where Samaria was later built. (Gen. 12:6-8) When Abraham's wife Sarah later died (1881 B.C.E.), he purchased as a burial place the field and cave of Machpelah, which was near Hebron to the south of Jerusalem. "Abraham buried Sarah his wife in the cave of the field of Machpelah in front of Mamre, that is to say, Hebron, in the land of Canaan." (Gen. 23:15-19) In time Abraham, Isaac, Rebekah and Leah were also buried there.—Gen. 25:9; 49:29-32.

Abraham's grandson Jacob also dwelt for a while near Shechem, and he there purchased a tract of land and built an altar. (Gen. 33:18-20) When he was near death in Egypt, Jacob commanded his sons that he be buried, not in Shechem, but with his fathers in the plot that Abraham had purchased near Hebron. (Gen. 49:29-32; 50:12, 13) As to a burial in Shechem, Joshua 24:32 says that after the Israelites entered the Promised Land they buried Joseph's bones "in Shechem in the tract of the field that Jacob had acquired," which came to be in the territory of Joseph's son Manasseh.

With this history in mind, we can note Acts 7:15, 16. In his masterful defense the Christian disciple Stephen said: "Jacob went down into Egypt. And he deceased; and so did our forefathers, and they [the "forefathers"] were transferred to *Shechem* and were laid in the *tomb that Abraham had bought* for a price with silver money from the sons of Hamor in Shechem." So it might appear that Stephen was saying that Abraham, rather than Jacob, purchased land in Shechem. Yet Genesis 23:17, 18 tells us that Abraham bought a burial place in Machpelah near Hebron.

Certain scholars believe that in addition to

IN THE NEXT ISSUE

- **The Giving That Really Counts.**
- **The Kind of Persons Approved for God's New Order.**
- **Christian Love Attracts Men of All Kinds in Nigeria.**

the purchase of the plot of land in Hebron, Abraham could have also obtained the land in Shechem where Jehovah appeared to him and where he then built an altar. (Gen. 12:7) If so, then this may have been the same land that Genesis 33:18, 19 mentions Jacob as buying from those who controlled it at that time. This view would eliminate any seeming problem with Acts 7:16.

Another approach is that Stephen may simply have been condensing two accounts, combining Abraham's transaction at Genesis 23:15-19 and the purchase by Jacob mentioned at Genesis 33:18, 19. Giving some weight to this possibility is the fact that at Acts 7:7 Stephen evidently combined into one statement something God said to Abraham and something He said to Moses. (Gen. 15:14; Ex. 3:12) Thus Acts 7:16 may just be a condensed or elliptical statement that was sufficient for Stephen's purpose, as was Acts 7:7.

Another possible solution can be considered. Abraham was Jacob's grandfather. So, even though Genesis 33:18, 19 says that Jacob purchased land at Shechem, Stephen could have ascribed the purchase to Abraham the patriarchal head. Giving credence to this are other instances in the Bible where the names of forefathers were applied to and used for the descendants.—Hos. 11:1, 3, 12; Matt. 2:15-18.

Each one of these possibilities may be the solution to the seeming conflict between Acts 7:16 and Genesis 23:15-19. The fact that a number of plausible explanations are available emphasizes how unreasonable it would be for anyone today who does not have all the facts to conclude that Stephen was in error.

"WATCHTOWER" STUDIES FOR THE WEEKS

January 4: Christian Greatness Comes from Serving. Page 716. Songs to Be Used: 58, 15.

January 11: Serving Unitedly as an Association of Brothers. Page 722. Songs to Be Used: 64, 14.

January 18: What Does It Mean to Be a "Minister"? Page 728. Songs to Be Used: 29, 32.

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit G

0001

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
-oOo-

JANE DOE,

Plaintiff,

-vs-

No. HG11558324

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

DEPOSITION OF GARY A. ABRAHAMSON
Tuesday, August 23, 2011

Taken Before Karen Scott
Certified Shorthand Reporter
State of California
C.S.R. No. 4027

0002

I N D E X

DEPOSITION OF GARY A. ABRAHAMSON
Tuesday, August 23, 2011

EXAMINATION BY:		Page
MR. SIMONS		10

E X H I B I T S

Exhibit	Description	Page
No. 1	Letter To All Bodies of Elders from Watchtower Bible and Tract Society of New York, Inc., dated March 10, 1983	76
No. 2	Letter To All Bodies of Elders from Watchtower Bible and Tract Society of New York, Inc., dated September 20, 1984	87
No. 3	Letter To All Bodies of Elders from Watchtower Bible and Tract Society of New York, Inc., dated February 1, 1987; letter To All Bodies of Elders from Watchtower and Tract Society of New York, Inc., dated May 20, 1987	90
No. 4	Letter To All Bodies of Elders	92

coverage of our territory in the preaching work, also be concerned about the different Bible studies that are being conducted in the congregation.

Q Are there other elders in the Fremont North Congregation at present?

A Yes.

Q Approximately how many?

A I would say 12.

Q And what is the approximate size of the congregation today?

A About 110.

Q If we were to go back in time to the mid-1990s, do you have an estimate then as to the number of elders, approximately?

A I would estimate eight, but it's just an estimation.

Q And the size of the congregation at that time, approximately 15 to 20 years ago.

A I'm sure those records might be available, but I would hesitate to guess.

0016

Q Do you have a general impression as to whether the membership has grown larger in that specific congregation since the mid-1990s, smaller or is about the same?

A There have certainly been a lot of new ones that have come in but others have moved away, so it might be fair to say that it was around the same.

Q You mentioned the term "service overseer." What is a service overseer?

A A service overseer is a -- an appointment as an -- he must be an elder, and it's an appointment to oversee the departments that I mentioned to you, literature, and we call our -- preaching work is our service to God. So anything that involves the preaching work would be something that I would be quite interested in.

Q To become an elder, is there a process of, I'll call it like a ladder, steps in a ladder that one must go through in preparation for assuming that title and position?

A Well, what we use are the Bible requirements. All of Jehovah's Witnesses, before they're baptized, must take a knowledge, repent, act upon the knowledge, obey what they find from the Scriptures. But in addition to that, elders would be

0017

those that reach out for additional responsibilities, and these are outlined -- these qualifications for elders are outlined in First Timothy, Chapter 3.

Q Can you tell me what they are?

A Some of them are, sure.

Qualifications are that they would, first of all, be desirous of a fine work, so it is work-involved. We're not paid for the effort that we put forth, but we do it freely and willingly. And we would not be irreprehensible -- or we would need to be irreprehensible. We would need to be a husband and one wife. We would need to be orderly. We would need to be not given to a lot of wine, not -- and if I had the Bible I could do a little bit more justice to the -- but they're found there in First Timothy, Chapter 3, Verses 1 through, say, 10.

Q Who selects elders?
A The local Body of Elders observes individuals and then we will discuss them as a body, and ultimately we will send a recommendation into the branch office and the traveling brother that assists us at this time would be the circuit overseer, and so we would submit a request for this recommendation to be approved.
Q All right. You used the word "branch office," and I'm not sure what that refers to. Please tell me.
A Okay. Yes. It's -- the worldwide organization of Jehovah's Witnesses has a headquarters which is in New York, and there is where the United States branch happens to be, but also they oversee the entire work, the global work of Jehovah's Witnesses.
Q Is that organization The Watchtower Bible and Tract Society of New York?
Actually let me -- I see you are puzzled. Let me withdraw the question and ask you, back in the mid-1990s, was that organization The Watchtower Bible and Tract Society of New York?
A I -- it might be New York or it might be Pennsylvania. I think it was -- I'm not sure.
Q Fair enough.
A Yeah.
Q Do you as an elder -- strike that. Let me start over.
Have you as an elder recommended other persons to be nominated to the position of elder during your years of service?
A Yes. I have been on the body that has recommended others.
Q And to whom is such a recommendation directed?
A To the branch office.
Q And is the branch office located somewhere other than New York or is it in New York to your understanding?
A It's in New York.
Q Has that process changed during the many years that you have been an elder?
A No.
Q You mentioned the term "circuit overseer," and can you describe for me what a circuit overseer is?
A Yes. He is a traveling elder. He visits -- generally he has a circuit of 20 congregations, and so he would like to visit these twice a year, and we look forward to these visits, and during this time he gives counsel from the branch to the elders, to the ministerial servants, and this counsel is appreciated.
He -- he agrees to travel to the various congregations, and in some cases they house him in maybe a room that they have, and if he has a wife, he and his wife. And in some cases they may have an apartment attached to a Kingdom Hall that they could use, and he does not get any reimburse -- well, he does not get any salary for his work. He's a

I, the undersigned, declare under penalty of perjury that I have read the foregoing transcript, and I have made any corrections, additions, or deletions that I was desirous of making; that the foregoing is a true and correct transcript of my testimony contained therein.

Dated:_____ at _____, California.

_____
GARY A. ABRAHAMSON

CERTIFICATE OF REPORTER

I, KAREN SCOTT, a Certified Shorthand Reporter of the State of California, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED:

KAREN SCOTT, CRP, CSR No. 4027

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit H

ORGANIZED TO ACCOMPLISH OUR MINISTRY

"You, though, keep your senses in all things, suffer evil, do the work of an evangelizer, fully accomplish your ministry."—2 Tim. 4:5.

COPYRIGHT, 1983
by

WATCH TOWER BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

Publishers
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.
INTERNATIONAL BIBLE STUDENTS
ASSOCIATION
Brooklyn, New York, U.S.A.

Made in the United States of America

sponsible for their own children, others in the congregation may also wish to help young ones who are motivated from the heart to share in the Kingdom-preaching work. If you are a parent, your fine example in the field ministry will do much to encourage your children to be zealous in their service to God. When a child is exemplary in his conduct and is able to make a personal expression of his faith by speaking to others about the good news, being moved from the heart to do so, what further help can be given?

It would be in order for the parent to approach one of the elders on the service committee of the congregation and discuss whether the child is qualified to be counted as a publisher. If the child has a basic knowledge of Bible truth and gives evidence of *wanting* to share in Kingdom service, this would indicate good progress has been made. After that elder has considered these and other factors similar to those that apply to adults, he can determine whether the child's field service reports may be accepted, so that he may be recognized as a publisher with the congregation.—Luke 6:45; Rom. 10:10.

REPORTING ON THE PROGRESS OF THE MINISTRY

Progressive reports on the worldwide expansion of pure worship have been a source of genuine encouragement for Jehovah's people over the years. From the time Jesus first told his disciples that the good news would have to be preached throughout all the earth, true Christians have been vitally concerned with knowing how this would be accomplished.—Matt. 28:19, 20; Mark 13:10; Acts 1:8.

Early followers of Jesus Christ took interest in reports of progress in the preaching work. (Mark 6:30) As the work prospered, statistical

reports were compiled along with accounts of outstanding experiences of those having a share in preaching the good news. The Bible book of Acts tells us that there were about 120 persons present when holy spirit was poured out on the disciples at Pentecost. Soon the number of disciples grew to 3,000 and then to 5,000. The encouraging report was made that "Jehovah continued to join to them daily those being saved," and that "a great crowd of priests began to be obedient to the faith." (Acts 2:5-11, 41, 47; 6:7; 1:15; 4:4) What fine encouragement the news of these increases must have brought to the disciples! How these exciting reports must have impelled them to move ahead further with their divinely commissioned work in spite of severe persecution spearheaded by the Jewish religious leaders!

About 60-61 C.E. Paul reported in his letter to the Colossians that the good news was "bearing fruit and increasing in all the world" and "was preached in all creation that is under heaven." (Col. 1:6, 23) The Christians had been obedient to the Word, and holy spirit had empowered them to accomplish a worldwide preaching work before the end of the Jewish system of things in 70 C.E. How encouraging it was for those faithful Christian workers to hear reports of what was being accomplished! A seemingly impossible task had been completed and no doubt those having a share in the work sensed an expression of 'Well done!' from the Master.—Matt. 25:21.

In like manner, Jehovah's modern-day organization endeavors to keep precise records of the work being done in fulfillment of Matthew 24:14, which says: "And this good news of the kingdom will be preached in all the inhabited earth for a witness to all the nations; and then the end will

come." As dedicated servants of God we have an urgent work to do. Are you not personally interested in seeing to it that the ministry is accomplished thoroughly before the end comes? Of course, Jehovah will see to it that this work is completed, but will we have a share and will we receive Jehovah's smile of approval? Will we hear his pronouncement, "Well done"?

YOUR PERSONAL FIELD SERVICE REPORT

What, exactly, are we to report? The Field Service Report slip provided by the Society indicates what information is to be included, but perhaps the following general comments, along with additional clarifications that are set out from time to time in *Our Kingdom Ministry,* will prove to be helpful.

In the columns with the headings "Books," "Booklets" and "Individual Magazines," list the total number of any of these items that you placed with people who are not dedicated, baptized Witnesses. Brochures are counted as booklets.

Both new and renewal subscriptions obtained from unbaptized people are reported on your Field Service Report slip in the column under the heading "Subs." Please turn these in to the person handling subscriptions in the congregation at the very first opportunity. The congregation should promptly mail subscriptions to the Society each week to ensure the best service to subscribers.

In reporting "Return Visits" count the total number of return calls made for the purpose of further stimulating interest previously shown by people who are not dedicated, baptized Witnesses. (An exception would be where you conduct a home Bible study with an inactive brother or sister at the direction of one of the Congregation

Service Committee. Also, you may report return visits for studies conducted with a newly baptized person who has not finished studying two of the Society's publications.) The return visit could be not only by a visit to someone's home but also in the form of a letter, a telephone call or the delivery of some literature, such as the latest issue of a magazine. Each time a home Bible study is conducted it should be counted as a return visit. In order to count a return visit, you would need to contact the particular individual who showed interest previously.

Although Bible studies are usually conducted regularly at least once each week, they are reported only once each month. At the end of each month, please make out a Study Report slip for each home Bible study you have conducted during the month with people who are not dedicated, baptized Witnesses. (See exceptions in the following paragraph.) After filling out each slip completely and accurately, write the total number of these Bible studies in the box at the lower right-hand corner of your Field Service Report slip. The number you indicate on the Field Service Report slip and the number of Study Report slips you turn in will be the same.

It is important to make an accurate report of "Hours of Field Service." Basically, this is the time you spend in the house-to-house ministry, engaging in street witnessing, making return visits, conducting Bible studies or otherwise witnessing informally or publicly to people who are not dedicated and baptized Witnesses. (An exception would be where you conduct a home Bible study with an inactive brother or sister at the direction of one of the Congregation Service Committee. Also, you may continue reporting a

study being conducted with a newly baptized person who has not finished studying two of the Society's publications.) If a publisher works in areas or in situations where it is not wise to be alone and it is, therefore, necessary for another publisher to accompany him, both may count the time if both share in giving the witness. There are other essential activities for which time is not counted, such as getting ready for field service, attending the meeting for field service and traveling to and from the territory.

Your field service time should start when you begin your witness work and end when you finish your last call in each witnessing period. Time taken for refreshments or meals during a period of field service is not to be counted. Auxiliary, regular and special pioneers, as well as missionaries, have hour requirements to meet. Congregation publishers are encouraged likewise to put Kingdom interests first and exert themselves in the ministry to accomplish all that they can in the field according to their individual circumstances. All of Jehovah's dedicated servants endeavor to be whole-souled in the ministry. (Col. 3:23) Those giving public talks may count the time spent delivering these, and a parent may count up to one hour each week when studying with his or her undedicated children.

CONGREGATION'S PUBLISHER RECORD FILE

Your individual field service report for each month is compiled and recorded on a Congregation's Publisher Record card that is kept as a part of the congregation's files. These cards are not personal property. If you should move to another congregation, you may ask the secretary of the new congregation where you will be associating to write to the secretary of the congregation

from which you moved and request the transfer of your record of activity. This will serve to introduce you to the elders of that congregation and they will then be in a better position to continue giving needed spiritual assistance. If you are to be away from the congregation for a short period of less than three months, please continue to send your field service reports regularly to your home congregation.

When a person who has been having a home Bible study wants to go in the field service for the first time, this makes us rejoice. However, before he does so, the elders will want to make sure that the individual qualifies to be a publisher and that he or she really appreciates what it means to be publicly identified as associated with Jehovah's Witnesses. So the presiding overseer will arrange to have two elders (one being a member of the service committee) discuss this matter with the individual and with the brother or sister who is studying with him. (See page 98.) This will enable them to get better acquainted with him and to commend him warmly for the progress he is making.

In this discussion the elders can mention that the secretary keeps the field service records of the congregation. He and the other elders take a keen interest in all field service reports that are turned in each month. It would be appropriate to explain to the individual that when a Bible student reports field service for the first time and qualifies as an unbaptized publisher, a Congregation's Publisher Record card is made out

in his behalf and included in the congregation's file. The elders can then warmly welcome the individual as one who has a desire to become an active associate with Jehovah's Witnesses. (Rom. 15:7) Getting better acquainted with the new publisher in this way and taking a keen interest in what he has accomplished can have a fine influence on the individual. It may move him toward making even greater efforts to serve Jehovah and to turn in field service reports regularly each month.—Phil. 2:4; Heb. 13:2.

WHY WE REPORT OUR FIELD SERVICE

Do you sometimes forget to turn in your field service report? No doubt all of us need occasional reminders. But if we cultivate a proper attitude toward reporting our field ministry, and if we understand why it is important to do so, it may become easier for us to remember to make proper reports of our field service.

Someone has asked: "Since Jehovah knows what I am doing in his service, why do I need to make a report to the congregation?" True, Jehovah knows what each one is doing and he is able to judge whether our service is whole-souled or if it is just a token of what we are really able to do. Even so, the Bible reveals that Jehovah has always had a record kept of the activities of his servants. He recorded the number of days that Noah spent in the ark and the number of years the Israelites journeyed in the wilderness. God kept account of the number of those who were faithful as well as of those who disobeyed. He recorded the progressive conquest of the land of Canaan and the accomplishments of the faithful judges of Israel. Yes, he recorded many details regarding the deeds and accomplishments of his servants. He inspired this written record of what

took place, making clear to us his view of making reports and keeping accurate records.*

There are a number of reasons why we report our field service today. Although these reports obviously do not include all that we do in serving Jehovah, what is reported serves a most practical purpose toward helping all within the organization and especially the local elders and the Society.

At times reports may indicate that particular attention needs to be given to certain aspects of our ministry. The figures may show that there has been progress in some activities but that publisher increase or growth in other areas has slowed down. Encouragement may be needed or it could be that there are problems to be resolved. Responsible overseers will take note of reports and endeavor to rectify any condition that may be hindering the progress of individuals or of the congregation as a whole.

Also, reports are beneficial organizationally in determining just where there is a greater need for workers in the field. What areas are more productive? Where is little progress being made? What publications are needed to help people to learn the truth? Reports enable the Society to project literature needs for different areas of the world and then keep ahead of the need so that there is not a shortage of Bibles or Bible literature for use in the preaching work.

For most of us reports mean encouragement.

* Many historical events recorded in the Bible demonstrate the exactness of reports and records kept by Jehovah's name people. In many cases the full impact of the Bible account could not be conveyed without the specific numbers being reported. Consider the following examples: Genesis 46:27 and Exodus 12:37; Judges 7:7; 2 Kings 19:35; 2 Chronicles 14:9-13; John 6:10; 21:11; Acts 2:41; 19:19.

Are we not thrilled when we hear about the work our brothers are doing in getting the good news preached worldwide? Reports of increases in numbers of publishers help us to get an overall view of the expansion of Jehovah's organization. Individual experiences warm our heart and fill us with zeal, moving us also to have a full share in the preaching work. (Acts 15:3) So our individual cooperation with the congregation in turning in field service reports is important. It shows our concern for the brothers everywhere and in this small way we demonstrate our submission to Jehovah's organizational arrangement. —Matt. 24:45-47.

SETTING PERSONAL GOALS

There is no reason for us to become competitive in making our reports, comparing our service with that of another individual. Individual circumstances vary greatly, making it unwise for us to make such comparisons. On the other hand, we can derive much benefit from setting realistic personal goals for ourselves. These can give us a valuable basis for measuring our own progress in the ministry. Also, if our personal goals are realistic and set according to our individual circumstances, attaining these goals can give us the satisfaction that comes with accomplishment.

SHARE IN A FINAL REPORT

Regarding a symbolic work that was in a way prophetic of the preaching work we are doing today, we are told that a report was made when the work was finished. In prophetic vision Ezekiel saw six men with smashing weapons in their hands coming forth to execute judgment upon apostate Jerusalem. But then he saw a seventh man come forth also. This one had a secretary's

inkhorn with him and he was told: "Pass through the midst of the city, through the midst of Jerusalem, and you must put a mark on the foreheads of the men that are sighing and groaning over all the detestable things that are being done in the midst of it." After finishing his work of marking those who were to be saved from execution by the men with the smashing weapons, the man with the secretary's inkhorn returned to make a report, saying: "I have done just as you have commanded me."—Ezek. 9:1-11.

We do not know what final report Jehovah will request from his dedicated people when it comes to making a permanent record of the grand preaching work accomplished during the time of the end in fulfillment of Matthew 24:14. However, we can personally show our respect for his present organizational arrangement and demonstrate our appreciation for the small part we are allowed to have in the ministry by conscientiously reporting our field service regularly each month. It is recommended that all publishers of the good news promptly report their service activity at the end of each month. If this is done it will be greatly appreciated by the brothers who are assigned to compile the congregation field service report for mailing to the Society.

It is obvious that Jehovah is now, indeed, speeding up the ingathering of those people he will protect through "the great tribulation." We are living in the time of fulfillment of Isaiah's prophecy in this regard: "The little one himself will become a thousand, and the small one a mighty nation. I myself, Jehovah, shall speed it up in its own time." (Rev. 7:9, 14; Isa. 60:22)

As part of the worldwide association of brothers entrusted with the ministry, we want to be able to report as did the visionary man with the secretary's inkhorn: "I have done just as you have commanded me."—Ezek. 9:11.

CHAPTER 9

WAYS TO EXPAND YOUR MINISTRY

WHEN the time came for Jesus to send his disciples out as Kingdom preachers, he said to them: "Yes, the harvest is great, but the workers are few." There was much work to be done, and so he added: "Beg the Master of the harvest to send out workers into his harvest." (Matt. 9: 37, 38) As Jesus instructed the disciples on how to go about their ministry there was a ring of urgency in his words. He said: "You will by no means complete the circuit of the cities of Israel until the Son of man arrives."—Matt. 10:23.

Today, also, there is a great need in the field of the Christian ministry. Time is running out and this good news of the Kingdom must be preached before the end comes. (Mark 13:10) Since the field is the world, it becomes clear that we are faced with a situation quite similar to that experienced by Jesus and his disciples, only on a much larger scale. We, too, are few in number in comparison with the world of mankind, but we can be sure that Jehovah's hand is not short with regard to his ability to have the Kingdom good news declared throughout the inhabited earth. The good news *will be preached* and the end *will come* on schedule according to Jehovah's own purpose. But will we be found faithful in having discharged our responsibility

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit I

JACKSON LEWIS, LLP
Robert J. Schnack, Esq.
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW York, INC., FREMONT CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, et al, Defendants.	Case No.: HG115558324 **DECLARATION OF ALLEN SHUSTER**

I, Allen Shuster, after being duly sworn, depose and state that if called to testify in this matter I would competently testify as follows:

1. I am over 21 years of age, of sound mind, and competent to make this Affidavit. I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I reside in Patterson, New York, and have served as an elder in the faith of Jehovah's Witnesses since about 1979.

3. On April 23, 1976, I began serving at the U.S. branch offices of Jehovah's Witnesses in New York. I have served in the Service Department of the U.S. branch offices since February 5, 1981. I provide spiritual assistance to congregation elders who call or write the Service Department for help. Prior to March 2001, the spiritual assistance provided by the Service Department, along with the appointment of elders and ministerial servants, was communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"). Since March 2001, this has been

communicated through the Christian Congregation of Jehovah's Witnesses.

4. My duties in the Service Department include monitoring the organization, functioning, and staffing of congregations of Jehovah's Witnesses, including reviewing the qualifications for the appointment of elders and ministerial servants to congregations of Jehovah's Witnesses in the United States.

MEMBERS OF CONGREGATIONS

5. All congregations of Jehovah's Witnesses are composed of individuals and families who gather together to worship in buildings called "Kingdom Halls."

6. There is no age requirement for baptism, but Jehovah's Witnesses do not practice infant baptism. Their youth are not typically baptized until they are old and mature enough to make an independent determination about their religious beliefs, often not until their teenage years.

7. An ordinary member of the congregation is called a "publisher." Publishers are called that because they "publish" the good news of the Bible by engaging in public ministry.

8. Congregations may have both baptized and unbaptized publishers, but only baptized publishers are considered to be congregation members.

9. There is no predetermined number of hours a publisher is required to spend in public ministry.

10. Individuals spend as much time in the public ministry as their heart motivates them to spend.

11. There is no requirement for publishers to place any amount of literature.

12. Before an individual, man, woman, or child, is recognized as an unbaptized publisher, two congregation elders briefly meet with that person (and his or her parents in the case of a minor) to determine whether he or she believes the Bible is the inspired Word of God, knows basic Bible teachings, is living in harmony with the Bible's prohibitions against immorality, drunkenness, and drug abuse, and wants to be one of Jehovah's Witnesses. Thereafter, the two elders who meet with the individual determine whether he or she qualifies to be recognized as an unbaptized publisher in the congregation.

13. This procedure for becoming an unbaptized publisher came into existence when it was announced in the November 15, 1988, issue of *The Watchtower*. Prior to that time, the individual publisher who studied the Bible with an interested person decided when that interested person could be invited to accompany the congregation in the field ministry as an approved associate of Jehovah's Witnesses.

14. There is no application form to fill out to become an unbaptized publisher.

15. Neither Watchtower nor the U.S. branch offices of Jehovah's Witnesses review or approve whether an individual is qualified to be recognized as an unbaptized or baptized publisher, nor does Watchtower or the U.S. branch offices of Jehovah's Witnesses maintain a list of unbaptized or baptized publishers.

16. After a person turns in his or her first field service report to a congregation's elders, an announcement is made during one of the weekday congregation meetings that the person is a new unbaptized publisher in the congregation. The procedure to announce a new unbaptized publisher to the congregation came into existence when it was announced in the November 15, 1988, issue of *The Watchtower*. Prior to that date no announcement was made when an individual became an approved associate.

CONGREGATION ELDERS AND MINISTERIAL SERVANTS

17. There is no paid clergy class at Watchtower, the U.S. branch offices of Jehovah's Witnesses, or in congregations of Jehovah's Witnesses. Men who qualify are appointed to serve a congregation as ministerial servants and then as elders. The appointed men who provide spiritual direction to the congregation members are the elders. Ministerial servants help elders by providing administrative functions in the congregation.

18. Jehovah's Witnesses are not automatically appointed to serve as congregation elders. They must meet qualifications as follows: Before a male member of the congregation can be considered for appointment as a ministerial servant, he must be baptized as one of Jehovah's Witnesses. The individual must then gain further knowledge of the Holy Scriptures and show a willingness to be used to assist others in the congregation. If he shows such willingness and meets the Scriptural qualifications stated in 1Timothy 3:8-13, he may qualify to

be appointed as a ministerial servant. Although a ministerial servant would not provide spiritual supervision to the congregation, he could be assigned tasks to assist congregation elders as they carry out their duties.

19. In time—perhaps after many years—a ministerial servant who has faithfully carried out his assignments and has gained experience may meet the qualifications of a congregation elders as outlined in the Bible. When this occurs, the congregation elders will recommend to the circuit overseer (a representative of the Branch office who is also an experienced elder) that the ministerial servant be appointed as an elder in the congregation. If the circuit overseer agrees with the recommendation, he will forward it to the Branch office's Service Department. Approved elders in the Service Department review the recommendation in accord with the guidelines outlined in the Holy Scriptures, adopted by the Governing Body of Jehovah's Witnesses. The Branch office then informs the local congregation's body of elders, in writing, of their determination about the recommendation.

20. The responsibilities of ministerial servants include handling the congregation literature, congregation accounts, and congregation territory for the public ministry, caring for microphone and sound equipment during meetings, serving as attendants during congregation meetings, and maintaining the physical appearance and cleanliness of the Kingdom Hall.

21. Those who serve as elders and ministerial servants are all volunteers and none of them are paid for their service nor do they receive any reimbursement for their transportation, living, or meal expenses.

22. Neither Watchtower, the U.S. branch offices of Jehovah's Witnesses, nor any congregations of Jehovah's Witnesses have any paid employees, and as previously noted, there is no paid clergy class (Matthew 10:8).

23. At least twice a year, the body of elders of a congregation meets together to review the qualifications of the men in the congregation who might qualify to serve as an elder or ministerial servant.

24. Elders are recommended from among the ministerial servants in the congregation who meet the spiritual qualifications found at 1 Timothy 3:1-7 and Titus 1:5-9.

25. Ministerial servants are recommended from male members of the congregation who are not serving as elders or ministerial servants and meet the spiritual qualifications found at 1 Timothy 3:8-10, 12, 13.

26. During all times relevant to this lawsuit local elders' recommendations for new elders and ministerial servants had to be approved by the Service Department at the U.S. branch offices of Jehovah's Witnesses in New York before they could be appointed.

27. During all times relevant to this lawsuit, all appointments of elders and ministerial servants in the United States were communicated by the Service Department to congregations through Watchtower.

28. If an individual is appointed to serve as a congregation elder, a letter of appointment from the Branch office is read to the congregation. At this time the newly appointed elder is officially vested with ministerial authority in the congregation.

29. Jehovah's Witnesses who serve as appointed elders are recognized as ordained congregation elders.

30. Elders are responsible for providing spiritual supervision to the congregations, which includes hearing confessions and other confidential spiritual communications made to them by members of the congregation who seek spiritual counsel, advice or comfort. Their authorization to do so comes from the Holy Scriptures and from the Governing Body of Jehovah's Witnesses.

31. According to the religious beliefs and practices of Jehovah's Witnesses, congregation elders, as ordained ministers, are expected to keep confession and other confidential spiritual communications confidential. An elder who reveals a confession or other confidential spiritual communication without the express permission of the one making the confession or confidential spiritual communication would usually be disqualified from continuing to serve as an elder.

32. At all times relevant to this case, the Fremont North Congregation elders occasionally communicated with elders serving in the Branch Office's Service Department, as well as with elders serving as circuit or district overseers, to receive spiritual counsel and advice

on applying the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. The religious beliefs of these elders also require that any confidential spiritual communications between elders serving in the Branch Office's Service Department, elders serving as circuit or district overseers, and congregation elders must be kept strictly confidential. The spiritual counsel and advice given by the elders serving in the Branch Office's Service Department, elders serving as circuit or district overseers, and congregation elders is based on Jehovah's Witnesses' understanding of the Bible.

INVESTIGATIONS, JUDICIAL COMMITTEES, DISCIPLINE

33. The elders of congregations of Jehovah's Witnesses are also responsible for conducting what are referred to as "judicial investigations" when a member of a congregation is accused of serious Scriptural wrongdoing. Judicial investigations are carried out by two elders selected by the congregation body of elders, as occurred when Jonathan Kendrick was investigated in 1993 by elders in the Fremont North Congregation.

34. The goal of a judicial investigation is to make certain that the Christian congregation remains spiritually and morally clean. (James 1:26) In doing so, if the elders confirm that serious Scriptural wrongdoing has occurred, a judicial committee of at least three elders is selected by the congregation body of elders to endeavor to provide spiritual assistance to the congregant who may have sinned, with the hope of assisting them to regain their spirituality and relationship with God. (Galatians 6:1, 2) At times, a judicial committee will determine that an accused congregant should be spiritually disciplined internally, based on Jehovah's Witnesses' understanding of the Bible.

35. In the case of the investigation of Jonathan Kendrick in 1993, the elders did not form a judicial committee because the assertion of child sexual abuse was not confirmed. However, the assertion by Andrea, Kendrick's step-daughter, was sufficient to disqualify him from continuing to serve as a ministerial servant since he was no longer "free from accusation."

36. Spiritual discipline administered by elders of Jehovah's Witnesses serving on a judicial committee is based solely on Jehovah's Witnesses' understanding of the Bible as applied to the facts of the matter. Where a serious sin is involved and the accused person is

repentant, the judicial committee may recommend private or public reproof. But if the person who committed a serious sin cannot be brought back to repentance, the individual will have to be disfellowshipped. When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses."

37. Spiritual discipline administered by elders serving on an investigative committee is likewise based solely on Jehovah's Witnesses' understanding of the Bible as applied to the facts. When an accusation disqualifies a servant from continuing to serve, he is removed as a servant and an announcement is made during a congregation meeting to the effect that "[name] is no longer serving as [ministerial servant/elder]."

CONFIDENTIAL COMMUNICATIONS

38. Jehovah's Witnesses recognize the Bible's admonition to confess ones sins to God. 1 John 1:8, 9 ("If we confess our sins, he is faithful and righteous so as to forgive us our sins and to cleanse us from all unrighteousness.").

39. In addition Jehovah's Witnesses also believe that there can be much benefit from speaking to the congregation elders ("older men") regarding confidential matters. James 5:13-16 ("Is there anyone suffering evil among YOU? Let him carry on prayer. Is there anyone in good spirits? Let him sing psalms. Is there anyone sick among YOU? Let him call the older men of the congregation to [him], and let them pray over him, greasing [him] with oil in the name of Jehovah. And the prayer of faith will make the indisposed one well, and Jehovah will raise him up. Also, if he has committed sins, it will be forgiven him. Therefore openly confess YOUR sins to one another and pray for one another, that YOU may get healed."). Jehovah's Witnesses view confessions and other confidential and private communications of a spiritual nature between congregants and elders as communications that elders must keep confidential. Proverbs 25:9.

40. Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with the congregation elders is limited to confessions. Rather, as outlined in James 5:13-16, Jehovah's Witnesses are encouraged to seek the spiritual counsel

and advice of the elders in a variety of life situations. Congregation elders are also encouraged to seek spiritual counsel and advice from elders serving in the Branch Office's Service Department, or from elders serving as circuit or district overseers, in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members, and on occasion congregation elders seek such spiritual counsel and advice. Such confidential spiritual communications from congregation elders are only handled by elders in the Branch Office Service Department.

41. If a servant is recommended by the elder body to be removed, the body of elders forwards a notice containing their recommendation of removal to the Branch Office elders, who, if they agree, confirm the removal in writing to the elders.

42. If a congregation member is disfellowshipped, the judicial committee elders forward a notice of disfellowshipping to Branch Office elders for their review to ensure that their decision was spiritually based and well founded. The notice of disfellowshipping has the name of the disfellowshipped person, the date of disfellowshipping, and the Scriptural basis for disfellowshipping.

43. Jehovah's Witnesses view all such spiritual communications about removal and disfellowshipping as confidential communications that must be kept strictly confidential.

44. Elders do not allow unnecessary third parties to be a party to a confidential communication. At times more than one elder may be a party to the conversation. For instance, it is Jehovah's Witnesses religious belief and practice to have at least two elders present during a judicial investigation and at least three elders present during a judicial committee. (Deuteronomy 17:6; Deuteronomy 19:15; Matthew 18:15-17; 2 Corinthians 13:1; 1 Timothy 5:19) Jehovah's Witnesses believe that men are imperfect and, therefore, three elders serving on a judicial committee can provide more full and complete spiritual counsel and advice based on a broader range of experience and knowledge than can a single elder alone. Before one becomes one of Jehovah's Witnesses, he is made aware of this provision. *Your Word Is a Lamp To My Foot*, pages 176-79; *Organization for Kingdom-Preaching and Disciple-Making*, pages 159-65; *Organized to Accomplish Our Ministry*, pages 145-47; *Organized To Do Jehovah's*

Will, pages 151-2. In addition, there may be instances where a husband and wife, or a parent and child, may together seek or be provided with spiritual counsel, advice or comfort from the elders. The elders and participants to these confidential and private spiritual communications would view these communications as confidential and congregants expect the elders to keep such communications strictly confidential.

45. The religious doctrine of Jehovah's Witnesses requires that all elders keep confidential and private spiritual communication strictly confidential. *The Watchtower*, April 1, 1971, pages 222-224; *Kingdom Ministry*, July 1975; *The Watchtower*, December 15, 1975, pages 764-66; *The Watchtower,* September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-27; *The Watchtower*, November 15, 1991, pages 19-23. An elder who reveals the contents of such a confidential communication may be subject to removal.

46. In this case, the Letter to All Bodies of Elders dated July 1, 1989, PE 1 and WE R, provides a reminder to the elders of their duty to maintain the confidential nature of confidential communications.

SIGNED the 26 day of April, 2012, at Patterson, New York.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my information, belief, and knowledge.

Allen Shuster

Allen Shuster

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

SUBSCRIBED AND SWORN TO BEFORE ME on the 26 day of April 2012, to certify which witness my hand and official seal.

A. HERNAN STEELE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01-ST6106293
Qualified in Putnam County
Commission Expires March 01, 2016

Notary Public, State of New York

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit J

Name KENDRICK, JONATHAN

Address 200 HONEY LANE

Telephone 679-0411

Male [X]

Date of Birth Jan 31 54

[ ] Elder [ ] Min. Svt

Date immersed May 28 88 Other Sheep [ ] Regular Pioneer

ECORD

Male ☐ Female ☐

Date of birth

☐ Elder ☐ Ministerial servant ☐ Regular pioneer

YEAR: 20 10	BOOKS	BKLTS. & BROCHURES	HOURS	MAGS.	RETURN VISITS	BIBLE STUDIES	REMARKS
SEPT.							
OCT.			8	8	4	1	
NOV.			10	2	5	1	
DEC.							
JAN.							
FEB.							
MAR.							
APR.							
MAY							
JUNE							
JULY							
AUG.							
TOTAL							

S-21-E 4/05 Printed in Canada

Name KENDRICK, JONATHAN

Address 200 HONEY LANE

Telephone 679-0411

Male [X]

Date of Birth Jan 31 54

[ ] Elder [ ] Min. Svt.

Date immersed May 28 88 Other Sheep [ ] Regular Pioneer

CORD

Male ☐ Female ☐

ite of birth

☐ Elder ☐ Ministerial servant ☐ Regular pioneer

YEAR: 20 10	BOOKS	BKLTS. & BROCHURES	HOURS	MAGS.	RETURN VISITS	BIBLE STUDIES	REMARKS
SEPT.			5		5	1	
OCT.			6	3	6	1	
NOV.			3	3	2	1	
DEC.			8	5	8	1	
JAN.							
FEB.			6	2	2	1	
MAR.							
APR.	1		8	6	7	1	
MAY			9	8	6	1	
JUNE			3	2	2	1	
JULY			8	5	5	1	
AUG.							
TOTAL							

S-21-E 4/05 Printed in Canada

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit K

file
Read in MTG

DO NOT DESTROY

SSW SEP 1 4 1998

North Congregation Fremont

#15685
c/o Michael Clarke
32852 Bass Lake St
Fremont, CA 94555-1000

Watchtower Bible & Tract Society of New York , Inc
25 Columbia Heights
Brroklyn, New York 11201-2483

SDU:SSW Aug. 31, 1998

Dear Brothers:

This is in regard to your letter of June 19, 1998 involving Jonathan Kendrick. We are providing a copy of our November 15, 1993 letter to you, and your letter to us of December 3, 1993 SCN:SST

Below are answers to questions posed in the March 14, 1997 letter to all bodies of elders, page 3, para 1

1. How long ago did he committ the sin?	July 1993
2. What was the age of his victim?	15yrs old
3. Was it a one-time occurrence?	one time
4. How is he viewed in the community/authorities?	legal authorities contacted, police report made, no action taken by courts
5. Has he lived down any notoriety in community?	community unaware
6. Are members of congregation aware of sin?	no
7. Has he ever been disfellowshipped, reproved, etc	yes - loss of temper, self control – Reproved
8. If he has moved, indentify congregation	Oakley Congregation, Antioch, CA
9. Have they been notified?	No

We were not aware that we needed to send a follow up letter after our November 15, 1993 letter. We are sorry for that oversite. Brother Kendrick was deleted as a ministerial servant as of December 3, 1993. Full restrictions were put into place and lifted over a 2 year period. *He moved to Antioch in Jan of 1998. Our letter failed to mention anything about this matter. We will write to them immediately and send them a copy of this letter.*

Please accept our warm Christian love and best wishes

Michael Clarke Gary Abrahamson Larry Lamerdin

cc: Oakley Congregation

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit L

SSD NOV 23 1993

North Congregation #15685
Fremont
c/o Michael L. Clarke
32852 Bass Lake St.
Fremont, Ca 94555

Nov 15, 1993

Watchtower Bible & Tract Society
25 Columbia Heights
Brooklyn, New York, 11201 USA

Dear Brothers,

We are writing to you regarding a case of child abuse. We telephoned 11/12/93 and it was suggested that we submit in writing our questions.

We met on 11/11/93 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15 yr old step daughter. The abuse occurred approximately 4 months ago. He confessed to touching the breast of his step daughter while she was sleeping. She was awaken instantly and knew what had happened. His wife was informed that evening and the 3 of them talked it out between them. Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders. He said that his conscious continued to bother him.

Evelyn, his wife, is baptized but inactive. She occasionally attends meetings.

Andrea, the step daughter, is not baptized and is no longer an unbaptized publisher. The step daughter is now using this as a tool to threaten with when she wants something. Because she has been promiscuous with 2 boys at school, the parents have tried to enforce house rules covering her comings and goings.

Andrea has recently mentioned the abuse to another young girl, Toy Register, whom she attends school with. Coincidentally, Toy attends our congregation meetings and is studying. Her mother is disfellowshipped. Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional. Mrs Register is now threatening to call the police.

Here are the facts as best as we can present them without interviewing each party. Our questions are as follows:

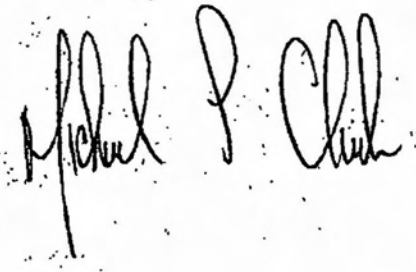
1. Can 2 elders handle this matter with Brother Kendrick as mentioned on page 93 of "Pay attention to Yourselves....Flock", under the heading Uncleanness? Or do we have to form a Judicial hearing because of it being child abuse?

2. We assume that Brother Kendrick does not qualify any longer as a Ministerial Servant. We will announce to the congregation that he is no longer serving as such. If this is incorrect, please inform us.

3. The legal department has given us some direction as far as our legal requirements and we will follow that closely.

We will wait to hear from you regarding the above questions. If I have not been clear enough, you may reach me during the day at my work phone (510-462-7861 ext 105)

Your Brothers,



DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit M

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

SCN:SST December 3, 1993

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers:

Your letter dated November 15, 1993, has been received. As you will note from the enclosed S-52 form, Brother Jonathan Kendrick has been deleted from serving as a ministerial servant on the grounds of "uncleanness."

Your letter states: "He confessed to touching the breasts of his stepdaughter while she was sleeping. She was awakened instantly and knew what had happened." Since this incident is known by outside members of the family, it is appropriate that Brother Kendrick be deleted from serving as a ministerial servant with your congregation.

On page 92 of the Kingdom Ministry School textbook the following is stated: "Uncleanness includes an intentional momentary touching of sexual parts or caressing of breasts. Such minor uncleanness can be handled at the discretion of an elder or two; it does not require a judicial hearing. There is a need for strong counsel, admonition, and assistance to help the individual to maintain chaste conduct in the future."

In harmony with the above, it will not be necessary for a judicial committee to handle the "uncleanness" committed by Brother Kendrick. However, it would be appropriate for two elders to meet with him and provide him with strong Scriptural counsel so as to avoid a repetition of such a serious offense.

We trust the above comments will be helpful to you. With this letter we are pleased to send you an expression of our warm Christian love and best wishes.

Your brothers,

Watchtower B. & T. Society
OF NEW YORK, INC.

cc: R. Rainer, CA #40

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit N

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

VIDEOTAPED DEPOSITION OF

GARY A. ABRAHAMSON, VOLUME II

PAGES 113 TO 142

Tuesday, October 25, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

INDEX OF EXAMINATION

EXAMINATION BY:		PAGE
	Richard L. Simons (resumed)	118

---oOo---

INDEX OF PLAINTIFF'S EXHIBITS

NUMBER	DESCRIPTION	PAGE
11	1-page 9-29-11 Furtado, Jaspovice & Simons Granted Order for a "Motion to Compel Further Answers at Deposition" for Gary Abrahamson.	119
12	1-page 8-31-98 North Congragation Fremont letter to Watchtower Bible Brothers from Michael Clarke, Gary Abrahamson and Larry Lamerdin.	138

---oOo---

VIDEOTAPED DEPOSITION OF

GARY A. ABRAHAMSON, VOLUME II

BE IT REMEMBERED that pursuant to Court Order, and on Tuesday, October 25, 2011, commencing at the hour of 9:10 a.m. thereof, at the Law Offices of FURTADO, JASPOVICE & SIMONS, 22274 Main Street, Hayward, California, before me, CHARLOTTE C. ROCHE, a Certified Shorthand Reporter in and for the County of Alameda, State of California, personally appeared GARY A. ABRAHAMSON, a witness in the above-entitled court and cause, produced on behalf of the plaintiff therein, who being previously and presently affirmed under, was further examined as a witness herein.

APPEARANCES OF COUNSEL

RICHARD J. SIMONS, Attorney at Law, of THE LAW OFFICES OF FURTADO, JASPOVICE & SIMONS, 22274 Main Street, Hayward, California 94541, was present on behalf of Plaintiff JANE DOE.

ROBERT J. SCHNACK, Attorney at Law, of THE LAW OFFICES OF JACKSON LEWIS LLP, 801 K Street, Suite 2300, Sacramento, California 95814, was present on behalf of THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and on behalf of THE WITNESS.

JAMES MC CABE, Attorney at Law, of THE LAW OFICES OF JAMES MC CABE, 4817 Santa Monica Boulevard, San Diego, California 92107, was present on behalf of Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES and on behalf of THE WITNESS.

FRANCIS J. MC NAMARA, Associate General Counsel, of the WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., 100 Watchtower Drive, Patterson, New York 12563, was present on behalf of Defendant THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

DAN MOTTAZ, Notary Public and Videographer, of the offices of DAN MOTTAZ VIDEO PRODUCTIONS L.L.C., One Lansdale Avenue, San Francisco, California 94127, was present as the VIDEO OPERATOR.

****

(Plaintiff's Exhibit No. 11 marked for identification.) 09:13:38 09:13:38

MR. SIMONS: Q. Have you actually seen this Order before? 09:13:44 09:13:45

A. If I had it would only be through counsel. 09:13:52

Q. Okay. 09:13:54

Do you understand that those questions, that we had some disagreement about and that you were instructed not to answer, are going to come up again today; and that at least for some of those questions, there has been an Order by the Court that they would be answered? 09:13:57 09:13:58 09:14:01 09:14:07 09:14:09 09:14:11

A. Yes. 09:14:12

Q. Okay, fair enough. Thank you. 09:14:13

Let me start with the first question that we dealt with, and that was involving Jonathan Kendrick in his removal as a Ministerial Servant. 09:14:14 09:14:22 09:14:25

Why was Mr. Kendrick removed as a Ministerial Servant? 09:14:28 09:14:31

A. He was removed because of improper conduct. He was no longer irreprehensible or free from accusation. 09:14:32 09:14:34 09:14:38

Q. And what was the conduct that was involved in that removal? 09:14:41 09:14:44

A. It was the conduct of, he admitted to 09:14:47

touching briefly and inadvertently his stepdaughter's breast, which was over the clothing. 09:14:51 09:14:56

Q. Um-hum. 09:14:59

Did he make this admission to you? 09:15:01

A. He did make the admission to myself, myself and another brother. 09:15:04 09:15:08

Q. Okay. Where did that admission occur? 09:15:10

A. It occurred at their house. 09:15:15

Q. Not the conduct but the conversation in which he admitted it. 09:15:18 09:15:21

A. The conversation. Right. Right. 09:15:23

Q. Okay. And when you say "at their house," was that -- 09:15:24 09:15:26

A. The Kendricks' house. 09:15:26

Q. Okay. 09:15:28

At the time that that conversation occurred, was that the house that Evelyn Kendrick, Andrea Kendrick, and Jonathan Kendrick were all residing at? 09:15:30 09:15:33 09:15:36 09:15:40

A. Correct. 09:15:41

Q. Although Andrea, I guess, is not a Kendrick. 09:15:41 09:15:44

A. That would be true. 09:15:45

Q. Yes. Okay. 09:15:46

Who was present during this conversation? 09:15:47

A. The three of them, plus myself and another brother, Michael Clarke. 09:15:50 09:15:53

Q. And how was it that you came to the Kendrick home to have this conversation? 09:15:56 09:16:00

A. It was prearranged. 09:16:03

Q. Was there something that generated the conversation and the arrangements to go and meet with the Kendricks? 09:16:06 09:16:12 09:16:15

A. Yes. 09:16:18

Q. What was that? 09:16:19

A. Well, they, uh -- 09:16:27

I think Jonathan went to Brother Clarke and confessed it. So, as a body we met and decided to form an investigating committee. 09:16:29 09:16:31 09:16:35

Q. All right. And when you say "as a body we met," are you talking about the Elders of the North Congregation? 09:16:36 09:16:39 09:16:41

A. Yes, I am. 09:16:42

Q. Do you know who the original conversation, the very first conversation that occurred involving this touching, was with in terms of someone from the Kendrick family and someone from the Body of Elders? 09:16:46 09:16:49 09:16:52 09:16:56

A. I do not know. Cannot remember if I ever knew. 09:17:00 09:17:03

Q. Okay. How did you first hear about it? 09:17:04

VIDEO OPERATOR: Okay, this marks the end of Volume II and Videotape 1 in the Deposition of Gary Abrahamson on October 25th, 2011. The time is 9:57 and we're off record. (Deposition concluded at 9:57 a.m.) 09:57:31 09:57:33 09:57:37 09:57:42 09:57:48

GARY A. ABRAHAMSON

---oOo---

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness herein was by me duly affirmed under penalty of perjury to testify the truth, the whole truth and nothing but the truth; that this deposition was held at the time and place herein stated; that the testimony was audiotape and videotape recorded by a licensed videographer, and was simultaneously reported stenographically and thereafter transcribed by me into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and the caption named, nor am I in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of November 2011.

Charlotte C. Roche, C.S.R. #4486
Alameda County, California

BAY AREA COURT REPORTERS
21573 Foothill Boulevard, Suite 215
Hayward, California 94541
(510) 889-9400

November 7, 2011

Gary A. Abrahamson
c/o James McCabe, Attorney at Law
Law Offices of James McCabe
4817 Santa Monica Boulevard
San Diego, California 92107

Re: Doe vs. Watchtower
G.A. Abrahamson's 10-25-11 Deposition

Dear Mr. Abrahamson,

Please be advised that the Volume II transcript of your deposition taken in the above-entitled matter has now been completed.

If you wish to read, correct and sign your deposition, please call me at 510-889-9400, Monday through Friday, 9:00 - 4:30, for arrangements within 30 days of this notification. Because you are represented by counsel, you may want to contact your attorney regarding this procedure.

Any changes or corrections may be made in letter form directed to my attention, indicating changes by page and line references.

Charlotte C. Roche, CSR 4486

Certified Shorthand Reporter

cc: R.J. Simons, Esq.

R.J. Schnack, Esq.

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit O

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

VIDEOTAPED DEPOSITION OF

MICHAEL LEE CLARKE

Tuesday, November 8, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

INDEX OF EXAMINATION

EXAMINATION BY:		PAGE
	Richard J. Simons	6
	James M. McCabe	61
FURTHER EXAMINATION BY:		PAGE
	Richard J. Simons	63

---oOo---

INDEX OF PLAINTIFF'S EXHIBITS

NO.	DESCRIPTION	PAGE
1	4-page 8-11-11 McCabe Law Firm "Affidavit of Michael L. Clarke."	11
2	2-page 11-15-93 North Congregation Fremont letter to Watchtower Bible & Tract Society from Michael L. CLarke.	27
3	1-page 12-3-93 Watchtower Bible and Tract Society of New York letter to Body of Elders, North Congregation, Fremont.	42
4	1-page 9-8-98 North Congregation of Jehovah's Witnesses letter to Oakley Congregation from Michael Clarke.	52
5	1-page 6-19-98 Watchtower Bible and Tract Society of New York letter to Body of Elders, North Congregation Fremont.	56
6	1-page 9-2-98 Watchtower Bible and Tract Society of New York letter to Body of Elders, North Congregation Fremont.	56

VIDEOTAPED DEPOSITION OF

MICHAEL LEE CLARKE

BE IT REMEMBERED that pursuant to Notice of Taking Deposition through Subpoena, and on Tuesday, November 8, 2011, commencing at the hour of 11:31 a.m. thereof, at the Law Offices of FURTADO, JASPOVICE & SIMONS, 22274 Main Street, Hayward, California, before me, CHARLOTTE C. ROCHE, a Certified Shorthand Reporter in and for the County of Alameda, State of California, personally appeared MICHAEL LEE CLARKE, a witness in the above-entitled court and cause, produced on behalf of the plaintiff therein and being by me duly affirmed under penalty of perjury, was examined as a witness herein.

APPEARANCES OF COUNSEL

RICHARD J. SIMONS, Attorney at Law, of THE LAW OFFICES OF FURTADO, JASPOVICE & SIMONS, 22274 Main Street, Hayward, California 94541, was present on behalf of Plaintiff JANE DOE.

ROBERT J. SCHNACK, Attorney at Law, of THE LAW OFFICES OF JACKSON LEWIS LLP, 801 K Street, Suite 2300, Sacramento, California 95814, was present on behalf of THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and on behalf of THE WITNESS.

JAMES MC CABE, Attorney at Law, of THE LAW OFICES OF JAMES MC CABE, 4817 Santa Monica Boulevard, San Diego, California 92107, was present on behalf of Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES IN FREMONT, CALIFORNIA and on behalf of THE WITNESS.

DAN MOTTAZ, Notary Public and Videographer, of the offices of DAN MOTTAZ VIDEO PRODUCTIONS L.L.C., One Lansdale Avenue, San Francisco, California 94127, was present as the VIDEO OPERATOR.

****

There's information here concerning Toi Register having had her chest, quote, "accidentally touched," end quote, by Mr. Kendrick.

Was it Mr. Kendrick that told you that?

A. Boy. This was repeated to us by....

I don't know where that information -- how we gathered it. It might have been mentioned by the stepdaughter. We --

We did not talk with Toi Register.

Q. Okay.

Was there any reason that you did not talk to Toi Register to see if the touching of her chest by Brother Kendrick was actually accidental, as opposed to intentional?

A. I don't remember why we did not talk with her.

Q. Were you concerned on November 15th, 1993, that there might be other young girls who Brother Kendrick had been touching in their breasts?

A. Can you please repeat that?

Q. Yeah.

During this meeting of November 11th, you learned that there had been some touching of Toi Register and some touching of Andrea by Mr. Kendrick.

Q. Do you recall whether it was weeks or months or years before the meeting that happened in November 1993 at the Kendrick household? 01:07:13 01:07:15 01:07:18

A. Well, I can say it led to him being reproved. So, we have something, a letter, that states when he was reproved. That would give us an idea. 01:07:24 01:07:28 01:07:31

Q. Do you know whether or not Mr. Kendrick was a Ministerial Servant when he was reproved? 01:07:36 01:07:38

A. Yes. He was. 01:07:42

Q. And did he continue to serve as a Ministerial Servant after the reproval? 01:07:43 01:07:45

A. Yes. 01:07:49

Q. And he did so until being removed following the report of his molestation of Andrea. 01:07:50 01:07:54

A. Yes. 01:07:57

MR. SIMONS: Thank you. 01:07:58

VIDEO OPERATOR: That's it? 01:08:02

MR. SCHNACK: That's it. 01:08:04

VIDEO OPERATOR: Okay. This marks the end of Videotape No. 1 in the Deposition of Michael Clarke on November 8, 2011. The time is 1:07. Going off record. 01:08:05 01:08:07 01:08:09 01:08:15

_____

MICHAEL LEE CLARKE

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness herein was by me duly affirmed under penalty of perjury to testify the truth, the whole truth and nothing but the truth; that this deposition was held at the time and place herein stated; that the testimony was audiotape and videotape recorded by a licensed videographer, and was simultaneously reported stenographically and thereafter transcribed by me into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and the caption named, nor am I in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of November 2011.

Charlotte C. Roche, C.S.R. #4486
Alameda County, California

BAY AREA COURT REPORTERS
21573 Foothill Boulevard, Suite 215
Hayward, California 94541
(510) 889-9400

November 30, 2011

Michael Lee Clarke
c/o James M. McCabe, Attorney at Law
the McCabe Law Firm
4817 Santa Monica Avenue, Suite B
San Diego, California 92107

Re: Doe vs. Watchtower
M.L. Clarke's 11-8-11 deposition

Dear Mr. Clarke,

Please be advised that the transcript of your deposition taken in the above-entitled matter has now been completed.

If you wish to read, correct and sign your deposition, please call me at 510-889-9400, Monday through Friday, 9:00 - 4:30, for arrangements within 30 days of this notification. Because you are represented by counsel, you may want to contact your attorney regarding this procedure.

Any changes or corrections may be made in letter form directed to my attention, indicating changes by page and line references.

Charlotte C. Roche, CSR 4486
Certified Shorthand Reporter

cc: R.J. Simons, Esq.
R.J. Schnack, Esq.

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit P

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,,

Defendants.

Case No.: HG11558324

DECLERATION OF TOI REGISTER HAYES

I, Toi Register Hayes, upon her oath deposes and states that if she was called as a witness to testify in this case could and would do so competently as follows:

1. My date of birth is March 7th 1980.

2. That during 1992/1993 my mother and I attended meetings of Jehovah's Witnesses at the North Congregation in Fremont, California.

3. That I knew Jonathan Kendrick, Evelyn Kendrick, and their daughter Andrea at that time. They also attended meetings of the North Congregation in Fremont, California.

4. That I have no recollection of ever telling anyone that Jonathan Kendrick touched my breast inadvertently or otherwise.

5. That I was never touched improperly or abused in any way by Jonathan Kendrick and I never felt that Jonathan Kendrick behaved in any inappropriate manner with me as a young girl.

6. That I attended meetings at the North Fremont Congregation from 1992 until February 1994 when we moved to Guam. During that time Jonathan Kendrick never did anything to make me feel uncomfortable nor did I ever see him do anything inappropriate with any child.

7. That I also spent the night at the Kendrick home on several occasions, as did Andrea at my home, and I felt completely safe and secure as a young guest in the Kendrick home. I also spent time after school at the Kendrick home on a regular basis. I stopped associating with Jonathan Kendrick's step-daughter, Andrea, after I told my mom that she had a boyfriend and that she was having sex with him.

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24th, day of April, 2012, at San Francisco, California.

Toi Register Hayes

Toi Register ~~Harris~~ HAYES
-HH

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit Q

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,,

Defendants.

Case No.: HG11558324

DECLERATION OF MICHAEL LEE CLARKE

I, Michael Lee Clarke, hereby declare:

1. I am an elder in the North Congregation of Jehovah's Witnesses, Fremont, California, and have been an elder there since 1989.

2. Gary Abrahamson, also an elder at that time, and I visited the home of Jonathan, and Evelyn Kendrick and Evelyn's daughter, Andrea, to investigate an allegation that Jonathan had improperly touched Andrea.

///

///

3. During the conversation that day in my presence and the presence of Andrea, Evelyn, Jonathan and Gary Abrahamson, Jonathan Kendrick admitted touching Andrea's breast over her clothes when he entered the home in the dark and she was sleeping on the living room couch.

4. Andrea and Evelyn never contradicted Jonathan's version of this incident.

5. I have read the Declaration of Evelyn Kendrick dated March 26, 2012.

6. At no time did Andrea say that Jonathan had given her any drugs, that Jonathan watched television with her in her bedroom, that Jonathan had reached inside her bra and touched her breast, or that he had put his hand inside her pants and touched her genitals.

7. If Andrea, or anyone else, had said such things as described in the Declaration of Evelyn Kendrick, a judicial committee would have been formed.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am competent to testify as to the facts said forth herein.

Executed this 23, day of April, 2012, at Fremont, California.

Michael Lee Clarke

DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

Exhibit R

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,,

Defendants.

Case No.: HG11558324

DECLERATION OF GARY A. ABRAHAMSON

I, Gary A. Abrahamson, hereby declare:

1. I am an elder in the North Congregation of Jehovah's Witnesses, Fremont, California, and have been an elder there since 1986.

2. Michael Lee Clarke, also an elder at that time, and I visited the home of Jonathan, and Evelyn Kendrick and Evelyn's daughter, Andrea, to investigate an allegation that Jonathan had improperly touched Andrea.

3. During the conversation that day in my presence and the presence of Andrea, Evelyn, Jonathan and Michael Lee Clarke, Jonathan Kendrick admitted touching Andrea's

breast over her clothes when he entered the home in the dark and she was sleeping on the living room couch.

4. Andrea and Evelyn never contradicted Jonathan's version of this incident.

5. I have read the Declaration of Evelyn Kendrick dated March 26, 2012.

6. At no time did Andrea say that Jonathan had given her any drugs, that Jonathan watched television with her in her bedroom, that Jonathan had reached inside her bra and touched her breast, or that he had put his hand inside her pants and touched her genitals.

7. If Andrea, or anyone else, had said such things as described in the Declaration Evelyn Kendrick, a judicial committee would have been formed.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am competent to testify as to the facts said forth herein.

Executed this 23, day of April, 2012, at FREMONT, California.

Gary A. Abrahamson

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On April 27, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S LODGMENT OF EXHIBITS IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to NORCO Overnight Delivery Services for delivery to the address(es) listed on the Service List.

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 27, 2012, at Sacramento, California

Lori Gilmette

SERVICE LIST
JANE DOE v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

Counsel for Defendant
North Congregation of Jehovah's Witnesses, Fremont, California

THE McCABE LAW FIRM, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Defendant In Pro Per

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
Telephone: (925) 484-1008

9598712

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
APR 3 0 2012
CLERK OF THE SUPERIOR COURT
By Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO FILE AMENDED COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY [C.C.P. §425.14; Civil Code §3295]

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

INTRODUCTION

The Opposition to Plaintiff's Motion to Amend her Complaint to add a claim against Watchtower New York for punitive damages raises two issues. First, Watchtower argues that the Motion is untimely, requiring either denial or continuance of the trial date. Plaintiff's Reply explains below that the motion is brought at the exact time the statutes intend, and neither continuance of the trial date nor denial are warranted. Watchtower next argues that Plaintiff fails to meet her burden of proof of presenting a prima facie case supporting punitive damages. While the Opposition creates some factual issues, it fails to negate as a matter of law the evidentiary showing offered by Plaintiff, and ignores the applicable case law, the express language of the two controlling statutes, and the prior Orders of this Court.

I. GRANTING THIS MOTION DOES NOT REQUIRE A CONTINUANCE AND IS NOT PREJUDICIAL TO DEFENDANT WATCHTOWER.

Watchtower's initial argument is that this Motion is untimely, requiring either denial or continuance of the trial. The timing of a motion to amend a pleading to allege punitive damages against a religious corporation is a creation of C.C.P. 425.14 and Civil Code 3295(a). Watchtower states Plaintiff was generally aware in 2011 of facts supporting her motion (Def. MPA 3:17-18.) That standard is applicable to general notice pleading amendments that add a party or new cause of action. However, punitive damage amendments pursuant to C.C.P. section 425.14 and discovery under Civil Code section 3295(a) require an evidentiary showing of a prima facie case. That evidence was still being gathered until completion of the Watchtower PMQ depositions in New York in mid-February, and her experts' review of that testimony and documents obtained during and in follow up. Had she brought her motion earlier, Plaintiff would have met with the objection that she offered only "suspicions" rather than evidence.

Watchtower claims a prejudice and a need to continue the trial if the motion is granted based on two points. First, Watchtower claims it is deprived of the right to file a Motion to Strike or Motion for Summary Adjudication. (Def. MPA 4:16-19) However, because 425.14 and 3295(a) both require an evidentiary showing of a prima facie case prior to permitting amendment or allowing discovery, it is the functional equivalent of both such motions. If there is sufficient evidence to support the amendment and discovery order, there is sufficient evidence to withstand a motion to strike or a motion for summary adjudication, both of which utilize the same standard of sufficiency.

Secondly, Watchtower claims that, had it known of the punitive damage allegation, it would have retained an expert to "address the punitive damage allegation." (Def. MPA 4:13.) It does not, and cannot, identify any specific expert by name or by subject matter. There are no "experts" in punitive damages in institutional child sex abuse cases, because the punitive damages flow from the conduct at issue, not the nature of the relief sought. The conduct was always part of the case, and Watchtower has identified and disclosed an expert on its conduct and policies - a security expert named Monica Applewhite (Simons Reply Dec., para. 2 and Ex. 1.) This is a "red herring" issue.

Watchtower also suggests it would retain an expert of corporate valuation. Since no financial discovery has even been allowed yet in the case, it can retain such an expert anyway, and the expert can be deposed if necessary in the time between verdict number one on liability and malice, and trial number two on the amount of punitive damages. (See bifurcation procedure, Civ. Code 3295(d).) Plaintiff is unclear what a "valuation expert" would testify to, since Watchtower is a corporation and presumably has an annual corporate balance sheet and financial statement prepared. In fact, Defendant's counsel has already supplied confidential information concerning Watchtower's financial status to Plaintiff's counsel in this case under an agreement not to reveal it publicly. (Reply Dec. of R. Simons, para. 3 and redacted Ex. 2.)

Both 425.14 and 3295 contemplate motions late in the case. Neither section has a pre-trial deadline for hearing, as does C.C.P. 437c for motions for summary judgment. Neither section contemplates new discovery and experts on issues other than financial worth, because the evidentiary motions are based on the evidence previously adduced in discovery. Civil Code 3295(c) creates a discovery process that may not even begin until after phase one of the trial.

II. WATCHTOWER'S FACTUAL AND EVIDENTIARY DISPUTES DO NOT REQUIRE DENIAL OF THE MOTION.

Watchtower's opposition produces evidence and arguments that create factual disputes, and plaintiff does not disagree that there are disputed facts in the case. However, this Motion is not the forum for resolution of factual disputes - that function is reserved for the jury. (*Rowe v. Superior Court* (1993) 15 Cal. App. 4th 1711, at 1723.) Watchtower's evidentiary showing does not negate the showing provided by Plaintiff as a matter of law.

For example, Watchtower emphatically states **"Watchtower had No Notice of Child Abuse By Kendrick."** (Def. MPA 7:20, emphasis in original.) Contrast that argument with the first sentence of Plaintiff's Exhibit 2, the 1993 letter from Elder Clark to Watchtower New York, where it is stated: "We are writing to you regarding a case of child abuse." Watchtower argues, based on the 2011-2012 depositions and declarations of its Elders, "Kendrick confessed only to having briefly and inadvertently touched his stepdaughter's breast over the clothing." (Def. MPA 8:4-5) Again, however,

the actual letter from 1993 does **NOT** state that Kendrick's molestation of Andrea was "inadvertent" - that word is only used in relation to the touching of Toi Register. (Ex. 2, p. 1, paras. 2 & 5.) Watchtower makes the argument that expert Anna Salter's Declaration is "false" and does not apply to this case because it is based on the mistaken assumption that Kendrick's abuse of Andrea was "confirmed." (Def. MPA 8:20-24.) However, Watchtower's letter of December 3, 1993, responding to Elder Clarke, is a confirmation. (Plaintiff's Ex. 3 and Watchtower Ex. M in Oppo.)

Watchtower argues that Dr. Salter's opinion is without evidentiary value because it is vague as to the basis of her standard of care, "ignores" articles in Watchtower's magazines, "ignores" the absence of legal mandatory reporting requirements, and "ignores" the Clergy-Penitent privilege. (Def. MPA 8:25-9:8.) This Court has already determined that the communications offered into evidence by Plaintiff and relied upon by Dr. Salter are not subject to privilege. (Court's Discovery Orders of September 29, 2011, and October 17, 2011, Simons reply Dec. Exs. 3 & 4.) The duty of Watchtower and the Fremont Congregation to protect children from sexual abuse pre-dates mandatory reporting, and arises from the nature of its relationship to children involved in its activities. (Plaintiff's MPA In Support 6:16-7:18.) The various articles from Awake and Watchtower magazines do not as a matter of law overcome the confidential and specific written letters and instructions provided to Elders by Watchtower and the Governing Body, either generally or in this case. Dr. Salter's opinions concern the standard of care, not the existence of duty, and Watchtower's argument (Def. MPA 14:18-26) that she invades the province of the Legislature and Court is as inaccurate as stating a teaching or training expert cannot testify to the standard of care in a medical malpractice or police shooting case. These factual arguments can be raised on cross-examination of Dr. Salter, but do not require exclusion of her testimony.

Watchtower objects to Evelyn Kendrick's declaration as "hearsay" because it was Andrea, not Evelyn, who described the abuse to the Elders. (Watchtower Objection No. 3 and Def. MPA 7:25-8:3.) However, Evelyn's testimony is not hearsay any more than Elder Abrahamson's or Elder Clarke's statements of what they were told are hearsay. Evelyn was present at the meeting (Evelyn Dec., Ex. 30 in Support, para. 3), and personally heard the information the Elders received as to Kendrick. Her

testimony both impeaches Elders Clarke and Abrahamson's testimony as to what information they received, and establishes notice to Watchtower of Kendrick's use of drugs to accomplish skin-to-skin breast and genital touching. It is not offered for proof of the allegations made by Andrea, but rather as to the issue of what notice was received by the Elders - who are admitted agents of Watchtower New York. (Admissions, Evid. In Support Ex. 7.)

Similarly, the denial by Toi Register Hayes in her 2012 Declaration (Def.'s Ex P) of any misconduct by Kendrick directed at her does not establish that the Elders were acting with due care in failing to investigate 20 years ago the reports of Kendrick's misconduct. We do not know that she would have said the same things then that she does now, as child abuse victims often do not.

Watchtower then argues that the Fremont Elders are not Managing Agents. (Def. MPA 12:4.) Plaintiff agrees. The undisputed evidence establishes that the Managing Agents of Watchtower is the Governing Body in New York (MPA in Support 2:1-5,11:27-12:4.)

III. WATCHTOWER'S LEGAL AUTHORITIES ARE NOT APPLICABLE.

Watchtower misstates the law applicable to this case. It argues that there is no evidence of a duty in California to prevent sexual abuse of a child by anyone other than employees or agents. (Def. MPA 14:27-15:4.) In fact, the duty has even extended for 50 years to preventing abuse by strangers. (*Wallace v. Der-Ohanian* (1962) 199 Cal. App. 2d 141.) "Volunteers" are specifically included in the language of C.C.P. 340.1, the section under which this case is brought. (340.1(b)(2))

Watchtower argues that proof of malice requires a "spirit of mischief or . . . criminal indifference . . . ," citing *Gombos v. Ashe* (1958) 158 Cal. App. 2d 517. (Def. MA 17:18.) If, as the California Supreme Court observed in specifically disapproving *Gombos*, that view no longer reflects twentieth century law, it has even less applicability in this century. (*Taylor v. Superior Court* (1979) 24 Cal. 3d 890, 896 and 900.)

Dated: April 30, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

9598708

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY

APR 30 2012

CLERK OF THE SUPERIOR COURT
By Molly Lynch Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

REPLY DECLARATION OF RICHARD J. SIMONS IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO FILE AMENDED COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY [C.C.P. §425.14; Civil Code §3295]

Date:	**5/3/12**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1232647**

I, RICHARD J. SIMONS, hereby declare:

1. That I am an attorney at law duly licensed to practice before all Courts of the State of California and am the attorney of record for plaintiff in the above-entitled action.

2. That defendant Watchtower has disclosed and declared an expert witness on the issues of conduct of its agents and the adequacy of its policies of sexual abuse prevention. The testimony of that expert witness, Monica Applewhite, is described by defendant's counsel Mr. Schnack in the Watchtower's Disclosure of Expert Witnesses, a true and correct copy of the applicable provisions of which are attached to this Declaration as Ex. 1.

3. That Watchtower NY does not require additional expert witnesses on the question of the valuation of the corporation, as it has informally provided such information to me through defendant's attorney Mr. McCabe many months ago. I have agreed to keep this information

confidential. However, a redacted true and correct copy of Mr. McCabe's email of September 23, 2011, concerning this issue, is attached as Ex. 2 to this Declaration.

4. That the Court has determined previously in discovery issues in this matter that defendant Watchtower's claims of confidentiality and clergy-penitent privilege to not apply to the communications at issue in this matter. Courtesy copies of the Court's rulings of September 29, 2011, and October 17, 2011, are attached as Exs. 3 and 4, respectively, to this Declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the matters set forth herein.

Executed this 30th day of April, 2012, at Hayward, California.

RICHARD J. SIMONS

EXHIBIT 1

EXHIBIT 1

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

EXPERT WITNESS DECLARATION OF ROBERT J. SCHNACK

I, Robert J. Schnack, according to California Code of Civil Procedure Sections 2034.260, *et seq.* declare that:

I am an attorney admitted to practice law before all of the courts of the State of California and an attorney of record for Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower New York" or "designating party") in this action.

Defendant Watchtower New York expects to call the following persons as expert witnesses at the time of trial, either in person or through deposition, and such experts herein designated will be sufficiently familiar with the pending action to submit to a meaningful oral deposition upon the completion of his or her review of the deposition testimony, documents, discovery, and any other relevant evidence in this case.

1. **Monica Applewhite, Ph.D.**

A. Monica Applewhite has a Ph.D. in social work in 1995 and is an expert in the field of social work and child sexual abuse, including, but not limited to, the historical evolution of policies and laws in the United States to protect children from sexual abuse, and the education, screening, monitoring, development of risk management policies for the protection of children from sexual abuse, the organizational response to allegations of child sexual abuse, and the behaviors and tactics of child molesters.

Dr. Applewhite has spent the past 16 years conducting research and root-cause analysis in the area of child sexual abuse in organizations in order to assist organizations in developing best practice standards. Formerly with Praesidium Inc., she helped create an accreditation system for the Conference of Major Superiors of Men to hold them accountable to the highest standards of child protection.

She has worked with more than 300 organizations that serve children and youth, including 28 Catholic dioceses, the U.S. Conference of Catholic Bishops, the U.S. Jesuit Conference, and the Congregation for Institutes of Consecrated Life and Societies of the Apostolic Life in Rome.

She also is an expert in standards of care and the dynamics of abuse in educational and religious environments. She resides in Austin, Texas. Dr. Applewhite's *curriculum vitae* is attached as **Exhibit A**.

B. Based on her professional education, it is anticipated that Monica Applewhite, Ph.D. will testify on the subject areas of defendants' alleged notice that individual defendant Jonathan Kendrick (hereinafter "Kendrick") may be a danger to children, the church defendants' response to allegations of child sexual abuse in this case, the church defendants'

alleged negligent failure to protect plaintiff and children from harm by Kendrick, including, but not limited to, knowledge of child sexual abuse and child molesters in the early to mid-1990s, the church defendants' alleged negligent failure to warn, train, and educate their agents and plaintiff and her family, the church defendants' alleged negligent supervision and investigation of Kendrick, and the church defendants' alleged negligent hiring, appointment, or retention of Kendrick. She is also expected to testify regarding the church defendants' policies for the protection of children and its education of parents, victims, families and elders on the subject of child sexual abuse and child molesters, including the church defendants' publication and distribution of educational materials.

C. Monica Applewhite, Ph.D. has agreed to testify at the trial of this action.

D. Monica Applewhite, Ph.D. will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the testimony the expert is expected to give at trial, including any opinion and its basis upon the completion of her review of all depositions (including depositions of other experts designated in this case), documents, discovery and other relevant evidence in this case.

E. The hourly deposition fee for Monica Applewhite, Ph.D. is $450 per hour.

2. **Martin H. Williams, Ph.D.**

A. Martin H. Williams, Ph.D. is a licensed psychologist and an expert in the fields of clinical and forensic psychology. After completing undergraduate and post-graduate degrees, he received his Ph.D. in psychology from the University of California, Berkeley. He is currently a Fellow of the American Psychological Association and maintains a private practice at Williams Psychological Services. Dr. William's *curriculum vitae* is attached as **Exhibit B**.

B. It is anticipated that Dr. Williams will testify about the subject areas of Plaintiffs' claimed damages, including, but not limited to, Plaintiff's psychological test results, his diagnosis of Plaintiff's claimed psychological injuries and damages and the degree thereof, the causation and apportionment of Plaintiff's claimed psychological injuries and damages, and the reasonableness of past treatment for Plaintiff's claimed psychological injuries and damages

EXHIBIT 2

Rick Simons

From: James M. McCabe [jim@mccabelaw.net]
Sent: Friday, September 23, 2011 4:30 PM
To: Rick Simons
Subject: Jane Doe v. Watchtower

EXHIBIT 3

EXHIBIT 3

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Law Offices Of James M. McCabe
Attn: McCabe, James M.
4817 Santa Monica Avenue
Suite B
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Further Answers at Deposition Granted

The Motion to Compel Further Answers at Deposition was set for hearing on 09/29/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of Plaintiff Jane Doe to Compel Answers to Questions at Deposition of Gary Abrahamson and for Sanctions is GRANTED. Plaintiff has established that the information sought is not precluded from disclosure under the penitent-clergy privilege, Evidence Code §1031-1034 because the questions do not appear to call for communications that were presumed to be kept confidential with only the clergy member to whom they were communication. Instead, the questions appear to call for information and communications of a kind that would be expected to be communicated beyond that clergy member to others within the religious organization, i.e. a judicial investigating committee, for purposes of taking responding to the communication within the church. (Cf. Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417, 445-46.)

Defendant shall present Gary Abrahamson for further deposition and shall not instruct him not to answer the questions identified in the motion based upon clergy-penitent privilege.
The further deposition shall take place at a mutually-convenient time, but no later than 20 days after entry of this order.

The request for sanctions in connection with this motion is DENIED.

Dated: 09/29/2011

facsimile
Judge Robert McGuiness

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 09/29/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/05/2011.

Executive Officer / Clerk of the Superior Court

By Joyce R. Gonzalez Digital
Deputy Clerk

Furtado, Jaspovice & Simons
Attn: ~~Simons, Richard J.~~ Martin Jaspovice
A Law Corporation
22274 Main Street
Hayward, CA 94541____

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave.
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Production of Documents Granted

The Motion to Compel Production of Documents filed for Jane Doe was set for hearing on 10/03/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

Pursuant to the court's prior order in this matter, it conducted an in camera review of two letters dated respectively, November 15, 1993 and December 3, 1993, to determine whether the same were (are) privileged communications within the application of Evidence Code section 1034 and related statutes. After review, the court determines that the letters are not privileged and plaintiff's motion to compel production is granted. However, the court will withhold production of the subject letters and they shall remain under seal until November 17, 2011 so as to allow defendants time to consider and seek appellate review here. The court has determined this matter largely within the context of the holding of Roman Catholic Diocese of Los Angeles v. Superior Court, 131 Cal. App. 4th 417. The record there and here demonstrate that the communications were likely to be shared with more than one person; persons other than elders would be likely to consider same and that the penitent (defendant Kendrick) did not expect the communications to be kept confidential (under the circumstances related and presented).

Dated: 10/17/2011

Robert McGuiness - facsimile
Judge Robert McGuiness

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 10/17/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/17/2011.

Executive Officer / Clerk of the Superior Court

By Kasey McKeon digital
_____
Deputy Clerk

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Amend Complaint Granted

The Motion to Amend Complaint was set for hearing on 05/03/2012 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion of Jane Doe to file amended complaint adding punitive damage allegations against defendant Watchtower Bible and Tract Society ("Watchtower") under CCP 425.14 is GRANTED.

Plaintiff filed this motion on April 10, 2012, just six weeks before the trial date of May 21, 2012. Plaintiff did not delay unduly in filing this motion, and Watchtower has not identified any specific liability or fact discovery that it will need from Plaintiff as a result of the addition of the punitive damages allegations.

Under CCP 425.14, a plaintiff cannot assert a claim for punitive damages against a religious corporation until the court finds that the plaintiff has presented sufficient evidence of a prima facie showing of liability under the preponderance of evidence standard and a showing of recklessness, oppression or fraud under the clear and convincing standard. Little Co. of Mary Hosp. v. Superior Court (2008) 162 Cal.App.4th 261, 267, 271; Rowe v. Superior Court (1993) 15 Cal.App.4th 1711, 1723.

The proposed First Amended Complaint includes a third cause of action entitled "Acts of Malice." The court reads the cause action as a claim that defendant Watchtower is liable for negligence because it acted with a willful and conscious disregard of the rights or safety of others. (Civil Code 3294(c)(1).) To establish conscious disregard, plaintiff must show that the defendant was aware of the probable dangerous consequences of its conduct, and that he willfully and deliberately failed to avoid those consequences. (Hoch v. Allied Signal (1994) 24 Cal.App.4th 48, 61.)

Plaintiff has presented a prima facie showing that she could potentially prove a claim against Watchtower for negligence by a preponderance of the evidence. There is evidence that Watchtower's officers, directors, or managing agents knew or had reason to know in 1993 that Jonathan Kendrick had confessed to inappropriate touching of a child (PX 2; DX L and M), that Watchtower failed to notify the congregation or to take other measures to protect children in the church (PX 3 and 4; DX K), and that as a result plaintiff suffered injury from 1994 through 1996.

Plaintiff has presented a prima facie showing that she could potentially prove by clear and convincing evidence that Watchtower was aware of the probable dangerous consequences of its decision not to alert church members of Kendrick's dangerous tendencies, and that Watchtower willfully and deliberately failed to avoid those consequences. (PX 2, 3, 4.)

Watchtower raises the issue of the appropriate balance between the clergy-penitent privilege and appropriate disclosures to congregants that a member may be a threat to children. Watchtower also notes that most of the case law on the responsibility of entities for sexual abuse concerns abuse perpetrated by employees or agents rather than by member of the entity who were not in positions of authority at the time of the abuse. (But see Wallace v. Der-Ohanian (1962) 199 Cal.App.2d 141.) These concerns present fact specific issues that are beyond the scope of a motion where the plaintiff need only present sufficient evidence to establish a prima facie case of liability and punitive damages.

The court OVERRULES the objection to PX 27 (percipient witness), to PX 26 (percipient witness to statements by Kendrick), to PX 30 (offered as evidence that Watchtower was on notice, not for truth of matter asserted), PX 31 (admissible to extent based on personal knowledge, but court disregards testimony regarding the "true purpose" of Watchtower), and PX 32 (witness is arguably a qualified expert with pertinent information regarding the standard of care during the relevant time period).

The motion of Jane Doe for an order permitting financial discovery is DENIED. If the jury finds that Watchtower is liable for punitive damages, then the court will expect Watchtower to produce its pertinent financial information by 9:00 am the following morning and to have witnesses available to testify by the following day.

Plaintiff must file the proposed First Amended Complaint on or before May 11, 2012.

The Court further orders the parties to comply with the Pretrial Orders: File Motions in Limine and related documents by May 16, 2012 at 2:30 p.m.

Dated: 05/03/2012

facsimile

Judge Robert McGuiness

SHORT TITLE:	CASE NUMBER:
Doe VS The Watchtower Bible and Tract Society of New York, I	HG11558324

ADDITIONAL ADDRESSEES

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 05/03/2012

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 05/14/2012.

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

RCD

10230334

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 4 2012
CLERK OF THE SUPERIOR COURT
By Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

FIRST AMENDED COMPLAINT FOR DAMAGES FOR CHILDHOOD SEXUAL ABUSE

Plaintiff alleges,

1. Plaintiff JANE DOE is an adult, under the age of 26 at the time of the filing of this action, and residing in California. Plaintiff appears by the fictitious name JANE DOE to preserve her anonymity because of the sensitive and highly personal nature of the subject matter of this action. (*Doe v. Lincoln Unified School District* (2010) 187 Cal. App. 4th 1286). Plaintiff's true name and identity has been disclosed to defendants with service of the Complaint.

2. At all times herein, defendant THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc. (WATCHTOWER NY) was a corporation, licensed in the State of New York, with a principle place of business in the City of New York, State of New York.

3. Plaintiff is unaware of the true names and capacities of defendants sued herein as ROES 1 to 10 and therefore sue said defendants by such fictitious names. Said fictitiously named

defendants were negligent in and about the matters alleged herein, and that such negligence was the proximate cause of the damages complained of by plaintiff. Plaintiff will seek leave to amend this Complaint when the true names and capacities of such fictitiously-named defendants have been ascertained.

4. At all times herein, defendant FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT ("FREMONT CONGREGATION") was a corporation, organized and existing under the laws of the State of California, with a principle place of business located in Fremont, California. At all times herein defendant FREMONT CONGREGATION owned, managed, operated, supervised, and staffed a religious facility, organized and existing for the purpose of practicing and promoting the faith of Jehovah's Witnesses, and located within the City of Fremont, State of California. At all relevant times herein, defendant WATCHTOWER NY concurrently owned, managed, operated, supervised, and staffed that same religious facility located in the City of Fremont, County of Alameda, California.

5. At all times herein, defendant JONATHAN KENDRICK was an individual, residing in the State of California, with a date of birth of January 31, 1954, and is currently a registered sex offender within the State of California.

FIRST CAUSE OF ACTION
Negligence
(As to Defendants WATCHTOWER NY, and FREMONT CONGREGATION Only)

6. In the time period of 1994 to 1996, plaintiff JANE DOE was a minor. During that time period, plaintiff JANE DOE was a member of the religious group commonly known as the Jehovah's Witnesses, and attended, participated in, and was a member of the Jehovah's Witness religious facility located in the City of Fremont, and owned, managed, operated, supervised, and staffed by defendants WATCHTOWER NY and FREMONT CONGREGATION. During that same time period, defendant JONATHAN KENDRICK was a volunteer, active member, and participant in the congregation and congregation leadership of the religious facility in Fremont. During that time period, defendant KENDRICK sexually molested and abused plaintiff JANE DOE on multiple occasions within the County of Alameda. Defendant KENDRICK accomplished the sexual abuse and molestation of plaintiff by

use of the trust, position, and authority he held as a fellow member, volunteer, and leader of the religious facility and congregation in Fremont.

7. At all times herein, defendants WATCHTOWER NY and FREMONT CONGREGATION, and each of them, negligently supervised, managed, and controlled defendant KENDRICK in his membership and participation in the Fremont religious facility, and negligently failed to warn plaintiff JANE DOE, her family, and other members of the congregation, of the propensity and risk that defendant KENDRICK would sexually molest or abuse minor girls, a propensity and history of which defendants, and each of them, acting through their employees, agents, and volunteers, had actual notice. During the same time period, defendants, and each of them, were negligent in failing to exercise reasonable care to protect plaintiff JANE DOE, and other minors, who were members of, or participants in, activities at the religious facility in Fremont, from the risk of sexual abuse or molestation by perpetrators, including defendant JONATHAN KENDRICK.

8. As a result of the negligence of defendants, and each them, as herein alleged, plaintiff JANE DOE was caused to suffer the physical, mental, and emotional injuries of childhood sexual abuse and molestation; was caused to incur medical and other expenses for care, treatment, and counseling; and has suffered loss of earnings and earning capacity. Plaintiff will further continue to incur all such damages in the future, in amounts of which plaintiff will advise defendants at least sixty days prior to trial.

SECOND CAUSE OF ACTION
Willful and Intentional Acts
(As to Defendant Jonathan Kendrick Only)

9. Plaintiff realleges each and every allegation contained in paragraphs 1 through 8 as though fully set forth herein.

10. During the time period stated herein, defendant JONATHAN KENDRICK intentionally, willfully, and maliciously sexually abused and molested plaintiff JANE DOE during the time that she was a minor.

11. As a result of the intentional, willful conduct of defendant JONATHAN KENDRICK, as set forth herein, plaintiff has incurred, and will continue to incur the damages as set forth in paragraph 8 of this Complaint.

THIRD CAUSE OF ACTION
Acts of Malice
(Against Watchtower New York only)

12. At all times herein, the Managing Agents directing and setting the corporate policies of the Defendants WATCHTOWER NEW YORK and FREMONT CONGREGATION was a group of individual members of the Jehovah's Witnesses religion known collectively as "The Governing Body". The Governing Body at all times acted through legal entities it caused to be established throughout the world, including the corporations WATCHTOWER NEW YORK and FREMONT CONGREGATION. The Governing Body established, approved, and disseminated all of the administrative policies, programs, and procedures followed by all Jehovah's Witnesses entities on the subject matter of prevention of and administrative response to acts of childhood sexual abuse committed by or upon its members, including childhood sexual abuse arising from or out of the activities of members of the FREMONT CONGREGATION. The Governing Body's administrative policies and procedures concerning childhood sexual abuse issues for all entities of the Jehovah's Witnesses, including WATCHTOWER NEW YORK and FREMONT CONGREGATION, were implemented and carried out by the responsible volunteer agents of each corporation selected to hold the administrative title of "Elders". The Elders of the FREMONT CONGREGATION in 1993-96 included individuals named Gary Abrahamson, Michael Clarke, and Larry Lammerdin, as well as other individuals holding the same title. These specific Elders were, at all relevant times herein, acting as agents of WATCHTOWER NEW YORK, within the course and scope of their agency, were acting at all times under the immediate supervision, instructions, directions, and control of WATCHTOWER NEW YORK and its Legal and Service Departments; and served as Elders only with the consent and approval of WATCHTOWER NEW YORK.

13. There exists within Jehovah's Witnesses an administrative position known as Ministerial Servant. Ministerial Servants have administrative responsibilities within each congregation, including FREMONT CONGREGATION, and were at all times relevant herein appointed

to their positions only with the approval and consent of WATCHTOWER NEW YORK. JONATHAN KENDRICK was appointed to the position of Ministerial Servant at the FREMONT CONGREGATION by Order of WATCHTOWER NEW YORK in 1990.

14. In 1993, Elders Abrahamson and Clarke received a report that KENDRICK had sexually molested his step-daughter, a minor, with skin to skin contact of the breast and genital areas of the victim after administering a narcotic drug to her. Elders Abrahamson and Clarke also received a report that KENDRICK had inappropriately touched a second non family member minor girl active in the FREMONT CONGREGATION. Elders Abrahamson and Clarke confirmed the molestation of the step daughter, which was admitted in part to them in an open meeting attended by both Elders, KENDRICK, the minor step daughter, and her mother Evelyn Kendrick. Elders Abrahamson and Clarke failed to investigate the second report.

15. In November, 1993, Elders Abrahamson and Clarke provided a written report of the molestations to WATCHTOWER NEW YORK's corporate offices. In December, 1993, KENDRICK was removed from his position as Ministerial Servant by WATCHTOWER NEW YORK. No additional punishment was imposed, and KENDRICK remained a member in good standing within FREMONT CONGREGATION, and continued to participate daily with other Congregation members, including children and specifically including Plaintiff, in Jehovah's Witness activities including religious services and meetings, door to door religious solicitations, study groups, and Congregation social events. KENDRICK used his good standing within Jehovah's Witnesses, and his access to children during and arising out of FREMONT CONGREGATION activities, to select, groom, and sexually molest other minor girls, including Plaintiff.

16. Notwithstanding their receipt of the reports of 2 possible minor sexual abuse victims, and their confirmed actual knowledge of KENDRICK's recent molestation of at least one child, Elders Abrahamson and Clarke intentionally and purposely failed to notify or warn other FREMONT CONGREGATION members, including other administrative personnel such as Elders and Ministerial Servants, parents of children active in the Congregation, Congregation members, Fremont law enforcement, or any other persons of the possible risk of further childhood sexual abuse by

KENDRICK, and failed to limit or supervise KENDRICK's access to children, including Plaintiff. Elders Abrahamson and Clarke intentionally kept secret their receipt of the reports of 2 possible minor sexual abuse victims, and their confirmed actual knowledge of KENDRICK's recent molestation of at least one child, from FREMONT CONGREGATION administrative personnel including other Elders and Ministerial Servants, parents of children active in the Congregation, Congregation members, Fremont law enforcement, or any other persons.

17. The conduct by Elders Abrahamson and Clarke of keeping their knowledge of KENDRICK's past sexual abuse of children secret, and in failing to warn others in the Congregation or community of the risk of further sexual abuse of children he posed, occurred at the specific direction, instruction, and under the authority of WATCHTOWER NEW YORK. The WATCHTOWER NEW YORK decision to maintain secrecy concerning KENDRICK, and the resulting failure to warn or otherwise protect minors, including Plaintiff, against the risk of further sexual abuse by KENDRICK, occurred as the implementation of a written policy requiring such secrecy issued by the Governing Body through WATCHTOWER NEW YORK, and as its Managerial Agents. The policy is set forth in a Body Of Elders letter, issued by the Governing Body through WATCHTOWER NEW YORK on July 1, 1989, and still in effect today, to keep all such information secret. The stated purpose of the secrecy policy is to avoid lawsuits and legal problems for the Elders and entities of Jehovah's Witnesses.

18. The secrecy policy of WATCHTOWER NEW YORK regarding sexual abuse of children within Jehovah's Witnesses was established and enforced by the Governing Body as the Managing Agents of WATCHTOWER NEW YORK, with actual knowledge of and deliberate disregard of the known risk that it would be likely to lead to further sexual abuse of children within Jehovah's Witnesses, as was known to the Governing Body specifically as stated in its authorized publications and articles on the subject of childhood sexual abuse, and circumstantially as it was known to all national community, youth, and religious groups in the United States by 1993. Notwithstanding such knowledge, the Governing Body as Managerial Agents, and WATCHTOWER NEW YORK through its agents, despicably placed children at risk of sexual abuse by child molesters known only to a few Elders within Jehovah's Witnesses and kept secret from all others, including placing Plaintiff at risk of

molestation by Kendrick, to further its own business and financial interests in avoiding claims, lawsuits, and litigation by victims who might learn that their abuser was a risk known to WATCHTOWER NEW YORK.

19. As a result of the conduct of the Elders Abrahamson and Clarke, acting under the authority of WATCHTOWER NEW YORK and its managing Agents, and of their personal conscious disregard of the safety of children including Plaintiff, as set forth herein, Plaintiff suffered the injury and harm of childhood sexual abuse committed upon her by KENDRICK between 1995 and 1996.

WHEREFORE, plaintiff prays for relief as follows:

1. For compensatory damages, including economic and non-economic, according to proof in amounts of which plaintiff will advise defendants at least 60 days prior to trial, pursuant to the First and Second Causes of Action;

2. For punitive damages against WATCHTOWER NEW YORK only pursuant to the Third Cause of action;

3. For costs of suit incurred herein; and

4. For such further relief as the Court deems just and proper.

Dated: May 3, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On May 4, 2012, I served the within **FIRST AMENDED COMPLAINT** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below:

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below:

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
jim@mccabelaw.net
Attorneys for Defendants
CHURCH DEFENDANTS

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
SchnackR@jacksonlewis.com
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

Jonathan Kendrick, In Pro Per
200 Honey Lane
Oakley, CA 94561
925/679-0411 Telephone

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 4, 2012, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

8801306

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JOINT STATEMENT OF THE CASE

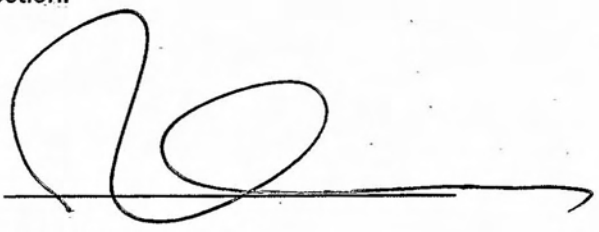
Trial Date: 5/21/2012

In this case, Plaintiff Candace Conti claims that she was sexually abused as a child by an adult named Jonathan Kendrick. Ms. Conti further claims that the negligence of Defendants The Watchtower Bible and Tract Society of New York, Inc., and The Fremont Congregation of Jehovah's Witnesses, North Unit, were contributing causes of her molestation. Ms. Conti seeks an award of money damages to compensate her for the economic and non-economic harm she claims to have suffered as a result of her sexual abuse.

Jonathan Kendrick was named as a Defendant in this lawsuit, but he has failed to appear for this trial.

The Defendants The Watchtower Bible and Tract Society of New York, Inc., and the Fremont Congregation of Jehovah's Witnesses North Unit, deny they were negligent in any way and deny that their conduct was a cause of any injury to the Plaintiff Candace Conti. Both Defendants also dispute the nature and extent of any harm suffered by Ms. Conti as a result of any sexual abuse she may have experienced as a child.

Should it proceed to trial, it is estimated that this case will take three to four weeks after the completion of jury selection.

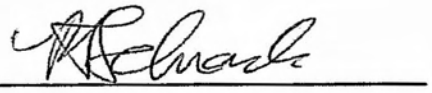
Approved: 

Rick Simons

Attorney for Plaintiff

James McCabe

Attorney for Defendant Fremont Congregation



Robert Schnack

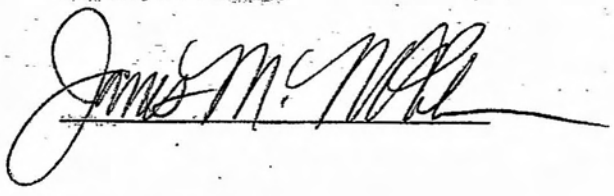
Attorney for Watchtower

Should it proceed to trial, it is estimated that this case will take three to four weeks after the completion of jury selection.

Approved: _____

Rick Simons

Attorney for Plaintiff



James McCabe

Attorney for Defendant Fremont Congregation



Robert Schnack

Attorney for Watchtower

8801310

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, California 94541
510/582-1080 Telephone
510/582-8254 Facsimile
Rick@fjslaw.com
Attorneys for Plaintiff
JANE DOE

JAMES M. McCABE, ESQ. State Bar No. 51040
THE McCABE LAW FIRM
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
jim@mccabelaw.net
Attorneys for Defendant
FREMONT CONGREGATION
OF JEHOVAH'S WITNESSES NORTH UNIT

ROBERT J. SCHNACK, ESQ. State Bar No. 191987
JACKSON LEWIS LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
SchnackR@jacksonlewis.com
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Delgado
DEPUTY

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JOINT MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF USE OF JURY QUESTIONNAIRE AND APPLICABILITY OF AMENDED C.C.P. §222.5

Trial Date: May 21, 2012

INTRODUCTION

The issues and evidence in this case involve several sensitive issues, including claimed sexual abuse of a child, the involvement of religious corporations as Defendants, mental health

testimony, and the recoverability of damages for serious emotional distress. The case is complex, involving multiple parties and claims. All Counsel have met and conferred to produce a Proposed Jury Questionnaire. The questionnaire, a copy of which will be submitted at or before the May 18 Pre-Trial Conference, is being jointly drafted to achieve neutrality in both language and organization. All parties jointly request the questionnaire because it is the most effective approach to obtaining candid responses to inquiry on controversial or very personal subject matters on which many people hold strong views, because it is the most efficient way to obtain biographical information from many people in the shortest time, and because questionnaires provide a focus for the *voir dire* of each individual. Questionnaires also assist the court in giving advance warning of prospective jurors who, for any of several reasons, are likely to inject potentially prejudicial information that may contaminate the jury selection process. The Legislature has specifically provided the right to use jury questionnaires in civil cases, and the Judicial Council has provided instructions and an approved format for their use.

In addition, Counsel jointly request that the procedures specified in the newly amended C.C.P. section 222.5 on jury selection be incorporated into this case. The procedures include expanded questionnaire and *voir dire* rights, as well as allowing counsel to give "mini" abbreviated opening statements prior to jury selection.

THE LEGISLATURE HAS PROVIDED THE RIGHT TO USE JURY QUESTIONNAIRES TO ACQUIRE INFORMATION FOR PREEMPTORY AND CAUSE CHALLENGES.

Civil jury selection is controlled by CCP section 222.5. That section has multiple procedures, including providing that "counsel for each party shall have the right to examine, by oral and direct questioning, any of the prospective jurors in order to enable counsel to intelligently exercise both preemptory challenges and challenges for cause." Section 222.5 provides that "the trial judge should permit liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case." The statute prohibits unreasonable or arbitrary time limits for voir dire, and advises that the time allocations should reflect the unique or complex factual or legal elements of the case. No prior submission of voir dire questions is authorized by 222.5 in the

absence of improper questioning. The "liberal and probing examination to discover bias and prejudice within the circumstances of each case" standard has also been judicially recognized. (*Bly-Magee v. Budget Rent-a-Car Corp.* (1994) 24 Cal. App. 4th 318, 324).

The use of questionnaires is sanctioned both by 222.5, and by the Judicial Council, who has authored a pre printed cover/instruction sheet incorporated into the proposed questionnaire in this case. The 2011 amendments to section 222.5 extend the protection against the imposition of "unreasonable or arbitrary time limits" to the use of those questionnaires. Section 222.5 provides: "If a questionnaire is utilized, the parties should be given reasonable time to evaluate the responses to the questionnaires before oral questioning commences. To help facilitate the jury selection process, the judge in civil trials should provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called."

In this action, because of the nature of the questions to be asked, it is jointly requested by Counsel for all parties that they be given a day to review and assess juror questionnaires, so that the voir dire process can be focused and more efficient.

Dated: May 4, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

Dated: May 4, 2012

THE McCABE LAW FIRM

By _____
JAMES M. McCABE
Attorneys for Defendant
FREMONT CONGREGATION
OF JEHOVAH'S WITNESSES NORTH UNIT

Dated: May 4, 2012

JACKSON LEWIS LLP

By _____
ROBERT SCHNACK
Attorneys for Defendant
WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK INC.

absence of improper questioning. The "liberal and probing examination to discover bias and prejudice within the circumstances of each case" standard has also been judicially recognized. (*Bly-Magee v. Budget Rent-a-Car Corp.* (1994) 24 Cal. App. 4th 318, 324).

The use of questionnaires is sanctioned both by 222.5, and by the Judicial Council, who has authored a pre printed cover/instruction sheet incorporated into the proposed questionnaire in this case. The 2011 amendments to section 222.5 extend the protection against the imposition of "unreasonable or arbitrary time limits" to the use of those questionnaires. Section 222.5 provides: "If a questionnaire is utilized, the parties should be given reasonable time to evaluate the responses to the questionnaires before oral questioning commences. To help facilitate the jury selection process, the judge in civil trials should provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called."

In this action, because of the nature of the questions to be asked, it is jointly requested by Counsel for all parties that they be given a day to review and assess juror questionnaires, so that the voir dire process can be focused and more efficient.

Dated: May 4, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

Dated: May 4, 2012

THE McCABE LAW FIRM

By _____
JAMES M. McCABE
Attorneys for Defendant
FREMONT CONGREGATION
OF JEHOVAH'S WITNESSES NORTH UNIT

Dated: May 4, 2012

JACKSON LEWIS LLP

By _____
ROBERT SCHNACK
Attorneys for Defendant
WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK INC.

8801302

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S [PROPOSED] ORDER GRANTING MOTIONS IN LIMINE

Trial Date: 5/21/2012

Plaintiff's Motions in Limine having regularly become before the Court for hearing on May 18, 2012, having been briefed, argued, and submitted, IT IS HEREBY ORDERED as follows:

1. Plaintiff's Motion in Limine No. 1 To Exclude Reference to or Evidence of Plaintiff's Sexual History or Activity [Evidence Code §§780; 352; C.C.P. §2017.220] with Persons Other than Perpetrator Jonathan Kendrick is GRANTED. All reference to or evidence of any sexual history or conduct by Plaintiff with persons other than Jonathan Kendrick is excluded from evidence.

2. Plaintiff's Motion in Limine No. to Exclude Defense Mental Health Expert Martin Williams' Speculative Opinion Testimony Re: Malingering" and All Medical Opinion Testimony [Evid. Code §§801(B); 352] is GRANTED. Dr. Williams is prohibited from offering any speculative opinion as to "malingering" by plaintiff. Dr. Williams is further prohibited from offering any opinions outside the scope of his licensing and practice as a psychologist, including expert medical opinion as to the prescriptions or medications used by plaintiff, medical history or diagnosis, the reasonableness of her medical care, and any other medical opinion that falls outside the scope of a licensed Psychologist.

3. Plaintiff's Motion in Limine No. 3 to Exclude Irrelevant Medical History [Evid. Code §§350; 352] is GRANTED. The medical history and information included within the treatments and records identified in the attached Table are excluded from evidence or argument, pursuant to Evidence Code §§350 and 352.

4. Plaintiff's Motion in Limine No. 4 to Exclude Improper Character, Specific Act, and Religious Belief Evidence as to Expert Witness William Bowen [Evid Code §§786; 787; 789; 352] is GRANTED. The specific instances of claimed misconduct or activity contained in Plaintiff's Motion are excluded.

5. Plaintiff's Motion in Limine No. 5 to Exclude Undisclosed Expert Witnesses and Opinions [C.C.P. §2034.300] is GRANTED. Defendants each are prohibited from eliciting or introducing expert opinions from any non-disclosed employee, agent, or witness, including such opinions as to standard of care issues or the violations thereof by any Defendant.

6. Plaintiff's Motion in Limine No. 6 to Exclude Evidence of and Reference to Inapplicable Privilege Issues is GRANTED. Defendants may not testify to, or argue, that Clergy-Penitent Privilege or other non-statutory privileges apply to mandate or prohibit any of their conduct or decisions involving Jonathan Kendrick.

7. Plaintiff's Motion in Limine No. 7 to Exclude Evidence Of Or Reference to Plaintiff's Arrests and Criminal Convictions is GRANTED pursuant to Evidence Code Sections 787 and 352.

8. Plaintiff's Motion in Limine No. 8 To Exclude the Testimony of Toi Register Hayes is GRANTED pursuant to Evidence Code §§350 and 352.

Dated: _____

_____
THE HONORABLE ROBERT McGUINESS
Judge of the Superior Court

8801314

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S DESIGNATION OF EXCERPTS OF DEPOSITIONS TO BE OFFERRED AT TRIAL

Trial Date: 5/21/2012

Plaintiff JANE DOE hereby designates the following deposition excerpts to be offered into evidence at trial:

1. From the video deposition of CLIFF WILLIAMS, taken October 21, 2011: (Written Transcript pages) 6:12-14; 8:9-16:10; and 16:21- 30:13;

2. From the video deposition of ALAN SHUSTER: taken February 15, 2012: 9:9-10:5; 10:13-19; 10:25-11:14; 13:3-15:20; 16:25-21:24; 22:13- 23:8; 34:2-20; 35:18-36:15; 37:6-39:6; 39:15-39:24; 42:2-49:14; 49:25-57:11; 58:11-60:7; 60:14-68:13; 81:13-84:10; 85:21-86:4; 91:5-98:25; 106:25-107:13; 109:3-111:4; and 111:19-112:4;

3. From the video deposition of LAURA FRASER L.C.S.W., taken April 16, 2012: 6:11-28:14; and 29:3-65:25;

4. From the video deposition of PAUL INMAN, taken February 21, 2012: 5:4-15; 6:25-13:16; 16:6-19; 17:14-24;3; 26:22-34:8;

5. From the video deposition of LAURA WALTON, M.D., taken April 30, 2012: 6:9-7:14; 7:25-8:13; 10:7-14:20; 15:2-22:16;

6. From the video deposition of MARCIA LEE, M.F.T., taken April 30, 2012: 6:11-16:3;

7. From the video deposition of HELENE HARMATZ, Ph. D., taken April 30, 2012: 6:12-9:5; 10:9-14:25; 16:8-19:23; 19:24-20:6 (subject to ruling on Objections); 20:18-23:4; 23:19-24:19 (subject to ruling); 25:6-28:24 (objection withdrawn and deleted);

Dated: May 15, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

8801318

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S DESIGNATION OF WRITTEN DISCOVERY RESPONSES TO BE OFFERED INTO EVIDENCE

Trial Date: 5/21/2012

Plaintiff will offer the following written discovery responses and verification in evidence:

1. Defendant Watchtower Bible and Tract Society of New York, Inc.'s Responses to Plaintiff's Requests for Admission, Set Three;

2. Defendant Watchtower Bible and Tract Society of New York, Inc.'s Responses to Plaintiff's Demands for Inspection of Documents, Things, and/or Places, Sets One through Five, and attached Exhibits; and

3. Defendant Watchtower Bible and Tract Society of New York, Inc.'s Amended Responses to Plaintiffs' Request for Documents, One Amended.

Dated: May 15, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

8801354

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE

Trial Date: 5/21/2012

Plaintiff requests that this Court take judicial notice, pursuant to Evidence Code §§ 450 and 452, of the following:

1. Certified Copy of Alameda County Case No. CH192890-1, entitled *Conti v. Conti*

2. Copy of Alameda County Case No. H200708-9, entitled *Kendrick v. Kendrick*

3. Copy of Order to Show Cause and Application, Alameda County No. H-179047-4, entitled *Inman v. Inman*

4. Original Order to Reduce Felony Offenses to Misdemeanors, Los Angeles County Court Case No. SA077463, entitled People v. Candace Conti

5. Certified Copy Clerk's Dockets and Minutes and Records of Contra Costa County Superior Court Action No. 138568-1, entitled *People v. Jonathan Kendrick*

6. California Department of Justice Sex Offender Register Profile of Jonathan David Kendrick, taken from www.meganslaw.ca.gov.

///

Dated: May 15, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and [illegible] Address): TELEPHONE NO.: 510-791-1836

LEON J. MEZZETTI, JR., ESQ. (Bar #071945)
39510 Paseo Padre Parkway
Suite 190
Fremont, CA 94538

ATTORNEY FOR (Name): NEAL R. CONTI

FOR COURT USE ONLY

FILED
ALAMEDA COUNTY
OCT 16 1996
RONALD G. OVERHOLT, Exec. Off./Clerk
BY Nancy A. Rodd

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
STREET ADDRESS: 24405 Amador Street
MAILING ADDRESS: P.O. Box 3038
CITY AND ZIP CODE: Hayward, CA 94544
BRANCH NAME: SOUTHERN DIVISION

FEE PAID
162.00

MARRIAGE OF
PETITIONER: NEAL R. CONTI
RESPONDENT: KATHLEEN K. CONTI

SUMMONS ISSUED

PETITION FOR
[X] Dissolution of Marriage
[ ] Legal Separation
[ ] Nullity of Marriage
[ ] And Declaration Under Uniform Child Custody Jurisdiction Act

CASE NUMBER: H-192890 1

1. RESIDENCE (Dissolution only) [X] Petitioner [ ] Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this Petition for Dissolution of Marriage.

2. STATISTICAL FACTS
   a. Date of marriage: 6/1/85
   b. Date of separation: 7/8/96
   c. Period between marriage and separation
      Years: 11 Months: 1

3. DECLARATION REGARDING MINOR CHILDREN OF THIS MARRIAGE FOR WHOM SUPPORT MAY BE ORDERED OR WHO MAY BE SUBJECT TO CUSTODY OR VISITATION ORDERS
   a. [ ] There are no minor children.
   b. [X] The minor children are:

Child's name	Birthdate	Age	Sex
Candace Conti	11/25/85	10	Female

   c. IF THERE ARE MINOR CHILDREN, COMPLETE EITHER (1) OR (2)
   (1) [X] Each child named in 3b is currently living with [X] petitioner [ ] respondent in the following county (specify): Alameda County
   During the last five years each child has lived in no state other than California and with no person other than petitioner or respondent or both. Petitioner has not participated in any capacity in any litigation or proceeding in any state concerning custody of any minor child of this marriage. Petitioner has no information of any pending custody proceeding or of any person not a party to this proceeding who has physical custody or claims to have custody or visitation rights concerning any minor child of this marriage.
   (2) [ ] A completed Declaration Under Uniform Child Custody Jurisdiction Act is attached.

4. [X] Petitioner requests confirmation as separate assets and obligations the items listed [ ] in Attachment 4 [X] below:

Item	Confirm to
Pursuant to Family Code 2550, Petitioner will file a preliminary and final Declaration of Disclosure.	

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent. This can be a large added amount.

(Continued on reverse)

MARRIAGE OF (last name, first name of parties):	CASE NUMBER:
Conti, Neal R. Conti, Kathleen K.	

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND OBLIGATIONS AS CURRENTLY KNOWN
   a. ☐ There are no such assets or obligations subject to disposition by the court in this proceeding.
   b. ☐ All such assets and obligations have been disposed of by written agreement.
   c. ☒ All such assets and obligations are listed ☐ in Attachment 5 ☒ below *(specify)*:
   Pursuant to Family Code 2550, Petitioner will file a preliminary and final Declaration of Disclosure.

6. **Petitioner requests**
   a. ☒ Dissolution of the marriage based on
      (1) ☒ irreconcilable differences. FC 2310(a)
      (2) ☐ incurable insanity. FC 2310(b)
   b. ☐ Legal separation of the parties based on
      (1) ☐ irreconcilable differences. FC 2310(a)
      (2) ☐ incurable insanity. FC 2310(b)
   c. ☐ Nullity of void marriage based on
      (1) ☐ incestuous marriage. FC 2200
      (2) ☐ bigamous marriage. FC 2201
   d. ☐ Nullity of voidable marriage based on
      (1) ☐ petitioner's age at time of marriage. FC 2210(a)
      (2) ☐ prior existing marriage. FC 2210(b)
      (3) ☐ unsound mind. FC 2210(c)
      (4) ☐ fraud. FC 2210(d)
      (5) ☐ force. FC 2210(e)
      (6) ☐ physical incapacity. FC 2210(f)

7. **Petitioner requests** that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	☒	☐	☐	☐
b. Physical custody of children to	☒	☐	☐	☐
c. Child visitation be granted to	☐	☒	☐	☐
☐ supervised as to *(specify)*:				
d. Spousal support payable by (wage assignment will be issued)	☐	☐		
e. Attorney fees and costs payable by	☐	☐		

   f. ☒ Terminate the court's jurisdiction (ability) to award spousal support to respondent.
   g. ☒ Property rights be determined.
   h. ☐ Wife's former name be restored *(specify)*:
   i. ☐ Other *(specify)*:

8. If there are minor children of this marriage, the court will make orders for the support of the children without further notice to either party. A wage assignment will be issued.

9. **I have read the restraining orders on the back of the Summons, and I understand that they apply to me when this petition is filed.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 10/16/96

▶ Neal R. Conti
(SIGNATURE OF PETITIONER)
NEAL R. CONTI

LEON J. MEZZETTI, JR.
(TYPE OR PRINT NAME OF ATTORNEY)

▶
(SIGNATURE OF ATTORNEY FOR PETITIONER)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
I certify the foregoing instruments are true and correct copies of the original on file in this office
ATTEST: APR 30 2012
CLERK OF THE SUPERIOR COURT
By _____ Deputy

NOTICE: Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters you may want to change in view of the dissolution or annulment of your marriage or domestic partnership. However, some changes may require the agreement of your spouse or a court order (see Family Code sections 231-235).



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Mailing Address):	TELEPHONE NO.:	FOR COURT USE ONLY
THOMAS JOSEPH NIXON, Esq. (116803) QUARESMA, BENYA, HALL, ET AL. 2201 WALNUT AVENUE, SUITE 140 FREMONT, CA 94538 116803 ATTORNEY FOR (Name): JONATHAN KENDRICK	(510) 793-6400	FILED MAR 11 1998 RONALD G. OVERHOLT, Exec. Off./Clerk BY Nancy L. Ford

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
STREET ADDRESS: 24405 Amador Street
MAILING ADDRESS: P.O. Box 3038
CITY AND ZIP CODE: Hayward, CA 94544
BRANCH NAME: SOUTHERN DIVISION

FEE PAID 193.00

MARRIAGE OF
PETITIONER: JONATHAN KENDRICK
RESPONDENT: EVELYN RUTH KENDRICK

SUMMONS ISSUED

03/11/98 DS-COMPL 193.00

PETITION FOR
- [X] Dissolution of Marriage
- [ ] Legal Separation
- [ ] Nullity of Marriage
- [ ] And Declaration Under Uniform Child Custody Jurisdiction Act

CASE NUMBER: 420703 - 3395A

1. RESIDENCE (Dissolution only) [X] Petitioner [ ] Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this Petition for Dissolution of Marriage.

2. STATISTICAL FACTS
   a. Date of marriage: 5-21-88
   b. Date of separation: 10-11-96
   c. Period between marriage and separation
      Years: 8 Months: 4

3. DECLARATION REGARDING MINOR CHILDREN OF THIS MARRIAGE FOR WHOM SUPPORT MAY BE ORDERED OR WHO MAY BE SUBJECT TO CUSTODY OR VISITATION ORDERS
   a. [X] There are no minor children.
   b. [ ] The minor children are:

Child's name	Birthdate	Age	Sex

   c. IF THERE ARE MINOR CHILDREN, COMPLETE EITHER (1) OR (2)
      (1) [ ] Each child named in 3b is currently living with [ ] petitioner [ ] respondent in the following county (specify):
      During the last five years each child has lived in no state other than California and with no person other than petitioner or respondent or both. Petitioner has not participated in any capacity in any litigation or proceeding in any state concerning custody of any minor child of this marriage. Petitioner has no information of any pending custody proceeding or of any person not a party to this proceeding who has physical custody or claims to have custody or visitation rights concerning any minor child of this marriage.
      (2) [ ] A completed Declaration Under Uniform Child Custody Jurisdiction Act is attached.

4. [X] **Petitioner requests** confirmation as separate assets and obligations the items listed [ ] in Attachment 4 [X] below:

Item	Confirm to
ALL ASSETS AND OBLIGATIONS IN THE POSSESSION OF PETITIONER	PETITIONER
ALL ASSETS AND OBLIGATIONS IN THE POSSESSION OF RESPONDENT	RESPONDENT

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent. This can be a large added amount.

(Continued on reverse)

MARRIAGE OF (last name, first name of parties):	CASE NUMBER:
MARRIAGE OF KENDRICK	

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND OBLIGATIONS AS CURRENTLY KNOWN
   a. [ ] There are no such assets or obligations subject to disposition by the court in this proceeding.
   b. [ ] All such assets and obligations have been disposed of by written agreement.
   c. [X] All such assets and obligations are listed [X] in Attachment 5 [ ] below (specify):

SEE PROPERTY DECLARATION HERETO ATTACHED.

6. **Petitioner requests**
   a. [X] Dissolution of the marriage based on
      (1) [X] irreconcilable differences. FC 2310(a)
      (2) [ ] incurable insanity. FC 2310(b)
   b. [ ] Legal separation of the parties based on
      (1) [ ] irreconcilable differences. FC 2310(a)
      (2) [ ] incurable insanity. FC 2310(b)
   c. [ ] Nullity of void marriage based on
      (1) [ ] incestuous marriage. FC 2200
      (2) [ ] bigamous marriage. FC 2201
   d. [ ] Nullity of voidable marriage based on
      (1) [ ] petitioner's age at time of marriage. FC 2210(a)
      (2) [ ] prior existing marriage. FC 2210(b)
      (3) [ ] unsound mind. FC 2210(c)
      (4) [ ] fraud. FC 2210(d)
      (5) [ ] force. FC 2210(e)
      (6) [ ] physical incapacity. FC 2210(f)

7. **Petitioner requests** that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	[ ]	[ ]	[ ]	[ ]
b. Physical custody of children to	[ ]	[ ]	[ ]	[ ]
c. Child visitation be granted to	[ ]	[ ]	[ ]	[ ]
[ ] supervised as to (specify):				
d. Spousal support payable by (wage assignment will be issued)	[ ]	[ ]		
e. Attorney fees and costs payable by	[ ]	[ ]		

   f. [X] Terminate the court's jurisdiction (ability) to award spousal support to respondent.
   g. [ ] Property rights be determined.
   h. [ ] Wife's former name be restored (specify):
   i. [ ] Other (specify):

8. If there are minor children of this marriage, the court will make orders for the support of the children without further notice to either party. A wage assignment will be issued.

9. **I have read the restraining orders on the back of the Summons, and I understand that they apply to me when this petition is filed.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 3-6-95

▶ Jonathan Kendrick
(SIGNATURE OF PETITIONER)

JONATHAN KENDRICK

THOMAS JOSEPH NIXON, ESQ.
(TYPE OR PRINT NAME OF ATTORNEY)

▶
(SIGNATURE OF ATTORNEY FOR PETITIONER)

NOTICE: Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Family Code sections 231-235).



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): 111983	TELEPHONE NO.:	FOR COURT USE ONLY
KATHLEEN K. REEVES AKULIAN & REEVES LAW OFFICES 176 JUANA AVENUE SAN LEANDRO, CA 94577 ATTORNEY FOR (Name): CAROLYN INMAN	510/351-7955	FILED ALAMEDA COUNTY SEP 28 1994 RONALD G. OVERHOLT, Exec. Off./Clerk By: Wanda Bayne
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 24405 AMADOR STREET MAILING ADDRESS: P.O. BOX 3038 CITY AND ZIP CODE: HAYWARD, CA 94544 BRANCH NAME: SOUTHERN DIVISION	FEE WAIVED	
PETITIONER / PLAINTIFF: CAROLYN INMAN RESPONDENT / DEFENDANT: PAUL R. INMAN		
ORDER TO SHOW CAUSE FOR [ ] MODIFICATION [X] Child Custody [X] Visitation [ ] Injunctive Order [X] Child Support [X] Spousal Support [X] Other (specify): HEALTH INS. FOR CHILDREN & SPT. [X] Attorney Fees and Costs		CASE NUMBER: H-179047-4

1. TO (name): PAUL R. INMAN
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE RELIEF SOUGHT IN THE ATTACHED APPLICATION SHOULD NOT BE GRANTED. *If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed below.*

a. Date: 10-11-94 Time: 9:00 A.M. [X] Dept.: 34 [ ] Rm.:

b. Address of court [X] same as noted above [ ] other (specify):

3. IT IS FURTHER ORDERED that a completed Application for Order and Supporting Declaration, a **blank** Responsive Declaration, and the following documents shall be served with this order:
   - (1) [X] Completed Income and Expense Declaration and a **blank** Income and Expense Declaration
   - (2) [ ] Completed Property Declaration and a **blank** Property Declaration
   - (3) [ ] Points and authorities
   - (4) [ ] Other (specify):

   a. [X] Time for [X] service [X] hearing is shortened. Service shall be on or before (date): BZ 5 days prior to hearing
   Any responsive declaration shall be served on or before (date):

   b. [ ] You are ordered to comply with the temporary orders attached.
   c. [ ] Other (specify):

Date: SEP 28 1994

Bonnie Lowman
Judge of the Superior Court

Notice: If you have children from this relationship, the court is required to order payment of child support based on the income of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise the child support order will be based on the information supplied by the other parent.
You do not have to pay any fee to file responsive declarations in response to this order to show cause (including a completed Income and Expense Declaration that will show your finances). The original of the responsive declarations must be filed with the court and a copy served on the other party at least five court days before the hearing date.

MARRIAGE OF (last name, first name of parties):	CASE NUMBER:
INMAN, CAROLYN and PAUL R.	

(THIS IS NOT AN ORDER)

[X] **Petitioner** [ ] **Respondent** [ ] **Claimant requests the following orders be made:**

1. [X] CHILD CUSTODY [X] **To be ordered pending the hearing**

a. Child (name and age)	b. Request custody to (name)	c. [ ] Modify existing order
ROSANNA INMAN (8)	SOLE LEGAL/PHYSICAL TO CAROLYN INMAN (FOR BOTH CHILDREN)	(1) filed on *(date)*: (2) ordering *(specify)*:
JENNA INMAN (5)		

2. [X] CHILD VISITATION [X] **To be ordered pending the hearing**
   - a. [ ] Reasonable
   - b. [X] Other *(specify)*: SUPERVISED / RESPONDENT
   - c. [ ] Neither party shall remove the minor child or children of the parties
     - (1) [ ] from the State of California. (2) [ ] other *(specify)*:
   - d. [ ] Modify existing order (1) filed on *(date)*: (2) ordering *(specify)*:

3. [X] CHILD SUPPORT *(A Wage and Earnings Assignment Order will be issued.)*

a. Child (name and age)	b. Monthly amount (if not by guideline)	c. [ ] Modify existing order
ROSANNA INMAN (8)	$ GUIDELINES	(1) filed on *(date)*: (2) ordering *(specify)*:
JENNA INMAN (5)	GUIDELINES	

4. [X] SPOUSAL SUPPORT *(A Wage and Earnings Assignment Order will be issued.)*
   - a. [X] Amount requested *(monthly)*: $ PER GUIDELINE
   - b. [ ] Modify existing order (1) filed on *(date)*: (2) ordering *(specify)*:
   - c. [ ] Terminate existing order (1) filed on: *(date)*: (2) ordering: *(specify)*:

5. [X] ATTORNEY FEES AND COSTS a. [X] Fees: $750.00 b. [ ] Costs: $

6. [ ] RESIDENCE EXCLUSION AND RELATED ORDERS [ ] **To be ordered pending the hearing**
   - [ ] Petitioner [ ] Respondent must move out immediately and must not return to the family dwelling at *(address)*:
   - [ ] taking only clothing and personal effects needed until the hearing.

7. [ ] STAY-AWAY ORDERS [ ] **To be ordered pending the hearing**
   - a. [ ] Petitioner [ ] Respondent must stay at least ..... yards away from applicant and the following places:
     - (1) [ ] applicant's residence *(address optional)*:
     - (2) [ ] applicant's place of work *(address optional)*:
     - (3) [ ] the children's school *(address optional)*:
     - (4) [ ] other *(specify)*:
   - b. [ ] Contacts relating to pickup and delivery of children pursuant to a court order or a stipulation of the parties arrived at during mediation shall be permitted.

8. [ ] RESTRAINT ON PERSONAL CONDUCT [ ] **To be ordered pending the hearing**
   - [ ] Petitioner [ ] Respondent
   - a. shall not molest, attack, strike, threaten, sexually assault, or otherwise disturb the peace of the other party [ ] **and** any person under the care, custody, and control of the other party.
   - b. [ ] shall not contact or telephone the other party.
   - c. [ ] **except** that peaceful contacts relating to minor children of the parties shall be permitted.

(Continued on reverse)

MARRIAGE OF (last name, first name of parties): INMAN, CAROLYN and PAUL R.	CASE NUMBER:

9. [X] PROPERTY RESTRAINT [ ] **To be ordered pending the hearing**
   a. The [ ] petitioner [X] respondent [ ] claimant be restrained from transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
      [ ] and applicant be notified at least five business days before any proposed extraordinary expenditures and an accounting of such be made to the court.
   b. [X] Both parties are restrained and enjoined from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties or their minor children.
   c. [X] Neither party shall incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.

10. [X] PROPERTY CONTROL [X] **To be ordered pending the hearing**
   a. [X] Petitioner [ ] Respondent be given the exclusive temporary use, possession, and control of the following property we own or are buying *(specify)*:
      1989 FORD AEROSTAR
   b. [ ] Petitioner [ ] Respondent be ordered to make the following payments on liens and encumbrances coming due while the order is in effect:

Debt	Amount of payment	Pay to

11. [ ] LAW ENFORCEMENT AGENCIES I request that copies of orders be given to the following law enforcement agencies having jurisdiction over the locations where violence is likely to occur:

Law enforcement agency	Address

12. [ ] **I request** that time for service of the Order to Show Cause and accompanying papers be shortened so that they may be served no less than *(specify number)*: ..... days before the time set for the hearing. I need to have the order shortening time because of the facts specified in the attached declaration.

13. [X] OTHER RELIEF *(specify)*:
    RESPONDENT MAINTAIN BOTH MINOR CHILDREN AND PETITIONER ON HIS MEDICAL INSURANCE.
14. [X] FACTS IN SUPPORT of relief requested and change of circumstances for any modification are *(specify)*:
    [X] contained in the attached declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 19, 1994

CAROLYN INMAN
(TYPE OR PRINT NAME)

Carolyn Inman
(SIGNATURE OF APPLICANT)

SHORT TITLE:	CASE NUMBER
INMAN, CAROLYN and PAUL R.	

DECLARATION OF PETITIONER IN SUPPORT OF OSC

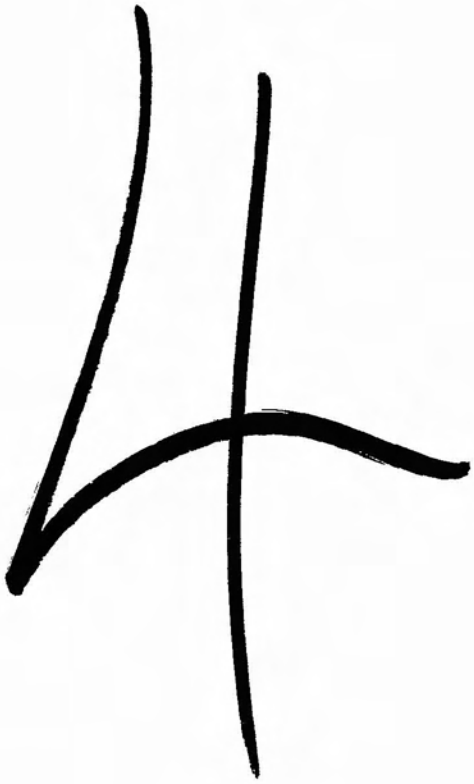
My name is CAROLYN INMAN. I currently reside at 37860 Mosswood Drive in Fremont, California 94536. I have two daughters who reside with me fulltime.

On August 26, 1994, my husband, Paul R. Inman, and I separated in anticipation of pursuing a divorce. Since that date I have received only $150 from Paul and he has refused to support the children and me.

Paul did pick up the children on Sept. 9, 1994 to spend one night with him at his mother's home at 6130 Corte Trancas in Pleasanton, Ca. On Sept. 10, 1994, Saturday, my youngest daughter, Jenna, who was going to take her shower, asked me "are you going to wash the lotion out of my butt?" I asked her what lotion and she said "the lotion daddy put up there with his fingers." Then she said that "it hurt real bad and she was crying and it was dark and her sissy (Rosanna) was asleep and that her daddy kept telling her to 'shut up' 'shut up', 'I hate you.'" After telling me this, Jenna was taken to Washington Hospital emergency and then transferred to Childrens Hospital in Oakland per Child Protection Services direction. The Pleasanton police became involved, and is currently and actively, investigating the matter. The case is #96445E and the detective's name is Paul Brock. He can be reached at (510) 484-8134.

I ask the court award me sole legal and physical custody with supervised visitation to Paul, if any visitation is awarded.

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):



Joseph A. Pertel, Esq. [SBN 181657]
LAW OFFICES OF JOSEPH A. PERTEL
1717 Fourth Street, Third Floor
Santa Monica, California 90401
Telephone: (310) 917-5599
Facsimile: (310) 395-3884
E-mail: jpertel@yahoo.com

Attorney for Defendant
Candace Conti

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 11 2012

John A. Clarke, Executive Officer/Clerk
By _____, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. CANDACE CONTI, Defendant.	CASE NO. SA 077463 (SA077463) ~~[PROPOSED]~~ **ORDER**

GOOD CAUSE APPEARING:

Defendant Candace Conti's motion to reduce felony offenses to misdemeanors is hereby granted. Defendant's felony conviction for a violation of Health and Safety Code section 11377, subdivision (a), sustained in the Alameda County Superior Court, case number H47823, is hereby reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b). Defendant's felony conviction for a violation of Penal Code section 496, sustained in the Alameda County Superior Court, case number H49316, is hereby reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b).

Dated: May 11, 2012

Marsha N. Revel
Honorable Marsha N. Revel
Judge of the Los Angeles County Superior Court

ORDER



SUPERIOR COURT, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA
SUPERIOR COURT OF CALIFORNIA, MARTINEZ

NOTICE, SENTENCE, COMMITMENT FORM

CLERK'S DOCKET AND MINUTES

PA RATE-H

DEFENDANT KENDRICK, JONATHAN DEPT. 006 DATE 1/07/2005 TIME 10:30 A
ADDRESS 200 HONEY LANE OAKLEY CA 94561 DOB 01/31/19
ROC MOD/P FEL PROB FORM DEFENSE ATTORNEY CHAZIN TIME NOT WAIVED
CUSTODIAL STATUS CUST
CHARGES 01 F PC 288(a) G 02 F PC 288(a) G 03 F PC 288(a) DSM

FILED
JAN - 7 2005
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
K. TORRE, CLERK OF THE COURT
BY DEPUTY CLERK

PROCEEDINGS

JUDGE DAVID B. FLINN COURT REPORTER VALERIE PRINCE DEPUTY CLERK MARY SLATER MINUTES CERTIFIED CORRECT
ASSIGN. TO DEPT. JUDGE COURT REPORTER DEPUTY CLERK

APPLICABLE ENTRIES MARKED

APPEARANCE
- ☐ Deft. proceeds in PRO PER
- ☒ Deft. appears ☐ in custody ☐ Deft. not appearing
- ☐ With/by Atty./Pub. Def./ADO
- ☒ Deputy Dist. Atty. Santos
- ☒ Court Probation Off. Osborne
- ☐ **Interp.** _____ **sworn/oath on file**
- ☐ **Cert.** ☐ **Non-Cert.** ☐ **Qualified per Rule 984.2**
- ☐ **Order** _____ **Int.** ☐ Int. Coord. notified

ARRAIGNMENT
- ☐ Answers true name as charged
- ☐ Waives Arr/reading of Complaint
- ☐ Handed copy of Complaint/Discovery
- ☐ Deft. duly arr. ☐ Video ☐ on Prob. Vio.
- ☐ Deft. waives arr. on amended complaint.

WARRANT
- ☐ Bench/Arrest Warrant to Issue
- Bail Set at $ _____
- ☐ Recalled ☐ Set Aside ☐ Remain Out
- ☐ No PTA Release ☐ No Vol. App.
- ☐ Hold until _____

BAIL ORDERS
- ☐ Bail forfeit & continued 190 days ☐ Bail Exon
- ☐ Bail forfeiture set aside & reinstated upon payment of fee $_____

REFERRALS
- ☐ _____ Referred To: PUBLIC DEFENDER
- ☐ _____ Referred To: PROB. Bail Study/PPR
- ☐ Referred per ☐ 288.1 PC ☐ 1368 PC
- ☐ Adult Pre-Trial/PC 1000 Diversion eligibility.
- ☐ Pub. Def. Conflict Filed; Appointed ADO
- ☐ Report to _____ for booking
- ☐ **977 waiver filed** ☐ 170.6 PC filed/oral
- ☐ In re law notice given

WAIVERS/PLEAS
- ☐ Written Plea filed ☐ Pleads Guilty, Ct.#
- ☐ Pleads No Contest, Found Guilty, Ct.#
- ☐ Pleads Not Guilty, Ct.#
- ☐ Jury Trial Waived/Demanded
- ☐ Time for Trial/Sent Waived/Not Waived
- ☐ Time for PX 10/60 Days Waived/Not Waived
- ☐ Admit/Denies _____ Priors/Refusal/Enhance

CONTINUANCES
- ☐ _____
- ☐ _____
- ☐ THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
- ☐ Vacate/Set on _____
- ☐ Def. must/need not appear

ATTEST: APR 06 2012
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA - PITTSBURG
DEPUTY CLERK

MOTIONS/ORDERS
- ☐ Peo/Def. Motion to/for/cont. _____
- ☐ Submitted with argument ☐ without argument
- ☐ Granted ☐ Denied ☐ Submitted ☐ No Action Taken
- ☐ Grounds: _____
- ☐ D.A. Motion to file amended complaint
- ☐ Complaint amended on its face to add Ct.# _____,
- a violation of section _____
- ☐ Pursuant to 23103.5CVC
- ☐ Strike the words felony and feloniously. Substitute the word misdemeanor wherever it appears in Complaint.
- ☐ Per Court/DA dismiss, Complaint/Ct.# _____
- ☐ Criminal Protective Order issued and served

PROBATION
- ☐ Court Probation granted for _____ mo/yr
- ☐ Adult Pre-Trial/PC 1000 Diversion granted
- ☒ Probation/Diversion/Reinstated/Modified/Extended to _____
- Original terms in full force and effect except as ordered.
- ☐ Deft. given/waived rights to Revoc. Hg; Admits/Denies allegations
- ☐ Prob. Revoked: ☐ Def. found in violation of probation
- ☐ Probation/Diversion: Terminated: Successfully/Unsuccessfully/Denied
- ☐ Pay Prob. Vio. fine of $ _____ ☐ Upon payment of fine/completion of jail sentence
- ☐ Criminal Proceedings Reinstated/Dismissed

No contact w/minors
Cooperate w/ sex offender instructions incl. polygraph
No involvement w/ youth programs.
No visiting places minors regularly attend

FINES/ORDERS/FEES
- ☐ Pay a fine of $_____ ☐ Rest. Fine of _____
- ☐ Pay $10 cite fee/$25 Booking Fee/ $_____ CJA Fee
- ☐ Pay balance of fine/ ☐ In lieu of fine ☐ Susp. $_____ after fine.
- ☐ Make monthly payments to CCU P.O. Box 2528 Martinez, CA 94553
- Phone (925) 646-1951 by _____
- ☐ _____ hours Volunteer work by _____ Fee $_____
- ☐ Re-refer/reinstate to Level I/Level II/PCDDP
- ☐ Referred to ORC for Attorney Fee Costs of $ _____
- ☐ License Suspended/Revoked _____ months/years
- ☐ DL310/DL309 Served ☐ Advised 14607.8 CVC
- ☐ **Pay** fine/comply or appear on _____ at _____

COMMITMENTS
- ☐ Be Imprisoned _____ days/months/years
- ☐ _____ days/months/years credit
- ☐ _____ days/months/years suspended
- ☐ Sentence to commence _____
- ☐ Serve consecutive/concurrent
- ☐ with _____ ☐ with any sentence
- ☐ Main Jail ☐ Electronic Home Detention
- ☐ WAP Contact CAB immediately / within 15 days.
- ☐ Day for day credit for time served in approved residential program. Proof by _____

OR CONDITIONS
- ☐ Obey all laws.
- ☐ Do not use any alcohol. Do not go to places where alcoholic beverages are the chief item of sale.
- ☐ Attend _____ AA/NA meetings per week and present proof at each court appearance.
- ☐ Submit to search and testing
- ☐ Destroy ☐ Return weapon
- ☐ Stay away from _____

BAIL AMT

JAN 24 2005

☐ REMANDED to County Jail: ☐ Ordered released ☒ On OR ☐ Promise to Appear. ☐ Def. to be allowed _____ phone calls
Bail Set in the amt. of $_____ ☐ Court Courtesy ☐ State Prison Commitment ☐ Committed to custody until sentence is satisfied in full

TO THE SHERIFF: COMMITMENT: I hereby certify that this is a true copy of the Entry of Judgment or Order and is your authority for the execution thereof.
See other minute pages for additional proceedings.

JAN - 7 2005
ENTERED: _____ (JUDGE OF THE SUPERIOR COURT)

CRIM. MINUTES (4/01)
CR-300

SWAT / EHD

Superior Court of California, County of Contra Costa

FELONY ORDER OF PROBATION

☐ CONCORD ☑ MARTINEZ ☐ PITTSBURG ☐ RICHMOND ☐ WALNUT CREEK

DEFENDANT KENDRICK JONATHAN DOCKET NO. 04-138568-1 DEPT: 4

The above named defendant having been convicted in this court of the offense(s) of violation PC 288(a)

IT IS ORDERED THAT: ☑ imposition ☐ execution of sentence be suspended during period of probation with the following terms and conditions:

TERMS OF PROBATION: **(Applicable Items Checked):** ☒

1. ☑ STATE PRISON - EXECUTION SUSPENDED - Fixed Term of: 8 yrs / months California Department of Corrections.
   ☑ FORMAL PROBATION GRANTED: Conditional and revocable release in community with Probation supervision except as specified by the Court.
   ☐ COURT PROBATION GRANTED: Conditional and revocable release in community without Probation supervision except as specified by the court.
   For a period of 5 months/yrs from the date of this order.
   ☒ STANDARD TERMS (see reverse for standard terms and additional instructions)
2. ☐ REVIEW DATE: _____
   ☐ Defendant must appear in Court.
   ☐ Defendant need not appear unless directed by DPO.

JAIL/FINE/VOLUNTEER WORK/ RESTITUTION

3. ☑ **Be IMPRISONED** 365 hrs / days / months
   ☑ 73 hrs / days / months credit.
   ☐ _____ hrs / days / months suspended.
   ☐ Sentence to commence _____.
   ☐ Serve consecutive / concurrent with _____.
   ☐ any imposed sentence.
   ☐ Other _____
   ☐ Main Jail ☐ Work Alternative Program
   ☐ Electronic Home Detention ☐ in _____ County allowed.
   ☑ Contact Custody Alternative Bureau (CAB) ~~within 15 days~~ From IN CUSTODY
   ☐ Remain in custody in the Contra Costa County Jail pending possible release by the Probation Officer to a residential treatment program and balance of remaining jail sentence be suspended.
   ☐ Day for day ☐ No credit for time served in approved residential program unless successfully completed.
   ☐ OTHER: _____
4. ☐ Pay a FINE of $ _____
   ☑ Pay RESTITUTION FINE of $ 200.00
   ☑ Make monthly installments to Court Collections & Compliance Unit, Complete payments by _____.
   ☐ Pay to Clerk of Court by _____.
   ☐ Probation to terminate upon payment of fine/completion of jail sent.
   ☐ _____ days jail concurrent / consecutive in lieu of fine.
   ☐ OTHER: _____
5. ☐ Perform _____ hrs VOLUNTEER COMMUNITY SERVICE
   ☐ In lieu of fine ☐ OTHER: _____
   ☐ Show proof of completion to Court or DPO by _____
6. ☐ Make RESTITUTION of $ _____ to _____
   ☑ Make RESTITUTION as determined by the Probation Officer.
   ☐ Show proof of restitution to Court or DPO by _____
   ☐ Honor any civil judgments as a result of this conviction.
   ☐ OTHER: _____
7. ☑ Submit your person, place of residence, storage locker or any vehicle under your control to search and seizure at any time of day or night, with or without warrant, to any peace officer.
   ☐ for alcoholic beverages ☐ _____
8. ☐ Not use or possess any dangerous drugs, narcotics, or narcotic paraphernalia without prescription.

JAN 2 8 2004

9. ☐ Not have checking or charge accounts, or possess, control or have custody of checks/credit cards except checks payable to you.
10. ☑ Do not own or possess or control any firearm or weapon.
11. ☐ Weapon ordered ☐ confiscated ☐ destroyed ☐ returned to _____
12. ☑ Do not annoy/harass/threaten/contact Victim
13. ☒ Contact Probation Officer within 5 (five) days.
14. ☒ Cost of Probation not to exceed $ 50.00 per month.
15. ☐ Abstain from the use of alcoholic beverages.
16. ☑ Submit to drug/alcohol detection tests as directed by DPO or any peace officer and pay costs not to exceed ☑ $10.00 ☐ _____
17. ☐ Not go places where alcoholic beverages are the chief item of sale.
18. ☐ Pay a laboratory analysis fee (H&S 11372.5) of $_____ and a drug education fee (H&S 11372.7) of $_____.
19. ☐ Not associate with _____ or with any individuals designated in writing by the Probation Officer.

PROGRAM TERMS

20. ☑ Register per ☐ H&S 11590 ☐ PC 457.1 ☑ PC 290
21. ☐ Submit to all tests and pay all fees as directed by DPO.
22a. ☐ Report to Post Conviction Drinking Driver's Program within 10 days and comply with its rules and fee requirements.
22b. ☐ Attend Domestic Violence Progam.
23. ☑ Participate in counseling as directed by the Probation Officer and not leave or terminate program without permission.
24. ☐ OTHER: _____

DRIVING TERMS

25. ☐ Driving privilege restricted for _____ to / during / from:
    ☐ Employment, treatment program ☐ School
26. ☐ Driving privilege suspended / revoked for _____
27. ☐ Not drive a motor vehicle unless properly licensed and insured.
28. ☐ Not drive vehicle with any measurable alcohol in blood.
29. ☐ If arrested for a violation of 23152 or 23153 CVC, not refuse a chemical test for the detection of alcohol.

ADDITIONAL TERMS

Stay away victim. Test per PC 296 + 1202.1
100 yards away. See special sex offender conditions attached.

Although not a condition of Probation, you are ordered to pay the following fees: ☐ $25 Booking ☐ $10 Cite ☐ CJA $_____
☐ Other fees $_____ ☐ Cost of Probation $_____ month

I HAVE READ AND RECEIVED A COPY OF THESE CONDITIONS OF PROBATION AND I UNDERSTAND AND AGREE TO PERFORM THEM AND UNDERSTAND THAT IF I FAIL TO DO SO, MY PROBATION MAY BE REVOKED AND I MAY BE SENTENCED TO JAIL OR SENTENCED AS OTHERWISE PROVIDED BY LAW.

DEFENDANT'S SIGNATURE Jonathan Kendrick

SOC. SEC. # [redacted] DOB 1-31-84

ADDRESS 200 HOPEY LANE

CITY OAKLEY ST CA ZIP 94561

HOME PH. (925) 679-0411 MSG. PH. (925) 584-1008

COMMITMENT: TO THE SHERIFF: I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ENTRY OF JUDGMENT OR ORDER AND IS YOUR AUTHORITY FOR THE EXECUTION THEREOF.

MOM
JUDGE

1/8/04
DATED

FILED
JAN - 8 2004
SUPERIOR COURT CLERK OF THE COURT
STATE OF CALIFORNIA
CONTRA COSTA

SEX OFFENDER – SPECIAL PROBATION CONDITIONS

( ) Defendant shall have no contact with any minors under the age of 18, until authorized by the Probation Officer.

(✓) Defendant shall consent to a full sex offender evaluation as provided by an approved Sex Offender treatment provider as directed by the Probation Officer.

( ) Defendant shall consent and cooperate with sex offender assessment instruments (i.e. polygraphic; penile plethysmographic; Able screen examinations; etc.) when deemed necessary by treatment providers and the Probation Officer.

(✓) Defendant shall be financially responsible for all counseling costs incurred by the victim(s).

(✓) Defendant shall consent to the sharing of privileged assessment and treatment information between public and private agencies, agents and persons who are deemed essential in assessing, monitoring, and mediating treatment for sexual deviancy problems.

(✓) Defendant shall not possess at any time any type of pornography including written, pictures, video tapes or electronic computer applications or telecommunications access to such applications. Defendant shall not contact minors via the Internet.

(✓) Defendant shall enter and complete a Sexual Offender Treatment Program as directed by the Probation Officer.

(✓) Defendant shall consent to and cooperate with any plan deemed necessary by Treatment Providers and/or Probation Officer to maintain and monitor offense-free behavior for the duration of probation.

( ) Defendant shall not be involved in any organizations or employment which would place him/her in direct contact with minors (i.e. Boy Scouts, Girl Scouts, 4-H, Big Brother/Big Sister Programs, Youth Counselor, Teacher, Instructor, etc.)

( ) Defendant shall not frequent or visit places that exist primarily for the enjoyment of minors (i.e. circuses; playgrounds; arcades; amusement parks; zoos; etc.)

(✓) Defendant shall register per terms and conditions as a sex offender pursuant to PC 290.

(✓) Defendant shall submit specimens of blood and saliva and palm and thumb prints for DNA purposes pursuant to PC 296.

(✓) Defendant shall submit to HIV testing with release of information to the victim(s) pursuant to PC 1202.1.

SUPERIOR COURT, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

04-138568-1

NOTICE, SENTENCE, COMMITMENT FORM

CLERK'S DOCKET AND MINUTES

FILED
JAN 8 2004
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

DEFENDANT KENDRICK, JONATHAN DEPT. 4 DATE 1/8/04 JAN TIME 1:30
ADDRESS DOB
ROC COP PROB DEFENSE ATTORNEY TIME WAIVE
CUSTODIAL STATUS
CHARGES PC 288(a)(1)

PROCEEDINGS MINUTES CERTIFIED CORREC

JUDGE M. O'MALLEY COURT REPORTER D. THOMMES DEPUTY CLERK MOYER
ASSIGN. TO DEPT. JUDGE COURT REPORTER DEPUTY CLERK

APPLICABLE ENTRIES MARKED

APPEARANCE
- ☐ Deft. proceeds in PRO PER
- ☑ Deft. appears ☑ in custody ☐ Deft. not appearing
- ☑ With/by Atty./~~Pub. Def./ADO~~ CHAZIN
- ☑ Deputy Dist. Atty. CAMPBELL
- ☑ Court Probation Off. MS. JARRETT
- ☐ **Interp.** _____ **sworn/oath on file**
- ☐ **Cert.** ☐ **Non-Cert.** ☐ **Qualified per Rule 984.2**
- ☐ **Order** _____ **Int.** ☐ Int. Coord. notified

ARRAIGNMENT
- ☐ Answers true name as charged
- ☐ Waives Arr/reading of Complaint
- ☐ Handed copy of Complaint/Discovery
- ☐ Deft. duly arr. ☐ Video ☐ on Prob. Vio.
- ☐ Deft. waives arr. on amended complaint.

WARRANT / BAIL ORDERS
- ☐ Bench/Arrest Warrant to Issue
- Bail Set at $ _____
- ☐ Recalled ☐ Set Aside ☐ Remain Out
- ☐ No PTA Release ☐ No Vol. App.
- ☐ Hold until _____
- ☐ Bail forfeit & continued 190 days ☑ Bail Exon
- ☐ Bail forfeiture set aside & reinstated upon payment of fee $_____

REFERRALS
- ☐ _____ Referred To: PUBLIC DEFENDER
- ☐ _____ Referred To: PROB. Bail Study/PPR
- ☐ Referred per ☐ 288.1 PC ☐ 1368 PC
- ☐ Adult Pre-Trial/PC 1000 Diversion eligibility
- ☐ Pub. Def. Conflict Filed; Appointed ADO
- ☐ Report to _____ for booking
- ☐ 977 waiver filed ☐ 170.6 PC filed/oral
- ☐ In re law notice given

WAIVERS/PLEAS
- ☑ Written Plea filed ☐ Pleads Guilty, Ct.# _____
- ☑ Pleads No Contest, Found Guilty, Ct.# 1+2
- ☐ Pleads Not Guilty, Ct.# _____
- ☐ Jury Trial Waived/Demanded
- ☐ Time for Trial/Sent Waived/Not Waived
- ☐ Time for PX 10/60 Days Waived/Not Waived
- ☐ Admit/Denies _____ Priors/Refusal/Enhance

CONTINUANCES
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST: APR 06 2012
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA - PITTSBURG
DEPUTY CLERK

MOTIONS/ORDERS
- ☐ Peo/Def. Motion to/for/cont. _____
- ☐ Submitted with argument ☐ without argument
- ☐ Granted ☐ Denied ☐ Submitted ☐ No Action Taken
- ☐ Grounds: _____
- ☐ D.A. Motion to file amended complaint
- ☐ Complaint amended on its face) add Ct.# _____, a violation of section _____
- ☐ Pursuant to 23103.5CVC
- ☐ Strike the words felony and feloniously. Substitute the word misdemeanor wherever it appears in Complaint.
- ☑ Per ~~Court~~/DA dismiss, ~~Complaint~~/Ct.# 3
- ☐ Criminal Protective Order issued and served

PROBATION
- ☑ ~~Court~~ Probation granted for 5 yrs mo/yr
- ☐ Adult Pre-Trial/PC 1000 Diversion granted
- ☐ Probation/Diversion/Reinstated/Modified/Extended to _____
- Original terms in full force and effect except as ordered
- ☐ Deft. given/waived rights to Revoc. Hg; Admits/Denies allegations
- ☐ Prob. Revoked: ☐ Def. found in violation of probation
- ☐ Probation/Diversion: Terminated: Successfully/Unsuccessfully/Denied
- ☐ Pay Prob. Vio. fine of $ _____ ☐ Upon payment of fine/completion of jail sentence
- ☐ Criminal Proceedings Reinstated/Dismissed

This is a negotiated disposition. As to counts 1+2 amend time of offense to February 2002. Chazin relieved as counsel.
Count 1+2 - 8 years suspended upper term.
Count 2 - 6 years mid term concurrent to Count 1

FINES/ORDERS/FEES
- ☐ Pay a fine of $_____ ☐ Rest. Fine of _____
- ☐ Pay $10 clte fee/$25 Booking Fee/ $_____ CJA Fee
- ☐ Pay balance of fine/ ☐ In lieu of fine ☐ Susp. $_____ after fine.
- ☐ Make monthly payments to CCU P.O. Box 2528 Martinez, CA 94553 Phone (925) 646-1951 by _____
- ☐ _____ hours Volunteer work by _____ Fee $_____
- ☐ Re-refer/reinstate to Level I/Level II/PCDDP
- ☐ Referred to ORC for Attorney Fee Costs of $_____
- ☐ License Suspended/Revoked _____ months/years
- ☐ DL310/DL309 Served ☐ Advised 14607.8 CVC
- ☐ **Pay** fine/comply or appear on _____ at _____

COMMITMENTS
- ☐ Be Imprisoned _____ days/months/years
- ☐ _____ days/months/years credit
- ☑ 8 days/months/years suspended
- ☐ Sentence to commence _____
- ☐ Serve consecutive/concurrent
- ☐ with _____ ☐ with any sentence
- ☐ Main Jail ☐ Electronic Home Detention
- ☐ WAP Contact CAB immediately / within 15 days.
- ☐ Day for day credit for time served in approved residential program. Proof by _____

OR CONDITIONS
- ☐ Obey all laws.
- ☐ Do not use any alcohol. Do not go to places where alcoholic beverages are the chief item of sale.
- ☐ Attend _____ AA/NA meetings per week and present proof at each court appearance.
- ☐ Submit to search and testing
- ☐ Destroy ☐ Return weapon
- ☐ Stay away from _____

See the Orders of Probation.

- ☑ REMANDED to County Jail: ☐ Ordered released ☐ On OR ☐ Promise to Appear ☐ Def. to be allowed _____ phone calls
- Bail Set in the amt. of $_____ ☐ Court Courtesy ☐ State Prison Commitment ☐ Committed to custody until sentence is satisfied in full

TO THE SHERIFF: COMMITMENT: I hereby certify that this is a true copy of the Entry of Judgment or Order and is your authority for the execution thereof.

☐ See other minute pages for additional proceedings.

MOM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
ADVISEMENT OF RIGHTS, WAIVER AND PLEA FORM

FILED
JAN - 8 2004
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
SUSAN JOHNSON, CLERK OF THE COURT

CASE NUMBER(S)
1385[illegible]

People v. Jonathan Kendrick

Judge O'Malley Date 1/8/04

Defendant's Attorney Seth P. Chazin

Clerk _____ Reporter _____

Fill out this form if you wish to plead guilty or no contest to the charges against you. Initial the box for each applicable item only if you understand it. If you have any questions about your case, the possible sentence, or the information on this form, ask your lawyer or the judge.

INITIAL ONLY THE BOXES THAT APPLY TO YOU:

CHARGES

[If represented by counsel]

JK 1. I have read, discussed with my attorney and understand all allegations in the complaint/information/indictment filed against me.

[If pro per]

X 1a. I have read and understand all allegations in the complaint/information/indictment filed against me.

CONSTITUTIONAL RIGHTS

JK 2. I understand that I have the right to an attorney to represent me throughout the proceeding, and that if I am unable to afford to hire an attorney, the Court will appoint an attorney to represent me at public expense, subject to reimbursement based on my ability to pay. I give up my right to be represented by an attorney. **[initial only if <u>not</u> represented by an attorney]**

JK 3. I understand that on a felony complaint I have the right to a preliminary hearing before a judge at which the district attorney must prove that a crime has been committed by me. If the district attorney does not meet this burden of proof, the charges on the complaint against me would be dismissed. I give up my right to a preliminary hearing. **[Initial only if plea before P.X.]**

JK 4. I understand that I have the right to a speedy and public trial by a jury on the charges. I give up my right to a jury trial on the charges.

JK 5. I understand that I have the right to confront and cross-examine all witnesses against me. I give up this right.

JK 6. I understand that I have the right to present evidence and to call witnesses to testify on my behalf and that I may use the power of the Court to subpoena such evidence or witnesses and compel their presence in court. I give up this right.

7. I understand that I have the right to remain silent and cannot be forced to testify against myself. I understand that by pleading guilty or no contest I am incriminating myself. I give up my right against self-incrimination.

CONSEQUENCES OF GUILTY/NO CONTEST PLEA

8. A "no contest" plea will be treated by the Court for all purposes as a guilty plea.

9. I understand that the legal maximum state prison sentence for the charge(s) to which I am pleading guilty/no contest, including all sentence enhancements, is 8 years and 0 months, and that the maximum fine for the charge(s) is $10,000 per charge.

10. I understand that conviction of the charge(s) makes me ineligible for a grant of probation. **(When probation ineligibility allegations are charged and admitted).**

11. I understand that my sentence to state prison will be [redacted] years and [redacted] months.

12. I understand that any state prison sentence will be followed by my being on parole for up to five (5) years.

13. I understand that I will not be sentenced now to state prison on the charge(s), but that I will be placed on felony probation for 5 years.

14. I understand that the Court will impose conditions upon my probation. These conditions may include up to one year in the Contra Costa County jail, a fine of up to $10,000, and other conditions that are reasonably related to the charge(s) to which I am pleading guilty/no contest.

15. I understand that as a condition of probation I will serve 365 days in the Contra Costa County jail.

16. I have credit for 73 actual days served through today.

17. I understand that I will be permitted to apply for a Custody Alternative Bureau (C.A.B.) Program (EHD/SWAP/Sheriff's Parole) to serve the remainder of my sentence. I further understand that the Sheriff will determine if I am accepted into that program; If rejected I will have to serve the remainder of my time in county jail. If I am accepted, I will receive NO CONDUCT CREDITS while on the program. NO PROMISES NOR REPRESENTATIONS HAVE been made to me regarding whether or not I will be accepted into these programs. If rejected, I understand that I will serve my sentence in County jail and that I will not have my sentence modified for that reason NOR will I be permitted to withdraw my plea for that reason. (**applies only to persons referred to the Sheriff's Custody Alternative Bureau**).

18. I understand that because I have admitted a prior "strike" allegation, my conduct credits in State Prison will be limited to a maximum of 20%. (P.C. §667 (c)(5).)

19. I understand that because I am pleading guilty/no contest to a violent felony (as defined in §667.5(c), my conduct credits (both locally and at State Prison) are limited to a maximum of 15% P.C. §2933.1).

20. I understand that if I violate my probation conditions, the court could revoke my probation and sentence me to the maximum term in state prison and to the maximum fine.

21. I understand that conviction of the charge(s) will subject me to registration requirements.

22. I understand that conviction of the charge(s) will require me to pay appropriate restitution to the victim(s) of my crimes and/or to pay a restitution fine of not less than $200 and not more than $10,000 [for a felony conviction] or not less than $100 and not more than $1,000 [for a misdemeanor conviction].

23. I understand that conviction of the charge(s) will result in suspension or revocation of my privilege to drive a motor vehicle.

24. Federal law provides for mandatory deportation for certain crimes. I understand that if I am not a citizen of the United States, I have the right to contact a diplomatic or consular representative of my country, and conviction of a crime could result in my deportation, denial of my re-entry to the United States and denial of my application for citizenship.

25. I understand that the charge to which I am pleading guilty/no contest constitutes a "STRIKE" under current law and may be charged as a "STRIKE" prior conviction in the future, if I am charged with a new felony offense. If found to be true, this strike prior would subject me to the enhanced penalties under the strike law. **[for use when defendant pleading guilty to future strike].**

26. I understand that the charge to which I am pleading guilty/no contest may be charged as a prior conviction in the future and subject me to increased penalties. **[for use on other "priorable" offenses].**

27. I understand that as a result of my conviction in this case, I will be prohibited from possessing any firearm or ammunition.

28. I understand that any plea entered in this case may be an admission of a violation of probation or parole which has been imposed on me in any other criminal case.

VOLUNTARINESS OF PLEA

29. Except for what is promised to me in open court **ON THE RECORD** I have not been promised or offered anything by anyone (including my attorney) that causes me to enter a guilty/no contest plea.

30. No threat has been made against me or anyone close to me that causes me to enter a guilty/no contest plea.

31. My mental abilities are not now impaired in any manner by prescription or nonprescription drugs, alcohol, or for any other cause; I am completely alert and sober; and I am fully able to understand these proceedings.

FACTUAL BASIS OF PLEA

[If represented by counsel]

32. I have discussed the contents of the police reports and investigative reports with my attorney. I am satisfied that I know the evidence that could be used against me in trial, as well as any possible defenses to these charges.

[If in pro per]

32a. I have read the police reports and I am satisfied that I know the evidence that could be used against me to these charges, as well as any possible defenses.

33. I believe and agree that a jury or judge who heard the evidence against me could find me guilty of the charges to which I am pleading guilty/no contest.

ENTRY OF PLEA

34. Having read and understood this form, I hereby freely and voluntarily plead [ ] guilty or [X] no contest to PC 288(a) in Counts One + Two
(list charges, priors and enhancements)

SIGNATURE OF DEFENDANT — DATE 1/8/04

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed the form and any addendum with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions with regard to this plea. I have discussed the facts of the defendant's case with the defendant, and explained the consequences of this plea, the elements of the offense(s), and the possible defenses. I concur in this plea and in the defendant's decision to waive constitutional rights. I stipulate that there is a factual basis for the defendant's plea(s).

SIGNATURE OF DEFENDANT'S ATTORNEY — DATE 1/8/04

INTERPRETER'S STATEMENT (if applicable)

I, having been sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language indicated below. The defendant stated that he/she understood the contents of the form, and then he/she initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify): _____

DATE | TYPE OR PRINT NAME | SIGNATURE

COURT'S FINDINGS AND ORDER

The Court, having reviewed this form and all attachments hereto, and having questioned the defendant concerning his/her understanding of, and execution of this form, finds that the defendant has expressly, voluntarily, knowingly, understandingly and intelligently waived his/her rights as set forth therein; that the plea(s) of the defendant are freely and voluntarily made with an understanding of the consequences thereof; and that there is a factual basis for the plea(s). The Court accepts the plea(s), finds the defendant guilty of each charge and allegations pled to, and orders this form filed and incorporated in the case file by reference as thought fully set forth therein.

DATED 1/8/04 — Maryann O'Malley
JUDGE OF THE SUPERIOR COURT

FILED

OCT 28 2003

K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - PITTSBURG
By _____ Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
PITTSBURG

THE PEOPLE OF THE STATE OF CALIFORNIA,

VS.

JONATHAN KENDRICK,

DEFENDANT./

NO. 138568-1
DA NO. X 03 000410-1
COMPLAINT - FELONY

01) PC 288(a)
02) PC 288(a)
03) PC 288(a)

The undersigned states, on information and belief, that JONATHAN KENDRICK, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about ~~November~~ February 2002, at Oakley, in Contra Costa County, the Defendant, JONATHAN KENDRICK, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane DOE, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COUNT TWO:

The undersigned further states, on information and belief, that JONATHAN KENDRICK, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about ~~November~~ February 2002, at Oakley, in Contra Costa County, the Defendant, JONATHAN KENDRICK, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane DOE, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COUNT THREE:

The undersigned further states, on information and belief, that JONATHAN KENDRICK, Defendant, did commit a felony, a violation of PENAL CODE SECTION 288(a) (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

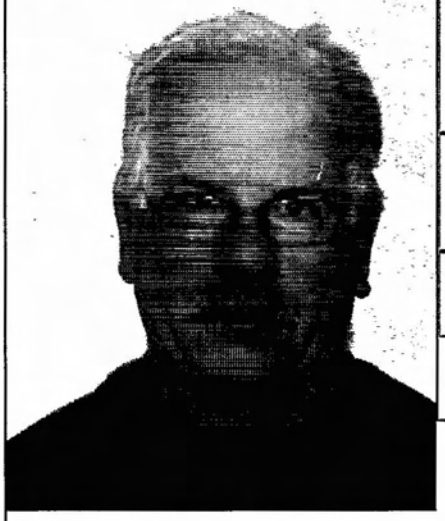
On or about November 2002, at Oakley, in Contra Costa County, the Defendant, JONATHAN KENDRICK, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane DOE, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and the child.

COMPLAINANT REQUESTS THAT DEFENDANT(S) BE DEALT WITH ACCORDING TO LAW. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
DATED: October 28, 2003 AT MARTINEZ, CALIFORNIA

DARA CASHMAN/lk
DEPUTY DISTRICT ATTORNEY

BALDWIN
COMPLAINANT
CONTRA COSTA COUNTY SHERIFF

Last Name: **KENDRICK** First Name: **JONATHAN** Middle Name: **DAVID**



Description | Addresses | Offenses | Scars/Marks/Tattoos | Known Aliases

Offense Code	Description	Year of Last Conviction	Year of Last Release
288(a)	LEWD OR LASCIVIOUS ACTS WITH A CHILD UNDER 14 YEARS OF AGE		
243.4(d)	SEXUAL BATTERY INVOLVING A RESTRAINED PERSON		

Registrant has subsequent felony conviction(s) but DOJ has no incarceration information for this felony.

View on Map

Report Information to DOJ

THE REGISTRANT MAY HAVE SUBSEQUENTLY RELOCATED

<<Back

8801298

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 8 TO EXCLUDE THE TESTIMONY OF TOI REGISTER HAYES [Evid. Code §§350; 352]

Trial Date: 5/21/2012

STATEMENT OF THE ISSUE

The November 1993 report by the Fremont Elders to Watchtower contained information about Jonathan Kendrick's sexual molestation of his stepdaughter Andrea, and also contained a report of possible grooming or fondling of a second girl, Toi Register. (Report, Ex. 1.) That report was never investigated by the Elders. (Clarke Depo., Ex. 2, 54:11-55:8.) Watchtower recently submitted a Declaration from Ms. Register, now Toi Register Hayes, in its Opposition to Plaintiff's Motion to Amend Complaint to add punitive damages. (Hayes Dec., Ex. 3.) Ms. Hayes states in 2012 that she has no present recollection of any "inadvertent" touching of her breast by Kendrick, as reported in 1993. Plaintiff moves to exclude her testimony on the grounds that her present recollection is irrelevant to any issue in this trial; that presenting evidence and experts explaining why the information received by the Elders in 1993 is consistent with Ms. Register's present recollection, or lack thereof, will waste

significant court time, confuse the jury; and because Ms. Register's present recollection provides no probative value in this case.

I. MS. REGISTER'S CURRENT RECOLLECTION IS IRRELEVANT TO ANY ISSUE IN THIS CASE.

Only relevant evidence is inadmissible. (Evid. Code 350.) Relevant evidence is defined as "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code 210.) Neither Ms. Register nor her mother were ever contacted by anyone from Jehovah's Witnesses at any time between 1993, when the report of her being touched was received, and 2012. (Clarke Depo., Ex. 2, 34:21-35:16.) Watchtower's Elders admit they never investigated the report. (*Id.*, 54:11-55:8.) Watchtower's written instructions to the Fremont Elders did not request or suggest investigating the report. (Watchtower Letter, Ex. 4.) Therefore, Ms. Hayes' testimony in 2012 does not have any relevance in whether or not the Elders and Watchtower were negligent in 1993-1996 – as they neither acted nor refrained from acting in response to anything she said.

Watchtower may argue that the evidence is relevant to show that, if they had investigated, nothing would have been found, and therefore, their negligence is not a cause of any harm to Plaintiff. Ms. Register's current recollection, or non-recollection, does not establish that she would have had the same response 19 years ago. This testimony is irrelevant in any event because the Elders acted at all times as if the Toi Register complaint did not exist, and it is their conduct that is at issue. There is absolutely no testimony or documentary evidence that can be offered by Watchtower or Fremont Congregation that will support an inference that the Toi Register report made formed the basis or non-basis, or was considered in any way, as to their supervision of Kendrick. Whether or not their negligence in how they handled Kendrick between 1993 and 1996 was a cause of injury to Plaintiff is an analysis based upon facts about the events and information available at that time period, not through a speculative retrospectoscope of "Ifs."

II. MS. HAYES' TESTIMONY WILL CONSUME SIGNIFICANT TIME WITHOUT PROBATIVE VALUE.

The leap of inference from Ms. Hayes' 2012 lack of recollection of what to her would have seemed like a non-event 19 years ago, to the conclusion "nothing" would have been found if a

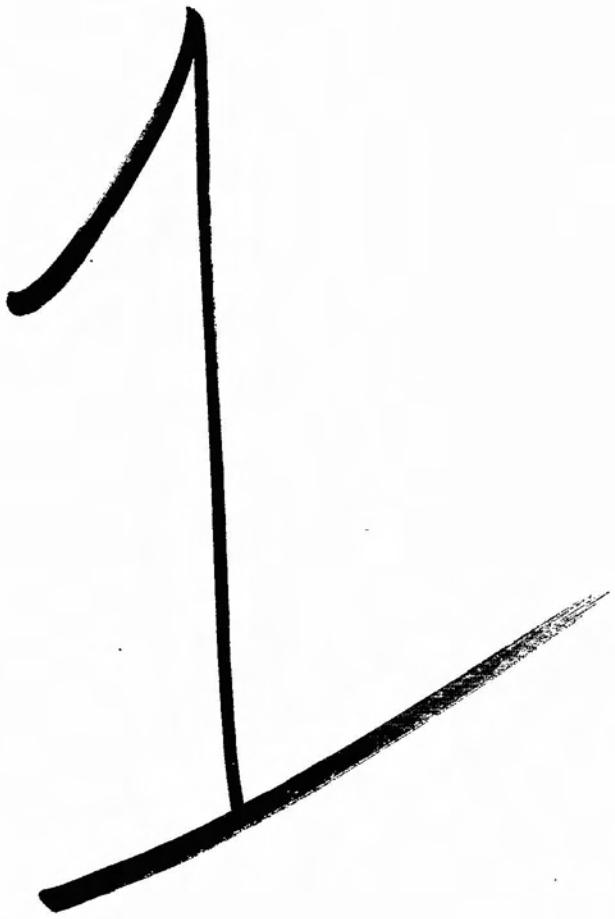
thorough investigation was done in 1993, is purely speculation. However, rebutting the suggestion will consume substantial court time. There is evidence that Kendrick was grooming at least one other girl in the Congregation, a 10-year-old named Brianna, for whom he bought a black bra. (Francis depo, Ex. 5, 33:13-34:25.) Had an investigation of Kendrick been done, the Elders may have learned something from Toi Register's 1993 recollection that she no longer remembers, or chooses not to speak about, in 2012. Plaintiff is able to produce expert evidence that the then 13-year-old Toi Register may not have had any reason to suspect anything improper by what likely appeared to her to be an "inadvertent" touch, giving her no reason whatever to remember it two decades later. She may now be embarrassed to mention it, even if she does recall. There will also be expert testimony produced by Plaintiff to show that the type of event reported was far more important to Kendrick, a predator with known multiple serial victims. Although insignificant to 13 year-old Toi, to Kendrick, an "inadvertent" touch would constitute an initial act of grooming approach behavior. Plaintiff's experts in predatory sex offenders like Kendrick can testify as to what individuals like he are known to learn from the "inadvertent" brush – that Toi did not respond in a way that encouraged him to further approach her. Kendrick may simply not have had another opportunity to try a second grooming act with her, so she would have been oblivious to his danger, and felt the safety she describes in her Declaration.

All of this testimony involves consumption of trial time and the risk of confusing the jury with a side issues of little probative value, the issues of Kendrick's grooming, and Toi's lack of perception as to the nature of what occurred. Consequently, Ms. Hayes' 2012 testimony should be excluded under Evidence Code §352.

Dated: May 7, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



North Congregation #15685
Fremont
c/o Michael L. Clarke
32852 Bass Lake St.
Fremont, Ca 94555

Nov 15, 1993

Watchtower Bible & Tract Society
25 Columbia Heights
Brooklyn, New York, 11201 USA

Dear Brothers,

We are writing to you regarding a case of child abuse. We telephoned 11/12/93 and it was suggested that we submit in writing our questions.

We met on 11/11/93 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15 yr old step daughter. The abuse occurred approximately 4 months ago. He confessed to touching the breast of his step daughter while she was sleeping. She was awaken instantly and knew what had happened. His wife was informed that evening and the 3 of them talked it out between them. Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders. He said that his conscious continued to bother him.

Evelyn, his wife, is baptized but inactive. She occasionally attends meetings.

Andrea, the step daughter, is not baptized and is no longer an unbaptized publisher. The step daughter is now using this as a tool to threaten with when she wants something. Because she has been promiscuous with 2 boys at school. the parents have tried to enforce house rules covering her comings and goings.

Andrea has recently mentioned the abuse to another young girl, Toy Register, whom she attends school with. Coincidentally, Toy attends our congregation meetings and is studying. Her mother is disfellowshipped. Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional. Mrs Register is now threatening to call the police.

Here are the facts as best as we can present them without interviewing each party. Our questions are as follows:

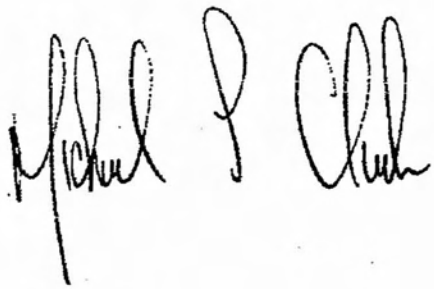
1. Can 2 elders handle this matter with Brother Kendrick as mentioned on page 93 of "Pay attention to Yourselves....Flock", under the heading Uncleanness? Or do we have to form a Judicial hearing because of it being child abuse?

2. We assume that Brother Kendrick does not qualify any longer as a Ministerial Servant. We will announce to the congregation that he is no longer serving as such. If this is incorrect, please inform us.

3. The legal department has given us some direction as far as our legal requirements and we will follow that closely.

We will wait to hear from you regarding the above questions. If I have not been clear enough, you may reach me during the day at my work phone (510-462-7861 ext 105)

Your Brothers,





In The Matter Of:

Doe vs. The Watchtower Bible

November 8, 2011

Videotaped Deposition of Michael Lee Clarke

Bay Area Court Reporters
21573 Foothill Boulevard, Suite 215
Hayward, California 94541
800-339-DEPO

Original File Clarke

Min-U-Script® with Word Index

Q. Did Mr. Kendrick also tell you that his daughter Andrea was now using the abuse, that she had experienced, as a tool to threaten when she wanted something?

A. Yes.

Q. Mr. Kendrick told you that.

A. Both him and his wife, Evelyn.

Q. Okay. And was that also in the meeting with Andrea present in the Kendrick home?

A. Yes.

Q. And did Mr. Kendrick tell you anything else about why he had chosen November of 1993 to talk to you about this abuse of Andrea, other than "his conscious continued to bother him"?

A. Well, the letter mentions that it had become... it had become known to a friend of the stepdaughter's.

And I believe he indicated, in addition to his conscious, that this would be a reason for us to -- to come over and talk to him about it.

Q. Are you referring to Toi Register?

A. Um... is that her name? Yes.

Q. Okay. And you discuss that, in the bottom paragraph of the November 16th -- I'm sorry, November 15th letter.

There's information here concerning Toi Register having had her chest, quote, "accidentally touched," end quote, by Mr. Kendrick.

Was it Mr. Kendrick that told you that?

A. Boy. This was repeated to us by....

I don't know where that information -- how we gathered it. It might have been mentioned by the stepdaughter. We --

We did not talk with Toi Register.

Q. Okay.

Was there any reason that you did not talk to Toi Register to see if the touching of her chest by Brother Kendrick was actually accidental, as opposed to intentional?

A. I don't remember why we did not talk with her.

Q. Were you concerned on November 15th, 1993, that there might be other young girls who Brother Kendrick had been touching in their breasts?

A. Can you please repeat that?

Q. Yeah.

During this meeting of November 11th, you learned that there had been some touching of Toi Register and some touching of Andrea by Mr. Kendrick.

Q. All right. What's the other document that you're thinking of?

A. I just, I thought there was three pages. But it's a long time ago.

Q. Was your letter of November 15th, 1993, which we've looked at earlier...

A. Um-hum.

Q. ... was that letter sent to Oakley Congregation on September 8th, 1998?

A. I can't say for sure (shrugs shoulders).

Q. In the letter of August 31, 1998, that was sent to Oakley, Question No. 3 says: "Was it a one-time occurrence?" And the answer is "One time."

Are you the individual who answered these Questions 1 through 9? Including Question 3?

A. Yes.

Q. Is there any reason, in answering Question 3, that you did not make reference to the touching of Toi Register?

A. I had no way of proving it.

It was just something hearsay, I guess you'd call it, the stepdaughter making a statement that this Toi Register had made that statement.

But I think even the stepdaughter mentioned that it was unintentional.

Something in the original letter about that. It said:

"Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional."

Anyway, it was just hearsay what the stepdaughter told us.

So....

Q. Did Mr. Kendrick deny, in the meeting that you you had on November 12th, 19 -- I'm sorry, November 11th, 1993, that he had also touched the breast of Toi Register?

A. I don't recall if he denied it or not.

Q. Did he admit it?

A. I don't recall what he said about it.

MR. SIMONS: Let me show you two other letters that we're going to mark as exhibits next in order. One is of June 19th, 1998.

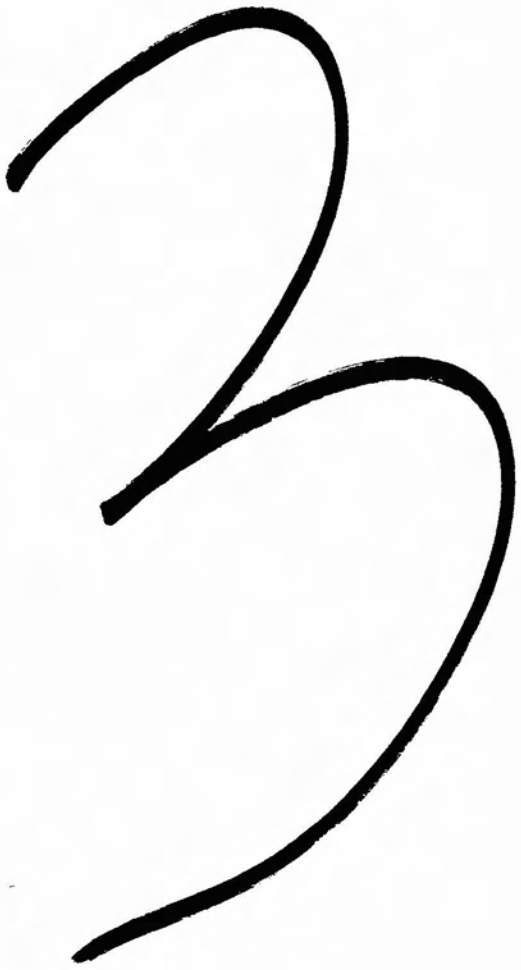
And that will be Exhibit 5?

THE REPORTER: Yes.

MR. SIMONS: And then September 2nd, 1998, will be Exhibit 6.

MR. SCHNACK: June 19 is Exhibit 5?

MR. SIMONS: Yeah.



JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,,

Defendants.

Case No.: HG11558324

DECLERATION OF TOI REGISTER HAYES

I, Toi Register Hayes, upon her oath deposes and states that if she was called as a witness to testify in this case could and would do so competently as follows:

1. My date of birth is March 7th 1980.

2. That during 1992/1993 my mother and I attended meetings of Jehovah's Witnesses at the North Congregation in Fremont, California.

3. That I knew Jonathan Kendrick, Evelyn Kendrick, and their daughter Andrea at that time. They also attended meetings of the North Congregation in Fremont, California.

4. That I have no recollection of ever telling anyone that Jonathan Kendrick touched my breast inadvertently or otherwise.

5. That I was never touched improperly or abused in any way by Jonathan Kendrick and I never felt that Jonathan Kendrick behaved in any inappropriate manner with me as a young girl.

6. That I attended meetings at the North Fremont Congregation from 1992 until February 1994 when we moved to Guam. During that time Jonathan Kendrick never did anything to make me feel uncomfortable nor did I ever see him do anything inappropriate with any child.

7. That I also spent the night at the Kendrick home on several occasions, as did Andrea at my home, and I felt completely safe and secure as a young guest in the Kendrick home. I also spent time after school at the Kendrick home on a regular basis. I stopped associating with Jonathan Kendrick's step-daughter, Andrea, after I told my mom that she had a boyfriend and that she was having sex with him.

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24th, day of April, 2012, at San Francisco, California.

Toi Register Hayes

Toi Register ~~Harris~~ HAYES

4

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

SCN:SST December 3, 1993

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers:

Your letter dated November 15, 1993, has been received. As you will note from the enclosed S-52 form, Brother Jonathan Kendrick has been deleted from serving as a ministerial servant on the grounds of "uncleanness."

Your letter states: "He confessed to touching the breasts of his stepdaughter while she was sleeping. She was awakened instantly and knew what had happened." Since this incident is known by outside members of the family, it is appropriate that Brother Kendrick be deleted from serving as a ministerial servant with your congregation.

On page 92 of the Kingdom Ministry School textbook the following is stated: "Uncleanness includes an intentional momentary touching of sexual parts or caressing of breasts. Such minor uncleanness can be handled at the discretion of an elder or two; it does not require a judicial hearing. There is a need for strong counsel, admonition, and assistance to help the individual to maintain chaste conduct in the future."

In harmony with the above, it will not be necessary for a judicial committee to handle the "uncleanness" committed by Brother Kendrick. However, it would be appropriate for two elders to meet with him and provide him with strong Scriptural counsel so as to avoid a repetition of such a serious offense.

We trust the above comments will be helpful to you. With this letter we are pleased to send you an expression of our warm Christian love and best wishes.

Your brothers,

WATCHTOWER B. & T. SOCIETY
OF NEW YORK, INC.

cc: R. Rainer, CA #40



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

CLAUDIA NANCY FRANCIS

Monday, October 24, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

A. Yes; I believe. Yes. 10:36:55

And now I believe he's a sex addict. And 10:36:58

a predator. 10:37:01

And he would complain that Evelyn -- 10:37:09

Evelyn moved out of the bedroom, so, he -- they didn't 10:37:10

sleep together for seven years. Something like that. 10:37:13

And so, it really fried him when Andrea 10:37:17

was bringing her boyfriend home, having sex with him, 10:37:20

he was in the house. 10:37:24

It's like: She's getting it and he isn't. 10:37:25

I know that would be his way of looking at it, thinking 10:37:28

it. So.... 10:37:30

Q. In the information that I have received, 10:37:35

there's a reference to Jonathan Kendrick purchasing a 10:37:37

black bra for a -- for a girl. 10:37:45

A. Oh, yeah. 10:37:48

Q. And do you recall that occasion? 10:37:49

A. Yes, I do. 10:37:50

Q. What do you recall? 10:37:51

A. He lived with us for about six months, 10:37:55

when he and Evelyn broke up and they lost the home. 10:37:57

So, he stayed with us. 10:38:01

And he had gotten his tax check back. And 10:38:03

he wanted to spend some money on the kids. So, he took 10:38:08

my son and... and Brianna Becker to Sears. And he 10:38:13

bought each kid something. 10:38:23

And he brought -- bought David, I think it's, a Skil saw that makes those curvy (indicating). 10:38:25 10:38:28

Because I like home projects and working with wood ,and I'd always said "Oh, I wish I had a saw like that; I would just" to -- you know, "love to be able to make this and that." 10:38:32 10:38:35 10:38:38 10:38:40

And he bought David one. Why did he buy one of those Skil saws? What do you call those things that they make the -- the blades go around and they make curves. 10:38:42 10:38:44 10:38:46 10:38:50

Well, he must have bought that for me. Why would you buy a, you know, a 10-year-old kid a Skil saw? 10:38:50 10:38:52 10:38:55

But he brought Brianna Becker a black bra. And I thought: That is weird. 10:38:55 10:38:59

He goes "Well," every -- "every girl needs," you know, "a black bra." 10:39:02 10:39:04

But I never reported it. I never acted on it. I just thought: That's weird. 10:39:09 10:39:12

Q. How did you learn about this purchase? 10:39:15

A. He told me. 10:39:17

Q. Was there a receipt that you actually saw? 10:39:19

A. I had the receipt. I threw it out. Not after this (indicating). 10:39:21 10:39:24

8801290

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 6 TO EXCLUDE EVIDENCE OF AND REFERENCE TO INAPPLICABLE PRIVILEGE ISSUES

Trial Date: 5/21/2012

STATEMENT OF THE ISSUE

Defendants Watchtower New York and Fremont Congregation have each argued that they could not warn of Jonathan Kendrick's propensity for sexual abuse, nor inform the Congregation of the reason for his removal as a Ministerial Servant, because to do so would violate the Clergy-Penitent and "Spiritual" Privileges. The Court has previously rejected the argument as to the specific evidence regarding Jonathan Kendrick in this case, both in two separate Motions to Compel Discovery and in Plaintiff's Punitive Damage Pleading Motion. Neither Defendants' agents, nor its Attorneys, should be permitted to testify or argue to the jury that Clergy-Penitent or Spiritual Privileges would have been violated if remedial action regarding Jonathan Kendrick was taken in 1993.

I. THE INFORMATION CONCERNING JONATHAN KENDRICK WAS NOT RECEIVED IN A CLERGY-PENITENT PRIVILEGE SETTING.

Information concerning Kendrick's molestation of his stepdaughter was received in a meeting held with Elders Abrahamson and Clarke, Jonathan Kendrick, Evelyn Kendrick, and the stepdaughter.

(Abrahamson Depo.. Ex. 1, 120:4-121:2; Clarke Depo., Ex. 2, 29:4-30:14; Evelyn Kendrick Dec., Ex. 3, para. 3.) Mr. Abrahamson conceded in his deposition that third party reports of sexual abuse committed by other perpetrators within the Congregation were not anticipated or expected to be kept confidential. (Abrahamson Depo., Ex. 1, 59:24-60:18).

In order to apply in California, the Clergy-Penitent Privilege, as codified in Evidence Code section 1032, there must be a "confidential communication." (Evid. Code § 1032; *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 441; *John Doe 2 v. Superior Court* (2005) 132 Cal. App. 4th 1504, 1517-18). Statements are not "confidential" if they are made in the presence of any third persons, even other victims of a sex offender. (*John Doe 2, supra*, at p. 1518.) In *Doe 2*, statements made in a "Healing Conference" where other victims were present were held not subject to Clergy privilege. The statements made by the stepdaughter, Evelyn, and Jonathan Kendrick at a family meeting with the Elders in 1993 were all made in the presence of third persons. The report containing the information upon which Watchtower New York instructed the Fremont Elders to act came from the Kendrick family meeting. (North Congregation Letter Nov. 15, 1993, Ex. 4; and Watchtower Letter Dec. 3, 1993, Ex 5.) No "confidential communications," within the definition of California law, were the basis of the information received by the Elders or their decision to Remove Kendrick from his post as Ministerial Servant. The Court has twice ruled on this issue in Plaintiff's prior Motions to Compel Discovery. (Orders of September, 2011 and October, 2011, Exs. 6 and 7.).

There is simply no factual or legal basis to claim or apply Clergy-Penitent Privilege as to the information received by the Elders in the Kendrick home meeting, or the subsequent actions of Defendants in disciplining him. Therefore any testimony, argument, or evidence that Clergy-Penitent Privilege prevented warning the Congregation or its adults and parents that Jonathan Kendrick was removed from his position as a Ministerial Servant because of an act of child sexual abuse is without legal or factual basis.

///

///

II. CALIFORNIA LAW DOES NOT RECOGNIZE A SEPARATE "SPIRITUAL PRIVILEGE."

In California, the law is and has always been that all privileges are statutory unless constitutionally compelled. (Evid. Code § 911; *Roman Catholic Archbishop v. Superior Court* (2005) 131 Cal.App.4th 417, 441.) California has not recognized a non-statutory "spiritual privilege," and Defendants have not yet cited any case so holding. Laws regarding protection from and liability for child sexual abusers have always been deemed to have a "secular purpose," if applied to all entities rather than just religious or a specific religion. Notwithstanding the lack of any support in the law, Defendants have argued, and presented testimony through the Affidavit of Elder Alan Shuster filed in opposition to Plaintiff's Motion to Amend, that they are prohibited from warning Congregation parents and members of the risk of child abuse posed by Kendrick because of "religious doctrine." (Shuster Dec. Apr. 26, 2011, Excerpt, Ex. 8, para. 45)

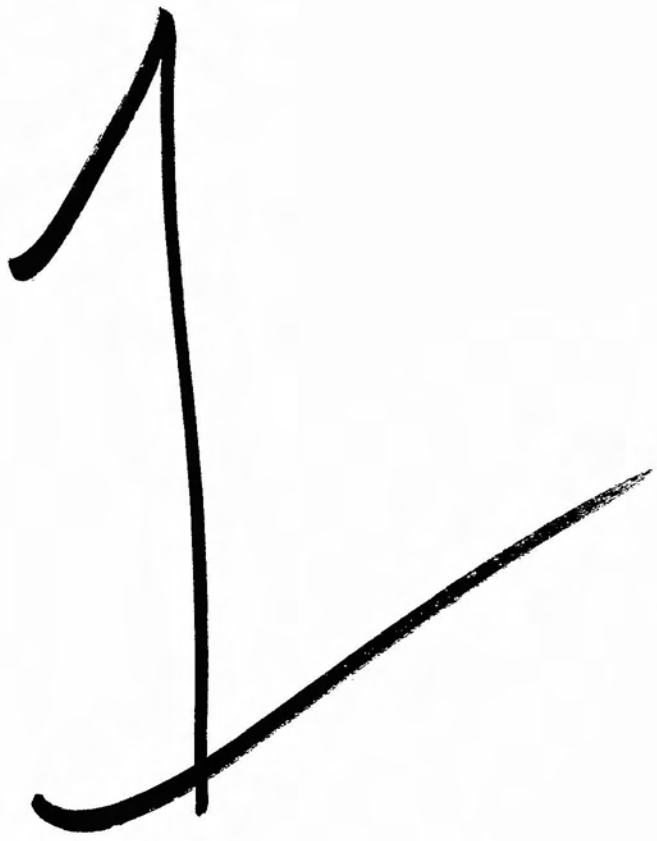
To the extent that this argument attempts to create a non-statutory "spiritual privilege," it must be based upon a First Amendment right. However, extensive case law over decades has rejected this argument, because sexual abuse of children is not deemed to be an exercise of religion. (See Hamilton, "The Licentiousness in Religious Organizations," William and Mary Bill of Rights Journal, Vol. 18, No. 4 (2010), copy attached as Ex. 9, pp. 967-68 and fn. 66). The U.S. Supreme Court has long so held, upholding laws against polygamy, child labor, and child pornography against religious First Amendment challenges. (*Reynolds v. U.S.* (1878) 98 U.S. 145, 164-66 [Prohibition on polygamy does not infringe on First Amendment because "to permit a man to excuse his practices to the contrary because of his religious belief . . . would be to make the professed doctrines of religious belief superior to the law of the land and in effect permit every citizen to become a law unto himself"]; *Prince v. Massachusetts* (1944) 321 U.S. 158 [Jehovah's Witness children could not distribute religious literature in violation of child labor laws regardless of the children's status as ministers in the faith]; *New York v. Ferber* (1982) 458 U.S. 747, 774 [a category of speech can constitutionally be excluded from First Amendment protection to further the protection of children].)

There is no legal basis to allow Defendants, even though they are religious corporations, to introduce testimony or argument that they were compelled by privilege or First Amendment protected rights to keep secret the existence of a known child sexual molester within their small congregation.

Dated: May 14, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

-oOo-

CERTIFIED COPY

JANE DOE, Plaintiff, -vs- THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	No. HG11558324

DEPOSITION OF GARY A. ABRAHAMSON

Tuesday, August 23, 2011

Taken Before Karen Scott
Certified Shorthand Reporter
State of California
C.S.R. No. 4027

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ◇ FAX (925) 416-0971

A Yes.

Q And during your years of service in Fremont, has such an investigation committee existed?

A The investigative committee is developed based on the circumstances. So maybe an individual felt comfortable coming to me and confessing a sin, or that they were party to a sin or that they heard of a sin. So it might be good for me to be on that investigating committee because they spoke to me. I would be a natural choice, but I wouldn't do it by myself. There would be another brother with me.

Q All right. Is the existence of such an investigation committee something that is communicated to all the members of the congregation?

A No.

Q And let me make my question clear. I don't think it was.

Without regard to a specific investigation, is generally the ability of the elders to have an investigation committee under certain circumstances something that is taught to all of the members or explained to the members?

A Could you rephrase that question, please?

Q Yes. Were members customarily told that the Body of Elders can under certain circumstances convene

an investigation committee? In other words, was the process known to the members that a judicial committee could be or investigation committee could be convened if circumstances so required?

A I believe that's in our publications.

Q So would I be correct in saying that an individual member who brought to an elder's attention a specific situation that would be of such a serious nature that an investigation would follow would customarily be aware of the power of the elders to convene an investigation?

A I believe I understand your question, so to answer that question, the congregation would expect the elders to investigate an allegation of serious wrongdoing.

Q And certainly sexual abuse of a child would fall under that category of serious wrongdoing?

A Yes.

Q Hold on one second for the --

A Okay.

Q -- siren there. All right.

It's not meant to be a hint on any specific question or answer.

THE VIDEOGRAPHER: I need to repair a microphone real quick.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

GARY A. ABRAHAMSON, VOLUME II

PAGES 113 TO 142

Tuesday, October 25, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

touching briefly and inadvertently his stepdaughter's breast, which was over the clothing. 09:14:51 09:14:56

Q. Um-hum. 09:14:59

Did he make this admission to you? 09:15:01

A. He did make the admission to myself, myself and another brother. 09:15:04 09:15:08

Q. Okay. Where did that admission occur? 09:15:10

A. It occurred at their house. 09:15:15

Q. Not the conduct but the conversation in which he admitted it. 09:15:18 09:15:21

A. The conversation. Right. Right. 09:15:23

Q. Okay. And when you say "at their house," was that -- 09:15:24 09:15:26

A. The Kendricks' house. 09:15:26

Q. Okay. 09:15:28

At the time that that conversation occurred, was that the house that Evelyn Kendrick, Andrea Kendrick, and Jonathan Kendrick were all residing at? 09:15:30 09:15:33 09:15:36 09:15:40

A. Correct. 09:15:41

Q. Although Andrea, I guess, is not a Kendrick. 09:15:41 09:15:44

A. That would be true. 09:15:45

Q. Yes. Okay. 09:15:46

Who was present during this conversation? 09:15:47

A. The three of them, plus myself and another brother, Michael Clarke. 09:15:50 09:15:53

Q. And how was it that you came to the Kendrick home to have this conversation? 09:15:56 09:16:00

A. It was prearranged. 09:16:03

Q. Was there something that generated the conversation and the arrangements to go and meet with the Kendricks? 09:16:06 09:16:12 09:16:15

A. Yes. 09:16:18

Q. What was that? 09:16:19

A. Well, they, uh -- 09:16:27

I think Jonathan went to Brother Clarke and confessed it. So, as a body we met and decided to form an investigating committee. 09:16:29 09:16:31 09:16:35

Q. All right. And when you say "as a body we met," are you talking about the Elders of the North Congregation? 09:16:36 09:16:39 09:16:41

A. Yes, I am. 09:16:42

Q. Do you know who the original conversation, the very first conversation that occurred involving this touching, was with in terms of someone from the Kendrick family and someone from the Body of Elders? 09:16:46 09:16:49 09:16:52 09:16:56

A. I do not know. Cannot remember if I ever knew. 09:17:00 09:17:03

Q. Okay. How did you first hear about it? 09:17:04



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

MICHAEL LEE CLARKE

Tuesday, November 8, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

Q. Do you know whether or not it was an attorney? 12:02:53 12:02:55

A. Do not recall. No. 12:02:57

Q. In your letter, you said: 12:03:02

"We met on 11/11/93 with Jonathan Kendrick." 12:03:05

Where did that meeting occur? 12:03:10

A. His home with his wife and stepdaughter. 12:03:12

Q. Yourself and Mr. Abrahamson. 12:03:16

A. Yes. 12:03:18

Q. Anyone else present? 12:03:18

A. No, sir. 12:03:20

Q. Did you keep any notes? 12:03:21

A. No. 12:03:22

Q. And the letter says you met "with Jonathan Kendrick, a ministerial servant," quote, "who confessed to child abuse with his 15-year-old stepdaughter," end quote. 12:03:24 12:03:31 12:03:33 12:03:35

What do you specifically recall him saying in this meeting? 12:03:37 12:03:40

A. Exactly what's written there. He confessed to touching her one evening when he came home. He said the room was dark. 12:03:44 12:03:47 12:03:51

Q. Did he say what room? 12:03:55

A. Living room? She was sleeping on the couch, I believe. But I don't know if that's detailed 12:03:57 12:03:59

here or not. 12:04:02

Q. Did he say whether or not any alcohol or drugs were involved? 12:04:09 12:04:11

A. No. 12:04:13

Q. Did you ask any questions of Mr. Kendrick when he told you what had occurred? 12:04:16 12:04:19

A. I don't recall. 12:04:24

Q. Do you recall whether or not Mr. Abrahamson asked any questions? 12:04:26 12:04:26

A. I don't recall specifically, no. 12:04:31

Q. Do you recall whether or not Andrea Kendrick described what had occurred? 12:04:34 12:04:36

A. She confirmed that he, that the stepfather, had touched her breast. 12:04:43 12:04:45

Q. Did she have anything to add to those circumstances under which that touching had occurred? 12:04:50 12:04:53

A. No. 12:04:59

Q. Did you talk to Andrea yourself, or Mr. Abrahamson or the two of you together talk to Andrea Kendrick, separate from Mr. Kendrick? 12:05:02 12:05:05 12:05:09

A. You mean in another room? 12:05:13

Q. Yes. 12:05:14

A. No. 12:05:14

Q. Or outside of his presence in any way? 12:05:15

A. No. 12:05:17



RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF EVELYN KENDRICK IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY

Date:	5/3/12
Time:	3:00 p.m.
Dept:	22
Reservation No:	1232647

I, EVELYN KENDRICK, hereby declare:

1. That I was married to Jonathan Kendrick in 1993, and am now divorced from him;

2. That I have a daughter Andrea born on July 16, 1979, who resided with us during the time Mr. Kendrick and I were married;

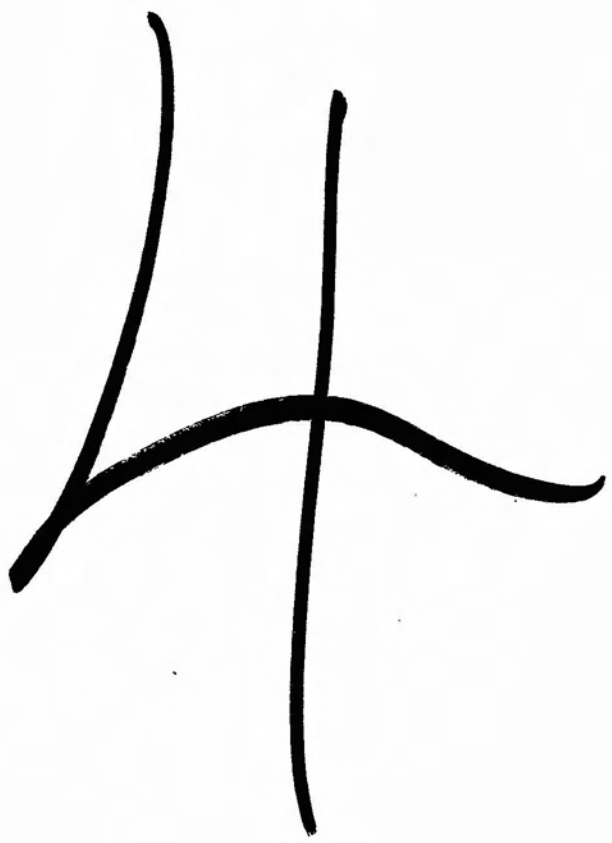
3. I was present at the meeting at our residence that occurred on November 11, 1993, and is the subject of Mr. Clarke's letter of November 15, 1993, attached to this Declaration as Exhibit 1. Mr. Kendrick, Andrea, and Elder Gary Abrahamson were also present. During the meeting, Andrea told the Elders that Jonathan Kendrick had given her Vicodin, watched T.V. with her in her bedroom, and then put his hand inside Andrea's bra, with skin-to-skin contact on her breast. Andrea also told the Elders that Kendrick placed his hand inside her pants and touched her genital area.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 26 day of March, 2012, at Hayward, California.

Evelyn Kendrick

EVELYN KENDRICK



North Congregation #15685
Fremont
c/o Michael L. Clarke
32852 Bass Lake St.
Fremont, Ca 94555

Nov 15, 1993

Watchtower Bible & Tract Society
25 Columbia Heights
Brooklyn, New York, 11201 USA

Dear Brothers,

We are writing to you regarding a case of child abuse. We telephoned 11/12/93 and it was suggested that we submit in writing our questions.

We met on 11/11/93 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15 yr old step daughter. The abuse occurred approximately 4 months ago. He confessed to touching the breast of his step daughter while she was sleeping. She was awaken instantly and knew what had happened. His wife was informed that evening and the 3 of them talked it out between them. Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders. He said that his conscious continued to bother him.

Evelyn, his wife, is baptized but inactive. She occasionally attends meetings.

Andrea, the step daughter, is not baptized and is no longer an unbaptized publisher. The step daughter is now using this as a tool to threaten with when she wants something. Because she has been promiscuous with 2 boys at school. the parents have tried to enforce house rules covering her comings and goings.

Andrea has recently mentioned the abuse to another young girl, Toy Register, whom she attends school with. Coincidentally, Toy attends our congregation meetings and is studying. Her mother is disfellowshipped. Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional. Mrs Register is now threatening to call the police.

Here are the facts as best as we can present them without interviewing each party. Our questions are as follows:

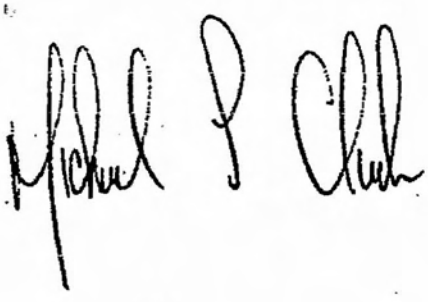
1. Can 2 elders handle this matter with Brother Kendrick as mentioned on page 93 of "Pay attention to Yourselves....Flock", under the heading Uncleanness? Or do we have to form a Judicial hearing because of it being child abuse?

2. We assume that Brother Kendrick does not qualify any longer as a Ministerial Servant. We will announce to the congregation that he is no longer serving as such. If this is incorrect, please inform us.

3. The legal department has given us some direction as far as our legal requirements and we will follow that closely.

We will wait to hear from you regarding the above questions. If I have not been clear enough, you may reach me during the day at my work phone (510-462-7861 ext 105)

Your Brothers,





WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

SCN:SST December 3, 1993

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers:

Your letter dated November 15, 1993, has been received. As you will note from the enclosed S-52 form, Brother Jonathan Kendrick has been deleted from serving as a ministerial servant on the grounds of "uncleanness."

Your letter states: "He confessed to touching the breasts of his stepdaughter while she was sleeping. She was awakened instantly and knew what had happened." Since this incident is known by outside members of the family, it is appropriate that Brother Kendrick be deleted from serving as a ministerial servant with your congregation.

On page 92 of the Kingdom Ministry School textbook the following is stated: "Uncleanness includes an intentional momentary touching of sexual parts or caressing of breasts. Such minor uncleanness can be handled at the discretion of an elder or two; it does not require a judicial hearing. There is a need for strong counsel, admonition, and assistance to help the individual to maintain chaste conduct in the future."

In harmony with the above, it will not be necessary for a judicial committee to handle the "uncleanness" committed by Brother Kendrick. However, it would be appropriate for two elders to meet with him and provide him with strong Scriptural counsel so as to avoid a repetition of such a serious offense.

We trust the above comments will be helpful to you. With this letter we are pleased to send you an expression of our warm Christian love and best wishes.

Your brothers,

WATCHTOWER B. & T. SOCIETY
OF NEW YORK, INC.

cc: R. Rainer, CA #40



Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Law Offices Of James M. McCabe
Attn: McCabe, James M.
4817 Santa Monica Avenue
Suite B
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Further Answers at Deposition Granted

The Motion to Compel Further Answers at Deposition was set for hearing on 09/29/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of Plaintiff Jane Doe to Compel Answers to Questions at Deposition of Gary Abrahamson and for Sanctions is GRANTED. Plaintiff has established that the information sought is not precluded from disclosure under the penitent-clergy privilege, Evidence Code §1031-1034 because the questions do not appear to call for communications that were presumed to be kept confidential with only the clergy member to whom they were communication. Instead, the questions appear to call for information and communications of a kind that would be expected to be communicated beyond that clergy member to others within the religious organization, i.e. a judicial investigating committee, for purposes of taking responding to the communication within the church. (Cf. Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417, 445-46.)

Defendant shall present Gary Abrahamson for further deposition and shall not instruct him not to answer the questions identified in the motion based upon clergy-penitent privilege.
The further deposition shall take place at a mutually-convenient time, but no later than 20 days after entry of this order.

The request for sanctions in connection with this motion is DENIED.

Dated: 09/29/2011

Robert McGuiness - facsimile
Judge Robert McGuiness

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 09/29/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/05/2011.

Executive Officer / Clerk of the Superior Court

By Digital
Deputy Clerk



Furtado, Jaspovice & Simons
Attn: ~~Simons, Richard J.~~ Martin Jaspovice
A Law Corporation
22274 Main Street
Hayward, CA 94541____

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave.
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Production of Documents Granted

The Motion to Compel Production of Documents filed for Jane Doe was set for hearing on 10/03/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

Pursuant to the court's prior order in this matter, it conducted an in camera review of two letters dated respectively, November 15, 1993 and December 3, 1993, to determine whether the same were (are) privileged communications within the application of Evidence Code section 1034 and related statutes. After review, the court determines that the letters are not privileged and plaintiff's motion to compel production is granted. However, the court will withhold production of the subject letters and they shall remain under seal until November 17, 2011 so as to allow defendants time to consider and seek appellate review here. The court has determined this matter largely within the context of the holding of Roman Catholic Diocese of Los Angeles v. Superior Court, 131 Cal. App. 4th 417. The record there and here demonstrate that the communications were likely to be shared with more than one person; persons other than elders would be likely to consider same and that the penitent (defendant Kendrick) did not expect the communications to be kept confidential (under the circumstances related and presented).

Dated: 10/17/2011

Facsimile
Judge Robert McGuiness

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 10/17/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/17/2011.

Executive Officer / Clerk of the Superior Court

By Kadey McLean digital
Deputy Clerk



JACKSON LEWIS, LLP
Robert J. Schnack, Esq.
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW York, INC., FREMONT CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, et al, Defendants.	Case No.: HG115558324 **DECLARATION OF ALLEN SHUSTER**

I, Allen Shuster, after being duly sworn, depose and state that if called to testify in this matter I would competently testify as follows:

1. I am over 21 years of age, of sound mind, and competent to make this Affidavit. I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I reside in Patterson, New York, and have served as an elder in the faith of Jehovah's Witnesses since about 1979.

3. On April 23, 1976, I began serving at the U.S. branch offices of Jehovah's Witnesses in New York. I have served in the Service Department of the U.S. branch offices since February 5, 1981. I provide spiritual assistance to congregation elders who call or write the Service Department for help. Prior to March 2001, the spiritual assistance provided by the Service Department, along with the appointment of elders and ministerial servants, was communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"). Since March 2001, this has been

Will, pages 151-2. In addition, there may be instances where a husband and wife, or a parent and child, may together seek or be provided with spiritual counsel, advice or comfort from the elders. The elders and participants to these confidential and private spiritual communications would view these communications as confidential and congregants expect the elders to keep such communications strictly confidential.

45. The religious doctrine of Jehovah's Witnesses requires that all elders keep confidential and private spiritual communication strictly confidential. *The Watchtower*, April 1, 1971, pages 222-224; *Kingdom Ministry*, July 1975; *The Watchtower*, December 15, 1975, pages 764-66; *The Watchtower*, September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-27; *The Watchtower*, November 15, 1991, pages 19-23. An elder who reveals the contents of such a confidential communication may be subject to removal.

46. In this case, the Letter to All Bodies of Elders dated July 1, 1989, PE 1 and WE R, provides a reminder to the elders of their duty to maintain the confidential nature of confidential communications.

SIGNED the 26 day of April, 2012, at Patterson, New York.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my information, belief, and knowledge.

Allen Shuster

Allen Shuster

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

SUBSCRIBED AND SWORN TO BEFORE ME on the 26 day of April 2012, to certify which witness my hand and official seal.

A. HERNAN STEELE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01-ST6106293
Qualified in Putnam County
Commission Expires March 01, 2016

Notary Public, State of New York



William & Mary Bill of Rights Journal

Volume 18 | Issue 4 Article 1

Table of Contents (v. 18, no. 4)

Repository Citation
Table of Contents (v. 18, no. 4), 18 Wm. & Mary Bill of Rts. J. (2010),
http://scholarship.law.wm.edu/wmborj/vol18/iss4/1

Copyright c 2010 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
http://scholarship.law.wm.edu/wmborj

WILLIAM & MARY BILL OF RIGHTS JOURNAL

VOLUME 18 MAY 2010 ISSUE 4

SYMPOSIUM:
FAMILIES, FUNDAMENTALISM, & THE FIRST AMENDMENT

INTRODUCTION: PERSPECTIVES ON RELIGIOUS FUNDAMENTALISM AND FAMILIES IN THE U.S.
Vivian E. Hamilton 883

FUNDAMENTALISM, THE FIRST AMENDMENT, AND THE RISE OF THE RELIGIOUS RIGHT
Randall Balmer 889

GOD OF OUR FATHERS, GODS FOR OURSELVES: FUNDAMENTALISM AND POSTMODERN BELIEF
Frederick Mark Gedicks 901

THE NONPROBLEM OF FUNDAMENTALISM
Andrew Koppelman 915

PRIVATIZING FAMILY LAW IN THE NAME OF RELIGION
Robin Fretwell Wilson 925

THE "LICENTIOUSNESS" IN RELIGIOUS ORGANIZATIONS AND WHY IT IS NOT PROTECTED UNDER RELIGIOUS LIBERTY CONSTITUTIONAL PROVISIONS
Marci A. Hamilton 953

FUNDAMENTALIST CHALLENGES TO CORE DEMOCRATIC VALUES: EXIT AND HOMESCHOOLING
Catherine J. Ross 991

EMBRYO FUNDAMENTALISM
June Carbone
Naomi Cahn 1015

FAMILY VALUES, COURTS, AND CULTURE WAR:
THE CASE OF ABSTINENCE-ONLY SEX EDUCATION
John E. Taylor 1053

NOTES

SETTING THE BOUNDARIES OF THE CENSUS CLAUSE:
NORMATIVE AND LEGAL CONCERNS REGARDING THE
AMERICAN COMMUNITY SURVEY
Carrie Pixler 1097

NO AMBIGUITY LEFT BEHIND: A DISCUSSION OF THE
CLEAR STATEMENT RULE AND THE UNFUNDED
MANDATES CLAUSE OF NO CHILD LEFT BEHIND
Andrew G. Caffrey 1129

THE "LICENTIOUSNESS" IN RELIGIOUS ORGANIZATIONS AND WHY IT IS NOT PROTECTED UNDER RELIGIOUS LIBERTY CONSTITUTIONAL PROVISIONS

Marci A. Hamilton*

There is no doubt that the sexual abuse of children occurs within religious organizations and that these organizations too often operate to perpetuate cycles of abuse. There was a time when such a statement was counter-intuitive, but it is now merely a statement of fact. One difficult question to answer is how the law has failed to protect the vulnerable in religious organizations. Misguided reliance on the First Amendment is partly to blame.

There are many reasons why the law has been insufficient to protect children in religious organizations, some more obvious than others. First, children have not had the legal capacity until relatively recently to challenge their abusers.[1] Second, the statutes of limitations for child sex abuse have been constructed in a way to make it virtually impossible for the vast majority of victims to get to a prosecutor and/or civil courts before their claims have expired.[2] Third, as a society, we have tended to adopt a "romantic attitude" and trust most religious organizations, which gave them latitude to hide abuse.[3] That changed in 2002 when the *Boston Globe* revealed that the Boston Archdiocese of the Roman Catholic Church had covered up horrendous abuse by serial pedophiles, including Father Paul Shanley and Father John Geoghan.[4]

---

* Paul R. Verkuil Chair in Public Law, Benjamin N. Cardozo School of Law, Yeshiva University. Thanks to the William and Mary Institute of Bill of Rights Law for making this paper possible and the participants of their symposium "Families, Fundamentalism, & the First Amendment" for their comments. Thanks to the participants of the University of Toronto Roundtable and Professor Lorraine Weinreb for their thoughtful discussion of this Article. I also thank Cardozo students Jordan Walsh, Jesse Loffler, Richard Trotter, Zahava Silverman and Miriam Palmer-Sherman for their excellent research and assistance.

[1] *See* JAMES G. DWYER, THE RELATIONSHIP RIGHTS OF CHILDREN (2006); ANNE LAWRENCE, PRINCIPLES OF CHILD PROTECTION: MANAGEMENT AND PRACTICE 35–84 (2004); JOHN R. LUTZKER, HANDBOOK OF CHILD ABUSE RESEARCH AND TREATMENT 3–52 (1998); BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE (2008); THE CHILD PROTECTION HANDBOOK 195–246 (Kate Wilson & Adrian James eds., 3d ed. 2007).

[2] *See* MARCI A. HAMILTON, JUSTICE DENIED: WHAT AMERICA MUST DO TO PROTECT ITS CHILDREN (2008); Marci A. Hamilton, *The Maturing of a Movement: Statute of Limitations Reform for Sex Abuse Victims*, FINDLAW, June 11, 2009, http://writ.news.findlaw.com/hamilton/20090611.html. *See generally* Statute of Limitations Reform, http://www.sol-reform.com (last visited Apr. 20, 2010) (containing information regarding attempts to extend SOLs in various states).

[3] MARCI A. HAMILTON, GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW 3–11 (2005).

[4] Sacha Pfeiffer, *Famed 'Street Priest' Preyed Upon Boys*, BOSTON GLOBE, Jan. 31, 2002, at A21 (singling out Shanley as "among the most insidious cases of clergy sex abuse found" by the *Globe*'s investigative team with the number of victims "unclear"); Walter V. Robinson

While there had been trickles of information to the public before then,[5] it was not until the larger picture of the Catholic hierarchy's handling of abuse that the public started to comprehend that its practices were uniform across dioceses, and even other countries,[6] and then that such practices were not peculiar to the Catholic Church.[7]

& Matt Carroll, *Documents Show Church Long Supported Geoghan Officials Gave Comfort Despite Abuse Charges*, BOSTON GLOBE, Jan. 24, 2002, at A1 (Geoghan was accused of abuse by at least 130 people); Walter V. Robinson, *Scores of Priests Involved in Sex Abuse Cases: Settlements Kept Scope of Issue Out of Public Eye*, BOSTON GLOBE, Jan. 31, 2002, at A1. Shanley was convicted in February 2005 of raping a student and sentenced to twelve to fifteen years in prison. Joanna Weiss, *Shanley Gets 12 to 15 Years; Defrocked Priest's Accuser Hailed as Hero*, BOSTON GLOBE, Feb. 16, 2005, at A1. The Massachusetts Supreme Judicial Court affirmed the denial of Shanley's motion for a new trial in January 2010. Commonwealth v. Shanley, 455 Mass. 752 (2010). Geoghan was convicted in 2002 and sentenced to nine to ten years, Kathleen Burge, *Geoghan Sentenced to 9–10 Years*, BOSTON GLOBE, Feb. 22, 2002, at A1, but the conviction was voided after he was killed in prison while an appeal was pending. Yvonne Abraham, *Geoghan's Death Voids Conviction, Prosecutors Say*, BOSTON GLOBE, Aug. 27, 2003, at B1.

[5] *See, e.g.*, JASON BERRY, LEAD US NOT INTO TEMPTATION: CATHOLIC PRIESTS AND THE SEXUAL ABUSE OF CHILDREN (2000); F. RAY MOUTON & THOMAS P. DOYLE, THE PROBLEM OF SEXUAL MOLESTATION BY ROMAN CATHOLIC CLERGY: MEETING THE PROBLEM IN A COMPREHENSIVE AND RESPONSIBLE MANNER (1985), *available at* http://www.bishop-accountability.org/reports/1985_06_09_Doyle_Manual/; Jason Berry, *The Tragedy of Gilbert Gauthe*, TIMES OF ACADIANA (Lafayette, La.), May 23, 1985, *available at* http://www.bishop-accountability.org/news/1985_05_23_Berry_TheTragedy.htm; Maureen Graham & Larry Lewis, *Sex Abuse Suit Claims Coverup by Bishops*, PHILA. INQUIRER, Nov. 1, 1994, at A1; Andrew M. Greeley, Op-Ed., *Priestly Silence on Pedophilia*, N.Y. TIMES, Mar. 13, 1992, at A31; *see also* Jon Nordheimer, *Sex Charges Against Priest Embroil Louisiana Parents*, N.Y. TIMES, June 20, 1985, at A24 (chronicling the story of Rev. Gilbert Gauthe's admission of molesting thirty-seven children in rural Louisiana).

[6] *See, e.g.*, COMMISSION TO INQUIRE INTO CHILD ABUSE, COMMISSION REPORT (2009), *available at* http://www.childabusecommission.com/rpt/; JOHN JAY COLLEGE OF CRIMINAL JUSTICE, THE NATURE AND SCOPE OF THE PROBLEM OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES (2004), *available at* http://www.usccb.org/nrb/johnjaystudy/; YVONNE MURPHY ET AL., COMMISSION OF INVESTIGATION: REPORT INTO THE CATHOLIC ARCHDIOCESE OF DUBLIN (2009), *available at* http://www.dacoi.ie/; FRANCIS D. MURPHY ET AL., THE FERNS REPORT (2005), *available at* http://www.bishop-accountability.org/ferns/; WINTER COMMISSION REPORT (1990), *available at* http://www.cta-usa.org/Winter/summary.pdf (summary and extracts available online); *see also* BRUCE BLYTH, COUNTING THE COST: CHRISTIAN BROTHERS AND CHILD CARE IN AUSTRALIAN ORPHANAGES (1999); MICHAEL HARRIS, UNHOLY ORDERS: TRAGEDY AT MOUNT CASHEL (1990) (telling the story of a sex abuse scandal at a Catholic orphanage in Canada); JOE RIGERT, AN IRISH TRAGEDY: HOW SEX ABUSE BY IRISH PRIESTS HELPED CRIPPLE THE CATHOLIC CHURCH (2008); *Irish Catholic Cover-Up of Child Sex Abuse Echoes Past Priestly Scandals*, CHRISTIAN CENTURY, Dec. 29, 2009, at 16, *available at* http://www.christiancentury.org/article.lasso?id=8083; David Sharrock, *Irish Bishop Donal Murray Resigns Over Cover-Up of Child Sex Abuse*, TIMES ONLINE, Dec. 18, 2009, http://www.timesonline.co.uk/tol/comment/faith/article6961000.ece.

[7] *See, e.g.*, MARTHA BECK, LEAVING THE SAINTS: HOW I LOST THE MORMONS AND FOUND MY FAITH (2005); APRIL DANIELS & CAROL SCOTT, PAPERDOLLS: A TRUE STORY OF

There have been two other hurdles to adequate legal protection for children at risk in religious organizations, both of which have originated from religious groups themselves. One important reason for the law's ineffectiveness has been the intentional opacity, or secrecy, of religious organizations on these issues.[8] For a number of religious organizations, there are built-in theological or religious rules that keep child abuse in particular secret.[9] When that dynamic is combined with the fact that most perpetrators against children abuse more than one child,[10] cycles of abuse become entrenched within the organization and far more children are abused than would have been had the organization not kept abuse internal. Sealing off abuse from the legal and social forces constructed to protect children disables legal efficacy in this field and creates a system within which more children are abused.

The second way in which religious organizations have impeded the capacity of the law to protect children is the perverse decision to defend their actions establishing the conditions for abuse by invoking federal and state religious liberty guarantees.[11]

CHILDHOOD SEXUAL ABUSE IN MORMON NEIGHBORHOODS (1993); HAMILTON, *supra* note 3, at 12–13; HAMILTON, *supra* note 2; CAROLYN JESSOP WITH LAURA PALMER, ESCAPE (2007); Assoc. Press, *Judge to Mediate $45m Sex Abuse Suit Against LDS Church*, SALT LAKE TRIB., July 27, 2007; Alison Gendar & Simone Weichselbaum, *Abuse Comes to Light: Hasidim Silence on Perverts Cracking*, N.Y. DAILY NEWS, Feb. 28, 2009, at 26; John Metcalfe, *One Man's Brutal Encounter With Sexual Abuse in the Mormon Church*, SEATTLE WEEKLY, May 30, 2007 (detailed feature on sexual abuse in the Mormon Church); Gustav Niebuhr, *Mormons Paying $3 Million to Settle Sex Abuse Case*, N.Y. TIMES, Sept. 5, 2001, at A14; Peter Wilkinson, *The Life and Death of the Chosen One*, ROLLING STONE MAG., June 30, 2005, at 114; Kareem Fahim, *Focus on Sex Crimes in Orthodox Jewish Communities*, N.Y. TIMES ONLINE, Apr. 1, 2009, http://cityroom.blogs.nytimes.com/2009/04/01/brooklyn-officials-focus-on-sex-crimes-in-orthodox-jewish-communities/; Miriam Karp, *Responding to Child Predators in the Jewish Community*, CHABAD.ORG, July 12, 2009, http://www.chabad.org/blogs/blog_cdo/print/true/aid/880142/jewish/Responding-to-Child-Predators-in-the-Jewish-Community.htm; Scott Michels, *Orthodox Jewish Community Struggles with Abuse Allegations*, ABC NEWS, May 5, 2009, http://abcnews.go.com/TheLaw/Story?id=7376057&page=1.

[8] *See* THOMAS DOYLE ET AL., SEX, PRIESTS, AND SECRET CODES: THE CATHOLIC CHURCH'S 2000-YEAR PAPER TRAIL OF SEXUAL ABUSE 175–261 (2006); Marci A. Hamilton, *The Rules Against Scandal and What They Mean for the First Amendment's Religion Clauses*, 69 MD. L. REV. 115 (2009).

[9] DOYLE, *supra* note 8, at 47–61; Hamilton, *supra* note 8, at 122–26.

[10] KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 37 (4th ed. 2001), *available at* http://www.cybertipline.com/en_US/publications/NC70.pdf ("Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the *primary* acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.").

[11] Mainstream religious organizations like the Roman Catholic Church and the Church of Jesus Christ of Latter-Day Saints have in recent years pushed for a "church autonomy" First Amendment doctrine, which would keep them unaccountable for their negligent acts

Typically, the sexual abuse practices are not supported by the religious beliefs of these organizations.[12] Fundamentalist polygamous groups, though, raise a slightly more interesting issue under religious liberty theory, because their sexual abuse of children and child bigamy are rooted in the religious edicts of powerful spiritual leaders. The purpose of this Article is to show that even when abuse is rooted in such religious sources, conduct involving illicit sex, including child sex abuse, was never meant to be constitutionally protected and should be categorically excluded from religious liberty protection.

It was widely understood by English and American society before and when the First Amendment and state constitutions were drafted that there can be too much liberty, which they called "licentiousness."[13] They tended to view certain actions as beyond any religious liberty guarantee. This means that certain actions were never intended to receive protection under religious liberty guarantees. Among the liberties that were never intended to be protected, clearly, were polygamy and sexual abuse. They were consciously excluded from free exercise protection.

---

that led to child sex abuse. Their most recent initiative was to file amicus briefs in the Nevada Supreme Court urging the Court to embrace expansive First Amendment immunity for religious organizations accused of permitting child sex abuse within their organizations. *See* Brief Amicus Curiae of the Church of Jesus Christ of Latter-Day Saints, Ramani v. Segelstein, No. 49341 (Nev. Oct. 5, 2009); Joinder of the Roman Catholic Bishop of Las Vegas and of the Roman Catholic Bishop of Reno, Ramani v. Segelstein, No. 49341 (Nev. Oct. 12, 2009). As I have explained previously, this is an argument that cannot be justified in the face of the extraordinary harm that has been caused by religious organizations against children. *See* Marci A. Hamilton, *The Waterloo for the So-Called Church Autonomy Theory: Widespread Clergy Abuse and Institutional Cover-Up*, 29 CARDOZO L. REV. 225 (2007). In this Article, I am making the even stronger point that there are no rights under free exercise guarantees in cases involving child sex abuse.

[12] *See* Wisconsin v. Yoder, 406 U.S. 205, 215 (1972) ("[T]o have the protection of the Religion Clauses, the claims must be rooted in religious belief."); Elvig v. Calvin Presbyterian Church, 397 F.3d 790, 795 (9th Cir. 2005) (Fletcher, J., concurring in denial of petition for en banc rehearing) ("No court has ever held that sexual harassment by a minister is protected by the First Amendment."); Bollard v. Cal. Province of the Soc'y of Jesus, 196 F.3d 940, 947 (9th Cir. 1999) ("[Free Exercise] rationale does not apply here, for the Jesuits most certainly do not claim that allowing harassment to continue unrectified is a method of choosing their clergy."); McKelvey v. Pierce, 800 A.2d 840, 857–58 (N.J. 2002) (stating that in order to apply the ministerial exception, the dispute must involve an ecclesiastical or religious belief); *see also* Longo v. Regis Jesuit High Sch. Corp., No. 02-cv-001957-PSF-OES, 2006 U.S. Dist. LEXIS 4142, at *18–19 (D. Colo. Jan. 25, 2006) (holding that a disabled teacher's claim for discriminatory discharge under Americans with Disabilities Act could go forward in part because no religious justification was offered for the termination); Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc) (S.D. Cal. Dec. 20, 2005) (holding that where child sex abuse was not part of church's religious belief, church could still be liable in tort for child sex abuse); Linklater v. Prince of Peace Lutheran Church, No. 505, slip op. at 20–21 (Md. Ct. Spec. App. Mar. 16, 2009) (allowing tort claims to go forward against church where church had no religious belief in harassment).

[13] *See infra* Part II.

In this Article, I will first briefly examine the beliefs and practices of the fundamentalist polygamists, primarily but not exclusively the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS), which have led to a cycle of severe and entrenched child sex abuse. The point of focusing upon the fundamentalist polygamists is that their sexual abuse of children is grounded in their religious scriptures and beliefs. Therefore, if there is any religious liberty defense to furthering child sex abuse, they arguably would have the most powerful arguments.

Second, I will survey the rich history that establishes that "licentious," or illicit, sexual behavior was never intended to be protected by free exercise protections in the history of the United States (or Canada), even if religiously motivated. It is beyond the reach of free exercise guarantees, whether in the state or federal constitutions. I will also look to First Amendment doctrine, which further supports categorical exclusions. Free speech cases already recognize this principle in the context of child pornography and exploitation, which are constitutionally unprotected activities. If the First Amendment was not designed to protect the act of creating images of children engaging in sex, it follows that neither should it protect the acts that lead to child sexual abuse itself. Third, I will extend this reasoning to contemporary cases and explain why carving out licentiousness from religious liberty's reach can keep these cases from negatively affecting other aspects of the doctrine.

I. THE FUNDAMENTALIST POLYGAMISTS AND THE BELIEFS AND CONDUCT THAT HAVE CONTRIBUTED TO CYCLES OF CHILD SEX ABUSE

The United States has struggled with religiously motivated polygamy for well over a century. Though there are exceptions, in the main, religiously motivated polygamy has elevated men to positions of nearly absolute power, demeaned and disabled women, and harmed children. Despite popular cultural propaganda like the television show Big Love, those women who have escaped from such marriages, which are often initiated when they are under-age, reveal lives of desperation and great sadness.[14] If there was ever a religiously motivated practice that should be outside the bounds of constitutional protection, this is it.

A. Historical Background

There are a number of fundamentalist polygamist groups whose history traces back to the early decades of the Church of Jesus Christ of Latter-Day Saints (LDS

[14] *See, e.g.*, JESSOP & PALMER, *supra* note 7; MELISSA MERRILL, POLYGAMIST'S WIFE (Pocket Books 1977) (1975); SUSAN RAY SCHMIDT, FAVORITE WIFE: ESCAPE FROM POLYGAMY (Lyons Press 2009) (2006); DOROTHY ALLRED SOLOMON, DAUGHTER OF THE SAINTS: GROWING UP IN POLYGAMY (2003); ELISSA WALL WITH LISA PULITZER, STOLEN INNOCENCE: MY STORY OF GROWING UP IN A POLYGAMOUS SECT, BECOMING A TEENAGE BRIDE, AND BREAKING FREE OF WARREN JEFFS (2008); *see also* Tapestry Against Polygamy, http://www.polygamy.org/ (last visited Mar. 9, 2010).

Church or Mormon).[15] While the LDS Church practiced polygamy for some decades during the nineteenth century, its leaders issued two later manifestoes that, first, rejected the practice,[16] and, second, instituted excommunication for those who continued to engage in polygamy.[17] A small number of Mormons, though, rejected these new revelations and continued to practice polygamy in Mexico and the United States,[18] and later Canada.[19] "Every fundamentalist group has its own particular rules and mode of dress, and the members blindly follow their leader. Though some of their practices differ concerning the act of procuring wives, every group is convinced that they are a 'peculiar people.'"[20] Thus, they have broken into separate sects, but continue to practice polygamy.

Laws against polygamy were in place well before the United States was founded,[21] and existed in every state during the nineteenth century through today.[22] They blanketed the states before Congress took up the Morrill Anti-Bigamy Act of 1862 and the Edmunds-Tucker Act of 1887, which extended the ban on polygamy to the Utah

---

[15] *See* SARAH BARRINGER GORDON, THE MORMON QUESTION: POLYGAMY AND CONSTITUTIONAL CONFLICT IN NINETEENTH-CENTURY AMERICA (2002); MERRILL, *supra* note 14, at 34–37; ANDREA MOORE-EMMETT, GOD'S BROTHEL 21–31 (2004); IRENE SPENCER, CULT INSANITY: A MEMOIR OF POLYGAMY, PROPHETS, AND BLOOD ATONEMENT 2–8 (2009).

[16] Official Declaration of Wilford Woodruff, President of the Church of Jesus Christ of Latter-Day Saints (Sept. 24, 1890), *in* THE DOCTRINE AND COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 256–57 (1921) [hereinafter DOCTRINE AND COVENANTS].

[17] Joseph F. Smith, President of the Church of Jesus Christ of Latter-Day Saints, Official Statement at the 74th Annual Conference of the Church of Jesus Christ of Latter-Day Saints (Apr. 6, 1904), *available at* http://search.ldslibrary.com/article/view/274597 ("I hereby announce that all such marriages are prohibited, and if any officer or member of the Church shall assume to solemnize or enter into any such marriage he will be deemed in transgression against the Church and will be liable to be dealt with, according to the rules and regulations thereof, and excommunicated therefrom.").

[18] *See* BENJAMIN G. BISTLINE, THE POLYGAMISTS: A HISTORY OF COLORADO CITY, ARIZONA 16 (2004); JON KRAKAUER, UNDER THE BANNER OF HEAVEN: A STORY OF VIOLENT FAITH 5, 253–55 (2003); SCHMIDT, *supra* note 14, at 1–19; SPENCER, *supra* note 15, at 3.

[19] *See* BISTLINE, *supra* note 18, at 144–60; DAPHNE BRAMHAM, THE SECRET LIVES OF SAINTS: CHILD BRIDES AND LOST BOYS IN CANADA'S POLYGAMOUS MORMON SECT 3 (2009); KRAKAUER, *supra* note 18, at 29–30; MOORE-EMMETT, *supra* note 15, at 25–31.

[20] SPENCER, *supra* note 15, at 7.

[21] Reynolds v. United States, 98 U.S. 145, 164–65 (1879) ("At common law, the second marriage was always void (2 Kent, Com. 79), and from the earliest history of England polygamy has been treated as an offence against society. . . . By the statute of 1 James I. (c. 11), the offence [of polygamy] . . . was made punishable in the civil courts, and the penalty was death. . . . [I]t was at a very early period re-enacted, generally with some modifications, in all the colonies.").

[22] *Id.* "[W]e think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity [than under the former English law]." *Id.* at 165. Notably, the Model Penal Code reaffirmed past practice by making bigamy a misdemeanor and polygamy a felony of the third degree. MODEL PENAL CODE § 230.1 (1962).

Territory (and all territories under the jurisdiction of the United States) before the states in those areas were established.[23] Thus, the extension of anti-polygamy laws to the territories followed the law in the states. None of the anti-polygamy laws were limited to Mormons, or any other religious group, but were applicable to all who engaged in polygamy, secular or religious.[24]

The Republican Platform of 1856 situated polygamy in the same moral universe as slavery:

> *Resolved:* That the Constitution confers upon Congress sovereign powers over the Territories of the United States for their government; and that in the exercise of this power, it is both the right and the imperative duty of Congress to prohibit in the Territories those twin relics of barbarism—Polygamy, and Slavery.[25]

The Republicans were committed to "humanitarian reform" in both arenas and to ending the "enslavement of women in Utah."[26]

When the United States Supreme Court was asked to rule on whether there is free exercise protection for polygamy, it reiterated the phraseology of the twin relics of "barbarism"[27] and described polygamy as a violation of historical practices and equality between women and men:

---

[23] *See* Morrill Anti-Bigamy Act of 1862, ch. 126, 12 Stat. 501 (banning bigamy in all United States territories); Edmunds Anti-Polygamy Act of 1882, ch. 47, 22 Stat. 30 (making polygamy a felony). Congress later amended these acts into the Edmunds-Tucker Act of 1887, ch. 397, 24 Stat. 635. This was the act that precipitated the confrontation between the Church of Jesus Christ of Latter-Day Saints and the United States government that ultimately led to the issuance of the Woodruff Manifesto. *See also* RICHARD S. VAN WAGONER, MORMON POLYGAMY: A HISTORY 105–76 (2d ed. 1989).

[24] *See* Williams v. State, 54 Ala. 131 (1875); State v. Hayes, 29 So. 22 (La. 1900) (man indicted for bigamy disappeared before trial and his bond was forfeited); Commonwealth v. Putnam, 18 Mass. (1 Pick.) 136 (1822) (man convicted of adultery for marrying and living with a second wife after divorce should have been charged with polygamy instead); State v. Caulder, 262 S.W. 1023 (Mo. 1924) (man convicted for marrying a woman who was already married); State v. Robbins, 28 N.C. (6 Ired.) 23 (1845); Biddy v. State, 256 S.W. 271 (Tex. Crim. App. 1923); State v. Geer, 765 P.2d 1 (Utah Ct. App. 1988) (affirming conviction for bigamy despite defendant's assertions that State selectively prosecuted only those bigamists who practiced bigamy for non-religious reason because the court found that knowledge of defendant's religious beliefs was not a factor in the decision to prosecute).

[25] REPUBLICAN PLATFORM OF 1856, *available at* http://www.ushistory.org/gop/convention_1856republicanplatform.htm.

[26] GORDON, *supra* note 15, at 55–83; John Kincaid, *Extinguishing the Twin Relics of Barbaric Multiculturalism—Slavery and Polygamy—from American Federalism*, 33 PUBLIUS 75 (2003); Letter to the Editor, *Republicans and Polygamy*, N.Y. TIMES, Nov. 30, 1899, at 6, *available at* http://query.nytimes.com/gst/abstract.html?res=9C02E3D7133DE633A25753C3A9679D4689ED7CF.

[27] Late Corp. of Church of Jesus Christ of Latter-Day Saints v. United States, 136 U.S. 1, 48–50 (1890) ("[T]he inculcation and spread of the doctrines and usages of the Mormon

> In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says, polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. . . . An exceptional colony of polygamists under an exceptional leadership may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.[28]

The Court thus acknowledged that there might be instances of polygamy that do not result in oppression, but that in the main, the practice tended to generate severe harm to women and children. This acknowledgment has been borne out on the international stage with the United Nations identifying polygamy and plural marriage as violations of the human rights of women.[29] That oppression, in fact, has been visited repeatedly

---

Church, or Church of Latter-Day Saints, one of the distinguishing features of which is the practice of polygamy—a crime against the laws, and abhorrent to the sentiments and feelings of the civilized world. Notwithstanding the stringent laws which have been passed by Congress—notwithstanding all the efforts made to suppress this barbarous practice—the sect or community composing the Church of Jesus Christ of Latter-Day Saints perseveres, in defiance of law, in preaching, upholding, promoting and defending it. . . . The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. . . . One pretense for this obstinate course is that their belief in the practice of polygamy, or in the right to indulge in it, is a religious belief, and therefore under the protection of the constitutional guarantee of religious freedom. This is altogether a sophistical plea. No doubt the Thugs of India imagined that their belief in the right of assassination was a religious belief; but their thinking so did not make it so. The practice of suttee by the Hindu widows may have sprung from a supposed religious conviction. The offering of human sacrifices by our own ancestors in Britain was no doubt sanctioned by an equally conscientious impulse. But no one, on that account, would hesitate to brand these practices, now, as crimes against society, and obnoxious to condemnation and punishment by the civil authority.").

[28] *Reynolds*, 98 U.S.145, 165–66 (1879).

[29] *See* United Nations Div. for the Advancement of Women, United Nations Econ. Comm'n for Afr., *Expert Group Report: Good Practices in Legislation on "Harmful Practices" Against Women* 27 (May 26–29, 2009), *available at* http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf ("'Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.' In order to ensure that this discriminatory practice ends, legislation is required that prohibits polygamy."); *see also id.* at 26 ("Where polygamy exists, violence against women by their husband, as well as violence between co-wives, tends to be high.").

upon the vulnerable in the Mormon-derived polygamous societies in the United States. In order for the men to have numerous brides, they have drawn from girls and adolescents,[30] and they have discarded rebellious boys.[31] While these practices have been widespread, there have been relatively few prosecutions,[32] in part because so much of the abuse occurs under mandatory layers of secrecy, but also because FLDS leaders claim that the enforcement of the laws against statutory rape and child bigamy and polygamy violate their free exercise rights.[33]

B. The Religious Beliefs and Conduct that Have Contributed to Child Sex Abuse in Fundamentalist Mormon Communities

The fundamentalist Mormons actually view the LDS Church as the true church, though its leaders abandoned the mandate of polygamy.[34] Thus, there are beliefs and practices within the LDS Church that cast light on FLDS practices. (They also cast light on the origins of the serious child sex abuse occurring within the LDS Church itself.)[35]

---

[30] *See, e.g.*, BISTLINE, *supra* note 18, at 392–95; BRAMHAM, *supra* note 19, at 2; JESSOP & PALMER, *supra* note 7; MOORE-EMMETT, *supra* note 15, at 49; STEPHEN SINGULAR, WHEN MEN BECOME GODS 31–32 (2008); VAN WAGONER, *supra* note 23, at 212.

[31] *See, e.g.*, BISTLINE, *supra* note 18, at 142–43; BRAMHAM, *supra* note 19; BRENT W. JEFFS WITH MAIA SZALAVITZ, LOST BOY (2009); SINGULAR, *supra* note 30.

[32] *See* State v. Bateman, No. 1 CA-CR 07-0043, 2008 WL 4516447 (Ariz. Ct. App. Oct. 2, 2008); State v. Fischer, 199 P.3d 663 (Ariz. Ct. App. 2008); State v. Holm, 137 P.3d 726 (Utah 2006), *cert. denied,* 549 U.S. 1252 (2007); *see also* Brooke Adams, *Trial for Fourth FLDS Man Starts Monday*, SALT LAKE TRIB., Mar. 8, 2010; Brooke Adams, *Polygamist Sentenced to 10 Years for Sexual Assault of Teen 'Bride,'* SALT LAKE TRIB., Nov. 10, 2009; Assoc. Press, *Polygamous Sect Member Convicted of Sex Assault in Texas*, SALT LAKE TRIB., Dec. 15, 2009.

[33] *Holm*, 137 P.3d at 737–38; Jeffs v. Stubbs, 970 P.2d 1234, 1243–44, 1249 (Utah 1998), *cert. denied*, 526 U.S. 1130 (1999); SINGULAR, *supra* note 30, at 114; Nicolas Riccardi, *Leader's Conviction Won't Stop Polygamist Sect*, HOUSTON CHRON., Sept. 30, 2007, at A3 ("Sam Barlow, then the marshal of FLDS-controlled Colorado City, Ariz., told believers those efforts conflicted with First Amendment guarantees on freedom of religion. 'We have challenged them on whether or not in a country where Congress can make no law respecting an establishment of religion or prohibiting the free exercise, whether a legislature can predetermine at what age a person can make a religious covenant,' said Barlow, then in a recording played at the Jeffs trial last week.").

[34] SPENCER, *supra* note 15, at 7 ("Though ostracized by the LDS Church, most fundamentalists believe the LDS Church is God's true church, which will someday be put in order.").

[35] *See* Fleming v. Church of Latter Day Saints, 275 F. App'x 626 (9th Cir. 2008); Sherratt v. Friel, 275 F. App'x 763 (10th Cir.), *cert. denied*, 129 S. Ct. 503 (2008); Joseph v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints, No. Civ. 06-4143, 2008 WL 282163 (D.S.D. Jan. 31, 2008); Olinger v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints, 521 F. Supp. 2d 577 (E.D. Ky. 2007); Kathleen B. v. Shubeck, No. E046682, 2009 WL 467873 (Cal. Ct. App. Dec. 9, 2009); Green v. Texas, No. 12-06-00402, 2008 WL 787282 (Tex. Ct. App. Mar. 26, 2008); Franco v. Church of Jesus Christ of Latter-Day

1. Principles from the Mainstream Mormon Church

LDS texts establish beliefs and practices that operate to keep child sex abuse secret. First, there is a commitment to keep the image of the LDS Church pure. There is a belief that "[i]t is our great mission . . . to be a standard to all the world."[36] This requires measures that "safeguard the purity, integrity, and good name . . . or moral influence of the Church."[37] The Church's image, therefore, is a driving force permeating the faith, and operates even with respect to instances of child sex abuse.

Leaders are discouraged from cooperating in cases involving abuse as detailed in the 1998 Church Handbook of Instructions:

> To avoid implicating the Church in legal matters to which it is not a party, leaders should avoid testifying in civil or criminal cases reviewing the conduct of members over whom they preside. A leader should confer with the Church's Office of Legal Services or the Area Presidency:
>
> 1. If he is subpoenaed or requested to testify in a case involving a member over whom he presides.
> 2. Before testifying in any cases involving abuse.
> 3. Before communicating with attorneys or civil authorities in connection with legal proceedings.
> 4. Before offering verbal or written testimony on behalf of a member in a sentencing hearing, parole board hearing, or probationary status hearing.
>
> Church leaders should not try to persuade alleged victims or other witnesses either to testify or not to testify in criminal or civil court proceedings.[38]

Saints, 21 P.3d 198 (Utah 2001); *see also* DANIELS & SCOTT, *supra* note 7; MARILYN WARENSKI, PATRIARCHS AND POLITICS: THE PLIGHT OF THE MORMON WOMAN (1978); Stephen Hunt, *April Trial Set for Ex-FLDS Seminary Principal*, SALT LAKE TRIB., Nov. 10, 2009; Lindsay Whitehurst, *LDS Youth Leader Arrested on Suspicion of Sex Abuse*, SALT LAKE TRIB., Feb 10, 2010; Lindsay Whitehurst, *Police: Fourth Sex Abuse Allegation Against LDS Youth Leader*, SALT LAKE TRIB., Feb. 13, 2010.

[36] CHURCH EDUCATIONAL SYSTEM, DOCTRINE AND COVENANTS: STUDENT MANUAL § 115:5, at 286 (2d ed. 2001), *available at* http://www.ldsces.org/inst_manuals/d_cInst32493000/start_here.pdf ("D&C 115:5. How Is the Church to Be a Standard to the Nations?"); *see also* DOCTRINE AND COVENANTS, *supra* note 16, § 115:5, at 209, *available at* http://scriptures.lds.org/en/dc/115 ("Arise and shine forth, that thy light may be a standard for the nations . . . .").

[37] CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, CHURCH HANDBOOK OF INSTRUCTIONS: BOOK 1, at 105 (2006) [hereinafter CHURCH HANDBOOK 2006] ("The third purpose of Church discipline is to safeguard the purity, integrity, and good name of the Church. Consequently, transgressions that significantly impair the good name or moral influence of the Church may require the action of a disciplinary council.").

[38] CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, CHURCH HANDBOOK OF

Second, while there is no hierarchy in the sense of a monarchy, there is leadership, and it is made up of "prophet[s]" who "speak[ ] for God."[39] These first two principles have situated the Church and its leaders as barriers between victims, perpetrators and legal authorities.

Third, believers are required to be obedient to the commands of the prophets, and if they are obedient, "[g]reat [b]lessings [f]ollow."[40] "When a prophet speaks for God, it is as if God were speaking."[41] Members are told to do that which the prophets tell them to do, because a "prophet will never be allowed to lead the Church astray."[42] Therefore, believers "should follow his inspired teachings completely."[43]

Although there is a general proposition that members should obey authorities and the law,[44] there are only two crimes that believers are required to report to the authorities: murder and theft.[45] Instances of adultery, in contrast, "shall be tried

---

INSTRUCTIONS: BOOK 1, at 151 (1998) ("Legal Matters"). The more recent 2006 Handbook made one substantive change by eliminating the specific reference to "abuse." It also eliminated the list format:

> To avoid implicating the Church in legal matters to which it is not a party, Church leaders should avoid testifying in civil or criminal cases reviewing the conduct of members over whom they preside. In the United States and Canada, a leader should confer with the Church's Office of General Counsel if he is subpoenaed, is considering testifying in a lawsuit, is asked to communicate with attorneys or civil authorities regarding legal proceedings, or is asked to offer verbal or written testimony. Outside the United States and Canada, leaders should contact the administration office to obtain local legal counsel in these situations.
>
> Church leaders should not try to persuade alleged victims or other witnesses either to testify or not to testify in criminal or civil court proceedings.

CHURCH HANDBOOK 2006, *supra* note 37, at 178.

[39] CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, GOSPEL PRINCIPLES 47 (1997).

[40] *Id.* at 50.

[41] *Id.* at 47.

[42] *Id.* at 49.

[43] *Id.*

[44] JOSEPH SMITH, THE ARTICLES OF FAITH OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ¶ 12, *reprinted in* JAMES E. TALMAGE, THE ARTICLES OF FAITH iii (1899), *available at* http://www.lds.org/library/display/0,4945,106-1-2-1,FF.html ("We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law."); *see also* DOCTRINE AND COVENANTS, *supra* note 16, § 58:21–22, at 91, *available at* http://scriptures.lds.org/en/dc/58 ("21. Let no man break the laws of the land, for he that keepeth the laws of God hath no need to break the laws of the land. 22. Wherefore, be subject to the powers that be, until he reigns whose right it is to reign, and subdues all enemies under his feet.").

[45] DOCTRINE AND COVENANTS, *supra* note 16, § 42:79, at 65, *available at* http://scriptures.lds.org/en/dc/42 ("[I]f any persons among you shall kill they shall be delivered up and dealt with according to the laws of the land."); *id.* § 42:84–85, at 65 ("84. And if a man or woman

before two elders."[46] In cases of abuse, there is no requirement that the authorities be contacted on behalf of the victims. Rather, conduct is shaped in a way that keeps abuse internal. "Church leaders should be sensitive to such [abuse] victims,"[47] but the primary focus of the section on "Abuse and Cruelty" revolves around how to handle the perpetrator: he or she is required to be disciplined within the Church, but later may be "restored to full fellowship or readmitted by baptism and confirmation."[48] If either the victim or the perpetrator needs counseling, leaders and bishops are supposed to call LDS Social Services, so that counseling will be "in harmony with gospel principles."[49] The strongest suggestion regarding reporting abuse requires urging an *abuser* to turn him or herself in: if a bishop or stake president learns of a "member's abusive activities," they "should urge the member to report these activities to the appropriate government authorities."[50] There is an implicit acquiescence to reporting of abuse to the authorities by the leadership if there is mandatory reporting in the state, but no directive.[51] If reporting is legally mandated, the leader is required to "encourage

---

shall rob, he or she shall be delivered up unto the law of the land. 85. And if he or she shall steal, he or she shall be delivered up unto the law of the land."). There is also a requirement that those who lie must be "delivered up unto the law of the land." *Id.* § 42:86, at 65.

[46] *Id.* § 42:80, at 65. There must also be "two witnesses." *Id.* §§ 42:80, :81.

[47] CHURCH HANDBOOK 2006, *supra* note 37, at 186.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] In Utah, like some other states, clergy are required to report abuse unless it is obtained during a "confession." UTAH CODE ANN. § 62A-4a-403 (2009). The same is true in Arizona, ARIZ. REV. STAT. ANN. § 13-3620 (2009), Oregon, OR. REV. STAT. § 419B.010 (2007) (incorporating by reference the clergy-penitent privilege at OR. REV. STAT. § 40.260 (2007)), and California, CAL. PENAL CODE § 11166(d) (Deering 2009). Differences between the states, though, rest on how broadly or narrowly "confession" is interpreted. The LDS Church and other religious groups have argued with success that most clergy communications satisfy the "confession" exception to the requirement to report, successfully in Utah, Montana, and Washington, but not in California. *See* Scott v. Hammock, 870 P.2d 947, 949 (Utah 1994) (holding that "nonpenitential communications are privileged under Utah law if they are intended to be confidential and are made for the purpose of seeking spiritual counseling, guidance, or advice from a cleric acting in his or her professional role and pursuant to the discipline of his or her church"); State v. MacKinnon, 957 P.2d 23, 28 (Mont. 1998) (holding that "Utah's broader interpretation of the clergy-penitent privilege as set forth in *Scott*" applies); State v. Martin, 975 P.2d 1020, 1026 (Wash. 1999) (holding that "[o]ne element of the privilege requires the clergy member to act in a professional capacity"). *But see* Doe 2 v. Superior Court, 34 Cal. Rptr. 3d 458, 465–69 (Cal. Ct. App. 2005) (holding that "'[i]n order for a statement to be privileged, it must satisfy all of the conceptual requirements of a penitential communication: 1) it must be intended to be in confidence; 2) it must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed to hear such communications; and 3) such member of the clergy has a duty under the discipline or tenets of the church, religious denomination or organization to keep such communications secret'" (quoting People v. Edwards, 248 Cal. Rptr. 53, 56 (Cal. Ct. App. 1988))).

the [abusing] member to secure qualified legal advice."[52] The same advice is not given to victims.

The LDS Church thus has created an opaque system when it comes to child sex abuse. While polygamy, child brides, and sex abuse are not permitted or encouraged, the structure of the organization, its self-image as a leader of virtue in the world, and its patent intent to protect the Church from liability, have yielded a cycle of abuse not unlike that widely documented in the Roman Catholic Church.[53]

2. Practices Within the FLDS

The fundamentalist groups are less devoted to securing a pure public image, no doubt because they are engaging in a great deal of illegal conduct (from polygamy to statutory rape to child abandonment), but they observe with fervor the mainstream LDS principles of deference to leaders and the disinclination to involve legal authorities in cases of abuse.[54] The fundamentalist polygamous communities that split off from the LDS Church to sustain their beliefs in divinely-mandated polygamy have followed strict patriarchal principles. Their leaders have fought each other for control and have claimed that they are God or have the most direct relationship with God.[55] This has meant that their edicts have been treated as orders from God. Power is typically secured through the mandate of communal property controlled by the leadership.[56]

---

[52] CHURCH HANDBOOK 2006, *supra* note 37, at 186.

[53] *See, e.g.*, Assoc. Press, *supra* note 7; Metcalfe, *supra* note 7; Niebuhr, *supra* note 7.

[54] *See infra* notes 60–62 and accompanying text.

[55] SPENCER, *supra* note 15, 5–6 (describing turf wars between polygamous sect leaders); *see also* KRAKAUER, *supra* note 18, *passim* (describing the infighting and political and theological power struggles in the American and Canadian enclaves); Daphne Bramham, *Key Players in the Bountiful Case*, VANCOUVER SUN, Jan. 7, 2009, (noting that Winston Blackmore was the head of the Canadian Fundamentalist Church of Jesus Christ of Latter Day Saints "until he was ousted by Warren Jeffs, the church's prophet. Blackmore now leads a breakaway group in the southeastern corner of B.C.").

[56] Jennifer Dobner, *CPA Asks Court to Order Release of Housing Fees in Polygamy Trust Case*, SALT LAKE TRIB., July 7, 2009 ("The Unified Effort Plan Trust is a communal property trust and an arm of the FLDS church. Formed in 1942, the trust holds most of the land and homes in Hildale, Utah, Colorado City, Ariz., and a church enclave near Bountiful, British Columbia."); Mark Shaffer, *Polygamist Sect Loses Grip on Towns*, ARIZ. REPUBLIC, June 23, 2005, at A1 ("The trust was formed in 1940 based on utopian, frontier Mormon concepts of all possessions being shared within a community by the faithful. The trust maintains legal control of all property and buildings while church members tithe their work earnings to the sect."); Ben Winslow, *Some to Get FLDS Deeds*, DESERET NEWS, Apr. 15, 2007, at B01 ("The UEP was originally based on the early Mormon concept of a 'united order,' where people would put everything into a common pot and the church would distribute it. The UEP Trust controls homes, businesses and property in the FLDS enclaves on the Utah-Arizona border and in British Columbia in Canada.").

This principle of communal holdings was first in the LDS Church's doctrines, originating in DOCTRINE AND COVENANTS, *supra* note 16, § 42:30–39, at 62–63, *available at* http://

Warren Jeffs, who is now incarcerated for a series of charges involving statutory rape and child abuse, is the most notorious polygamous sect prophet in recent years.[57] He has directed which men would have which women and girls, and even has broken up marriages and families to rearrange them to his edicts.[58] Jeffs exercised exclusive power to choose who would live on the Yearning for Zion Ranch near Eldorado, Texas, and handpicked each of the men, women, and children from other enclaves, putting asunder pre-existing families to put together the most righteous among his flock, according to his lights.[59] Secrecy has been central to the FLDS's practices, and has been furthered by prohibitions on filing birth or death certificates,[60] on obtaining medical care outside their enclaves,[61] and on reporting child sex abuse or statutory rape

---

scriptures.lds.org/en/dc/42 ("And it shall come to pass, that after they are laid before the bishop of my church, and after that he has received these testimonies concerning the consecration of the properties of my church, that they cannot be taken from the church, agreeable to my commandments, every man shall be made accountable unto me, a steward over his own property, or that which he has received by consecration, as much as is sufficient for himself and family."), but later evolved in the LDS Church so that tithing to the organization displaced sharing all property. Frank W. Hirschi, *Consecration: Law of Consecration*, *in* 1 ENCYCLOPEDIA OF MORMONISM 312, 313 (Daniel H. Ludlow ed., 1992) ("The law of consecration requires dedicating all of one's time, talents, and possessions to the Church and its purposes (D&C 82:19; 64:34; 88:67–68; 98:12–14). John A. Widtsoe, an apostle, noted that its operation was quite simple. Those who joined such an order were to place all their possessions in a common treasury—the rich their wealth, the poor their pittance. Then each member was to receive a sufficient portion—called an 'inheritance'—from the common treasury to enable that person to continue in trade, business, or profession as desired."); *see also* Karl Ricks Anderson, *Consecration: Consecration in Ohio and Missouri*, *in* 1 ENCYCLOPEDIA OF MORMONISM, *supra*, 312, 314–15; DOCTRINE AND COVENANTS, *supra* note 16.

[57] *See* SINGULAR, *supra* note 30; Hilary Hylton, *Jeffs' Conviction: A Winning Ploy*, TIME, Sept. 25, 2007, *available at* http://www.time.com/time/nation/article/0,8599,1665547,00.html; *State Requests Foster Care for 8 FLDS Children*, CNN.COM, Aug. 5, 2008, http://www.cnn.com/2008/CRIME/08/05/polygamy/index.html.

[58] Brooke Adams, *Warren Jeffs Profile: Thou Shalt Obey*, SALT LAKE TRIB., Mar. 14, 2004; Elissa Wall, *Warren Jeffs' FLDS Church and What I Left Behind*, HUFFINGTON POST, May 17, 2008, http://www.huffingtonpost.com/elissa-wall/warren-jeffs-flds-church_b_102195.html ("When I was fourteen years old, I, like many young FLDS girls, was forced by Jeffs to marry a man whom I did not want to wed.").

[59] *See* Adams, *supra* note 58.

[60] *See* TEX. DEP'T OF FAMILY AND PROTECTIVE SERV., ELDORADO INVESTIGATION 3, 6 (2008), *available at* http://www.dfps.state.tx.us/documents/about/pdf/2008-12-22_Eldorado.pdf (noting the inability of children to determine their ages and familial relationships and lack of records to ascertain such information); Trish Choate, *FLDS: Lawmaker Proud of Sect's Ire*, SAN ANGELO STANDARD-TIMES, Dec. 26, 2009 (detailing planned law in Texas to create criminal penalties for failing to report a birth or file a birth certificate, primarily due to FLDS practices); Terri Langford, *First FLDS Sex Assault Trial Starts on Monday*, HOUSTON CHRON., Oct. 24, 2009, (noting that prosecutors have a difficult time proving underage sex because "many of the children do not have birth certificates.").

[61] For example, Warren Jeffs refused to take a girl who had been in labor for three days to the hospital. *See* Trish Choate, *FLDS TRIAL: Defense Grills Ex-member of Sect*, SAN ANGELO

to outside authorities.[62] The result has been entrenched and widespread child sex abuse, statutory rape, and child bigamy within a significant number of these organizations.[63]

Along with the Catholic hierarchy, the LDS leaders, and other religious organizations,[64] the fundamentalist polygamists have invoked the First Amendment and state free exercise guarantees to defend against liability for under-age marriages and child sex abuse.[65] Intuitively, such claims seem meritless on their face, but courts have

---

STANDARD-TIMES, Nov. 4, 2009, *available at* http://www.gosanangelo.com/news/2009/nov/04/former-flds-teacher-takes-stand-in-jessop-trial/ ("One dictation or 'priesthood records' from Warren Jeffs was about a 16-year-old in difficult labor at the YFZ Ranch in 2005, according to evidence Nichols read aloud in court. Warren Jeffs didn't consider taking her to the hospital to be an option because the girl was underage, and he was a fugitive, according to a document the prosecutor read from Tuesday."); James C. McKinley, Jr., *Polygamist Sect Leader Convicted of Sexual Assault*, N.Y. TIMES, Nov. 5, 2009, at A19 ("One of the most damning pieces of evidence presented in court was a written record of Mr. Jeffs's instructions in August 2005 not to take the girl to a hospital even though she had been struggling in labor for three days at a clinic on the ranch.").

[62] Terri Langford, *Fight For 8 FLDS Children Renewed*, HOUSTON CHRON., Aug. 6, 2008 ("[Dr.] Barlow was indicted on July 22 on a charge of failure to report sex abuse. . . . In an affidavit written by CPS caseworker Paul Dyer that was filed with the court Tuesday, Barlow said he had delivered many babies to minor girls. 'Dr. Barlow was asked if he had ever delivered children to girls under the age of 18 on the ranch and he said many times both on this ranch and in other places,' Dyer wrote. . . . Barlow also informed CPS that domestic violence is something handled internally by the FLDS. '(A caseworker) asked Dr. Barlow what a young woman's recourse was should she be a victim of domestic violence,' Dyer wrote. 'Dr. Barlow stated that the church elders would handle the situation first.'"); Assoc. Press, *Polygamist Convicted of Sexual Abuse*, Nov. 5, 2009, *available at* http://www.msnbc.com/id/33699837 ("In all, 12 FLDS men have been indicted on charges ranging from failure to report child abuse to sexual assault since authorities raided the ranch last year."); *see also* Brooke Adams, *Texas FLDS Raid: Defense Attorney Alleges Search Too Broad, Evidence Tainted*, SALT LAKE TRIB., July 13, 2009; Assoc. Press, *FLDS Sect Member Convicted of Sex Assault*, HOUSTON CHRON., Nov. 6, 2009; Ben Winslow, *13 FLDS Children in Court Custody*, DESERET NEWS, Jan. 20, 2009, *available at* http://www.deseretnews.com/article/1,5143,705279101,00.html.

[63] *See* Brooke Adams, *Escape from Polygamy*, SALT LAKE TRIB., Oct. 16, 2007. *See generally* MOORE-EMMETT, *supra* note 15.

[64] *See supra* note 11 (describing the push by Catholic and Mormon organizations to use the First Amendment as a barrier to tort liability including the most recent foray into the courts with the filing of amicus briefs in the Nevada Supreme Court in *Ramani v. Segelstein*).

[65] *See* Jeffrey Michael Hayes, *Polygamy Comes Out of the Closet: The New Strategy of Polygamy Activists*, 3 STAN. J.C.R. & C.L. 99, 127 (2007); Charles C. Haynes, *Polygamy Showdown: Balancing Child Welfare, Religious Freedom*, FIRST AMENDMENT CENTER, Apr. 27, 2008, http://www.firstamendmentcenter.org/commentary.aspx?id=19969; *see also* Cleveland v. United States, 329 U.S. 14, 20 (1946) (polygamy is not protected by the First Amendment); Potter v. Murray City, 760 F.2d 1065, 1068–70 (10th Cir.), *cert. denied*, 474 U.S. 849 (1985) (affirming summary judgment for defendant city and state because police officer's discharge for practicing polygamy did not violate his free exercise rights); State v. Green, 99 P.3d 820, 836 (Utah 2004) (denying free exercise challenge and affirming bigamy conviction); *In re* State in Interest of Black, 283 P.2d 887, 905 (Utah), *cert. denied*, 350 U.S.

struggled with free exercise doctrine and apply it to institutions responsible for creating opportunities for and constructing cycles of child sex abuse. By now, most courts to address the issue have rejected such constitutional defenses using contemporary doctrines.[66] A few states, however, have reached the counter-intuitive conclusion that religious liberty guarantees apply as defenses to child sex abuse claims, most notably Missouri, Utah, and Wisconsin.[67] The next section argues that history confirms intuitions: licentious, or illicit sexual, behavior was never intended to be protected by religious liberty guarantees.

II. THE HISTORY AND DOCTRINE SUPPORT CATEGORICAL EXCLUSION OF LICENTIOUS BEHAVIOR (ESPECIALLY INVOLVING CHILDREN) FROM RELIGIOUS LIBERTY GUARANTEES

Contemporary discourse treats liberty as though it is impossible to have too much. Such reasoning, though is a perversion of the history behind religious liberty, which limited liberty by incorporating the concept of "licentiousness." The epitome of

---

923 (1955) (affirming removal of children from polygamist homes over appellants' objection that the judgment of the Juvenile Court violated their constitutional right to worship as they see fit and to speak freely); SINGULAR, *supra* note 30, at 114 ("For decades, Jeffs's church had claimed that under the First Amendment to the U.S. Constitution, it had the absolute right to practice its religion as it chose; county, state, and federal governments had no business interfering with the FLDS and no jurisdiction over it."); *id.* at 236 ("Bugden [Jeffs's attorney] aggressively took issue with the judge's ruling and later reiterated what he'd been saying since early fall: his client's First Amendment rights were being trampled on by Utah's legal system, and this case was about nothing but the religious persecution of Warren Jeffs."); Ben Winslow, *Arizona, Feds Pursuing Cases Against Warren Jeffs*, DESERET MORNING NEWS, Sept. 23, 2007, at B1 ("Defense attorneys successfully argued to have some of the evidence returned on the grounds it is protected by Jeffs' First Amendment right to freedom of religion and that some of the documents constitute 'clergy-communicant privilege.' The U.S. Attorney's Office recently returned many items seized to Jeffs' attorneys.").

[66] *See, e.g.*, Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409, 431 (2d Cir. 1999); Perry v. Johnston, No. 4:09-CV-105, 2009 U.S. Dist. LEXIS 74706, at *11 (E.D. Mo. Aug. 24, 2009); Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc), slip op. at 8 (S.D. Cal., Dec. 20, 2005); Rashedi v. Gen. Bd. of Church of the Nazarene, 54 P.3d 349 (Ariz. Ct. App. 2002); Doe v. Evans, 814 So. 2d 370, 371 (Fla. 2002); Malicki v. Doe, 814 So. 2d 347, 351 n.2 (Fla. 2002) (listing states that have rejected this doctrine and permitted church liability); State v. Young, 974 So. 2d 601, 613 (Fla. Dist. Ct. App. 2008); Odenthal v. Minnesota Conference of Seventh-Day Adventists, 649 N.W.2d 426 (Minn. 2002); Olson v. First Church of Nazarene, 661 N.W.2d 254 (Minn. Ct. App. 2003); Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005); N.H. v. Presbyterian Church, 998 P.2d 592, 602 (Okla. 1999); Young v. Gelineau, No. 03-1302, 2007 WL 3236736 (R.I. Super. Sept. 20, 2007).

[67] Gibson v. Brewer, 952 S.W.2d 239 (Mo. 1997); Franco v. Church of Jesus Christ of Latter-Day Saints, 21 P.3d 198, 203 (Utah 2001); Pritzlaff v. Archdiocese of Milwaukee, 533 N.W.2d 780 (Wis. 1995), *cert. denied*, 516 U.S. 1116 (1996).

licentiousness was illicit sexual behavior. This history as well as the references to conduct involving "licentiousness" found in a number of state constitutions, Canadian law, and in United States cases, strongly argues for an exception from religious liberty guarantees for claims involving sex abuse. It was an activity not intended to be encompassed.

This historically grounded principle of excluding licentious behavior (particularly involving children) from religious liberty guarantees is also reflected in free speech doctrine, where child pornography is an unprotected category of speech because of its link to child sex abuse.[68]

A. "Licentiousness" Was Understood to Be Too Much Liberty

If one looks carefully into the history of religious liberty, contemporary presumptions that incorporate no internal limitation turn out to be unfounded and ahistorical. There was a widely shared view that too much liberty is as bad as no liberty. Nineteenth and early twentieth century writings[69] and cases equated "licentiousness" with the variety of illicit sex activities—adultery,[70] child sex abuse,[71] and polygamy or bigamy.[72] Dictionaries also defined "licentious" as "dissolution" or "sexual

---

[68] *See, e.g.*, New York v. Ferber, 458 U.S. 747, 774 (1982).

[69] *See, e.g.*, NATHANIEL HAWTHORNE, *The Minister's Black Veil*, *in* TWICE-TOLD TALES 25–37 (Modern Library 2001) (1837); NATHANIEL HAWTHORNE, THE SCARLET LETTER (Modern Library 2000) (1850); 2 JOHN LELAND, A VIEW OF THE PRINCIPAL DEISTICAL WRITERS OF THE LAST AND PRESENT CENTURY 303, 571 (5th ed. 1755).

[70] King v. United States, 17 F.2d 61, 63 (4th Cir. 1927); United States v. Clapox, 35 F. 575 (Or. Dist. Ct. 1888); Lake v. Governor, 2 Stew. 395, 398 (Ala. 1830); Kelley v. State, 226 S.W. 137, 138 (Ark. 1920); Tully v. Tully, 69 P. 700, 700 (Cal. 1902); *In re* Estate of Jessup, 22 P. 742, 746 (Cal. 1889). Some courts have equated "licentiousness" with incest as well. *See* Campbell v. Crampton, 2 F. 417, 428 (C.C.N.D.N.Y 1880).

[71] Mut. Life Ins. Co. v. Terry, 82 U.S. (15 Wall.) 580, 589 (1872); Hansel v. Purnell, 1 F.2d 266, 270–71 (6th Cir. 1924); People v. Stouter, 75 P. 780, 780–82 (Cal. 1904); People v. Adams, 47 P.2d 320, 320 (Cal. App. 1935); Cheeseman v. Cheeseman, 278 P. 242, 242 (Cal. App. 1929); People v. Camp, 183 P. 845, 848 (Cal. App. 1919); *In re* Petition of Todd, 186 P. 790, 795 (Cal. App. 1919); People v. Hoosier, 142 P. 514, 516 (Cal. App. 1914); People v. Anthony, 129 P. 968, 970 (Cal. App. 1912); Blount v. State, 138 So. 2, 2–3 (Fla. 1931).

[72] Davis v. Beason, 133 U.S. 333, 348 (1890). The term "licentiousness" has been used by multiple courts in cases prosecuted under the White Slave Act of 1910, ch. 395, 36 Stat. 825 (current version at 18 U.S.C. §§ 2421–2428 (2006)). *See* Athanasaw v. United States, 227 U.S. 326, 331 (1913) (affirming conviction for transporting a girl for the purpose of debauchery in violation of the White Slave Act); United States v. Long, 16 F. Supp. 231, 232 (E.D. Ill. 1936) (convicting defendant for transporting two girls for the purpose of debauchery in violation of the White Slave Act).

The White Slave Act, officially the Mann Act, was also used for the prosecution of polygamists. *See* Cleveland v. United States, 329 U.S. 14, 20 (1946) (holding the interstate transportation of a plural wife, for or by a member of a polygamist sect constitutes an immoral purpose under the Mann Act, and that such conviction under the Mann Act did not violate defendant's free exercise rights).

immorality."[73] In the 1850s, Canada also enacted a law that protected religious liberty but explicitly excluded acts of licentiousness.[74]

> It is also urged that the requisite criminal intent was lacking since petitioners were motivated by a religious belief. That defense claims too much. If upheld, it would place beyond the law any act done under claim of religious sanction. But it has long been held that the fact that polygamy is supported by a religious creed affords no defense in a prosecution for bigamy (citing Reynolds v. United States, 98 U.S. 145 (1878)). Whether an act is immoral within the meaning of the statute is not to be determined by the accused's concepts of morality. Congress has provided the standard. The offense is complete if the accused intended to perform, and did in fact perform, the act which the statute condemns, viz., the transportation of a woman for the purpose of making her his plural wife or cohabiting with her as such.

Id. (internal citations omitted).

[73] *See* 3 THE CENTURY DICTIONARY 3436 (William Dwight Whitney ed., 1889) ("Licentious . . . *a.* . . . 1. Characterized by or using license; marked by or indulging too great freedom; overpassing due bounds or limits; excessive . . . . Specifically—2. Unrestrained by law, religion, or morality; wanton; loose; dissolute; libidinous: as, a *licentious* person; *licentious* desires"; "Licentiously . . . *adv.* In a licentious manner; with too great freedom; especially, in contempt of law and morality; lasciviously; loosely; dissolutely. Licentiousness . . . *n.* The state or character of being licentious; want of due restraint in any respect; especially, dissolute or profligate conduct; sexual immorality."); *see also* FRANCIS ALLEN, A COMPLETE ENGLISH DICTIONARY 448 (1765) ("*LICENTIOUS*, *Adj.* not restrained by law, morality, or religion."); 4 JOHN OGILVIE, THE IMPERIAL DICTIONARY OF THE ENGLISH LANGUAGE 785 (Charles Annandale ed., 1883) ("*Fille de joie*. [Fr.] A woman of licentious pleasure; a prostitute.").

Even as far back as Shakespearean times, licentiousness was affiliated with illicit sex. *See, e.g.*, ERIC PARTRIDGE, SHAKESPEARE'S BAWDY 175 (3d ed. 1968) (defining Shakespeare's usage of the word licentious in his works: "[L]icentious. *Addicted to illicit sexual indulgence*. 'How dearly'—says Adriana—'would it touch thee to the quick, Shouldst thou but hear I were licentious', *Com. of Errors*, II ii 129–30.—*Henry V*, II iii 22 ('licentious wickedness').—'Fill'd the time With all licentious measure', *Timon*, V iv 3–4" (first emphasis added)).

[74] Denise J. Doyle, *Religious Freedom in Canada*, 26 J. CHURCH & ST. 413, 417–18 (1984) ("In 1851, the legislature of Canada . . . repealed those sections of the Constitutional Act that dealt with endowed parsonages. The statute contained an important section, that has increased in importance over the years: 'That the free exercise and enjoyment of Religious Profession and Worship, without discrimination or preference, so the same be not made an excuse for acts of licentiousness, or justification of practices inconsistent with the peace and safety of the Province, is by the constitution and laws of this Province allowed to all Her Majesty's subjects within the same.' This was the first statute to declare religious freedom of worship in the Province of Canada. By the terms of the later of the British North American Act, this Freedom of Worship statute has remained in effect in Quebec and Ontario."); *see also id.* at 419 ("The British North American Act of 1867 (BNA) joined four Canadian provinces together in a confederation known as the Dominion of Canada. The BNA Act, the former Canadian Constitution, made no express statements on the subject of religion or religious freedom. Section 129 of the Act allows for the continuance of provincial laws as long as they are not repealed. This ensured that whichever religious rights had been achieved—as, for

According to historian John Philip Reid, those in the eighteenth century "had as great a duty to oppose licentiousness as to defend liberty."[75] Historian Bernard Bailyn explained that

> [t]he very idea of liberty was bound up with the preservation of this balance of forces. For political liberty, as opposed to the theoretical liberty that existed in a state of nature, was traditionally known to be "a natural power of doing or not doing whatever we have in mind" so long as that doing was "consistent with the rules of virtue and the established laws of the society to which we belong"; it was "a power of acting agreeable to the laws which are made and enacted by the consent of the PEOPLE, and in no ways inconsistent with the natural rights of a single person, or the good of the society." Liberty, that is, was the capacity to exercise "natural rights" within limits set not by the mere will or desire of men in power but by non-arbitrary law—law enacted by legislatures containing within them the proper balance of forces.[76]

A number of state constitutions exclude "licentiousness," or illicit sex, from religious liberty protections along the lines of the language in the California Constitution:

> Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are *licentious* or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.[77]

---

example, the Freedom of Worship Statute—would remain in effect."); *id.* at 427–28 ("[T]he plaintiff in *Cribben v. The City of Toronto* (1891) was unsuccessful in having a bylaw declared invalid prohibiting all religious speeches in public parks. . . . The idea being that religious freedom is freedom for religion not freedom from the law."). For more information, see David H. Moore, *Religious Freedom and Doctrines of Reluctance in Post-Charter Canada*, 1996 BYU L. REV. 1087, 1090–91. *See generally* DOUGLAS A. SCHMEISER, CIVIL LIBERTIES IN CANADA (reprint ed. 1977).

[75] JOHN PHILIP REID, THE CONCEPT OF LIBERTY IN THE AGE OF THE AMERICAN REVOLUTION 35 (1988).

[76] BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 76–77 (1992); *see also* David Jenkins, *The Sedition Act of 1798 and the Incorporation of Seditious Libel into First Amendment Jurisprudence*, 45 AM. J. LEGAL HIST. 154, 163–64 (2001).

[77] CAL. CONST. art. I, § 4 (emphasis added); *see* ARIZ. CONST. art. II, § 12; COLO. CONST. art. II, § 4; CONN. CONST. art. I, § 3; GA. CONST. art. I, § 1, ¶ IV; IDAHO CONST. art. I, § 4; ILL. CONST. art. I, § 3; MINN. CONST. art. I, § 16; MISS. CONST. art. III, § 18; MO. CONST. art. I, § 5; NEV. CONST. art. I, § 4; N.Y. CONST. art. I, § 3 (amended 2001); N.D. CONST. art. I, § 3; S.D. CONST. art VI, § 3; WASH. CONST. art. I, § 11 (amended 1993); WYO. CONST. art. I, § 18. See Appendix A for the full texts of the sixteen current state free exercise clauses containing the term licentious[ness].

This exclusion from free exercise protection first appeared in the Charter of Rhode Island and Providence Plantations of 1663, which stated:

> That our royall will and pleasure is, that noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter, freelye and fullye have and enjoye his and theire owne judgments and consciences, in matters of religious concernments, throughout the tract of land hereafter mentioned; they behaving themselves peaceablie and quietlie, and not useing this libertie to *lycentiousnesse* and profanenesse, nor to the civill injurye or outward disturbeance of others.[78]

The exclusion of "licentiousness" was reflected in a few other early state constitutions besides Rhode Island's Charter,[79] but it became most prevalent during the nineteenth century.[80] Most early constitutions also included a provision that made laws protecting peace and safety an exception to free exercise.[81]

---

[78] CHARTER OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (1663), *reprinted in* 8 SOURCES AND DOCUMENTS OF THE UNITED STATES CONSTITUTIONS 362 (William F. Swindler ed., 1979) [hereinafter SOURCES & DOCUMENTS].

[79] *See, e.g.*, N.Y. CONST. of 1777, art. XXXVIII, *reprinted in* 7 SOURCES & DOCUMENTS, *supra* note 78, at 168 ("And whereas we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind, this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: *Provided*, That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.").

[80] *See* CAL. CONST. of 1849, art. I, § 4, *reprinted in* 1 SOURCES & DOCUMENTS, *supra* note 78, at 447; COLO. CONST. art. II, § 4 (ratified in 1876); CONN. CONST. of 1818, art. I, § 3, *reprinted in* 2 SOURCES & DOCUMENTS, *supra* note 78, at 144; FLA. CONST. of 1868, art. I, § 5, *reprinted in* 2 SOURCES & DOCUMENTS, *supra* note 78, at 353; GA. CONST. of 1877, art. I, § 1, ¶ XIII, *reprinted in* 2 SOURCES & DOCUMENTS, *supra* note 78, at 514; IDAHO CONST. art. I, § 4 (ratified in 1890); ILL. CONST. of 1870, art. II, § 3, *reprinted in* 3 SOURCES & DOCUMENTS, *supra* note 78, at 286; MINN. CONST. art. I, § 16 (ratified in 1858); MISS. CONST. of 1817, art. I, § 3, *reprinted in* 5 SOURCES & DOCUMENTS, *supra* note 78, at 347; MO. CONST. of 1875, art. II, § 5, *reprinted in* 5 SOURCES & DOCUMENTS, *supra* note 78, at 544; NEV. CONST. art. I, § 4 (ratified in 1864); N.D. CONST. art. I, § 3 (ratified in 1889); S.D. CONST. art. VI, § 3 (ratified in 1889); WASH. CONST. of 1889, art. I, § 11, *reprinted in* 10 SOURCES & DOCUMENTS, *supra* note 78, at 282; WYO. CONST. art. I, § 18 (ratified in 1890); *see also* ARIZ. CONST. art. II, § 12 (Arizona's Constitution was ratified in 1912.).

[81] *See* CONN. CONST. of 1818, art. I, § 3, *reprinted in* 2 SOURCES & DOCUMENTS, *supra*

Laws prohibiting illicit sex were among those laws expected to be enforced throughout society.[82] As I have discussed previously, ministers and pastors themselves during the founding era preached the rule of law for religious believers from their pulpits.[83] Influential Baptist preacher John Leland removed "licentious indulgence of the carnal appetite" from the sphere of religion, placing it squarely under control of "human law":

> It is not designed to defend the religious opinions of *any*, but the persons and rights of *all*; *so* that Jews, Turks, Pagans and Christians, with all their subdivided opinions, may peaceably live together in the same domain—each one enjoying the free exercise of his religious opinions, and all impartially protected by the law. Should any one man, or one sect, attempt to force another to believe, act or support, what they themselves believe in, with this plea, that the others were licentious and heretical, the assailants would be the offenders, to be punished by the law; for when a

---

note 78, at 144; FLA. CONST. of 1868, art. I, § 5, *reprinted in* 2 SOURCES & DOCUMENTS, *supra* note 78, at 353; GA. CONST. of 1777, art. LVI, *reprinted in* 2 SOURCES & DOCUMENTS, *supra* note 78, at 443; MD. CONST. of 1776, art. XXXIII, *reprinted in* 4 SOURCES & DOCUMENTS, *supra* note 78, at 372; MASS. CONST. art. I, § 2 (ratified in 1780); N.H. CONST. art. I, § 5 (ratified in 1784); N.J. CONST. of 1776, art. XIX, *reprinted in* 6 SOURCES & DOCUMENTS, *supra* note 78, at 449; N.Y. CONST. of 1777, art. XXXVIII, *reprinted in* 7 SOURCES & DOCUMENTS, *supra* note 78, at 168; *see also* VA. CODE ANN. § 57-1 (2009) (noting adoption of Thomas Jefferson's *Act for Establishing Religious Freedom*, adopted by the Virginia legislature on January 16, 1786. *See* 12 STATUTES OF VIRGINIA AT LARGE; BEING A COLLECTION OF ALL THE LAWS 84–86 (William Waller Hening ed., 1823)).

[82] *See, e.g.*, JOHN D'EMILIO & ESTELLE B. FREEDMAN, INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA 27–38 (2d ed. 1997) (noting the strict enforcement of laws regulating sex in colonial America); Douglas Greenberg, *Crime, Law Enforcement, and Social Control in Colonial America*, 26 AM. J. LEGAL HIST. 293, 297–99 (1982) (explaining that 'morals' crimes—including "fornication, adultery, sodomy, buggery, and . . . [even] public masturbation"—were often regularly and strictly enforced in colonial New England); Carolyn B. Ramsey, *Sex and Social Order: The Selective Enforcement of Colonial American Adultery Laws in the English Context*, 10 YALE J.L. & HUMAN. 191, 211, 226 (1998) (book review) ("New England's magistrates took a hard line toward extramarital sex, just as the Puritan leaders of the Commonwealth did . . . . [N]orthern magistrates distinguished between problems dividing the family and those afflicting the state. They saw sexual misconduct as a sin that required correction . . . ."); *see also* 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 417 n.1 (Thomas M. Cooley ed., 4th ed. 1873) ("'It is requisite that the courts of justice should be able, at all times, to present a determined countenance against all licentious acts . . . .'").

[83] Marci A. Hamilton, *Religion, the Rule of Law, and the Good of the Whole: A View from the Clergy*, 18 J.L. & POLITICS 387, 399 (2002) ("Far from urging civil disobedience, many eighteenth century sermons exhorted believers to obey the civil law.").

> man's religion leads him to commit overt acts, he should be punished for his actions and pitied for his delusion.[84]

This exclusion of illicit sex from the universe of religious liberty protections is consistent with the leading philosopher to influence the founding and framing generations, John Locke, who distinguished licentiousness from protectable religious belief and conduct as follows:

> I will not here tax the pride and ambition of some, the passion and uncharitable zeal of others. These are faults from which human affairs can perhaps scarce ever be perfectly freed; but yet such as nobody will bear the plain imputation of, without covering them with some specious colour; and so pretend to commendation, whilst they are carried away by their own irregular passions. But, however, that some may not colour their spirit of persecution and unchristian cruelty with a pretence of care of the public weal, and observation of the laws, and *that others, under pretence of religion, may not seek impunity for their libertinism and licentiousness*; in a word, that none may impose either upon himself or others, by the pretences of loyalty and obedience to the prince, or of tenderness and sincerity in the worship of God; I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other.[85]

This view of licentiousness as beyond free exercise guarantees was further confirmed in the United States Supreme Court's earliest application of the Free Exercise Clause, in the Mormon polygamy cases. In *Davis v. Beason*,[86] the Court clearly identified polygamy as licentious: "The constitutions of several States, in providing for religious freedom, have declared expressly that such freedom shall not be construed to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State."[87] In *Reynolds v. United States*,[88] the Court did not use the term licentious itself, but its reasoning plainly fit polygamy and bigamy into the category of illicit sexual and family arrangements and, therefore, also the concept that they are unprotected by the First Amendment:

---

[84] John Leland, Short Sayings on Times, Men, Measures and Religion Exhibited in Address, Delivered at Cleslie, July 5, 1830, *in* THE WRITINGS OF THE LATE ELDER JOHN LELAND 579 (1845).

[85] JOHN LOCKE, A LETTER CONCERNING TOLERATION 17 (John Horton & Susan Mendus eds., Routledge 1991) (1689) (emphasis added).

[86] 133 U.S. 333 (1890).

[87] *Id.* at 348.

[88] 98 U.S. 145 (1879).

> From that day to this we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life.[89]

The descriptions of illicit sex in the context of religious organizations or by religious actors are consistent with these assumptions and world views.[90]

The history of freedom of the press also included a parallel debate about the mutual parameters of liberty and licentiousness.[91] Thus, the notion that free exercise

---

[89] *Id.* at 165.

[90] Hansel v. Purnell, 1 F.2d 266, 271–72 (6th Cir. 1924) ("[T]he plaintiff offered evidence tending to prove . . . that Benjamin in particular was guilty of the most disgusting and revolting crimes against the chastity of young girls who were members of this community; that he accomplished the debauchery of these young girls by and through his further interpretation of the faith, which interpretation was not publicly taught, but communicated only in private to the 'inner circle,' and in particular to the young girls whom he purposed to make the victims of his lust, by quotations from the Bible, by his representations, in which they implicitly believed . . . by his declarations and claims that sexual intercourse with him was not sinful, but a means by which they might be cleansed and receive immortal life of the body, and an act evidencing faith and obedience to Benjamin the 'Seventh Messenger sent to gather the elect together and prepare their bodies to receive the Kingdom of God.' . . . In the experience of the human family there are no meaner, more contemptible, or more despicable methods of accomplishing the debauchery of womanhood than the methods described by these witnesses, and which they testified were employed by Benjamin in the accomplishment of the ruin of these young girls who had been raised from childhood in this colony and had been taught to believe that Benjamin was a divinely inspired messenger to whom they must yield unquestioned obedience. If this testimony is true, it necessarily follows that Benjamin is a fraud and an imposter, a modern satyr of unspeakable lust, and wholly unfit to organize and control a religious society of any faith through the instrumentality of which he may prey upon the innocent and unsuspecting, prostitute womanhood to his lewd and licentious purposes, and hide his own rottenness under a cloak of righteousness."); *see also* People v. Mills, 54 N.W. 488, 488–89 (Mich. 1893); LAWRENCE, *supra* note 1, at 16–19 ("The sexual regulation of children has been part of social life since antiquity. . . . The first report of sexual abuse as a major hazard to child health is said to have occurred in the nineteenth century in France. It would seem this was the first modern acknowledgement of child sexual abuse as being of professional concern. . . . Prior to the latter half of the twentieth century, the most striking feature of the history of child abuse and child sexual abuse has been the intermittent nature of public concern. . . . [T]his pattern is due to what Myers refers to as society's 'blind spot for child sexual abuse'. . . . [I]t is only in the last 30 years that there has been an overwhelming societal condemnation of the problem. . . . [A]round the turn of the twentieth century, formal laws for the protection of children appeared for the first time in the western world. The nineteenth-century moral campaigns for children were made acceptable to politicians when new concepts about children and the state's right to intervene in family life emerged." (internal citations omitted)).

[91] Leonard Levy, *The* Legacy *Reexamined*, 37 STAN. L. REV. 767, 791–92 (1985) ("In

necessarily encompasses all possible conduct is simply wrong. The intuition that child sex abuse cannot be constitutionally protected conduct is firmly grounded in history.

B. The Free Speech Cases Have Already Incorporated the Principle of Excluding a Category of Licentious Speech from Constitutional Protection

The principle that a category defined by illegal sexual behavior is unprotected by a liberty guarantee is not a new doctrinal element within First Amendment jurisprudence. First Amendment free speech doctrine supports the categorical exclusion from free exercise of licentious acts. Under the Free Speech Clause, several types of speech are not protected, or protected to a scant degree.[92] For example, obscenity is not protected,[93] and pornography receives low-level protection.[94] Defamation and incitement to illegal conduct are also beyond the reach of the Free Speech Clause.[95]

---

the sense that Blackstonianism implied that seditious libel was a crime, the Sedition Act embraced Blackstonianism and the new libertarianism repudiated it. What was new about the new libertarianism was the outright rejection of the very concept of seditious libel. The new libertarianism asserted that free republican government and the crime of seditious libel were incompatible even at a state level. It repudiated the old distinction between licentiousness and liberty, abandoned the requirement of proving malice as being of little use to a defendant in a political trial, assaulted the claim of truth-as-self-defense on the ground that the truthfulness of political opinions could not be proved, and perhaps most significantly, discarded reliance on the jury as a defense against prosecutorial and judicial bias. The new libertarianism relied on the overt acts test; although the test was not new, invocation of it in cases of political opinion was." (internal citations omitted)).

[92] Ashcroft v. Free Speech Coal., 535 U.S. 234, 245–46 (2002) ("The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity, and pornography produced with real children.").

[93] *See* Miller v. California, 413 U.S. 15, 20 (1973) ("'[I]mplicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.'" (quoting Roth v. United States, 354 U.S. 476 (1957)); *Roth*, 354 U.S. at 485 ("We hold that obscenity is not within the area of constitutionally protected speech or press.").

[94] *Free Speech Coal.*, 535 U.S. at 249 (child pornography); City of Erie v. PAP's A.M., 529 U.S. 277, 289, 294 (2000) (nude dancing); Barnes v. Glen Theater, Inc., 501 U.S. 560, 565–68 (1991) (nude dancing); City of Renton v. Playtime Theaters, Inc., 475 U.S. 41, 49–50 (1986) (zoning); New York v. Ferber, 458 U.S. 747, 763–64 (1982) (child pornography); Young v. Am. Mini Theaters, Inc., 427 U.S. 50, 78–80 (1976) (zoning).

[95] Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) ("[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."); New York Times Co. v. Sullivan, 376 U.S. 254, 268–69 (1964) ("[T]he Constitution does not protect libelous publications. . . . Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations.").

Nor are fighting words protected[96] or advocacy to illegal action if violence is imminent.[97] Most important for purposes of this Article is the Supreme Court's persistent refusal to provide free speech protection for child pornography that involves actual children.[98] Child pornography, and not just child obscenity, is categorically unprotected speech. These free speech categories of excluded speech—which involve sex and/or violence—provide further support for the proposition that free exercise guarantees appropriately exclude illicit sexual behavior, especially child sex abuse.

The Supreme Court steadfastly has refused to extend constitutional guarantees to the category of child pornography, because of the overriding governmental interest in protecting children from sex abuse and exploitation.[99] In 1982, the Court explicitly recognized that "the exploitative use of children in the production of pornography has become a serious national problem."[100] The members of the Court have accepted "[t]he legislative judgment, as well as the judgment found in relevant literature . . . that the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child,"[101] as well as the need to censor child pornography because it is used "to seduce other children into sexual activity."[102]

---

[96] *See* Virginia v. Black, 538 U.S. 343, 359 (2003) ("[F]ighting words—'those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction'—are generally proscribable under the First Amendment." (citing Cohen v. California, 403 U.S. 15, 20 (1971))); R.A.V. v. City of St. Paul, 505 U.S. 377, 393 (1992) ("[T]he reason why fighting words are categorically excluded from the protection of the First Amendment is not that their content communicates any particular idea, but that their content embodies a particularly intolerable (and socially unnecessary) *mode* of expressing *whatever* idea the speaker wishes to convey."); Chaplinsky v. New Hampshire, 315 U.S. 568, 571–72 (1942) ("There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words . . . .").

[97] *Brandenburg*, 395 U.S. at 447 ("[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.").

[98] *See, e.g.*, United States v. Williams, 128 S. Ct. 1830 (2008); *Free Speech Coal.*, 535 U.S. 234; Osborne v. Ohio, 495 U.S. 103 (1990); *Ferber*, 458 U.S. 747.

[99] *Williams*, 128 S. Ct. at 1846 ("Child pornography harms and debases the most defenseless of our citizens."); *id.* at 1848 (Souter, J., dissenting) ("Dealing in obscenity is penalized without violating the First Amendment, but as a general matter pornography lacks the harm to justify prohibiting it. If, however, a photograph . . . shows an actual minor child as a pornographic subject, its transfer and even its possession may be made criminal. The exception to the general rule rests not on the content of the picture but on the need to foil the exploitation of child subjects." (internal citations omitted)); *Free Speech Coal.*, 535 U.S. at 240; *Ferber*, 458 U.S. at 761.

[100] *Ferber*, 458 U.S. at 749.

[101] *Osborne*, 495 U.S. at 109 (quoting *Ferber*, 458 U.S. at 758).

[102] *Id.* at 111.

Child pornography involving actual children, therefore, has been afforded no protection under the Free Speech Clause, starting with *New York v. Ferber*, which contains the first and most detailed explication of the Court's reasoning:

> Like obscenity statutes, laws directed at the dissemination of child pornography run the risk of suppressing protected expression by allowing the hand of the censor to become unduly heavy. For the following reasons, however, we are persuaded that the States are entitled to greater leeway in the regulation of pornographic depictions of children.
>
> *First.* It is evident beyond the need for elaboration that a State's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling." Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982). "A democratic society rests, for its continuance, upon the health, well-rounded growth of young people into full maturity as citizens." Prince v. Massachusetts, 321 U.S. 158, 168 (1944).
>
> . . .
>
> The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The legislative findings accompanying passage of the New York laws reflect this concern:
>
> "[T]here has been a proliferation of exploitation of children as subjects in sexual performance. The care of children is a sacred trust and should not be abused by those who seek to profit through a commercial network based upon the exploitation of children. The public policy of the state demands the protection of children from exploitation through sexual performances." 1877 N.Y. Laws, ch. 910, § 1.
>
> . . .
>
> The legislative judgment, as well as the judgment found in the relevant literature, is that the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment.

> *Second.* The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children in at least two ways. First, the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation. Second, the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled.
>
> . . .
>
> Respondent does not contend that the State is unjustified in pursuing those who distribute child pornography. Rather, he argues that it is enough for the State to prohibit the distribution of materials that are legally obscene under the *Miller* test. While some States may find that this approach properly accommodates its interests, it does not follow that the First Amendment prohibits a State from going further. The *Miller* standard, like all general definitions of what may be banned as obscene, does not reflect the State's particular and more compelling interest in prosecuting those who promote the sexual exploitation of children. Thus, the question under the *Miller* test of whether a work, taken as a whole, appeals to the prurient interest of the average person bears no connection to the issue of whether a child has been physically or psychologically harmed in the production of the work. Similarly, a sexual explicit depiction need not be "patently offensive" in order to have required the sexual exploitation of a child for its production. In addition, a work which, taken on the whole, contains serious literary, artistic, political, or scientific value may nevertheless embody the hardest core of child pornography. "It is irrelevant to the child [who has been abused] whether or not the material . . . has a literary, artistic, political or social value." Memorandum of Assemblyman Lasher in Support of § 263.15. We therefore cannot conclude that the *Miller* standard is a satisfactory solution to the child pornography problem."[103]

The rationale for excluding child pornography from free speech guarantees has been the compelling and actually extraordinary interest in protecting children from harm. As Justice O'Connor pointed out in concurrence in *Ferber*, the audience's assessment of the "social value" of child pornography is "simply irrelevant to New

---

[103] *Ferber*, 458 U.S. at 756–61.

York's asserted interest in protecting children from psychological, emotional, and mental harm."[104] Thus, the state's "special and compelling interest, and the particular vulnerability of children, afford the State the leeway to regulate pornographic material, the promotion of which is harmful to children, even though the State does not have such leeway when it seeks only to protect consenting adults from exposure to such material."[105]

The child protection rationale for divorcing pornographic speech from free speech rights applies just as powerfully, if not more so, to excluding child sex abuse perpetrated by religious organizations and clergy from free exercise rights. Victims of child sex abuse also suffer lifelong debilities,[106] and those that would permit such abuse need to be strongly deterred in order to protect future children.[107] Affording religious organizations and clergy constitutional protection for their acts involving child sex abuse is as contrary to society's fundamental interest in the protection of children

---

[104] *Id.* at 775 (O'Connor, J., concurring).

[105] *Id.* at 776 (Brennan, J., concurring).

[106] New Jersey v. Schnabel, 952 A.2d 452, 462 (N.J. 2008) (observing that Child Sexual Abuse Accommodation Syndrome "involves five behavior patterns that may be exhibited by a sexually abused child: secrecy, helplessness, entrapment and accommodation, delayed reporting, and recantation"); DALE ROBERT REINERT, SEXUAL ABUSE AND INCEST (1997); Christopher Bagley et al., *Victim to Abuser: Mental Health and Behavioral Sequels of Child Sexual Abuse in a Community Survey of Young Adult Males*, 18 CHILD ABUSE & NEGLECT 683, 689 (1994) (noting that the most common response as to why individuals who were molested once did not report abuse was that they could "handle the abuse" (50.7%), with the second most common response being that they were afraid of how other people would react (40%)); Kenneth S. Kendler et al., *Childhood Sexual Abuse and Adult Psychiatric and Substance Use Disorders in Women*, 57 ARCHIVES GEN. PSYCHIATRY 953, 953–59 (2000) (finding that young girls who are forced to have sex are three times more likely to develop psychiatric disorders, and/or abuse alcohol and drugs in adulthood, than girls who are not sexually abused); Mary L. Paine & David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REV. 271, 271–75 (2002) (discussing that victims sometimes feel shame and embarrassment about the abuse, making the victim feel they are to blame for the abuse); Mavis Tsai & Nathaniel N. Wagner, *Therapy Groups for Women Sexually Molested as Children*, 7 ARCHIVES SEXUAL BEHAV. 417 (1978) (finding that sexual victimization may profoundly interfere with and alter the development of attitudes toward self, sexuality, and trusting relationships during the critical early years of development).

[107] If the First Amendment is a barrier to criminal and tortious liability, such cases are suppressed and future children lack the knowledge needed to be protected from the abusers in the organizations and from the organizations that create the conditions for abuse. Most child predators seek far more than one victim over the course of their lives. *See* LANNING, *supra* note 10, at 40; Ray Blanchard & Howard E. Barbaree, *The Strength of Sexual Arousal as a Function of the Age of the Sex Offender: Comparisons Among Pedophiles, Hebephiles, and Teleiophiles*, 17 SEXUAL ABUSE: J. RES. & TREATMENT 441, 442 (2005) (finding that the more deviant the sexual practices of the offender, the greater the treatment noncompliance; and the greater the number of paraphilic interests reported by the offender, the higher the likelihood of re-offense).

as protecting child pornographers. Therefore, the exclusion of child sex abuse from free exercise doctrine is not novel and is both historically and doctrinally sound.

III. RELIGIOUS LIBERTY GUARANTEES TODAY OFFER NO PROTECTION FOR CONDUCT CONTRIBUTING TO LICENTIOUSNESS, ESPECIALLY CHILD SEX ABUSE

State decisions granting free exercise rights in cases where children have been sexually abused are the *Dred Scott*[108] decisions in the emerging movement of civil rights for children.[109] There is no element of contemporary religious liberty doctrine that contradicts the plain intent to exclude licentiousness from religious liberty guarantees and no element that argues in favor of bringing acts related to illicit sex under the umbrella of religious liberty guarantees. As the states have worked out these issues, the vast majority have interpreted modern-day doctrine to exclude First Amendment shields in these cases, without reference to this history.[110] Those few states that persist in protecting religious actors with respect to illicit sex[111] have unwittingly reversed the original intent of such guarantees.

The states that have concluded that the First Amendment bars liability for religious organizations dealing with licentiousness have treated the claims as ones that

---

[108] Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1857).

[109] James G. Dwyer, *A Taxonomy of Children's Existing Rights in State Decision Making About Their Relationships*, 11 WM. & MARY BILL RTS. J. 845, 850 (2003) ("[T]he Article aims to identify areas where children's interests do not receive legal protection and state decision making is likely in some cases to disserve their interests. In those areas, the failure to confer rights would be morally significant."); James G. Dwyer, *Spiritual Treatment Exemptions to Child Medical Neglect Laws: What We Outsiders Should Think*, 76 NOTRE DAME L. REV. 147, 158–59 (2000) ("Importantly, the right of incompetent adults to have decisions based on what is best for them is not affected by the religious beliefs of their caretakers. In fact, it would be unconstitutional for a State to diminish or eliminate an incompetent adult's rights because of the religious beliefs of her caretaker. The State would be affording certain incompetent adults lesser protection of the laws than it gives to others, for reasons not tied to their well being, and would therefore violate the Equal Protection Clause."); James G. Dwyer, *The Children We Abandon: Religious Exemptions to Child Welfare and Education Laws as Denials of Equal Protection to Children of Religious Objectors*, 74 N.C. L. REV. 1321, 1323 (1996) ("In numerous areas of the law relating to children's care and education, certain parents enjoy an exemption from normal parental legal responsibilities solely because they have religious beliefs in opposition to the conduct that those responsibilities would entail. These exemptions and the cultural ethos that supports them reflect a pervasive social indifference to the interests of particular groups of children. These children cannot speak for themselves and have no one to speak for them except the very parents who want to deny them the benefits and protections that the law guarantees other children."); *see also* HAMILTON, *supra* note 2; WOODHOUSE, *supra* note 1.

[110] *See* Malicki v. Doe, 814 So. 2d 347, 351 n.2 (Fla. 2002) (listing states that have rejected this doctrine and permitted Church liability).

[111] Ehrens v. The Lutheran Church-Mo. Synod, 269 F. Supp. 2d 328 (S.D.N.Y. 2003); H.R.B. v. J.L.G. 913 S.W.2d 92 (Mo. Ct. App. 1995).

require courts to determine the characteristics of a reasonable member of the clergy, and, therefore, concluded that the claims mandate excessive entanglement between courts and religious doctrine.[112] There is not a shred of evidence that proves that

---

[112] Franco v. The Church of Jesus Christ of Latter-Day Saints, 21 P.3d 198, 203 (Utah 2001) ("[T]he entanglement doctrine does not bar tort claims against clergy for misconduct not within the purview of the First Amendment, because the claims are unrelated to the religious efforts of a cleric [citing slip and fall cases]. . . . However, it is well settled that civil tort claims against clerics that require the courts to review and interpret church law, policies, or practices in the determination of the claims are barred by the First Amendment under the entanglement doctrine."). The court in Franco goes on to declare that

> despite Franco's characterization of her negligence-based claims as gross negligence, negligent infliction of emotional distress, and breach of fiduciary duty, we must deal with the real issue here—clergy malpractice.
>
> . . . [A] determination of the claims . . . could not be made without first ascertaining whether the LDS Church Defendants performed within the level of expertise expected of a similar professional, i.e., a reasonably prudent bishop, priest, rabbi, minister, or other cleric in this state. Indeed, malpractice is a theory of tort that would involve the courts in a determination of whether the cleric in a particular case—here an LDS Church bishop—breached the duty to act with that degree of "skill and knowledge normally possessed by members of that profession." Restatement (Second) of Torts § 299A (1965). Defining such a duty would necessarily require a court to express the standard of care to be followed by other reasonable clerics in the performance of their ecclesiastical counseling duties, which, by its very nature, would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs. This is as impossible as it is unconstitutional; to do so would foster an excessive government entanglement with religion in violation of the Establishment Clause.

Id. at 205–06; Gibson v. Brewer, 952 S.W.2d 239, 246–47 (Mo. 1997) ("Questions of hiring, ordaining, and retaining clergy, however, necessarily involve interpretation of religious doctrine, policy, and administration. Such excessive entanglement between church and state has the effect of inhibiting religion, in violation of the First Amendment."); Pritzlaff v. Archdiocese of Milwaukee, 533 N.W.2d 780, 790 (Wis. 1995) ("[W]e conclude that the First Amendment to the United States Constitution prevents the courts of this state from determining what makes one competent to serve as a Catholic priest since such a determination would require interpretation of church canons and internal church policies and practices. . . . The rationale for this rule was recently aptly summarized by a pair of commentators as follows: Examining the ministerial selection policy, which is infused with the religious tenets of the particular sect, entangles the court in qualitative evaluation of religious norms. Negligence requires the court to create a 'reasonable bishop' norm. Beliefs in penance, admonition and reconciliation as a sacramental response to sin may be the point of attack by a challenger who wants a court to probe the tort-law reasonableness of the church's mercy toward the offender. . . . The tort of negligent selection of unsuitable teachers has been recognized in civil courts. If negligent selection of a potential pedophile for the religious office of priest, minister or rabbi is a tort as to future child victims, will civil courts also hear Title VII challenges by the nonselected seminarian

religious liberty guarantees in the states or at the federal level were ever intended to immunize religious organizations or individuals from their actions related to illicit sexual behavior. The states going down the wrong path and other religious organizations that have led them down that path have mischaracterized the issue, which is not whether there should be a standard for the reasonableness of clergy. The question is who has acted in a way that is reasonable and decent, with no constitutional carve-out for religious actors in the arena of illicit sex.

Those religious organizations arguing for free exercise immunity in child sex abuse cases would be well served to embrace the history and doctrine that support exclusion of such cases from free exercise doctrine. They have expressed concern that such cases will erode the doctrine that forbids courts from deciding intra-organizational disputes over doctrine, ecclesiology, or governance.[113] While their concerns have not been realized in the many states that have permitted such claims to go forward,[114] any concerns they do have would be mitigated if child sex abuse cases were not part of free exercise jurisprudence. By excising child sex abuse from the constitutional doctrine, the cases cannot create a slippery slope within the existing jurisprudence. When the issue is schism or property ownership between warring factions or who should be in leadership, the child sex cases simply will not apply.[115] In any event, the protection of children from child sex abuse is so compelling that any incidental burden on religious groups from receiving no free exercise protection is an acceptable price, just as publishers must organize their speech to avoid using children for child pornography or creating child obscenity. Moreover, religious groups have demonstrated no superiority to secular organizations in protecting children and have harmed their own reputations through these failures.[116] Courts do them no favors by creating constitutional barriers to being accountable to society for the protection of children.

It should be clear by now that as a historical and doctrinal matter, the appropriate default legal rule is that conduct involving licentiousness is unprotected religious conduct. The history of the intent behind the First Amendment and state constitution free exercise provisions, their interpretation in cases involving licentious acts in religious organizations, and First Amendment doctrine relating to child sex abuse strongly support the vast majority of state courts, which have concluded that

---

against the theological seminary that declines to ordain a plaintiff into ministry because of his psychological profile? How far shall the courts' qualitative entanglement with religious selectivity extend?" (quoting James T. O'Reilly & Joann M. Strasser, *Clergy Sexual Misconduct: Confronting The Difficult Constitutional And Institutional Liability Issues*, 7 ST. THOMAS L. REV. 31, 47–48 (1994))).

[113] Brief Amicus Curiae of the Church of Jesus Christ of Latter-Day Saints, *supra* note 11, at 3–4.

[114] *See infra* note 117.

[115] *See* Marci A. Hamilton, *Religious Institutions, the No-Harm Doctrine, and the Public Good*, 2004 BYU L. REV. 1099, 1190–91 (noting that courts still traditionally decline to take part in purely ecclesiastical disputes).

[116] Hamilton, *supra* note 8, at 118–20.

the First Amendment is no barrier to criminal or civil liability for religious organizations in cases involving child sex abuse.[117]

The nineteenth century United States Supreme Court decisions and their reasoning upholding the laws against polygamy remain good law at the Court 132 years later,[118] making them powerful elements of the law today and deserving of stare decisis in child sex abuse cases. The Court's conclusions regarding the polygamy laws have been followed many times in the lower courts.[119] The reasoning of *Reynolds* and

---

[117] *See supra* note 66 (listing state court decisions holding that the First Amendment is not a defense to tort liability); *see also* Malicki v. Doe, 814 So. 2d 347, 351 n.2 (Fla. 2002) (listing states that have rejected this doctrine and permitted Church liability).

[118] Church of The Lukumi Babalu Aye, Inc., v. City of Hialeah, 508 U.S. 520, 535 (1993) (citing *Reynolds* favorably); Employment Div. v. Smith, 494 U.S. 872, 879, 882, 885 (1990) (same).

> The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities." We first had occasion to assert that principle in *Reynolds v. United States*, 98 U.S. 145, (1879), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. "Laws," we said, "are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.

Id. at 879.

[119] Bronson v. Swenson, 500 F.3d 1099 (10th Cir. 2007) (rejecting a Utah couple's free exercise challenge to a clerk's refusal to issue them a marriage license); Potter v. Murray City, 760 F.2d 1065 (10th Cir.), *cert. denied*, 474 U.S. 849 (1985) (rejecting free exercise challenge by police officer after being fired for his polygamous practices); State v. Holm, 137 P.3d 726 (Utah 2006) (holding that Utah's neutral statute banning polygamy did not impermissibly infringe upon free exercise rights); *In re* State in Interest of Black, 283 P.2d 887, 904 (Utah 1955) ("It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation." (emphasis omitted)); State v. Barlow, 153 P.2d 647, 653 (Utah 1944) ("'Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by zeal of the practitioners swept into the First Amendment. *Reynolds v. United States* and *Davis v. Beason* denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate.'" (citing Murdock v. Pennsylvania, 319 U.S. 105 (1943) (internal citations omitted))).

Davis v. Beason[120] was not intended to be limited solely to polygamy. In the Supreme Court's words, it "was never intended or supposed that the [First] amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society."[121] Nor has any Supreme Court decision since *Reynolds* and *Beason* ruled that the First Amendment is an appropriate vehicle for religious actors to overcome laws relating to illegal sexual conduct or involving the sexual abuse of children. In fact, the Supreme Court has never had an opportunity to address sexual abuse within religious organizations, though the reasoning of its free speech jurisprudence involving child pornography has laid groundwork that requires the rejection of claims to free exercise rights regarding the sexual abuse of children. It is nonsensical to refuse to extend free speech rights to individuals because they traffic in child pornography on the ground that pornography involves child sex abuse and then to erect free exercise rights for religious organizations and individuals who engage in and foster child sex abuse. It is imminently sensible to exclude cases involving child sex abuse from the reach of free exercise jurisprudence.

---

[120] 133 U.S. 333 (1890).

[121] *Id.* at 342.

APPENDIX A

1. Arizona Constitution, art. II, § 12

The liberty of conscience secured by the provisions of this Constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualifications shall be required for any public office or employment, not shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony.

2. California Constitution, art. I, § 4

Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

3. Colorado Constitution, art. II, § 4

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

4. Connecticut Constitution, art. I, § 3

The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the state; provided, that the right hereby declared and established, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state.

5. Georgia Constitution, art. I, § 1, ¶ IV

No inhabitant of this state shall be molested in person or property or be prohibited from holding any public office or trust on account of religious opinions; but the right of freedom of religion shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state.

6. Idaho Constitution, art. I, § 4

The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the state; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the state, and the legislature shall provide by law for the punishment of such crimes.

7. Illinois Constitution, art. I, § 3

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

8. Minnesota Constitution, art. I, § 16

The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by

law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

9. Mississippi Constitution, art. III, § 18

No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state.

10. Missouri Constitution, art. I, § 5

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section shall not be construed to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.

11. Nevada Constitution, art. I, § 4

The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State, and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief, but the liberty of consciene [conscience] hereby secured, shall not be so construed, as to excuse acts of licentiousness or justify practices inconsistent with the peace, or safety of this State.

12. New York Constitution, art. I, § 3 (amended 2001)

The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind; and no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of religious belief; but the liberty of conscience hereby secured

shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state. (Amended by vote of the people November 6, 2001.)

13. North Dakota Constitution, art. I, § 3

The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

14. South Dakota Constitution, art. VI, § 3

The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place of worship against his consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

15. Washington Constitution, art. I, § 11 (amended 1993)

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

16. Wyoming Constitution, art. I, § 18

The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

8801293

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 1 TO EXCLUDE REFERENCE TO OR EVIDENCE OF PLAINTIFF'S SEXUAL HISTORY OR ACTIVITY [Evidence Code §§780; 352; C.C.P. §2017.220]

Trial Date: 5/21/2012

STATEMENT OF THE ISSUE

This case is one involving allegations of sexual assault upon Plaintiff. A statutory scheme has been established to put in place the strong public policy against discovery of or admission into evidence of any sexual conduct or activity by the plaintiff with any person other than the perpetrator. That public policy is applicable to this case, as are the statutes. No evidence or argument of plaintiff's sexual history or conduct of Candace Conti with other persons can be admitted in this case on the record before the Court.

I. PUBLIC POLICY HAS ESTABLISHED STRONG STATUTORY PROTECTIONS FOR SEXUAL ASSAULT VICTIMS IN CIVIL CASES.

A network of statutes has been enacted to protect plaintiffs in sexual assault civil actions from embarrassment, harassment, or prejudice arising from discovery of or admission of evidence of sexual conduct or activity by a plaintiff with individuals other than the perpetrator. C.C.P. section 2017.220 prohibits discovery of any such sexual conduct information in the absence of a noticed

Motion establishing specific facts showing good cause for that discovery, including that the information sought to be discovered is relevant to the subject matter of the action, and that it is reasonably calculated to lead to the discovery of admissible evidence. (C.C.P. §2017.220(a).)

Evidence Code section 783 precludes admission, in any civil action alleging conduct which constitutes sexual assault, of any evidence of sexual conduct of Plaintiff to attack her credibility. A party seeking to offer such evidence must present a written Motion containing an offer of proof. The Court then conducts a preliminary hearing out of the presence of the jury, and if any such testimony is admitted, issues a Court Order strictly limiting both the evidence and the questioning. (Evid. Code § 783.) Even where such evidence may be deemed admissible, it is still subject to the evidentiary limitations of Evidence Code section 352. (Evid. Code §783(d).)

These statutes evidence a strong public policy against the harassment and embarrassment of a sexual assault victim at trial through use of sexual history or conduct evidence, as well as safeguarding the effort to introduce such evidence by the establishment of strong procedural safeguards.

II. THERE IS NO BASIS FOR ANY REFERENCE TO OR ADMISSION OF SEXUAL CONDUCT EVIDENCE CONCERNING PLAINTIFF.

None of the defendants in this action have pursued any of the procedural avenues to establish relevance or good cause for sexual conduct evidence. No Discovery Order was sought pursuant to C.C.P. section 2017.220. No written Motion has been filed containing an offer of proof of the relevancy of any such evidence in this case, where Plaintiff was sexually abused as a nine and ten-year-old.

Defendants' mental health examiner Dr. Martin Williams of San Jose conducted his exam of plaintiff in January, 2012, pursuant to Court Order upon the stipulation by the parties, as required by C.C.P. §2032.310. During the exam, he attempted to elicit sexual history information from Plaintiff. Even though defendants had failed to obtain any discovery Order under C.C.P. §2017.220, and failed to obtain any consent to inquire into sexual history in the Stip and Order, Dr. Williams pressured Plaintiff – who, pursuant to statute, attended the mental health examination without her attorney or

any representative – to provide sexual history information to him. (See Dr. Williams' Report, page 5, attached as Ex. 1.) Dr. Williams' retaining counsel, Mr. McCabe, in an apparent misunderstanding of the applicable law, intervened in an effort to persuade Plaintiff's counsel to allow this inappropriate questioning as well. (Email of January 12, 2012, Ex. 2.) Obviously, Plaintiff's counsel refused to allow the improper questions, and no inquiry was conducted. However, Dr. Williams did insist to Plaintiff that she must answer his questions, including threatening her. Dr. Williams is a major player in the expert witness world, and his unethical conduct and inability to comply with the law in conducting his mental health examination leads Plaintiff to conclude that he will attempt to circumvent any Court Order by a "back door" approach, and therefore, a strong and specific Order should be issued on this subject.

Dr. Williams has also been provided with copies of plaintiff's medical records, which include various OB-GYN visits. These records, and their content, are independently the subject of Plaintiff's Motion in Limine No. 3, to exclude irrelevant medical history. However, plaintiff specifically submits to the Court that the defendants' mental health expert – who is a psychologist, not a physician – should be precluded from again utilizing "back door" approaches to introduce evidence through plaintiff's medical records, or reference to them, of such information as STD testing (all negative); OB-GYN prescriptions, including birth control, or statements by plaintiff as to her sexual history or conduct.

Mr. McCabe's emails of January 12, 2012 do not remotely offer any good cause for admission of sexual conduct evidence. Plaintiff has not claimed sexual dysfunction as an element of damages, but instead claims post traumatic stress disorder, depression, anxiety, and the emotional and mental health damages associated with having been sexually abused as a nine and ten-year-old. More telling is the email statement "whether she is a lesbian and so forth." Again, the purpose of this testimony is not to present a defense to damages, but to "dirty up" Plaintiff before the jury. The strong public policy evidenced by the statutory framework that has not been followed in this case supports a firm rejection of this approach in this childhood sexual abuse case.

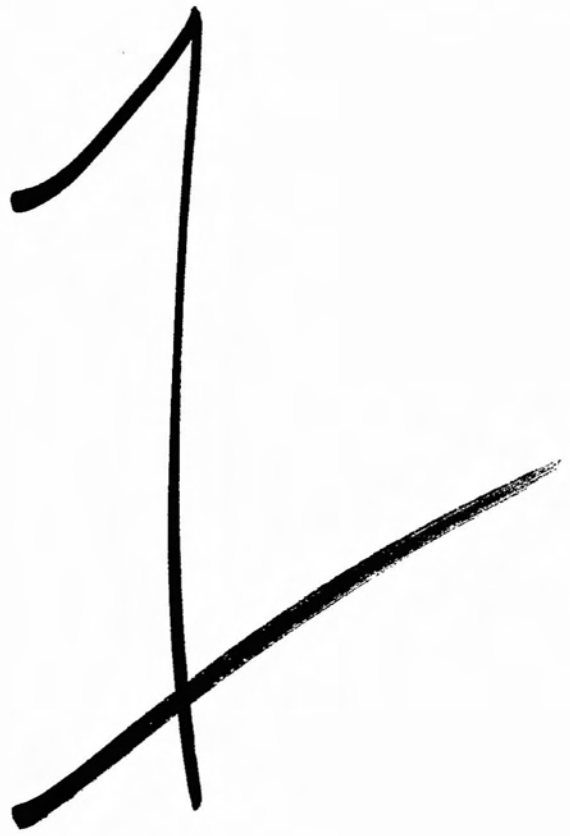
///

///

Dated: May 7, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



MARTIN H. WILLIAMS, Ph.D.
Psychologist Psy 4642
Williams Psychological Services
2033 Gateway Place; Suite 500
San Jose, CA 95110
(888) 886-6589

Evaluation of Candace Conti
Date of birth: November 25, 1985 (current age 26)
Date of Assessment: January 12, 2012

Qualifications of Evaluator: My curriculum vita is attached. My qualifications to carry out this evaluation are as follows: I am a 1975 graduate of the University of California, Berkeley where I obtained my doctorate in psychology. I previously had graduated Phi Beta Kappa and Summa Cum Laude from UCLA, with Highest Honors in Psychology, in 1968. I have been a licensed psychologist in California since 1976 and have never been subject to any disciplinary proceeding. I practiced as a clinical psychologist and manager at The Kaiser Permanente Medical Center in Santa Clara, California for 27 years, beginning in 1980. At Kaiser, I treated a wide range of individuals, including those with "dual diagnoses"—individuals who suffered from a substance abuse diagnosis in addition to a primary psychiatric diagnosis. I was chair of the Psychiatry Department Peer Review Committee at that medical center for 11 years. For the final three years of my time at Kaiser, I managed the Intensive Outpatient Treatment Program (IOP), a day-treatment program for individuals with severe mental illness.

Since 1993, I have maintained an independent practice in forensic psychology, carrying out evaluations of emotional damages and malingering in civil suits and providing standard-of-care testimony in psychology malpractice matters. I have also carried out numerous evaluations of fitness for duty for license holders practicing under a variety of professional boards in California. I have served as a Billing Monitor for the Board of Psychology and am on the panel of experts for the Board of Registered Nursing and the Board of Pharmacy. I am currently a member of the Panel of Evaluators for the Superior Court of California, carrying out evaluations of competency to stand trial and insanity defense in criminal defendants. I was formerly a member of the Forensic Assessment Division, Board of Parole Hearings, California Department of Corrections and Rehabilitation, where my duties included the psychological evaluation of life-term inmates regarding suitability for parole in terms of potential violence. I am an approved forensic evaluator for Immigration and Customs Enforcement, Enforcement and Removal Operations, San Francisco Region. I am a published expert in the field of psychotherapy ethics, having published numerous articles in peer reviewed, professional journals.

Documents reviewed: Prior to completing the present report, the following documents were reviewed:

Harmatz, a psychiatrist, who she has thus far seen twice after having graduated from Addiction Medicine and moving on to Psychiatry. Ms. Conti states she wants to see Dr. Harmatz to "straighten things out in my life," and to deal with her nightmares. Ms. Conti states she wants a better understanding of "all the things that I feel and don't feel."

She states that now that she is sober, she is thinking about many life issues that she never dealt with, including the trauma of the reported events relevant to this case.

Medications: At the beginning of high school, Ms. Conti was given Adderall for reported ADHD and also Remeron for sleep and nightmares. Ms. Conti began using Wellbutrin about four months ago. Ms. Conti believes it was prescribed because it is a good medication for patients who are coming off of methamphetamine. Ms. Conti states she had been tried on many medications that caused dizziness, but she does not recall the names. She also was given Minipress that assisted with her nightmares and sleep.

She is currently taking Celexa, 10 or 15 mg, and Wellbutrin 200 b.i.d.

Medical history: Ms. Conti denies any significant medical history other than a kidney infection in high school and kidney stone last year.

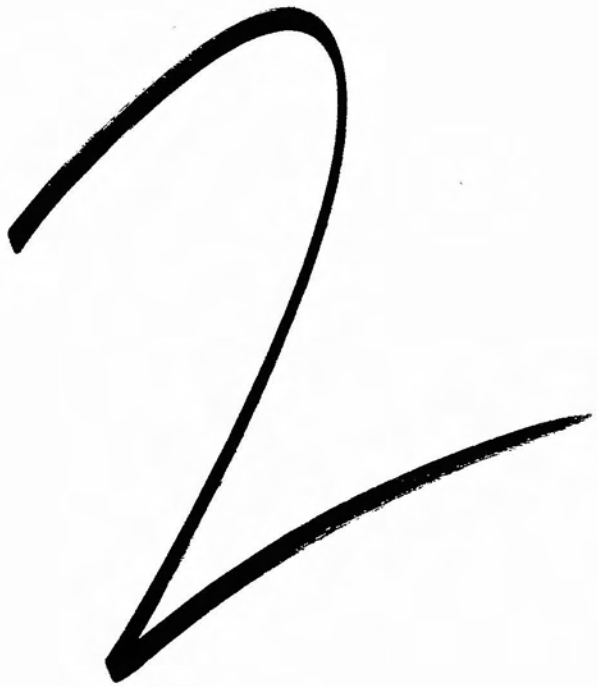
Social and sexual history: She stated that she was specifically told by her attorney that I was not entitled to ask questions about that. Consequently, alternative causes of her reported reactions to the purported sexual assaults that are central to this case could not be explored or considered.

Mental Status Examination: Ms. Conti is a pleasant, open, relaxed individual who seems to be in no apparent distress. She answers in a cooperative manner, although she does not digress or provide any information beyond that which was asked. She appears to be open, but only if she is asked the specific question to which one seeks and answer.

It is noted that there were occasional "off-topic" discussions, for example about the coffee machine in the office or about my computer problems. During those discussions, Ms. Conti displayed normal sociability and the full range of affect, including positive affect. She appears to be largely unimpaired emotionally unless she is encouraged to talk about the details of this legal case.

She appears to be of above average intelligence, although this was not formally assessed. She was oriented to time, place and person and manifested no overt mood or thought disorder.

Issues and events regarding present lawsuit: According to Ms. Conti, Jonathan Kendrick was a member of our Kingdom Hall. Ms. Conti had attended that church in Fremont from the time of her birth until her parents divorce when she was age 12.



Rick Simons

From: James McCabe [jim@mccabelaw.net]
Sent: Thursday, January 12, 2012 3:14 PM
To: Rick Simons
Cc: 'Schnack, Robert J. (Sacramento)'
Subject: Dr. Williams Exam

Rick:

This is a follow up to my voice mail and a quick attempt to do a meet and confer over the issue of the mental exam now ongoing with Dr. Williams. Dr. Williams informed me that you have instructed Ms. Conti not to discuss any sexual history with him. Our stipulation agrees that :

"1. The examiner may conduct a face to face interview with Plaintiff to obtain a history and to evaluate plaintiff's mental status and history;"

It would certainly be important and relevant to the examiner to know if she has been the victim of other sexual assaults, whether she currently has a normal sexual life, whether she claims sexual dysfunction, her sexual and relationship history, whether she is a lesbian and so forth. Certainly, if she has had stable long term relationships that might be useful to mitigate damages and if she was unable to sustain a relationship beyond two days that might certainly enhance her claim for damages.

If Dr. Williams is unable to obtain a "history" we will be forced to file a motion to compel and have to ask that the expense of re-examination be paid by the Plaintiff. On the other hand, I do not think that you want us asking Dr. Williams his opinion on damages and having him testify that he could not completely assess your client's damages because her lawyer told her not to discuss her relevant history with him. Please reconsider your instructions to your client and let me know what your position is as soon as you receive this. Dr. Williams exam is continuing tomorrow morning.

Thank you for your courtesy and cooperation as always.

Jim

James M. McCabe, Esq.
THE MCCABE LAW FIRM, APC
4817 Santa Monica Ave, Suite B
San Diego, CA 92107
619.224.2848 T
619.224.0089 F
jim@mccabelaw.net

CONFIDENTIALITY NOTE: This communication contains information belonging to The McCabe Law Firm, APC which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of said information is strictly prohibited. If you have received this communication by error, please delete it from your computer and notify us immediately.

8801301

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 2 TO LIMIT DEFENSE PSYCHOLOGY EXPERT DR. MARTIN WILLIAMS' SPECULATIVE OPINION TESTIMONY RE: "MALINGERING" AND ALL MEDICAL OPINION TESTIMONY [Evid. Code §§801(b); 352]

Trial Date: 5/21/2012

STATEMENT OF THE ISSUE

Defendants jointly retained Psychologist Dr. Martin Williams to conduct and report on his mental evaluation of Plaintiff. Dr. Williams is not licensed as a Physician, and is not qualified as a medical expert. In his report of his opinions, Dr. Williams stated:

> Ms. Conti, as a civil litigant seeking financial remuneration for damages, is in a position such that malingering must be considered. No evidence for malingering was found. Nevertheless, this possibility must also be considered as one way to explain her current account of sexual abuse that she never revealed to her apparently trusted therapist. (Williams Report, page 13, excerpt attached as Ex. 1.)

In the first part of this Motion, Plaintiff moves to exclude this opinion as speculative, and without foundation in any evidence.

In the second part of this Motion, Plaintiff moves to exclude any and all medical opinions that Dr. Williams may seek to offer, including testimony on the appropriate use of prescriptive drugs for Plaintiff, the medical or organic causes of any conditions she presents with, and what medical

treatment or care she requires in the future. Dr. Williams' licensure as a Psychologist does not permit him to practice medicine, to prescribe medications, or to form medical diagnoses or prognoses.

I. **DR. WILLIAMS' OPINION THAT MALINGERING MUST BE CONSIDERED IS WITHOUT FOUNDATION IN THE EVIDENCE AND INADMISSIBLE.**

Expert opinions are admissible if based upon matters "that reasonably may be relied upon by an expert . . . ." (Evid. Code 801(b).) Speculative expert opinions with no basis in evidence are not admissible. (*In re Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, 563.)

Defendants' expert admits that his opinion that Plaintiff's possible "malingering" must be considered in this case is not based on any evidence. His speculation that "malingering" must be considered as a reason Plaintiff did not disclose her abuse while a child during family therapy with her "trusted therapist" Laura Fraser finds no supporting evidence in Ms. Fraser's testimony, which was taken by video for use at trial as Ms. Fraser is now in San Diego. Her testimony flatly contradicts the inference, with no room for equivocation. (Fraser Depo., Ex. 2, 27:11-28:14, 63:4-20.) Additionally, Plaintiff disclosed her abuse to Dr. Janice Afruma, M.D., during a pediatric psychiatric examination in 2002, when Plaintiff was 16. (Bay Valley Medical Group Note attached as Exhibit 3.) That evidence again provides no support for Dr. Williams' speculation that Plaintiff has contrived "her current account of sexual abuse" for financial gain. In short, no evidence whatsoever supports the opinion of "malingering."

While the weight to be given expert opinion is generally best addressed through cross examination, purely speculative expert opinion testimony offered without any evidence to support it, offered only to prejudice the jury, is without adequate foundation under Section 801(b), and is properly excluded by Evidence Code section 352 as well. That is the case here.

I. **DR. WILLIAMS DOES NOT QUALIFY AS A MEDICAL EXPERT AND CANNOT GIVE MEDICAL EXPERT TESTIMONY.**

Dr. Williams is a Psychologist. He is licensed to perform professional services

> "involving the application of psychological principles, methods, and procedures of understanding predicting, and influencing, behavior, such as the principles pertaining to learning, perception, motivation, emotions, interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests

of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations." (Business and Professions Code §2903).

While §2903 permits Dr. Williams to diagnose and treat "psychological problems and emotional and mental disorders", it does not permit him to engage in, or perform professional services or evaluation in, physical and organic health matters. That is the province of a medical doctor under Business & Professions Code §2052. (*People v. Cantor* (1961) 198 Cal. App. 2d Supp. 843, 847 [determining nature of disease is diagnosis reserved for licensees]) Dr. Williams may not interpret, second guess, diagnose physical health issues, criticize Plaintiff's care or Physicians, or otherwise offer opinion testimony of plaintiff's medical history, care, diagnoses, or prognosis. He may not base his psychological opinions on his own medical interpretation of Candace Conti's health or diagnosis. Dr. Williams must be ordered to remain within the confines of his expertise and licensing, and, as an experienced testifying expert, admonished if he violates the rules.

Dated: May 7, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By
RICHARD J. SIMONS
Attorneys for Plaintiff



MARTIN H. WILLIAMS, Ph.D.
Psychologist Psy 4642
Williams Psychological Services
2033 Gateway Place; Suite 500
San Jose, CA 95110
(888) 886-6589

Evaluation of Candace Conti
Date of birth: November 25, 1985 (current age 26)
Date of Assessment: January 12, 2012

Qualifications of Evaluator: My curriculum vita is attached. My qualifications to carry out this evaluation are as follows: I am a 1975 graduate of the University of California, Berkeley where I obtained my doctorate in psychology. I previously had graduated Phi Beta Kappa and Summa Cum Laude from UCLA, with Highest Honors in Psychology, in 1968. I have been a licensed psychologist in California since 1976 and have never been subject to any disciplinary proceeding. I practiced as a clinical psychologist and manager at The Kaiser Permanente Medical Center in Santa Clara, California for 27 years, beginning in 1980. At Kaiser, I treated a wide range of individuals, including those with "dual diagnoses"—individuals who suffered from a substance abuse diagnosis in addition to a primary psychiatric diagnosis. I was chair of the Psychiatry Department Peer Review Committee at that medical center for 11 years. For the final three years of my time at Kaiser, I managed the Intensive Outpatient Treatment Program (IOP), a day-treatment program for individuals with severe mental illness.

Since 1993, I have maintained an independent practice in forensic psychology, carrying out evaluations of emotional damages and malingering in civil suits and providing standard-of-care testimony in psychology malpractice matters. I have also carried out numerous evaluations of fitness for duty for license holders practicing under a variety of professional boards in California. I have served as a Billing Monitor for the Board of Psychology and am on the panel of experts for the Board of Registered Nursing and the Board of Pharmacy. I am currently a member of the Panel of Evaluators for the Superior Court of California, carrying out evaluations of competency to stand trial and insanity defense in criminal defendants. I was formerly a member of the Forensic Assessment Division, Board of Parole Hearings, California Department of Corrections and Rehabilitation, where my duties included the psychological evaluation of life-term inmates regarding suitability for parole in terms of potential violence. I am an approved forensic evaluator for Immigration and Customs Enforcement, Enforcement and Removal Operations, San Francisco Region. I am a published expert in the field of psychotherapy ethics, having published numerous articles in peer reviewed, professional journals.

Documents reviewed: Prior to completing the present report, the following documents were reviewed:

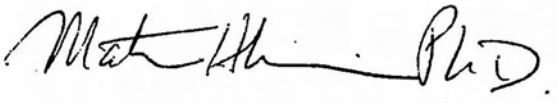
This is a very important unresolved question because her years of methamphetamine abuse may be a key index of the emotional harm she suffered from the purported abuse. However, it is also likely that she would have become an addict regardless of the abuse, rendering the abuse—if it actually occurred—not a cause of the addiction.

The problem in drawing conclusions with regard to Ms. Conti is that many of her reported symptoms are commonplace in the children of alcoholics—or even in some children from families not known to be at risk. Thus, her self-cutting behavior, her discomfort with other children while in school, her sleep disturbance and her later drug addiction, may all have occurred even had Ms. Conti never known Mr. Kendrick. Thus, nothing in her known history can be said to demonstrate that she was a victim of sexual abuse and, in that regard, manifests symptoms one would not expect to find unless sexual abuse had occurred.

To further complicate matters, Ms. Conti, according to the session notes by L. Fraser, LCSW, describes a wide variety of traumatic and chaotic events in Ms. Conti's family of origin. These events include her mother's irrational and angry behavior towards Ms. Conti, her mother's substance abuse, various power struggles between Ms. Conti's mother and father, and issues regarding her mother's boyfriend, Steve. Many of these conflicts involved discussions of the Jehovah's Witnesses. These childhood issues could fully account for all of Ms. Conti's later suffering. Finally, one notes the unresolved question as to why Ms. Conti, who appeared to have good rapport with Ms. Fraser and appeared to be quite willing to share all her troubles with Ms. Fraser, never mentioned any instances of sexual abuse to Ms. Fraser.

As a final note, Richard Rogers, Ph.D., author of the authoritative text on malingering, The Clinical Assessment of Malingering and Deception (Third Edition, 2008) has stated that civil litigation is the forum in which one discovers more malingering than any other forum. Ms. Conti, as a civil litigant seeking financial remuneration for damages, is in a position such that malingering must be considered. No evidence for malingering was found. Nevertheless, this possibility must also be considered as one way to explain her current account of sexual abuse that she never revealed to her apparently trusted therapist.

Respectfully submitted,



Martin H. Williams, Ph.D.



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	Case No. HG11558324

VIDEOTAPED DEPOSITION OF LAURA HARRINGTON FRASER

SAN DIEGO, CALIFORNIA

April 16, 2012

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: LAURA TAYLOR MARTIN, CSR 4158
FILE NO. A6036AC

Q. You have learned from me recently that Candace now reports that she was sexually abused --

A. Uh-huh.

Q. -- as a nine- and ten-year-old.

A. Yeah. 12:22

Q. And by an outside, non-family member.

A. Yes.

Q. Do you have any -- well, did she ever disclose that to you, first of all?

A. She did not disclose that to me. 12:23

Q. Do you have any opinion, based on your education and training and your experience with this patient and her family, as to why she would not disclose to you an important piece of history such as a history of sexual abuse? 12:23

A. Right. Well, first of all, she -- this is kind of therapisty terms, but she felt like a child who had been sexually abused, but I didn't gather any -- anything that allowed me to -- that led me to a reasonable suspicion except for she felt vulnerable, by the things I 12:23 stated, looking at other people's feelings, judging how the adults are doing, and that she was craving for adults to take care of her and care about her. So I felt that very strongly.

And in terms of her not disclosing it, there 12:24

was absolutely no safety for her and her family, which made her vulnerable to a predator in the beginning and at any point in her life; but also, it would mean that she would have to decide if she were to disclose that abuse. As I stated, I tell kids in the beginning what that means if I have to report it. 12:24

There was no safety. There was no one to keep her safe and stable going through a process like disclosing having been molested.

Q. And in your professional experience, is this, unfortunately, a common thread among many childhood -- 12:24

A. Yes.

Q. -- sexual abuse victims?

A. Yes. Yeah.

MR. SIMONS: I see the time is probably appropriate to take a break. 12:25

MR. SCHNACK: Yes.

THE VIDEOGRAPHER: Off the record at 12:25 p.m.

(Recess.)

(Lunch recess taken from 12:25 p.m. to 1:12 p.m.) 12:25

THE VIDEOGRAPHER: We are back on the record at 1:12 p.m.

///

/// 01:12

Q. Correct. But you discussed that with Candace. Correct?

A. I asked her about that, yes.

Q. Okay. And -- and yet you still don't find it surprising that Candace would not have told you about her own sexual abuse? 01:48

A. I absolutely do not find it surprising. There was no safety for this child. Her parents -- we just discussed so many different things that occurred for this child. She -- she couldn't have longer than 20 minutes of safety with a parent. 01:48

There was no way she could disrupt. There wasn't -- I mean, there wasn't any safety for her. It would have been so disruptive to her. She was still rescuing both parents. What would they say if she disclosed that this had happened? How -- could she stay connected to her father? Would her mother say, "Well, you're" -- "my abuse is worse than yours"? I mean, there are just a myriad of possibilities. This kid had no safety. 01:48

Q. And by having no safety at home, then her home life was truly troubled probably from the start, then.

A. Yes.

Q. Is that a fair statement?

A. Yes. 01:49



BAY VALLEY MEDICAL GROUP

HISTORY AND PHYSICAL RECORD

PATIENT'S NAME: Conti, Candace

MEDICAL RECORD #: 318070

C.O. 10:45 ☒

Provider # 179 Call taken by: SH Date 8-2-02

Patient Name re: Candace Conti (Cathy called) MRN Time: 10:27

Phone # (h) 925-487-8906 (w) Pharmacy:

Message: missed DR Wongs call. Please call her back. Psychiatrist is saying they can't see her until OCT. Can we expidite? spoke w/ psyches + calling for cancels. pt's condition adv to keep trying

Provider Response: pls call Dr Engers - ? I tried his extension + it didn't work

THURSDAY AUG 0 8 2002

J. AFRUMA, M.D.

Wt. 107 lbs. BP 96/72 164.0

c/o depression; wants an Rx — Dr Engers is on vacation

S: low attention span, depressed, cries a lot — Will be seen. ↓ ? ⇒ P.A. or Psychology for brief sessions. BAY VALLEY MEDICAL GROUP

since ~ age 11 or 12

· Says the Prozac doesn't work.

· friend gave her an Adderall ⇒ helped her energy level + concentration.

· off for 2 years suicide thoughts but never attempts + feels there is no chance of any.

* · sexual abuse from age 9 - ? 13 - not discussed further

· mom - alcoholic · father - not part of her life x ~ 4 yrs. · no alc · no drugs. (paternal side of family)

· mother has been in LA x few months — here ~ visiting.

· lives ~ grandmother off + on her whole life / mos.

BVMG 1001 (90)

BAY VALLEY MEDICAL GROUP

HISTORY AND PHYSICAL RECORD

PATIENT'S NAME

MEDICAL RECORD #

Conti, Candace

Q: · denies that she said she would hurt herself – something the assistant heard from mother who made the appointment.

O. MSE. discussion.

A: ? PTSD. / depression / insomnia

P: · encouraged to discuss history & counsellor / psychiatrist

· consider cognitive therapy as part of her treatment program

· mentioned how ale / drugs / even Rx meds can be used as ways to numb experiences + that it is best to have a proper diagnosis + treatment plan.

· encouraged re her school studies.

· stk prn

PROGRESS NOTES

BAY VALLEY MEDICAL GROUP

BVMG 1001 (90)

8801289

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 3 TO EXCLUDE IRRELEVANT MEDICAL HISTORY [Evid. Code §§350, 352]

Trial Date: 5/21/2012

STATEMENT OF THE ISSUE

Virtually all of plaintiff's lifetime medical records have been obtained and disclosed in the course of discovery in this action. There are well over 1000 pages of medical records from multiple healthcare providers. Many of the records contain medical conditions, complaints, or care that has nothing to do with either plaintiff's sexual abuse by Jonathan Kendrick or her mental health – the two areas of physical and mental health that she has placed at issue in her claim for damages. The vast majority of plaintiff's remaining medical care and treatment over her lifetime is neither relevant to the subject action, nor probative of any factual inquiry. Addressing evidence of plaintiff's remote or unrelated care will unduly consume time, confuse the jury, and promote inquiry into collateral issues. For these reasons, plaintiff moves to specifically exclude any records, argument, or testimony from experts or lay persons concerning the medical, mental health, and socio-medical care and treatment not directly at issue in this case.

Plaintiff has prepared a Table, attached as Exhibit 1, setting for the specific medical conditions, and general time frames of their care and treatment, that are included under the umbrella of this Motion. There are various medical records which may contain relevant information, but also contain information concerning irrelevant matters, and it is requested that the records be redacted appropriately by any party seeking to offer those records into evidence.

I. MEDICAL HISTORY NOT PLACED IN ISSUE IS IRRELEVANT.

It has long been established that a plaintiff does not place his or her entire medical history at issue by bringing a personal injury claim. (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 862-4) In *Britt*, the Supreme Court denied discovery of overbroad medical history in a case where the plaintiffs were claiming hearing loss due to jet airplane over flights. While plaintiff has placed her mental health history and relevant social history, at issue by claiming damages for childhood sexual abuse, she has not placed her physical health in issue. In addition, her history of sexual conduct or activity is irrelevant and excluded by public policy from a civil sexual assault case. (Plaintiff's Motion in Limine No. 1)

Only relevant evidence is admissible. (Evidence Code §350) There is no relevance to any of the information contained in plaintiff's unrelated medical history.

In addition, defendant does not have any physician designated as an expert witness, either retained or non-retained, to testify on issues of medical history. None of plaintiff's medical experts have, in their videotape for use at trial deposition testimony, or in depositions to date, expressed any opinion or belief that plaintiff's medical history as to the type of matters set forth in Exhibit 1 are relevant in any way to understanding her mental health and social issues. If any such evidence is to be offered, or raised on cross-examination, plaintiff's requests an offer of proof as to its relevancy prior to any disclosure to the jury.

Given the voluminous amount of medical records that plaintiff has, and which are in possession of all counsel, there is significant risk of an undue consumption of time reviewing her medical history, or arguing about the facts or significance of specific medical visits for unrelated

physical history issues. Plaintiff moves to exclude all such evidence based upon the prejudice, lack of probative value, lack of relevance, and the undue consumption of time.

In the event that there are certain medical records to be offered into evidence which contain irrelevant information that is subject to this Motion, or otherwise included, plaintiff requests that all such exhibits be redacted.

Dated: May 7, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



TABLE

EXHIBIT 1 TO PLAINTIFF'S MOTION IN LIMINE NO. 3

Condition/Complaint	Dates	Healthcare Providers
Knee injury/bursitis	1995; 1997; 3/2000; 12/2000; 9/2009	Kaiser; Bay Valley Medical Group; Palo Alto Med
Miscellaneous minor traumas	1993 (arm injury on playground); 1997 (facial contusion–hit table); 5/2010 (cut thumb); 1/2011 (finger injury)	Bay Valley Medical Group; Kaiser Fremont and Downey
Facial Dermatitis	2/2001	Palo Alto Med
ENT: Allergy/Sinusitis/URI/Ear Infection	1994 (ear); 1996 (ear (2)); 1997 (allergies); 2000 (sinusitis); 6/2004 (sinus); 11/2005 (URI); 12/2009 (sinus)	Bay Valley Medical Group; Kaiser Fremont; Palo Alto Med
Kidney stone	2/2011	Kaiser Downey
Optical issues	7/25/2000 (eye infection); 1/31/11	Bay Valley Medical Group; Kaiser Downey
Bladder/kidney/UTI/OB-GYN	2/9/99; 3/2000; 10/2001; 9/2002-2/2003; 8/26/2003 (birth control eval) 9/2001-10/2002 (UTI) 10/25/2002 (UTI); 2007 (evaluation); 11/2009 (eval, inc. STD testing)	Palo Alto Med; Bay Valley Medical Group; Kaiser Fremont and Downey; Washington Hospital
Blood and Lab Tests [including STD/Hepatitis]	1999-2003	Bay Valley Medical Group
Neck pain	1997-1998	Palo Alto Med
Tonsilitis	9/2003	Palo Alto Med
Cellulitis	8/2009	Kaiser Fremont
Cardiology Evaluation	12/2010	Kaiser Downey

EXHIBIT 1

8801282

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Rhonda Edgerly DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 4 TO EXCLUDE IMPROPER CHARACTER, SPECIFIC ACT, AND RELIGIOUS BELIEF EVIDENCE AS TO EXPERT WITNESS WILLIAM BOWEN [EVID. CODE §§786; 787;789;352]

Trial Date: 5/21/2012

STATEMENT OF THE ISSUE

Plaintiff will present the testimony of expert witness William Bowen. Mr. Bowen is a former Elder of Jehovah's Witnesses, and now administers a national organization named "Silent Lambs" that provides support for survivors of childhood sexual abuse occurring within JW. He is, to say the least, unpopular with the leadership of Jehovah's Witnesses. This Motion is made to confine the cross-examination of Mr. Bowen to proper and admissible areas of bias, qualifications, or factual disagreement, and to avoid some of the personal issues that have been raised in prior depositions taken of Mr. Bowen in other Jehovah's Witnesses actions.

Plaintiff's C.C.P. §2034 Declaration describes Mr. Bowen's expected testimony as follows:

> "Expert witness will testify in general substance as follows: as to the policies, procedures, and practices of defendants generally; the application of those policies on the subject of childhood sexual abuse within the Jehovah's Witnesses; the pattern and practices of Jehovah's Witnesses institutional management of disregarding sexual abuse of children and failing to protect minors within its membership and activities from sexual abuse; the business and financial reasons

> behind the institutional defendants' policies on sexual abuse of children; the knowledge and data available to Jehovah's Witnesses management on the consequences of increased sexual abuse of children resulting from its administrative policies; and as to the administrative organization and structure of Jehovah's Witnesses as to its policies and practices on secular and administrative issues." (Expert Disclosures, filed concurrently at Trial).

Based on past depositions, it is anticipated that defense counsel will attempt to discredit Mr. Bowen by raising one or more personal issues pertaining to his past marriages and/or his relationships with his family members. Therefore, plaintiff moves to exclude *in limine* discussion of any such issues including, but not limited to, the following:

1. William Bowen having married a 16 year-old in November of 1982, albeit lawfully in the State of Missouri and with the permission of her parents;

2. That Mr. Bowen's second wife was disfellowshipped by the Jehovah's Witnesses for marrying Mr. Bowen;

3. That William Bowen was disfellowshipped by the Jehovah's Witnesses in August of 2002 for "causing divisions";

4. That Mr. Bowen's mother and father were members of Jehovah's Witnesses who shunned him as a result of his efforts to expose child sexual abuse within the Jehovah's Witnesses' organization;

5. William Bowen suspected one of the Elders of the Jehovah's Witnesses had sexually abused his own minor daughter in the fall of 2000, but later concluded that there was no proof of any wrongdoing;

6. That the Jehovah's Witnesses' organization has described William Bowen as "self-willed" and "contentious" at the time he was disfellowshipped;

7. While serving as an Elder in Kentucky, Mr. Bowen was not allowed to stand before the Congregation in a teaching position because he had advised a member of his Congregation who was going through a divorce that the member's wife was likely the product of incest.

///

///

I. LEGAL ARGUMENT.

A. Undue Time and Prejudice.

Evidence Code §352 states:

> "The Court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

The foregoing character evidence regarding William Bowen's private family life and discipline that he has been subjected to by Jehovah's Witnesses should be excluded for both of the reasons contained within Evidence Code §352. Clearly it would necessitate an undue consumption of time if the defense were permitted to bring up any of these matters as plaintiff's counsel would have to have each of them painstakingly explained both by Mr. Bowen and other witnesses. There is no doubt that undue prejudice would be created by the introduction of any of these matters. In fact, it would be the defendants' intention to prejudice the plaintiff's case by bringing these matters up in an effort to discredit Mr. Bowen.

B. Relevance.

Evidence Code §350 states that "No evidence is admissible except relevant evidence." Relevant evidence is defined by Evidence Code §210 as "having any tendency in reason to prove or disprove any disputed fact that is a consequence to the determination of the action."

Mr. Bowen's family relations and background as well as the Witnesses record of imposing their discipline upon him for expressing his views has no relevance whatsoever to the disputed issues in this case.

C. Character Evidence.

Evidence Code §787 provides:

> "Subject to §788 [use of felony convictions], evidence of specific instances of his conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support the credibility of a witness."

See *People v. Rodriguez* (1999) 20 Cal.4th1, 9-10; *People v. Matlock* (1970) 11 Cal.App.3d 453, 461.

Consequently, it is improper to use character evidence of the kind described above to impeach the credibility of any witness, including an expert witness. Each of the seven matters listed constitutes character evidence and is therefore inadmissible.

Evidence Code §786 provides:

> "Evidence of traits of his character other than honesty or veracity, or their opposites, is inadmissible to attack or support the credibility of a witness."

CONCLUSION

It is respectfully requested that this Court issue an Order precluding defense counsel and any defense witnesses from mentioning or referring to the following or any related matters:

1. William Bowen having married a 16 year-old in November of 1982, albeit in the State of Missouri and with the permission of her parents;

2. That Mr. Bowen's second wife was disfellowshipped by the Jehovah's Witnesses for marrying Mr. Bowen;

3. That William Bowen was disfellowshipped by the Jehovah's Witnesses in August of 2002 for "causing divisions";

4. That Mr. Bowen's mother and father were members of Jehovah's Witnesses who have shunned him as a result of his efforts to expose child sexual abuse within the Jehovah's Witnesses' organization;

5. William Bowen suspected one of the Elders of the Jehovah's Witnesses had sexually abused his own minor daughter in the fall of 2000, but later concluded that there was no proof of any wrongdoing;

6. That the Jehovah's Witnesses' organization has described William Bowen as "self-willed" and "contentious" at the time he was disfellowshipped;

7. While serving as an Elder in Kentucky, Mr. Bowen was not allowed to stand before the Congregation in a teaching position because he had advised a member of his Congregation who was going through a divorce that the member's wife was likely the product of incest.

It is further respectfully requested that defense counsel be ordered to instruct each of their witnesses before called to testify that they are not to mention or refer to any of these or any related matters.

Dated: May 7, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

8801286

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 5 TO EXCLUDE UNDISCLOSED EXPERT WITNESSES AND OPINIONS [C.C.P. §2034.300]

Trial Date: May 21, 2012

STATEMENT OF THE ISSUE

Defendants have jointly disclosed two expert witnesses. They are both retained experts. Dr. Martin Williams, a Psychologist, will testify about Plaintiff's damages and issues of causation. Monica Applewhite, a Risk Management Consultant, will testify as to issues of standards of care. Plaintiff does not object to either being called as an expert, subject to possible objections as to specific testimony.

Defendants did not disclose any "in-house" experts, nor did they disclose any non-retained experts. This motion seeks to bar either Defendant from eliciting expert testimony on any issue of liability, causation, or damages from employees or agents of Defendants, and from any non-retained experts they may choose to call at trial. These specific issues include standard of care related testimony, the applicability of clergy privilege, requirements of mandatory reporting, and historic

policies and practices in the non-profit or religious corporation spheres, and critiques or opinions as to how the events concerning Jonathan Kendrick was managed by defendants.

I. UNDISCLOSED EXPERT WITNESSES AND OPINIONS MUST BE EXCLUDED.

A party must disclose all witnesses it intends to use as experts, including experts retained or employed by the party. (C.C.P. § 2034.210(b).) Disclosure must be accompanied by a declaration of the party's counsel, containing the expert witnesses' qualifications and the general substance of the testimony they are expected to give. (C.C.P. §2034.260(c).) If a party attempts to offer expert testimony from a witness not previously disclosed:

> On objection of any party who has made a complete and timely compliance with Section 2034.260, the trial court shall exclude from evidence the expert opinion of any witness that is offered by any party who has unreasonably failed to do any of the following:
> (a) List that witness as an expert under Section 2034.260.
> (b) Submit an expert witness declaration.
> (c) Produce reports and writings of expert witnesses under Section 2034.270.
> (d) Make that expert available for a deposition under Article 3 (commencing with Section 2034.410)." (C.C.P. § 2034.300.)

Defendants Watchtower and Fremont Congregation each designated only Monica Applewhite and Dr. Martin Williams to testify as experts at trial. (Expert Witness Lists, lodged concurrently, attached as Ex. 1.) Defendants may not elicit any opinion testimony from any other witness, including their own employees or agents, for whom no disclosure or declarations were provided. (C.C.P. section 2034.300.) This includes Allen Shuster, a Watchtower employee, who submitted a Declaration after the exchange of expert information, in support of Watchtower's Opposition to Plaintiff's Motion to Amend Complaint, attached as Exhibit 2. In this Declaration, Mr. Shuster lodges several opinions within the province of expert testimony, including:

> In the case of the investigation of Jonathan Kendrick in 1993, the elders did not form a judicial committee because the assertion of child sexual abuse was not confirmed. (Shuster Dec. in Opp. to Plaintiff's Motion to Amend, Ex. 2, ¶ 35.)

> Spiritual discipline administered by the elders of Jehovah's Witnesses serving on an investigative committee is based solely on Jehovah's Witnesses understanding of the Bible as applied to the facts. (*Id.* at ¶ 37.)

> Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with the congregation elders is limited to confessions. (*Id.* at ¶ 40.)
>
> Elders do not allow unnecessary third parties to be a party to a confidential communication. . . there may be instances where a husband and a wife, or a parent and a child, may together seek or be provided with spiritual counsel, advice or comfort from the elders. The elders and participants to these confidential and private spiritual communications would view these communications as confidential and congregants expect the elders to keep such communications strictly confidential. (*Id.* at ¶ 44.)
>
> The religious doctrine of Jehovah's Witnesses requires that all elders keep confidential and private spiritual communication strictly confidential. (*Id.* at ¶ 45.)

Because Defendants have not designated Mr. Shuster as an expert, he may not offer these, or any other, opinions at trial. Additionally, Mr. Shuster cannot comment on whether Defendants handled Kendrick's 1993 molestation correctly, as opining about whether Defendants' investigation and other actions were appropriate requires expert testimony beyond the scope of an employee or agent. Neither he, nor any other witness not disclosed by Defendants as experts, may be allowed to testify to issues requiring expert opinion, including the scope and applicability of clergy privilege, standards of care in religious and youth groups, historic policies and procedures of religious institutions, and requirements of mandatory reporting.

II. NONE OF THE EXCEPTIONS TO THE PROHIBITION ON UNDISCLOSED EXPERT TESTIMONY APPLY IN THIS CASE.

Only two narrow exceptions apply to expert testimony that does not meet the requirements of section 2034.300. A party may call an expert it has not previously designated only if (1) that expert has been designated by another party as an expert and has been deposed; or (2) that expert is called solely to provide impeachment testimony as to "the falsity or nonexistence of any fact used as the foundation for any opinion by any party's expert witness, but may not include testimony that contradicts the opinion." (C.C.P. § 2034.310.) California trial courts have been compelled to recognize for many years that "calling an expert witness to testify to an opinion *contrary* to the opinion of another expert witness is not "impeachment . . . ." (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, at 1040 [emphasis in original].) Courts are to strictly construe the foundational fact requirement in section 2034.310 "so as to prevent a party from offering a contrary opinion of his

expert under the guise of impeachment." (*Tesoro Del Valle Master Homeowners Association v. Griffin* (2011) 200 Cal.App.4th 619 at 641; accord: *Mizel v. City of Santa Monica* (2001) 93 Cal.App.4th 1059, 1068.)

CONCLUSION

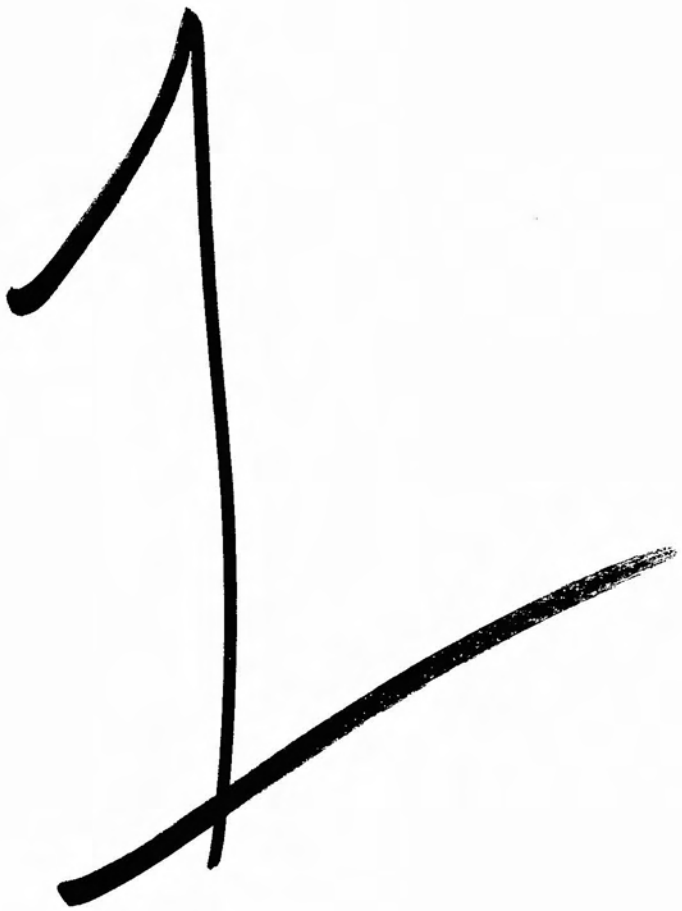
Defendants may not call any witness not designated as an expert, including their employees or agents, to offer opinion testimony for any purpose outside the extremely limited scope of impeachment. Any undisclosed experts and opinions must be excluded.

Dated: May 7, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation



By _____
RICHARD J. SIMONS
Attorneys for Plaintiff



JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC'S EXPERT WITNESS DESIGNATION

COMES NOW Defendant Watchtower Bible and Tract Society of New York, Inc. ("Watchtower New York" or "designating party"), by and through its undersigned counsel and pursuant to CAL. CIV. PROC. CODE §§ 2034.260, et seq., submit the following expert witnesses who may be called to testify at trial, either in person or by oral deposition:

Retained Expert Witnesses:

A. Monica Applewhite, Ph.D.
c/o Park Dietz & Associates, Inc.
2906 Lafayette
Newport Beach, California, 92663

B. Martin H. Williams, Ph.D.
2033 Gateway Place, Suite 500
San Jose, California 95110

This designating party expressly reserves the right to name or call any additional experts it retains, as the need arises during the course of discovery and investigation in preparation for trial in this action. Appropriate notice of such supplemental experts will be provided under Code of Civil Procedure Section 2034.280, and such witnesses will be made available for the purpose of being deposed prior to trial in this action and within the time frames set by the Court for depositions of expert witnesses.

This designating party expressly reserves the right to call any expert witnesses, whether presently or later identified by any party to this action, although not specifically retained by any party to this action, regardless of whether such party remains a party at the time of trial. The qualifications of these witnesses and the general substance of their testimony are set forth in the designation of expert witnesses already served or to be served in the future by other parties to this action.

This designating party, in compliance with Code of Civil Procedure Section 2034.260(b), incorporates as though fully set forth herein, the designation of all expert witnesses served or to be served by all other parties to this action.

This designating party expressly reserves the right to consult with and retain the services of additional expert witnesses to testify on their behalf at trial for purposes of impeachment pursuant to Code of Civil Procedure Section 2034.260(b).

This designating party expressly reserves the right to call as experts all individuals identified in: (l) the responses to interrogatories served in this action by or on behalf of any party; (2) depositions in this matter; and (3) any reports and documents related to this matter.

With respect to those individuals who have been identified in responses to interrogatories, deposition transcripts and/or any reports that have been prepared, the same are incorporated as though fully set forth herein.

In the event any additional analysis is obtained by this designating party, or any other party prior to trial, this designating party reserves the right to call, as an expert witness, the professional performing the analysis. The name, address, qualifications, and general substance of the testimony of those witnesses will be provided by this designating party herein to all other parties to the action as soon as they are known.

Since discovery in this action has not yet been completed, this designating party expressly reserves the right to file a supplemental list of expert witnesses as discovery is completed in this action. This designating party shall, or may, later designate individuals as experts in this matter. This designating party will designate such witnesses' names, addresses, qualifications, and the general substance of their testimony as soon as the same are ascertained so as to allow complete discovery of all opinions and documentation.

This designating party reserves the right to add additional experts as it deems appropriate in accordance with provisions of code of civil procedure Section 2034.260(b).

This designating party reserves the right to add additional experts as such need arises during the course of discovery and investigation and in preparation for the trial of this case.

This designating party further reserves the right to call as a witness any other party to this lawsuit who may be called to testify at trial under Evidence Code Section 776, either in person or through competent former testimony.

This designating party further reserves the right to call impeachment or rebuttal witnesses omitted here from.

///

///

///

///

///

If any of the witnesses discussed or listed above are not available at the time of trial, this designating party thereby advises all parties it will seek the introduction of competent former testimony, including depositions, of such witnesses in lieu of their testimony.

DATED: April 2, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant North Congregation of Jehovah's Witnesses, Fremont California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

EXPERT WITNESS DECLARATION OF JAMES M. McCABE

I, James M. McCabe, according to California Code of Civil Procedure Section 2034.260 *et seq.* declare that:

I am an attorney admitted to practice law before the Superior Court of the State of California, and am the attorney for Defendant The North Congregation of Jehovah's Witnesses (hereinafter "North Congregation") in this action.

This designating party expects to call the following designated experts as expert witnesses at the time of trial, either in person or through deposition, and such experts herein designated will be sufficiently familiar with the pending action to submit to a meaningful oral deposition upon the completion of his or her review of the deposition testimony, documents, discovery and other relevant evidence in this case.

1. **Monica Applewhite, Ph.D.**

A. Monica Applewhite has a Ph.D. in social work and is an expert in the field of social work and child sexual abuse, including but not limited to the historical evolution of policies and laws in the United States to protect children from sexual abuse, and the education, screening, monitoring, development of risk management policies for the protection of children from sexual abuse, the organizational response to allegations of child sexual abuse, and the behaviors and tactics of child molesters.

She received her Ph.D. in Social Work in 1995 from the University of Texas at Arlington. Dr. Applewhite is an expert in the field of social work and child sexual abuse, including but not limited to the historical evolution of policies and laws in the United States to protect children from child sexual abuse, and the education, screening, monitoring, development of risk management policies for the protection of children from sexual abuse, the organizational response to allegations of child sexual abuse, and the behaviors and tactics of child molesters.

Dr. Applewhite has spent the past 16 years conducting research and root-cause analysis in the area of child sexual abuse in organizations in order to assist organizations in developing best practice standards. Formerly with Praesidium Inc., she helped create an accreditation system for the Conference of Major Superiors of Men to hold them accountable to the highest standards of child protection.

She has worked with more than 300 organizations that serve children and youth, including 28 Catholic dioceses, the U.S. Conference of Catholic Bishops, the U.S. Jesuit Conference, and the Congregation for Institutes of Consecrated Life and Societies of the Apostolic Life in Rome.

Now director of Confianza LLC, a consulting firm specializing in standards of care and the dynamics of abuse in educational and religious environments, she resides in Austin, Texas. Dr. Applewhite's *curriculum vitae* is attached as Exhibit A.

B. Based on her professional education, it is anticipated that Monica Applewhite, Ph.D. will testify on the subject areas of defendants' alleged notice that Defendant Jonathan Kendrick (hereinafter "Perpetrator") may be a danger to children, defendants' response to allegations of child sexual abuse in this case, defendants' alleged negligent failure to protect plaintiff and children from harm by the Perpetrator, including but not limited to knowledge of child sexual abuse and child molesters in the early to mid-1990s, defendants' alleged negligent failure to warn, train, and educate its agents and plaintiff and her family, defendants' alleged negligent supervision and investigation of the Perpetrator, and defendants' alleged negligent hiring, appointment or retention of the Perpetrator. She is also expected to testify regarding defendants' policies for the protection of children and its education of parents, victims, families and elders on the subject of child sexual abuse and child molesters, including defendant's' publication and distribution of educational materials.

C. Monica Applewhite, Ph.D. has agreed to testify at the trial of this action.

D. Monica Applewhite, Ph.D. will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the testimony the expert is expected to give at trial, including any opinion and its basis upon the completion of her review of all

depositions (including depositions of other experts designated in this case), documents, discovery and other relevant evidence in this case.

E. The hourly fee for Monica Applewhite, Ph.D. is $450 per hour.

2. **Martin H. Williams, Ph.D.**

A. Martin H. Williams, Ph.D. is a licensed psychologist and he is an expert in the fields of clinical and forensic psychology. After completing undergraduate and post-graduate work degrees, he received his Ph.D. in psychology from the University of California, Berkeley. He is currently a Fellow of the American Psychological Association and maintains a private practice at Williams Psychological Services. Dr. William's *curriculum vitae* is attached as Exhibit B.

B. It is anticipated that Dr. Williams will testify about the subject areas of Plaintiffs' damages, including but not limited to Plaintiff's psychological test results, his diagnosis of the Plaintiff's claimed psychological injuries and damages and the degree thereof, the causation and apportionment of Plaintiff's claimed psychological injuries and damages, and the reasonableness of past treatment for Plaintiff's claimed psychological injuries and damages and future recommended treatment for Plaintiff's claimed psychological injuries and damages, including the reasonableness of the costs for such treatment.

C. Dr. Williams has agreed to testify at the trial of this action.

D. Dr. Williams will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the testimony the expert is expected to give at trial, including any opinion and its basis upon the completion of his review of all depositions (including expert depositions of other experts designated in this case) documents, discovery and other relevant evidence in this case.

E. The hourly fee for Dr. Williams is $400.00 per hour.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 1 day of April, 2012, at San Diego, California.

THE MCCABE LAW FIRM, APC

By: _____
James M. McCabe

Attorneys for Defendant The North Congregation of Jehovah's Witnesses



JACKSON LEWIS, LLP
Robert J. Schnack, Esq.
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW York, INC., FREMONT CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, et al, Defendants.	Case No.: HG115558324 **DECLARATION OF ALLEN SHUSTER**

I, Allen Shuster, after being duly sworn, depose and state that if called to testify in this matter I would competently testify as follows:

1. I am over 21 years of age, of sound mind, and competent to make this Affidavit. I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I reside in Patterson, New York, and have served as an elder in the faith of Jehovah's Witnesses since about 1979.

3. On April 23, 1976, I began serving at the U.S. branch offices of Jehovah's Witnesses in New York. I have served in the Service Department of the U.S. branch offices since February 5, 1981. I provide spiritual assistance to congregation elders who call or write the Service Department for help. Prior to March 2001, the spiritual assistance provided by the Service Department, along with the appointment of elders and ministerial servants, was communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"). Since March 2001, this has been

communicated through the Christian Congregation of Jehovah's Witnesses.

4. My duties in the Service Department include monitoring the organization, functioning, and staffing of congregations of Jehovah's Witnesses, including reviewing the qualifications for the appointment of elders and ministerial servants to congregations of Jehovah's Witnesses in the United States.

MEMBERS OF CONGREGATIONS

5. All congregations of Jehovah's Witnesses are composed of individuals and families who gather together to worship in buildings called "Kingdom Halls."

6. There is no age requirement for baptism, but Jehovah's Witnesses do not practice infant baptism. Their youth are not typically baptized until they are old and mature enough to make an independent determination about their religious beliefs, often not until their teenage years.

7. An ordinary member of the congregation is called a "publisher." Publishers are called that because they "publish" the good news of the Bible by engaging in public ministry.

8. Congregations may have both baptized and unbaptized publishers, but only baptized publishers are considered to be congregation members.

9. There is no predetermined number of hours a publisher is required to spend in public ministry.

10. Individuals spend as much time in the public ministry as their heart motivates them to spend.

11. There is no requirement for publishers to place any amount of literature.

12. Before an individual, man, woman, or child, is recognized as an unbaptized publisher, two congregation elders briefly meet with that person (and his or her parents in the case of a minor) to determine whether he or she believes the Bible is the inspired Word of God, knows basic Bible teachings, is living in harmony with the Bible's prohibitions against immorality, drunkenness, and drug abuse, and wants to be one of Jehovah's Witnesses. Thereafter, the two elders who meet with the individual determine whether he or she qualifies to be recognized as an unbaptized publisher in the congregation.

13. This procedure for becoming an unbaptized publisher came into existence when it was announced in the November 15, 1988, issue of *The Watchtower*. Prior to that time, the individual publisher who studied the Bible with an interested person decided when that interested person could be invited to accompany the congregation in the field ministry as an approved associate of Jehovah's Witnesses.

14. There is no application form to fill out to become an unbaptized publisher.

15. Neither Watchtower nor the U.S. branch offices of Jehovah's Witnesses review or approve whether an individual is qualified to be recognized as an unbaptized or baptized publisher, nor does Watchtower or the U.S. branch offices of Jehovah's Witnesses maintain a list of unbaptized or baptized publishers.

16. After a person turns in his or her first field service report to a congregation's elders, an announcement is made during one of the weekday congregation meetings that the person is a new unbaptized publisher in the congregation. The procedure to announce a new unbaptized publisher to the congregation came into existence when it was announced in the November 15, 1988, issue of *The Watchtower*. Prior to that date no announcement was made when an individual became an approved associate.

CONGREGATION ELDERS AND MINISTERIAL SERVANTS

17. There is no paid clergy class at Watchtower, the U.S. branch offices of Jehovah's Witnesses, or in congregations of Jehovah's Witnesses. Men who qualify are appointed to serve a congregation as ministerial servants and then as elders. The appointed men who provide spiritual direction to the congregation members are the elders. Ministerial servants help elders by providing administrative functions in the congregation.

18. Jehovah's Witnesses are not automatically appointed to serve as congregation elders. They must meet qualifications as follows: Before a male member of the congregation can be considered for appointment as a ministerial servant, he must be baptized as one of Jehovah's Witnesses. The individual must then gain further knowledge of the Holy Scriptures and show a willingness to be used to assist others in the congregation. If he shows such willingness and meets the Scriptural qualifications stated in 1Timothy 3:8-13, he may qualify to

be appointed as a ministerial servant. Although a ministerial servant would not provide spiritual supervision to the congregation, he could be assigned tasks to assist congregation elders as they carry out their duties.

19. In time—perhaps after many years—a ministerial servant who has faithfully carried out his assignments and has gained experience may meet the qualifications of a congregation elders as outlined in the Bible. When this occurs, the congregation elders will recommend to the circuit overseer (a representative of the Branch office who is also an experienced elder) that the ministerial servant be appointed as an elder in the congregation. If the circuit overseer agrees with the recommendation, he will forward it to the Branch office's Service Department. Approved elders in the Service Department review the recommendation in accord with the guidelines outlined in the Holy Scriptures, adopted by the Governing Body of Jehovah's Witnesses. The Branch office then informs the local congregation's body of elders, in writing, of their determination about the recommendation.

20. The responsibilities of ministerial servants include handling the congregation literature, congregation accounts, and congregation territory for the public ministry, caring for microphone and sound equipment during meetings, serving as attendants during congregation meetings, and maintaining the physical appearance and cleanliness of the Kingdom Hall.

21. Those who serve as elders and ministerial servants are all volunteers and none of them are paid for their service nor do they receive any reimbursement for their transportation, living, or meal expenses.

22. Neither Watchtower, the U.S. branch offices of Jehovah's Witnesses, nor any congregations of Jehovah's Witnesses have any paid employees, and as previously noted, there is no paid clergy class (Matthew 10:8).

23. At least twice a year, the body of elders of a congregation meets together to review the qualifications of the men in the congregation who might qualify to serve as an elder or ministerial servant.

24. Elders are recommended from among the ministerial servants in the congregation who meet the spiritual qualifications found at 1 Timothy 3:1-7 and Titus 1:5-9.

25. Ministerial servants are recommended from male members of the congregation who are not serving as elders or ministerial servants and meet the spiritual qualifications found at 1 Timothy 3:8-10, 12, 13.

26. During all times relevant to this lawsuit local elders' recommendations for new elders and ministerial servants had to be approved by the Service Department at the U.S. branch offices of Jehovah's Witnesses in New York before they could be appointed.

27. During all times relevant to this lawsuit, all appointments of elders and ministerial servants in the United States were communicated by the Service Department to congregations through Watchtower.

28. If an individual is appointed to serve as a congregation elder, a letter of appointment from the Branch office is read to the congregation. At this time the newly appointed elder is officially vested with ministerial authority in the congregation.

29. Jehovah's Witnesses who serve as appointed elders are recognized as ordained congregation elders.

30. Elders are responsible for providing spiritual supervision to the congregations, which includes hearing confessions and other confidential spiritual communications made to them by members of the congregation who seek spiritual counsel, advice or comfort. Their authorization to do so comes from the Holy Scriptures and from the Governing Body of Jehovah's Witnesses.

31. According to the religious beliefs and practices of Jehovah's Witnesses, congregation elders, as ordained ministers, are expected to keep confession and other confidential spiritual communications confidential. An elder who reveals a confession or other confidential spiritual communication without the express permission of the one making the confession or confidential spiritual communication would usually be disqualified from continuing to serve as an elder.

32. At all times relevant to this case, the Fremont North Congregation elders occasionally communicated with elders serving in the Branch Office's Service Department, as well as with elders serving as circuit or district overseers, to receive spiritual counsel and advice

on applying the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. The religious beliefs of these elders also require that any confidential spiritual communications between elders serving in the Branch Office's Service Department, elders serving as circuit or district overseers, and congregation elders must be kept strictly confidential. The spiritual counsel and advice given by the elders serving in the Branch Office's Service Department, elders serving as circuit or district overseers, and congregation elders is based on Jehovah's Witnesses' understanding of the Bible.

INVESTIGATIONS, JUDICIAL COMMITTEES, DISCIPLINE

33. The elders of congregations of Jehovah's Witnesses are also responsible for conducting what are referred to as "judicial investigations" when a member of a congregation is accused of serious Scriptural wrongdoing. Judicial investigations are carried out by two elders selected by the congregation body of elders, as occurred when Jonathan Kendrick was investigated in 1993 by elders in the Fremont North Congregation.

34. The goal of a judicial investigation is to make certain that the Christian congregation remains spiritually and morally clean. (James 1:26) In doing so, if the elders confirm that serious Scriptural wrongdoing has occurred, a judicial committee of at least three elders is selected by the congregation body of elders to endeavor to provide spiritual assistance to the congregant who may have sinned, with the hope of assisting them to regain their spirituality and relationship with God. (Galatians 6:1, 2) At times, a judicial committee will determine that an accused congregant should be spiritually disciplined internally, based on Jehovah's Witnesses' understanding of the Bible.

35. In the case of the investigation of Jonathan Kendrick in 1993, the elders did not form a judicial committee because the assertion of child sexual abuse was not confirmed. However, the assertion by Andrea, Kendrick's step-daughter, was sufficient to disqualify him from continuing to serve as a ministerial servant since he was no longer "free from accusation."

36. Spiritual discipline administered by elders of Jehovah's Witnesses serving on a judicial committee is based solely on Jehovah's Witnesses' understanding of the Bible as applied to the facts of the matter. Where a serious sin is involved and the accused person is

repentant, the judicial committee may recommend private or public reproof. But if the person who committed a serious sin cannot be brought back to repentance, the individual will have to be disfellowshipped. When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses."

37. Spiritual discipline administered by elders serving on an investigative committee is likewise based solely on Jehovah's Witnesses' understanding of the Bible as applied to the facts. When an accusation disqualifies a servant from continuing to serve, he is removed as a servant and an announcement is made during a congregation meeting to the effect that "[name] is no longer serving as [ministerial servant/elder]."

CONFIDENTIAL COMMUNICATIONS

38. Jehovah's Witnesses recognize the Bible's admonition to confess ones sins to God. 1 John 1:8, 9 ("If we confess our sins, he is faithful and righteous so as to forgive us our sins and to cleanse us from all unrighteousness.").

39. In addition Jehovah's Witnesses also believe that there can be much benefit from speaking to the congregation elders ("older men") regarding confidential matters. James 5:13-16 ("Is there anyone suffering evil among YOU? Let him carry on prayer. Is there anyone in good spirits? Let him sing psalms. Is there anyone sick among YOU? Let him call the older men of the congregation to [him], and let them pray over him, greasing [him] with oil in the name of Jehovah. And the prayer of faith will make the indisposed one well, and Jehovah will raise him up. Also, if he has committed sins, it will be forgiven him. Therefore openly confess YOUR sins to one another and pray for one another, that YOU may get healed."). Jehovah's Witnesses view confessions and other confidential and private communications of a spiritual nature between congregants and elders as communications that elders must keep confidential. Proverbs 25:9.

40. Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with the congregation elders is limited to confessions. Rather, as outlined in James 5:13-16, Jehovah's Witnesses are encouraged to seek the spiritual counsel

and advice of the elders in a variety of life situations. Congregation elders are also encouraged to seek spiritual counsel and advice from elders serving in the Branch Office's Service Department, or from elders serving as circuit or district overseers, in order to receive spiritual counsel and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members, and on occasion congregation elders seek such spiritual counsel and advice. Such confidential spiritual communications from congregation elders are only handled by elders in the Branch Office Service Department.

41. If a servant is recommended by the elder body to be removed, the body of elders forwards a notice containing their recommendation of removal to the Branch Office elders, who, if they agree, confirm the removal in writing to the elders.

42. If a congregation member is disfellowshipped, the judicial committee elders forward a notice of disfellowshipping to Branch Office elders for their review to ensure that their decision was spiritually based and well founded. The notice of disfellowshipping has the name of the disfellowshipped person, the date of disfellowshipping, and the Scriptural basis for disfellowshipping.

43. Jehovah's Witnesses view all such spiritual communications about removal and disfellowshipping as confidential communications that must be kept strictly confidential.

44. Elders do not allow unnecessary third parties to be a party to a confidential communication. At times more than one elder may be a party to the conversation. For instance, it is Jehovah's Witnesses religious belief and practice to have at least two elders present during a judicial investigation and at least three elders present during a judicial committee. (Deuteronomy 17:6; Deuteronomy 19:15; Matthew 18:15-17; 2 Corinthians 13:1; 1 Timothy 5:19) Jehovah's Witnesses believe that men are imperfect and, therefore, three elders serving on a judicial committee can provide more full and complete spiritual counsel and advice based on a broader range of experience and knowledge than can a single elder alone. Before one becomes one of Jehovah's Witnesses, he is made aware of this provision. *Your Word Is a Lamp To My Foot*, pages 176-79; *Organization for Kingdom-Preaching and Disciple-Making*, pages 159-65; *Organized to Accomplish Our Ministry*, pages 145-47; *Organized To Do Jehovah's*

Will, pages 151-2. In addition, there may be instances where a husband and wife, or a parent and child, may together seek or be provided with spiritual counsel, advice or comfort from the elders. The elders and participants to these confidential and private spiritual communications would view these communications as confidential and congregants expect the elders to keep such communications strictly confidential.

45. The religious doctrine of Jehovah's Witnesses requires that all elders keep confidential and private spiritual communication strictly confidential. *The Watchtower*, April 1, 1971, pages 222-224; *Kingdom Ministry*, July 1975; *The Watchtower*, December 15, 1975, pages 764-66; *The Watchtower,* September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-27; *The Watchtower*, November 15, 1991, pages 19-23. An elder who reveals the contents of such a confidential communication may be subject to removal.

46. In this case, the Letter to All Bodies of Elders dated July 1, 1989, PE 1 and WE R, provides a reminder to the elders of their duty to maintain the confidential nature of confidential communications.

SIGNED the 26 day of April, 2012, at Patterson, New York.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my information, belief, and knowledge.

Allen Shuster

Allen Shuster

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

SUBSCRIBED AND SWORN TO BEFORE ME on the 26 day of April 2012, to certify which witness my hand and official seal.

A. HERNAN STEELE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01-ST6106293
Qualified in Putnam County
Commission Expires March 01, 2016

Notary Public, State of New York

8801294

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MOTION IN LIMINE NO. 7 TO EXCLUDE EVIDENCE OF OR REFERENCE TO PLAINTIFF'S CRIMINAL ARRESTS OR CONVICTIONS [Evid. Code §§787, 352]

Trial Date: 5/21/2012

STATEMENT OF THE ISSUE

Plaintiff Candace Conti has suffered three criminal arrests and convictions, all in Alameda County Superior Court. The cases are as follows:

Case No. 1: Conviction – 7/19/07 - Docket #121079: Misdemeanor Penal Code §415 (Disturbing the Peace) and Misdemeanor Health & Safety Code §11377 (Possession of Controlled Substance) [Exhibit 1].

Case No. 2: Conviction – 4/27/09 - Dockets H-47823A & 233572A: Felony Health & Safety Code §11377(a) (Possession of Controlled Substance) [Exhibit 2].

Case No. 3: Conviction – 10/8/10 – Docket #H-49316B: Felony Penal Code §496(a) (Receiving Stolen Property) [Exhibit 3].

Based on Plaintiff's exemplary performance in her rehabilitation and sobriety, each of the felony convictions were reduced to misdemeanors pursuant to Penal Code 17(b) by Order of the Los Angeles County Superior Court, which acquired jurisdiction when Plaintiff's probation was transferred there in 2010. (Order, Exhibit 4)

Plaintiff moves to exclude evidence of or reference to all three criminal arrests and convictions. None constitute a Felony conviction at this time, and all are inadmissible as a matter of law.

I. MISDEMEANOR CONVICTIONS ARE INADMISSIBLE AS A MATTER OF LAW.

Evidence Code section 787 expressly precludes attacking a witness's credibility by showing prior arrests or convictions of misdemeanors. (*Grudt v. Los Angeles* (1970) 2 Cal.3d 575, 591). Although felony convictions may be admissible under certain circumstances under Evidence Code section 788, the section does not apply to misdemeanor convictions.

II. ALL OF THE CRIMINAL CASES ARE NOW MISDEAMENOR CONVICITONS ONLY.

A felony conviction that is declared to be a misdemeanor upon application of the defendant and/or probation officer subsequent to the conviction is a misdemeanor. (Cal. Pen. Code § 17(b)(3).) As a misdemeanor conviction, it is no longer admissible in evidence at trial. (*Grudt v. Los Angeles* (1970) 2 Cal.3d 575, 591.)

Plaintiff's probation supervision for her felony conviction in Case No. 3 was transferred to Los Angeles County, where she was attending a Kaiser inpatient and later outpatient substance abuse and psychological therapy programs. Her treating physicians and counselors from Kaiser Downey all documented her outstanding performance in both maintaining sobriety and fulfilling all of the conditions of her 2010 Probation Order. Her Los Angeles Probation Officer has concurred with their assessment. Based on this support, Plaintiff petitioned the Court to reduce her convictions to Misdemeanors, a remedy that was specifically authorized by her Alameda County Judge at the time of her sentencing in 2010. This Order establishes that Plaintiff has no felony convictions, and therefore any reference to or argument by counsel referencing her arrests, convictions, or criminal issues of any kind, should be excluded from this trial.

Dated: May 14, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS





8-30-10 H513

NANCY E. O'MALLEY
District Attorney
900 Courthouse
1225 Fallon Street
Oakland, CA 94612-4292
(510) 272-6222

CHARLETTE A. GREEN
Senior Deputy District Attorney
State Bar #103918

ENDORSED
FILED
ALAMEDA COUNTY

AUG 27 2010

CLERK OF THE SUPERIOR COURT
By VANCE CASTANEROS
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
HAYWARD HALL OF JUSTICE

PEOPLE OF THE STATE OF CALIFORNIA		
v.	NO. H49316 B INFORMATION	
JONATHON MCDONALD also known as JONATHON ALLEN MCDONALD	PFN: BCP965	CEN: 0448248
CANDACE JEANINE CONTI	PFN: BFM233	CEN: 0448240
Defendants.		

The District Attorney of the County of Alameda by this Information hereby accuses JONATHON MCDONALD also known as JONATHON ALLEN MCDONALD and CANDACE JEANINE CONTI of a Felony, to wit: FIRST DEGREE RESIDENTIAL BURGLARY, a violation of section 459 of the PENAL CODE of California, in that on or about June 22, 2010, in the County of Alameda, State of California, said defendants did unlawfully enter an inhabited dwelling house and trailer coach and inhabited portion of a building occupied by MITCHELL DUH, with the intent to commit larceny and any felony.

File Date: 8/27/2010/msl

"NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c)."

"NOTICE: Conviction of this offense will require you to provide specimens and samples pursuant to Penal Code section 296. Willful refusal to provide the specimens and samples is a crime."

It is further alleged that the above offense is a violation of Penal Code Section 462(a).

SECOND COUNT

And the said JONATHON MCDONALD also known as JONATHON ALLEN MCDONALD and CANDACE JEANINE CONTI are further accused by the District Attorney of the County of Alameda, by the second count of this Information, of a Felony, to wit: RECEIVING STOLEN PROPERTY, a violation of section 496(a) of the PENAL CODE of California, in that on or about June 22, 2010, in the County of Alameda, State of California, said defendants did unlawfully buy, receive, conceal, sell, withhold, and aid in concealing, selling, and withholding property, to wit: GPS, BAG WITH BADMITTEN GEAR, FASTRAK RESPONDER, SINK REPAIR PARTS, AND COMPUTER , which had been stolen and obtained in any manner constituting theft and extortion, knowing that said property had been stolen and so obtained.

THIRD COUNT

And the said JONATHON MCDONALD also known as JONATHON ALLEN MCDONALD is further accused by the District Attorney of the County of Alameda, by the third count of this Information, of a Felony, to wit: RECEIVING STOLEN PROPERTY, a violation of section 496(a) of the PENAL CODE of California, in that on or about June 22, 2010, in the County of Alameda, State of California, said defendants did unlawfully buy, receive, conceal, sell, withhold, and aid in concealing, selling, and withholding property, to wit: CALIFORNIA DRIVER'S LICENSE, which had been stolen and obtained in any manner constituting theft and extortion, knowing that said property had been stolen and so obtained.

FIRST PRIOR CONVICTION AS TO DEFENDANT MCDONALD

The District Attorney of the County of Alameda further charges that before the commission of the offense specified above, said defendant JONATHON MCDONALD, on or about December 18, 2006, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: UNLAWFUL DRIVING OR TAKING OF A VEHICLE, a violation of section 10851(a) of the VEHICLE CODE of California, and received a prison term therefor.

PRIOR SEPARATE PRISON TERM (PC 667.5(B))

It is further alleged that the above prior conviction is within the purview of Penal Code section 667.5(b) and that a separate term of imprisonment was served therefor as described in Penal Code section 667.5 for said offense, and that the defendant did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

SECOND PRIOR CONVICTION AS TO DEFENDANT MCDONALD

The District Attorney of the County of Alameda further charges that before the commission of the offense specified above, said defendant JONATHON MCDONALD, on or about August 18, 2005, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: SECOND DEGREE BURGLARY OF VEHICLE, a violation of section 459 of the PENAL CODE of California, and received a prison term therefor.

PRIOR SEPARATE PRISON TERM (PC 667.5(B))

It is further alleged that the above prior conviction is within the purview of Penal Code section 667.5(b) and that a separate term of imprisonment was served therefor as described in Penal Code section 667.5 for said offense, and that the defendant did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

THIRD PRIOR CONVICTION AS TO DEFENDANT MCDONALD

The District Attorney of the County of Alameda further charges that before the commission of the offense specified above, said defendant JONATHON MCDONALD, on or about January 23, 2004, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: UNLAWFUL DRIVING OR TAKING OF A VEHICLE, a violation of section 10851(a) of the VEHICLE CODE of California, and received a prison term therefor.

PRIOR SEPARATE PRISON TERM (PC 667.5(B))

It is further alleged that the above prior conviction is within the purview of Penal Code section 667.5(b) and that a separate term of imprisonment was served therefor as described in Penal Code section 667.5 for said offense, and that the defendant did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

FOURTH PRIOR CONVICTION AS TO DEFENDANT MCDONALD

The District Attorney of the County of Alameda further charges that before the commission of the offense specified above, said defendant JONATHON MCDONALD, on or about October 25, 2002, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a FELONY, to wit: SECOND DEGREE COMMERCIAL BURGLARY, a violation of section 459 of the PENAL CODE of California, and received a sentence of probation therefor.

FIRST PRIOR CONVICTION AS TO DEFENDANT CONTI

The District Attorney of the County of Alameda further charges that before the commission of the offense specified above, said defendant CANDACE JEANINE CONTI, on or about October 22, 2009, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: POSSESSION OF A CONTROLLED SUBSTANCE, a violation of section 11377(a) of the HEALTH AND SAFETY CODE of California, and received a sentence of probation therefor.

Pursuant to Penal Code Section 1054(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

NANCY E. O'MALLEY
District Attorney

By: CHARLETTE A. GREEN
Senior Deputy District Attorney

12-16-10
H503

ENDORSED
FILED
ALAMEDA COUNTY
10 DEC -6 AM 8:44
CLERK OF THE SUPERIOR COURT
BY DEPUTY

In the Superior Court of the State of California
in and for the County of Alameda
before the Honorable Roy Hashimoto, Judge
Department No. 515

COPY

The People of the State of California
Plaintiff,

vs. No. H-49316 B
H-47823

Candace Jeanine Conti,
Defendant.

---/

Reporter's Transcript of Change of Plea

Hayward Hall of Justice
Hayward, California
October 8, 2010

Appearances:

For the People: Nancy O'Malley, District Attorney
By: Paul Hora, Deputy

For the Defendant: Paul Wellenkamp, Attorney at Law

M. Jovita Escorcio, Csr 10910

Friday, October 8, 2010 -- Morning Session

Proceedings

---oOo---

The Court: People of the State of California versus Candace Jeanine Conti. This would be case H-49316-B, also And H-47823-A and 121079. Counsel, could you please state your appearances for the record.

Mr. Hora: Afternoon, your Honor, Paul Hora for the People.

Mr. Wellenkamp: Paul Wellenkamp with Ms. Conti, She is present in custody.

The Court: Ma'am, is your true and correct legal name Candace Jeanine Conti?

The Defendant: Yes, sir, your Honor.

The Court: What's the proposed disposition of miss Conti's three cases?

Mr. Hora: Proposed disposition is as follows:

She's going to plead no contest to Count Two of the Information, a violation of Penal Code Section 496 subsection (a) of the Penal Code as a felony.

She will not be sent to state prison as a direct consequence of that plea.

Five years felony probation.

One day CTS.

Four-way search clause.

Restitution fund fine.

DNA samples pursuant to 296, and she will have to pay restitution, if any, to the victims on the counts she's

pleading to and any dismissed counts. That will be joint and several with her co-defendant.

We have also, let's see, I think that takes care of that primary case. If in fact she enters that plea, I will move to dismiss the first count in the Information and also strike the prior on that Information for purposes of sentencing. That takes cares of that docket.

With respect to docket the probation docket H-47823, she's going to admit a violation, and she's also been promised by Judge Murphy, I can say just because we've talked about this, that she won't be sent to state prison as a direct consequence of that probation violation. He's contemplating some county jail time and a drug program, and so I expect that's what's going to happen.

And let me further say that with respect to the original docket which is H-49316-B, felony probation extends for a period of five years. I have told counsel that I will state on the record that I am not saying that the five years is mandatory, that she still has her right as any defendant would to petition the Court during the period of probation and if the Court that hears these matters to deem appropriate to take action such as terminate probation, reduce the offense under 17(b) motion, modified terms and conditions of probation, that would be at the Court's discretion. I'm not making any promises that it won't happen or that it will happen, just that she does have that opportunity like any other defendant would.

So, I'll let Mr. Wellenkamp fill in any blanks if

there are any.

The Court: What about the third case, Mr. Hora?

Mr. Hora: That was on my mind and I forgot to mention it. Looks like that is a misdemeanor -- do you have that case in front of you?

The Court: Yes.

Mr. Hora: Does it, well, I was thinking about is it, does it have a TRNC date, do you know what I'm talking about Madam Clerk?

Mr. Hora: Termination date.

The Clerk: It will once it gets restored.

Mr. Hora: Oh, I see what you're saying. Let's just restore, same terms and conditions. That's fine.

The Court: Mr. Wellenkamp, is that your understanding of the proposed disposition?

Mr. Wellenkamp: It is your Honor, well put.

The Court: Did you want to add anything for the record?

Mr. Wellenkamp: No, sir.

The Court: Thank you. Ms. Conti, did you hear and understand the proposed disposition of your three cases?

The Defendant: Yes, I did, your Honor.

The Court: Is that what you are prepared to do?

The Defendant: Yes.

The Court: Do you have any questions?

The Defendant: No.

The Court: Mr. Wellenkamp, have you discussed the elements of the offense, the defendant's possible defenses,

as well as her rights and consequences of the proposed plea?

Mr. Wellenkamp: We have.

The Court: Are you satisfied your client understands all the ramifications?

Mr. Wellenkamp: Yes, sir.

The Court: First of all, Ms. Conti, do you understand and agree to have Judge Murphy as your sentencing judge?

The Defendant: Yes, I do.

The Court: You further understand that you'll be liable for restitution in the main case for all the damages caused by the burglary; do you understand that?

The Defendant: Yes.

The Court: Meaning that you're pleading to receiving stolen property but you're going to get restitution along with the co-defendant, you're going to have to pay the person back for any monetary loss or the judge is going to have to order the damages; do you understand?

The Defendant: I understand.

The Court: You further understand that this plea is binding on you from this point forward, if you change your mind, think this isn't such a great deal, do you understand you're not going to be allowed to withdraw your plea?

The Defendant: I do.

The Court: You further understand that if you violate any term and condition of your felony probation, you could do up to three years in prison; do you understand

that, ma'am?

The Defendant: Yes, I do.

The Court: You further understand that Judge Murphy is going to have to fine you, the minimum fine is $260, can range up to $10,000 plus penalty assessment; do you understand that?

The Defendant: Yes.

The Court: You further understand that Judge Murphy is going to suspend a felony probation violation fine subject and until you commit a probation violation; do you understand that, ma'am?

The Defendant: Yes, I do.

The Court: You further understand you're going to have to fill out a statement of assets or financial declaration for restitution; do you understand that, ma'am?

The Defendant: Yes.

The Court: Ms. Conti, you further understand there's going to be a search clause of your person, your vehicle, any property under your control, as well as your residence day or night, with or without probable cause by any law enforcement officer; do you understand that?

The Defendant: Yes.

The Court: You further understand that if you commit a petty theft in the future, the DA can make it a felony because of this plea, this conviction; do you understand that?

The Defendant: Yes.

The Court: You further understand you're going to

have to submit biological samples for the state DNA felon DNA bank; do you understand that?

The Defendant: Yes.

The Court: You further understand that if you're not a citizen of the United States this plea could result in your deportation from the country, exclusion from the United States or denial of naturalization; do you understand that?

The Defendant: Yes.

The Court: You further understand that if you plead no contest, I'm going to find you guilty?

The Defendant: Yes.

The Court: And you understand that your probation or parole wherever it is can be revoked because of that no contest plea; do you understand that, ma'am?

The Defendant: Yes.

The Court: Ms. Conti, I have this felony waiver form before me, are these your initials on all the lines here and your signature here where my left index finger is pointing?

The Defendant: Yes, it is, your Honor.

The Court: Did you initial and sign this document because you understood your constitutional and statutory rights, ma'am?

The Defendant: Yes, I did.

The Court: And did you initial and sign this document because you're waiving and giving up your constitutional and statutory rights?

The Defendant: Yes.

The Court: Do you give up your right to a jury trial, ma'am?

The Defendant: Yes.

The Court: Do you give up your right of confrontation

The Defendant: Yes.

The Court: Do you give up your fifth amendment right to remain silent?

The Defendant: Yes.

The Court: Do you give up your right to present any defense available to you, to testify on your own behalf and to use the Court subpoena power to bring in witnesses and evidence?

The Defendant: Yes.

The Court: Do you give up all of your appeal rights in order to take advantage of this deal?

The Defendant: Yes.

The Court: Has anybody promised you anything other than what we stated here in open court?

The Defendant: No.

The Court: Has anybody threatened you or anyone near and dear to you to get you to enter into this disposition?

The Defendant: No.

The Court: Are you entering this disposition of your three cases because you feel it is in your best personal interest?

The Defendant: Yes.

The Court: Are you now under the influence of any medication, alcohol, drugs, a medical, mental or physical condition that's impairing your judgment?

The Defendant: No.

The Court: Do you have any questions at all, ma'am?

The Defendant: No.

The Court: Any further voir dire, Mr. Hora?

Mr. Hora: No, thank you.

The Court: Waive formal reading of the Information, Mr. Wellenkamp?

Mr. Wellenkamp: Yes, your Honor.

The Court: Ms. Conti, what is your plea that you did commit a felony, a violation of Section 496 of the Penal Code of California as a felony, in that on or about June 22nd, 2010 in the County of Alameda, State of California, you did unlawfully buy, receive, conceal, sell, withhold or aid in concealing, selling and withholding property ,to wit, GPS, bag with ,there's a little misspelling in here, Mr. Hora.

Mr. Hora: We're on the second count.

The Court: I assume it meant badminton gear, Fastrak Responder, sink repair parts and a computer which had been stolen and obtained in any matter constituting theft and extortion knowing that said property had been stolen and so obtained. What is your plea?

The Defendant: No contest.

The Court: Plea with your consent, Counsel?

Mr. Wellenkamp: It is, your Honor.

The Court: Factual basis as based on the police report, preliminary hearing transcript, any other discovery supplied to you?

Mr. Wellenkamp: Yes, sir.

Mr. Hora: So stipulated.

The Court: I find there's a factual basis for the plea.

I find that the plea and waivers were made knowingly, voluntarily and intelligently.

I accept and approve of the plea and conditions previously stated.

I specifically find the defendant guilty of Count Two, a felony violation of Section 496(a) of the Penal Code, based on your no contest plea, police reports, any discovery and consent of counsel.

Motion to dismiss Counts One and Three with restitution reserved and striking the prior for purposes of sentencing only.

Mr. Hora: The -- I think she's only charged in Count One and Two, so it will just be Count One.

The Court: First mistake of my life, Mr. Hora?

Mr. Hora: I believe it.

The Court: Strike that.

Mr. Hora: Just an oversight, not a mistake.

The Court: Count One is dismissed motion of the District Attorney with restitution reserved. Wasn't there a prior?

Mr. Hora: There was and I do move to strike that

for purposes of sentencing only.

The Court: stricken for purposes of sentencing only. Case is referred to the probation department for presentence investigation and report.

Defendant is ordered to truthfully and accurately complete a statement of assets form, have it attached to the probation report. Case is continued to Department 513 on November 5th, 2010, that will be at 8:45 a.m. for sentencing.

Defendant would be remanded to the custody of the Sheriff of Alameda County in no bail status.

In docket 121079, probation would be revoked and restored, same terms and conditions pursuant to plea negotiation.

In docket H-47823, did you want me to take an admission or should I just take judicial notice of the previous no contest plea?

Mr. Hora: What is quicker?

The Court: Court would take judicial notice of docket H-49316-B.

Mr. Hora: I guess technically she's entitled to a hearing, so she --

Mr. Wellenkamp: She will waive the hearing and admit the violation, your Honor.

The Court: Ms. Conti, do you give up your right to have a probation violation hearing in front of a judge in this docket?

The Defendant: Yes, I do.

The Court: Do you give up your right to see, hear and confront and have your very excellent lawyer cross-examine all witnesses brought to court to testify against you?

The Defendant: Yes, I do, your Honor.

The Court: Do you give up your fifth amendment right to remain silent?

The Defendant: Yes, I do.

The Court: Has anybody promised you anything other than what Judge Murphy told you he would do?

The Defendant: No.

The Court: Has anybody threatened you or anyone near and dear to you to get you to enter into this disposition?

The Defendant: No.

The Court: Do you admit or deny you violated your probation by committing the acts alleged on or about June 22nd, 2010, as evidenced in Fremont Police Report 10-0622041, do you had admit or deny?

The Defendant: I admit.

The Court: Admission with your consent, Counsel?

Mr. Wellenkamp: It is, your Honor.

The Court: Factual basis as based on discovery supplied to you?

Mr. Wellenkamp: Yes, sir.

The Court: I find by a preponderance of the evidence that the defendant is in violation of her probation. The revocation is affirmed. Matter would be

continued for sentencing to November 5th, 2010, that will be at 8:45 a.m. in Department 513 for sentencing. Defendant would be remanded to the custody of the Sheriff of Alameda County in no bail status.

Would there be anything further, Mr. Hora?

Mr. Hora: No, thank you, Judge, very much.

The Court: Mr. Wellenkamp?

Mr. Wellenkamp: No, sir.

The Court: That will be the Court's order. Good luck to you, Ms. Conti. Thank you

(Matter adjourned)

---o0o---

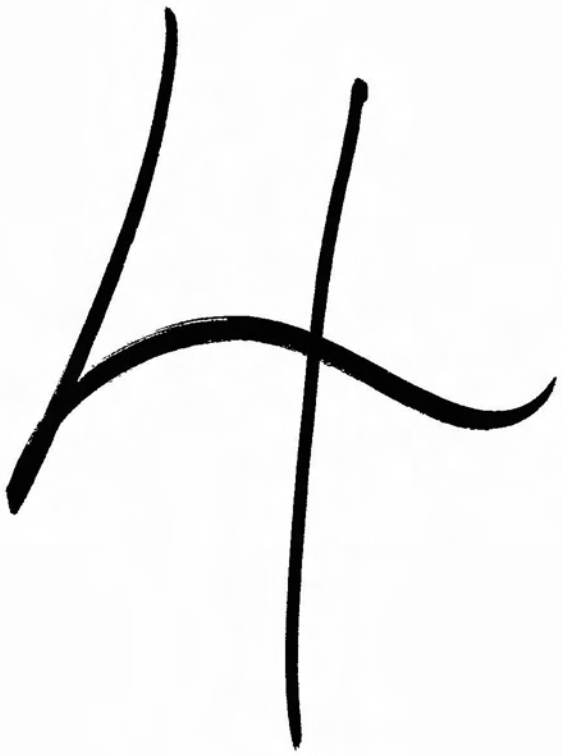
STATE OF CALIFORNIA)
) SS H-49316 B
COUNTY OF ALAMEDA) H-47823

I, M. JOVITA ESCORCIO, CERTIFIED SHORTHAND REPORTER, DO HEREBY CERTIFY THAT I AM AN OFFICIAL COURT REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, AND THAT, AS SUCH, I REPORTED THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED MATTER AT THE TIME AND PLACE SET FORTH HEREIN.

I FURTHER CERTIFY THAT MY STENOGRAPHIC NOTES WERE THEREAFTER PREPARED BY COMPUTER-ASSISTED TRANSCRIPTION INTO TYPEWRITING, AND THAT THE FOREGOING PAGES NUMBERED 1 - 12 CONSTITUTE A FULL, TRUE AND CORRECT TRANSCRIPTION OF SAID NOTES IN THE ABOVE-ENTITLED PROCEEDINGS TO THE BEST OF MY ABILITY.

DATED AT HAYWARD, CALIFORNIA, THIS 5TH DAY OF DECEMBER, 2010.

M. JOVITA ESCORCIO,
CSR NO. 10910



Joseph A. Pertel, Esq. [SBN 181657]
LAW OFFICES OF JOSEPH A. PERTEL
1717 Fourth Street, Third Floor
Santa Monica, California 90401
Telephone: (310) 917-5599
Facsimile: (310) 395-3884
E-mail: jpertel@yahoo.com

Attorney for Defendant
Candace Conti

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 11 2012

John A. Clarke, Executive Officer/Clerk
By _____, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

CANDACE CONTI,

Defendant.

CASE NO. SA 077463
(SA077463)

~~[PROPOSED]~~ **ORDER**

GOOD CAUSE APPEARING:

Defendant Candace Conti's motion to reduce felony offenses to misdemeanors is hereby granted. Defendant's felony conviction for a violation of Health and Safety Code section 11377, subdivision (a), sustained in the Alameda County Superior Court, case number H47823, is hereby reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b). Defendant's felony conviction for a violation of Penal Code section 496, sustained in the Alameda County Superior Court, case number H49316, is hereby reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b).

Dated: May 11, 2012

Marsha N. Revel
Honorable Marsha N. Revel
Judge of the Los Angeles County Superior Court

ORDER

PETITIONER: ALAMEDA COUNTY PROBATION DEPARTMENT **400 BROADWAY** **OAKLAND, CA 94607**	**FOR COURT USE ONLY**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: **1225 Fallon Street, Room 107** MAILING ADDRESS: **1225 Fallon Street, Room 107** CITY/ZIP CODE: **Oakland, CA 94607** BRANCH NAME: **Rene C. Davidson Courthouse**	
DEFENDANT'S NAME: CANDACE CONTI DOB:11/25/85	

NOTICE OF HEARING **MOTION FOR JURISDICTIONAL TRANSFER** **(Penal Code §1203.9 & Rules of Court §4.530)**	**COURT CASE NO:**	H47823, Dept. 5
	HEARING DATE/TIME:	3/28/11, 9:00 AM
	JUDGE:	Jacobson

The hearing is for the purposes of jurisdictional transfer of the above captioned Superior Court case pursuant to Penal Code §1203.9 and Rules of Court §4.530. Said motion has been filed in the Superior Court on behalf of the person named herein requesting the subject's probation case be transferred from the County of Alameda to the County of Los Angeles. Choose an item..

NOTICE TO:

- ☒ Candace Conti, 9779 Karmont Avenue, Southgate, CA 90280
- ☒ Presiding Superior Court Judge of Los Angeles County (N/A)
- ☒ Chief Probation Officer of Los Angeles County,200 West Woodward Avenue, Alhambra, CA 91801 Choose an item.
- ☒ Alameda County District Attorney, 24405 Amador St., Hayward, CA 94544
- ☒ Alameda County Public Defender's Office, 24085 Amador Street, Room 205, Hayward 94544
- ☒ (Name of victim(s), **CONFIDENTIAL ADDRESS**

The documents were placed in a sealed envelope or package addressed to the persons/entities listed above and served by the United States Postal Service on January 28, 2011.

The defendant was convicted of a violation of Section(s) 11377(a) of the Health and Safety Code on October 22, 2009. On February 2, 2010, the Court suspended imposition of sentence and placed the defendant on formal probation for a period of 5 years.

The Probation Officer of Alameda County respectfully moves that the Court adopt the following findings and recommendations for transfer of this case pursuant to §1203.9 of the Penal Code:

Recommended Findings:

- ☒ All required parties have been noticed of this hearing on the motion as required. [§4.530(d)(5) CRC]
- ☒ The Court has considered any and all comments submitted by the receiving Court. [§4.530(e)(3) CRC]
- ☒ The defendant is a resident of Los Angeles County and case is appropriate for jurisdictional transfer. [§4.530(f)(1) CRC]
- ☒ The transferring Court has considered the availability of appropriate programs. [§4.530(f)(2) CRC]
- ☒ Restitution has been ordered in the amount of (reserved) to the victim(s). [§4.530(f)(3) CRC]
- ☒ The transferring Court has considered any and all victim issues. [§4.530(f)(4) CRC]
- ☒ The defendant has completed all local jail commitments ordered. [§4.530(g)(7) CRC]

Additional Information:

Recommended Orders:

- ☒ Order case transferred to the Los Angeles County Superior Court. [§4.530 CRC]
- ☒ The Court Clerk shall transmit the court file and record of payments to the Los Angeles County Superior Court within two (2) weeks. [§4.530(g)(5)]
- ☒ Order the Probation Officer of Alameda County to transmit necessary case materials to the Probation Officer of Los Angeles County within two (2) weeks. [4.530(g)(6) CRC]
- ☒ Order defendant committed to the care and custody of the Probation Officer of Los Angeles County. [4.350(g)(4) CRC]
- ☒ Order defendant to report to the Probation Officer of Los Angeles County within thirty (30) days of transfer. [§4.530(g)(7) CRC]

Last Transmission **Jan.31.2011 04:08 PM**

Name :

Tel :

Date	Time	Type	ID	Duration	Pages	Result
Jan.31	04:08PM	Send	5594771612	00:00	0	No Dial Tone

A communication error has occurred during the fax transmission.
If you are sending, please try again and/or call to make sure the recipient's fax machine is ready to receive faxes.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
RENE C. DAVIDSON, ALAMEDA COUNTY COURTHOUSE

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

CONTI, CANDACE

Defendant

Dept. No.: 5
CEN: 0448240, 9333825
PFN: BFM233
Docket No.: H49316B, H47823

WAIVER OF APPEARANCE IN COURT AND CONSENT TO ORDER FOR MODIFICATION OF PROBATION UNDER SECTION 1203.2 (b) P.C.

TO THE ABOVE ENTITLED COURT:

I hereby acknowledge notice of hearing for modification of the terms and conditions of my probation order in the above entitled matter.

I further acknowledge and understand that I have a right to be present at the hearing.

☒ I hereby waive further notice of hearing, the right to appear, and consent to modification of my probation order in the following manner.

MODIFICATION: The terms and conditions be modified as follows:

Case transferred to the Los Angeles County Superior Court. [§4.530 CRC]

Defendant committed to the care and custody of the Probation Officer of Los Angeles County. [4.350(g)(4) CRC]

Defendant to report to the Probation Officer of Los Angeles County within thirty (30) days of transfer. [§4.530(g)(7) CRC]

Signed: Meganela
DEPUTY PROBATION OFFICER

Date: 2/3/11

Signed: Candace Conti
DEFENDANT

Date: 2/7/11

Document1

Dept. No.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,
GALE/SCHENONE HALL OF JUSTICE

PEOPLE OF THE STATE OF CALIFORNIA	NO. COMPLAINT 121079-6
v.	
CANDACE JEANINE CONTI	PFN: BFM233 CEN: 6249869
	BAIL 8/9/06
Defendant(s).	

The Undersigned, being sworn says, on Information and belief, that CANDACE JEANINE CONTI did, in the County of Alameda, State of California, on or about July 31, 2006, commit a Misdemeanor, to wit: POSSESSION OF A CONTROLLED SUBSTANCE, a violation of section 11377(a) of the HEALTH AND SAFETY CODE of California, in that said defendant(s) did unlawfully possess a controlled substance, to wit: METHAMPHETAMINE.

SECOND COUNT

The Undersigned further deposes and says on Information and belief, that said CANDACE JEANINE CONTI did, in the County of Alameda, State of California, on or about July 31, 2006, commit a Misdemeanor, to wit: POSSESSION OF INJECTION/INGESTION DEVICE, a violation of section 11364 of the HEALTH AND SAFETY CODE of California, in that said defendant(s) did unlawfully possess a device, contrivance, instrument, and paraphernalia used for unlawfully injecting, ingesting and smoking a controlled substance.

THIRD COUNT

The Undersigned further deposes and says on Information and belief, that said CANDACE JEANINE CONTI did, in the County of Alameda, State of California, on or about July 31, 2006, commit a Misdemeanor, to wit: CARRYING A DIRK AND DAGGER, a violation of section 12020(a)(4) of the PENAL CODE of California, in that said defendant(s) did unlawfully carry a dirk and dagger concealed upon the person.

Knutsen

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,
Monday, August 7, 2006

JON J. GOODFELLOW
Senior Deputy District Attorney
State Bar #76569 jr
Alameda County, California

/s/ Sheriff's Department-06-16899

ALAMEDA COUNTY

AUG 0 8 2006

By

Knutsen

ZXC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Gale / Schenone Hall of Justice

People of the State of California
VS.
CONTI, CANDACE Jeanine
(defendant)

DOCKET NO. 121079
DEPT. NO. 101/103
PFN BFM233 CEN 62749869

ORDER GRANTING REVOCABLE RELEASE IN THE COMMUNITY (COURT PROBATION)

( ) M23152 VC
( ) 23103VC PURSUANT TO 23103.5VC
DI M 415 TC ~~VC~~ M 11377

The above-named defendant being present in court and having been convicted of violation(s) of section(s)

IT IS ORDERED THAT:

( ) A. **EXECUTION SUSPENDED**—Defendant may be imprisoned in the County Jail for _____ days, however execution of _____ days of said sentence is suspended for _____ months and defendant is place on court probation for _____on the following terms and conditions:

(X) B. **IMPOSITION SUSPENDED**—Imposition of sentence is suspended for 36 months, and defendant is placed on Court Probation for 36 months on the following terms and conditions:

TERMS AND CONDITIONS:

(X) 1. Report as directed and follow the instructions of the Court.

(X) 2. **JAIL**—Serve 8 days in the County Jail, less 1 days credit for time served as follows: (X) Through Weekend Work Program
- A. Commencing forthwith
- B. Commencing _____.
- C. _____ weekends, commencing _____ and _____ weekends thereafter

Sentence to run ( ) concurrent; ( ) consecutive to any other sentence.

ZXC

(X) 3. **FINE**—Pay a fine of $ 30 plus $100 Victim Witness Fund (a total of $ 130.00): ( ) Through Central Collections.
Includes 20 CSF BY: to Court by 8/24/07

(X) 4. **CONDUCT**—Be of good conduct and obey all laws. If arested, give your own true name, address and date of birth to the arresting officer and report in writing to the court within 7 days.

(X) 5. **EMPLOYMENT/SCHOOL**—Seek and maintain steady employment or attend school or job training.

(X) 6. **RESIDENCE**—Report any change of address to the Court within 10 days.

( ) 7. **APPROVAL REQUIRED**—Do not change your place of residence, employment, schooling or training without approval of the Court

( ) 8. **TEST/TREATMENT**—Participate in any program of counseling, treatment, or testing as directed by this Court. _____

(X) 9. **SEARCH**—Submit your person, place of residence, or any vehicle, including all property therein, under your control, to search at any time, day or night, by any peace officer with or without a search warrant, and any property under your control.

( ) 10. **DRUGS**—Do not own, use or possess any narcotic or dangerous drug, without prescription, nor knowingly associate with those who do.

( ) 11. **ALCOHOL**—Do not drink alcoholic beverages (to excess). Submit to alcohol detection tests as requested by peace officer.
☐ NO ALCOHOL UNTIL 21 YEARS OLD

( ) 12. **DRIVING**—Do not drive any motor vehicle unless lawfully licensed and insured
☐ NOR WITH ANY MEASURABLE AMOUNT OF ALCOHOL IN YOUR BLOOD.

( ) 13. **TRAFFIC SCHOOL**—Attend and complete school as assigned ☐ DUI (Driving Under the Influence School); ☐ AA (Alcohol Awareness School); ☐ TVS (Traffic Violator's School); Other school or program (name) _____
COMPLETE BY: _____

( ) 14. **WRITE** OUT TEXT OF 13202.5 VC and turn in to the Court by: _____

( ) 15. **DRIVER'S LICENSE:**
- A. DRIVER'S PRIVILEGE AND LICENSE IS SUSPENDED/REVOKED FOR _____MONTHS. SURRENDER DRIVER'S LICENSE TO COURT TO BE SENT TO DMV. ☐ SUSPENSION BY DEPARTMENT OF MOTOR VEHICLES
- B. DRIVER'S PRIVILEGE AND LICENSE RESTRICTED FOR _____ AND DEFENDANT IS AUTHORIZED TO DRIVE TO/FROM ANY AUTHORIZED TREATMENT PROGRAM AND TO/FROM WORK DURING THE COURSE OF EMPLOYMENT AND SCHOOL.

( ) 16. **HARASSMENT:** ( ) Do not threaten, molest or annoy _____
( ) You are ordered to stay away from _____

(X) 17. **WEAPONS**—Do not own, use or possess any firearm or any other dangerous or deadly weapon. WEAPONS to be destroyed DIRK Dagger Double Edged

( ) 18. **RESTITUTION**—Make restitution in the amount of $_____ TO: _____
ADDRESS(ES): _____
( ) PAY DIRECTLY TO PERSON(S) NAMED ABOVE
( ) PAY THOROUGH ALAMEDA COUNTY CENTRAL COLLECTIONS BUREAU

( ) 19. **WORK PROGRAM**—Work _____ days for (Agency) _____
to be completed by _____. Report immediately as directed.

( ) 20. **VIOLATION** of the terms of probation may result in a minimum of 48 hours in the County Jail

( ) 21. **IF YOU** are stopped and detained again for this offense and your Test Result is above .04 you would be in violation of probation.

ADDITIONAL CONDITIONS:

(X) 22. $100.00 PRRF (1202.44) = SUSPENDED.

( ) 23. **NEXT COURT DATE:** Case continued to _____ at _____ for progress report in Department _____.
( ) Defendant must appear.
( ) Defendant is excused by Court if _____

Failure to comply with any terms of this order may result in revocation of the probation and imposition or execution of sentence. Upon successful completion of this probation, defendant may apply to this Court to have this conviction set aside under the provisions of Section 1203.4 of the Penal Code, except as to Vehicle Code violations.

Date: 7/19/07

Jacob Blea III
Judge of the Superior Court

I have received a copy of these conditions of probation, and I understand and agree to perform them and understand that if I fail to do so, my probation maybe revoked and I may be sentenced to jail.

Candace Conti
(Probationer's Signature)

Fremont CA 94536
(City) (State) (Zip)

470 Rego Common
(Address)

(510) 793-6124
(Telephone Number)

213-603A (Rev. 01/02)



SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY
JUN 24 2010
CLERK OF THE SUPERIOR COURT
By _____ Deputy

PEOPLE OF THE STATE OF CALIFORNIA,	NO: **H47823**
	PFN: **BFM233**
CANDACE JEANINE CONTI	CEN: **9333825**
Defendant.	**IN CUSTODY**

PETITION TO REVOKE FELONY PROBATION

The undersigned petitioner, based on information and belief, respectfully represents the following:

That on or about **February 2, 2010**, the defendant was placed on probation for a period of **60** months following his/her conviction of a violation of Section **11377(a) HS**. Conditions of probation included an order that the defendant obey all laws of the community and be of good conduct.

The defendant has violated the terms and conditions of probation in that he/she committed a violation of Section **459 PC and 496**, on or about **June 22, 2010**, in the County of Alameda, as set forth in the Declaration of Probable Cause, a copy of which has been attached hereto and incorporated by reference.

WHEREFORE, petitioner prays that probation be summarily revoked, and a hearing set on this matter.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Fremont, California, on June 24, 2010.

CHARGED FELONY

Aloe

Robert Aloe
Deputy District Attorney

ORDER

Good cause therefore appearing, it is hereby ordered probation be revoked and the defendant be remanded without bail.

DATED: 6/24/10

Judge of the Superior Court

Dept. No.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,
FREMONT HALL OF JUSTICE

FILED
ALAMEDA COUNTY

APR 27 2009

CLERK OF THE SUPERIOR COURT
By _____ Deputy

PEOPLE OF THE STATE OF CALIFORNIA v. **CANDACE JEANINE CONTI** **JONATHAN ANDREW LYNCH** Defendant(s).	NO. 233572-A COMPLAINT PFN: BFM233 CEN: 9333825 PFN: BFP478 CEN: 9333828 **CONTI BAILED 4-27-09** **LYNCH IN CUSTODY**

The Undersigned, being sworn says, on Information and belief, that CANDACE JEANINE CONTI and JONATHAN ANDREW LYNCH did, in the County of Alameda, State of California, on or about April 24, 2009, commit a Felony, to wit: POSSESSION FOR SALE OF A CONTROLLED SUBSTANCE, a violation of section 11378 of the HEALTH AND SAFETY CODE of California, in that said defendant(s) did unlawfully possess for purpose of sale a controlled substance, to wit: METHAMPHETAMINE.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

SECOND COUNT

The Undersigned further deposes and says on Information and belief, that said CANDACE JEANINE CONTI and JONATHAN ANDREW LYNCH did, in the County of Alameda, State of California, on or about April 24, 2009, commit a Felony, to wit: TRANSPORTATION OF A CONTROLLED SUBSTANCE, a violation of section 11379(a) of the HEALTH AND SAFETY CODE of California, in that said defendant(s) did unlawfully transport methamphetamine.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,
Monday, April 27, 2009

_____
/s/ Union City PD-090424019

_____
DANIELLE M. LONDON
Deputy District Attorney
State Bar #197900 rlf
Alameda County, California

CRM- 028 (Rev. 07/25/07– Replaces 170-401)

FREMONT HALL OF JUSTICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

CLERKS DOCKET AND MINUTES

1. DOCKET NAME _____ DEPT. 605 CRT. DATE/TIME 10/22/09 09:00

2. EVENT NAME CONTI, CANDACE JEANINE RPT. NO. 090424019 DOCK NO. 233572A

3. PROC. FPTH CEN. 9333825 PFN. BFM233 A DAY 04/24/09 SJ DATE 4/30/10
COUNTS AAG-UPD ACITY UC

4. CHARGES 1)F11378 HS
2)F11379(A HS

STAT BB BAIL $36,500.00 TOTAL DAYS IN CUSTODY: 2

5. BAIL $36,500.00 STAT. BB BOND DT. 04/25/09 BOND CO. 00988 DOB 11/25/85

BAIL _____ STAT. _____ BOND DT _____ BOND CO. _____ BAC _____

6. FINE/REST. _____ DATE PAID _____ REC. NO. _____ TIME WAIVED TW

PROCEEDING

7. JUDGE MCLAUGHLIN/~~GRIMMER~~ DEP. D.A. Angela Backers

8. DEP. CLERK MAYBON/WHITT/RETICKER DEF. ATTY. CONDES

9. REPORTER CRUZ/HOYT/KEEFER/PERKINS/GARCIA OTHERS _____ ☐ Not Present

Defendant (Deft): ☑Present ☐In Custody ☐Pro Per ☐Not Present ☐Excused ☐PC977 on file ☐Failed to Appear
☐**Interpreter:** _____ present ☐Certified ☐Sworn Language Interpreted: _____
☐Deft duly arraigned ☑Deft advised as to constitutional rights ☐Advisement of Rights Filed ☐Deft waives formal arraignment
Defendant served: ☐ _____ Information / Indictment / Complaint / Petition
Protective Order (PC136.2): ☐Issued ☐Modified ☐Terminated ☐Served ☐Stay away from ☐Do not harass
☐At least _____ yards
☐Referred to Public Defender **(PubDef)** ☐PubDef files conflict ☐Financially ineligible ☐PubDef Appointed ☐Private Atty apptd
☑Waiver of Rights and Plea form filed ☑Plea Withdrawn ☑Change of Plea
☑**Plea Entered:** Not Guilty / Guilty / No Contest ☐Found Guilty as to count(s) _____
Plea to a lesser included/reasonably related offense: ☐ Guilty ☑No Contest of Count 1 to the charge of F11377(A)HS
Clauses: ☐Dismissed _____ ☐ Admitted _____ ☐Denied ☐Sentencing Purposes Only
Priors: ☐Stricken _____ ☐Admitted _____ ☐Denied ☐Sentencing Purposes Only
☑Time waived for: ☐Preliminary Exam 10 / 60 days ☐Trial ☑Sentence ☐Time not waived ☐Time waiver withdrawn
Probation: ☐**Conditional Sentence:** ☐Granted for _____ years / months ☐See attached conditions ☐Denied
Probation Violation: ☐Deft Denies Violation ☐Hrg Waived ☐Matter Submitted ☐Deft Admits/Found ☐Not Found in Violation
☑Revoked ☐Restored ☐Modified ☐Extended to _____ ☐Continue same terms & conditions ☐Terminated
☑**Petition/Motion** by the PD to dism ct. 2 in view of plea ☑Granted ☐Denied ☐Withdrawn
Referred to: ☑Probation Dept. ☐Financial Hearing Officer ☐ _____
Bail: ☐**Forfeited in Open Court While Court was in Session** ☐Forfeiture Set Aside ☐Reinstated ☐Exonerated
☐Summary Judgment Entered **Warrant:** ☐Bench Warrant Issued ☑Bail Set at $ same ☐Bench Warrant Recalled
☐Bench Warrant Withheld ☐Bench Warrant Withdrawn ☐No Cite Release ☐Night Svc ☐Deft OR'd ☐Deft Remanded

Stip factual basis for plea Prop 36 Waived PTO:
Blood & Saliva ordered purs to 296 PC
Deft. given Assets form
Cert. to HHJ

FUTURE COURT DATES: ~~1/26/10 PX~~ vacate

☑Cont: Date: 1-19-10 Time: 8:45 Dept: 513 Proc.: R&S Date: _____ Time: _____ Dept. _____ Proc.: _____

ORPUS Codes: _____

DOCKET NAME CONTI, CANDACE JEANINE CT. DATE 10/22/09 DOCK NO. 233572A

8801297

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

NOTICE OF PLAINTIFF'S MOTIONS IN LIMINE

Trial Date: 5/21/2012

Prior to the commencement of trial, plaintiff CANDACE CONTI will present the following Motions in Limine:

No. 1:	To Exclude Reference To Or Evidence Of Plaintiff's Sexual History Or Activity [Evidence Code §§780; 352; C.C.P. §2017.220]
No. 2	To Exclude Defense Mental Health Expert Martin Williams' Speculative Opinion Testimony Re: Malingering" And All Medical Opinion Testimony [Evid. Code §§801(B); 352]
No. 3	To Exclude Irrelevant Medical History [Evid. Code §§350; 352]
No. 4	To Exclude Improper Character, Specific Act, And Religious Belief Evidence As To Expert Witness William Bowen [Evid Code §§786; 787; 789; 352]
No. 5	To Exclude Undisclosed Expert Witnesses And Opinions [C.C.P. §2034.300]
No. 6	To Exclude Evidence Of And Reference To Inapplicable Privilege Issues
No. 7	To Exclude Evidence Of Or Reference To Plaintiff's Arrests and Criminal Convictions [Evid. Code §§787, 352]
No. 8	To Exclude the Testimony of Toi Register Hayes [Evid. Code §§350, 352]

Dated: May 14, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

8801350

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 15 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.;

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S TRIAL BRIEF

Trial Date: 5/21/2012

///

///

///

///

///

///

///

///

///

///

///

///

TABLE OF CONTENTS

		Page
STATEMENT OF FACTS		1
I.	THE EVIDENCE WILL ESTABLISH A DUTY OF CARE ON THE PART OF BOTH INSTITUTIONAL DEFENDANTS TOWARD PLAINTIFF.	3
	A. Common Law and C.C.P. Section 340.1	3
	B. *Rowland v. Christian*	6
	1. Forseeability of Harm to the Plaintiff.	5
	2. The Degree of Certainty that the Plaintiff Suffered Injury.	6
	3. Closeness of the Conduct to the Injury.	6
	4. Moral Blame.	6
	5. The Policy of Preventing Future Harm.	6
	6. Burden to the Defendant and Consequences to Community.	7
	7. The Availability of Insurance.	7
II.	IMPOSITION OF DUTY AND LIABILITY IN THIS CASE DOES NOT CONTRAVENE ANY FIRST AMENDMENT PROTECTIONS.	8
	A. No Ministerial Exception	8
	B. The First Amendment Does Not Extend to child Sex Abuse	9
III.	THERE IS AMPLE EVIDENCE TO SUPPORT CAUSATION UNDER CALIFORNIA'S "SUBSTANTIAL FACTOR" TEST.	10
IV.	NATURE OF EXPERT TESTIMONY.	11
V.	STATUTORY PROCEDURES GOVERN THE PROCESS FOR DETERMINATION OF PUNITIVE DAMAGES.	13
VI.	DEFAULT AS TO KENDRICK.	13

TABLE OF AUTHORITIES

Authorities	Page
Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 828, 842-43	4
Pamela L. v. Farmer (1980) 112 Cal.App.3d 206, 211	4
Juarez v. Boy Scouts of America (2000) 81 Cal.App.4th 377, 395-96 and fn. 5	4
Wallace v. Der-Ohanian, (1962) 199 Cal.App.2d 141	4
Rowland v. Christian, (1968) 69 Cal.2d 108, 113	5
C.A. v. William S. Hart Unified School District (2012) 53 Cal.4th 861, at 877 and fn.8	5,7
Henry v. Red Hill Evangelical Lutheran Church of Tustin (2012) 201 Cal.App.4th 1041, 1053-54	8
Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S.Ct. 694 (January 11, 2012)	8,9
Employment Division v. Smith (1990) 494 U.S. 872	9
Reynolds v. U.S. (1878) 98 U.S. 145, 164-66	9
New York v. Ferber, (1982) 458 U.S. 747, 774	9
Prince v. Massachusetts, (1944) 321 U.S. 158	9
People v. Rippberger (1991) 231 Cal. App. 3d 1667, 1689	10
Saelzler v. Advanced Group (2001) 25 Cal.4th 763	10
Ann M. v. Pacific Plaza Shopping Center (1993) 6 Cal.4th 666	10
Sharon P. v. Arman, Ltd. (1999) 21 Cal.4th 1181	10
Nola M. v. University of Southern California (1993) 16 Cal.App.4th 421	10
Noble v. Los Angeles Dodgers, Inc. (1985) 168 Cal.App.3d 912	10
Constance B. v. State of California (1986) 178 Cal.App.3d 200	10,11
Delgado v. Trax Bar & Grill (2005) 36 Cal.4th 224	11
Tarasoff v. Regents of the University of California (1976) 17 Cal.3d 425	11
Giraldo v. Department of Corrections (2008) 168 Cal.App.4th 231	11
Wilson v. Goldman (1969) 274 Cal. App.2d 573, 79 Cal.Rptr.309	14

Heidary v. Yadollahi (2002) 99 Cal.App.4th 857, 863, 121 Cal.Rptr.2nd 695 14

Warden v. Lamb (1929) 98 Cal.App.738, 741, 277 P.867 14

Statutes **Page**

Penal Code 288(a) 2

C.C.P. Section 340.1 3,5

Rest. 2d Torts §302B 4

C.C.P. 340.1(b)(2) 5

CACI 430 10

CACI 431 10

C.C.P. §2034.430(a)(2) 13

Civil Code §3295(d) 13

Civil Code §3294 13

CACI 3944 13

CACI 3946 13

Evid. Code §1220 13

C.C.P. §585 14

C.C.P. §594 14

C.C.P. §594(b) 14

STATEMENT OF FACTS

Plaintiff Candace Conti was sexually abused by Jonathan Kendrick on multiple occasions over a period of more than a year. She was nine when the molestations began, around early 1995. The abuse continued and intensified until Plaintiff's parents separated during the summer of 1996 and she no longer was available to Kendrick. Kendrick's abuse started out as hugs and attention, which then deviated into oral copulation and penetration of Plaintiff with foreign objects. Kendrick gained access to Plaintiff during a time when she was particularly vulnerable due to her parents' dissolving, dysfunctional marriage. He used his trusted position as a fellow member of the North Fremont Congregation of Jehovah's Witnesses to get close to Plaintiff, and then took advantage of the opportunities presented by their mutual involvement in the Witnesses' activities to use her for sexual gratification.

The Jehovah's Witnesses are a collection of various corporations and entities around the world organized for religious purposes. The "Governing Body" is a group of men who meet at the Jehovah's Witnesses' New York world headquarters and control all Jehovah's Witnesses activities worldwide. The Governing Body acts through the various corporations it has established, including Defendant Watchtower New York. It establishes in detail each and every significant policy and administrative practice for all the entities and all the Jehovah's Witnesses. The local and national congregational administrative officials and Clergy class, called "Elders," must follow these rules, without any discretion to depart from them.

In 1993, Elders in the North Fremont Congregation learned of possible sexual abuse of two girls by Jonathan Kendrick, a "Ministerial Servant" in the Congregation. They confirmed the first report of molestation of Kendrick's stepdaughter, Andrea, and did not investigate the second report involving a girl named Toi Register. The Elders, on a written instruction from Watchtower New York, "removed" Jonathan Kendrick from his minor administrative position as a Ministerial Servant, which involved handing out books and magazines to Congregation members. After the Elders received actual notice of Kendrick's sexual abuse of Andrea, they did not notify or warn anyone else in the small Congregation that Kendrick was a potential sexual predator of children. The Elders did not warn or notify other administrative persons in the Congregation, including fellow Elders, Ministerial Servants, Congregation

members, or the parents of children active in the Congregation, including Plaintiff's parents. Kendrick continued to be allowed to engage in all Congregation activities without restriction, including "field service," where members, including children, go door-to-door through residential neighborhoods spreading the gospel. Kendrick performed unsupervised field service on many occasions with Plaintiff.

The abuse of Plaintiff was one of several identified occasions where Kendrick used the trust and confidence he enjoyed as a member of a small Jehovah's Witnesses Congregation to join an unsuspecting household or family and commit sexually deviant acts. He was criminally convicted in 1994 of his abuse of his stepdaughter from North Fremont Congregation. He was convicted in 2004 of felony Penal Code 288(a) sexual abuse of his 8-year-old step-granddaughter after he moved to a new Jehovah's Witnesses Congregation in 1998. In between, he molested Plaintiff and engaged in other inappropriate sexual conduct with Claudia, the spouse of Elder Rodney Francis, after moving into their house after his divorce from Andrea's mother.

The policy of secrecy as to sexual abuse of children by Congregation members that was followed by the Fremont Elders in 1993 and 1994 as to Kendrick was mandated upon it by Watchtower New York. The policy has as its rationale a very secular foundation: the effort of the Governing Body to avoid lawsuits by victims of sexual or other abusive conduct perpetrated by leaders or members of the Jehovah's Witnesses. The secrecy policy and its basis are stated repeatedly and explicitly in a binding policy commandment to All Bodies of Elders dated July 1, 1989, marked as Exhibit 1 for trial. It states:

> "Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society. " (Ex. 1, p. 1, ¶3.)
>
> "Worldly persons are quick to resort to lawsuits if they feel their "rights" have been violated. " (Ex. 1, p. 1, ¶4.)
>
> "The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, <u>such mistakes could result in successful litigation by those offended</u>. <u>Substantial monetary damages could be assessed against the elders or the congregation.</u> In some cases where the authorities are involved, certain complications could lead to a fine or imprisonment. **These possibilities underscore the need for elders to be discerning and to follow carefully directions provided by the Society.** (Ex. 1, p. 2, ¶3, emphasis added in part and in part in original.)

As devout Jehovah's Witnesses, Plaintiff's family centered virtually all of their social, recreational, and religious life around the Congregation. Meetings, study sessions, and field service, which involve children and adults together, occupied nearly all of their week. The Congregation was Plaintiff's extended family, as it is for most of the active members of the Church.

Plaintiff did not tell anyone about her abuse until 2002, when, as a 16-year-old, she disclosed it to a doctor at the Bay Valley Medical Group. Her "delayed reporting" is so common among abused children who have no safety net of family or institutional support that it is a recognized doctrine of professionals who address these issues. As Plaintiff grew older, she told her parents. Her mother, a sexual abuse victim herself as a child in Jehovah's Witnesses and a person with substantial mental and functional issues, was of little assistance. Her father, estranged from her by age 13 or 14, was on his fourth marriage when she told him in 2003, and his full-time commitment to Jehovah's Witnesses did not allow him to provide any support or assistance to Plaintiff on this or any other matter. Plaintiff reported the abuse to two Elders in a Southern California Congregation in early 2009, and requested that the Witnesses change their policies to do more to protect children from known child offenders within the membership. The subject of any policy change met with total rejection. Plaintiff then decided to retain an attorney and proceed with this lawsuit.

The health care providers who have treated and evaluated Plaintiff have diagnosed her with Post Traumatic Stress Syndrome and chronic depression from her abuse. She spent several years in her late teens and early twenties self-medicating with drug use, including methamphetamine – again, a common trait of abuse victims. Now 26, Plaintiff has been clean and sober for two years, and is on a path to a respectable and meaningful life. However, she will always carry the scars of the sustained sexual abuse she suffered as a child.

I. THE EVIDENCE WILL ESTABLISH A DUTY OF CARE ON THE PART OF BOTH INSTITUTIONAL DEFENDANTS TOWARD PLAINTIFF.

A. Common Law and C.C.P. Section 340.1

California Courts have long recognized a duty to protect children from the risk of sexual abuse at the hands of those known to present a specific risk. Third-party defendants have been exposed to

liability for their negligent failure to prevent sexual molestations by employees, volunteers, and family members, where the non-perpetrator defendant possessed actual knowledge of the employee or volunteer's history of sexual abuse and failed to warn or protect children exposed to the abuser. (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 842-43 [Church Youth Director]; *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206, 211 [Spouse of molester of girls in home swimming pool]; *Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377, 395-96 and fn. 5 [Boy Scout volunteer Scout Master]). The basis of the duty is found both in the "special relationship" between children and those who sponsor, organize, or supervise their activities, and in the general duty owed to persons of all ages to protect them from criminal conduct by third persons known to present a specific and preventable risk of criminal conduct or assault. (Rest. 2d Torts §302B.)

A separate specific duty to protect children from abuse also exists for organizations or persons who sponsor or supervise activities where youth participate. For example, *Juarez v. Boy Scouts*, *supra*, held that the evidence in that case established a duty to protect the child victim from the sexual abuse he experienced, even where there was no actual knowledge of prior molestation by the perpetrator Scout Master. The Court found that the general knowledge concerning child molesters' involvement in activities where youth are present and participate, and the knowledge of the risk of child molestation in or arising out of those activities, was sufficient to support "the imposition of a duty of care on the Scouts to take reasonable protective measures to protect Juarez from the risk of sexual abuse by adult volunteers involved in scouting programs, such as warning, training, or educating him (either directly or through his parent or adult volunteers) about how to avoid such an outcome." (*Juarez, supra*, 81 Cal.App.4th at p. 409-10). As *Juarez* noted, its holding was a continuation of a long line of cases recognizing such a duty even in the absence of specific knowledge of a specific child abuser. *Juarez* relied upon *Wallace v. Der-Ohanian*, (1962) 199 Cal.App.2d 141, where a youth camp operator was held liable for sexual abuse of an 11-year-old by an unknown third-party stranger who was not associated with the camp.

California Code of Civil Procedure section 340.1 is the statute of limitations for child sexual abuse cases. Extended limitations deadlines are applied to cases where an non-perpetrator entity

"knew, had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person . . . ." (C.C.P. 340.1(b)(2).)

In this action, it is admitted that the Congregation Elders acted as Defendant Watchtower New York's agents in their conduct concerning knowledge. The members of the Governing Body were the managing agents who set the policies the Elders followed. Plaintiff met Jonathan Kendrick through the Jehovah's Witnesses, she and her family trusted him because of the Jehovah's Witnesses community and church relationship, and Jonathan Kendrick had access to Plaintiff during, before, and after meetings, services, and door-to-door field service. The Elders had actual knowledge of Kendrick's reported prior sexual abuse of a minor. The elements of a common law duty as recognized by 340.1 are all present.

B. Rowland v. Christian

The analytical framework for analyzing duty in specific liability claims against institutional or entity defendants arising out of childhood sexual abuse by third-party perpetrators, like the analysis in virtually all tort duty cases, is based upon *Rowland v. Christian*, (1968) 69 Cal.2d 108, 113. (*C.A. v. William S. Hart Unified School District* (2012) 53 Cal.4th 861, at 877 and fn. 8.) The Court's determination of duty rests upon whether or not there is sufficient evidence that, if accepted, would give rise to a duty, but the liability itself can only be imposed if the jury decides the facts and evidence establish negligence. (*Id.* at p. 878-79.)

Applying the criteria of *Rowland v. Christian* supports the imposition of a duty against defendants in this case. The factors and their application are as follows:

1. Forseeability of Harm to the Plaintiff.

The evidence will show by the expert testimony of all of the professionals in the case, as well as Jehovah's Witnesses' own contemporaneously published articles, the knowledge that a perpetrator who has sexually abused one child was well known to pose a risk of future molestations to others. This factor strongly favors Plaintiff.

2. The Degree of Certainty that the Plaintiff Suffered Injury.

The evidence is 100% certain that Plaintiff suffered injury from her childhood sexual abuse. Although Defendants have not conceded the abuse occurred, for the purpose of the duty analysis, it must be assumed to be true. This factor favors Plaintiff.

3. Closeness of the Conduct to the Injury.

There is a direct line of continuity between the Defendants' conduct and the injury. The Elders' failure to warn Plaintiff, her parents, or other adults in the Congregation, of Kendrick's known risk of child sexual abuse, and their further failure to prevent his unsupervised access to Plaintiff during and arising out of Jehovah's Witnesses activities such as field service, provided Kendrick with the opportunity and the cloak of trust needed to accomplish his sexual abuse. There is a further closeness between the failure to educate or train leaders and members of the Congregation in sexual abuse prevention, and the failure on the part of the Elders and others to recognize the gravity of the risk posed by Kendrick and the necessary steps needed to protect children from him. This category also favors Plaintiff.

4. Moral Blame.

According to the repeated specific expressed reasons behind the July 1, 1989, written policy requiring the identity of child sexual abusers in the Congregations to be kept secret, the primary motive of Jehovah's Witnesses was to avoid lawsuits and financial loss. Putting the financial benefit of the organization ahead of the safety of children does involve moral blame, and this factor favors Plaintiff.

5. The Policy of Preventing Future Harm.

Perpetrator Kendrick continued to groom and later sexually abuse other children who he met through his relationships in Jehovah's Witnesses, resulting in his felony conviction in 2004. Had he been publicly identified as an offender against children in 1993, and the congregants warned instead of his record of sexual abuse of a child being kept secret, some or all of this harm would likely have been prevented. The professional experts who will testify in this case for Plaintiff will state that future harm is best prevented by identifying, warning of, and supervising known childhood sexual abusers so

that these criminals are deprived of the opportunity and ability to molest further. The policy preventing future harm is supported by imposition of a duty, and this factor favors Plaintiff.

6. Burden to the Defendant and Consequences to Community.

Defendants, including Watchtower, which is a wealthy international organization with millions of members, would not have any more unreasonable burden in implementing child safety and protection policies, procedures, and training and education programs, than would other large national or international agencies and entities which involve youth, such as the Catholic Church, the Boy Scouts, or Little League Baseball. Virtually all of these entities now have such programs in place. On the other hand, the consequences to the community of failing to have such a program and failing to protect children against sexual abuse are significant, as it fosters criminal conduct not only by the perpetrator, but by the childhood victims who often turn to drugs, and often suffer significant psychological damage - all of which places a burden on the community at large. This factor strongly favors Plaintiff.

7. The Availability of Insurance.

There is no insurance issue applicable in this particular case, as Jehovah's Witnesses and its entities are self-insured. To the extent that it is relevant in this case, imposition of a duty in this case will not affect the insurance market in any fashion. The availability and cost of insurance for large entities that sponsor activities involving youth already includes these risks, because of the existence of many lawsuits and claims during the last decade. Additionally, Defendants in the position of Watchtower and Fremont Congregation in this case do not bear all the burden of the damages caused by childhood sexual abuse, as comparative negligence principles will cause the jury to allocate a significant percentage of fault to Kendrick as the perpetrator, reducing their total liability for non-economic damages. (*C.A. v. William S. Hart USD*, *supra*, 53 Cal.4th at p. 879). This factor is of little consequence.

An analysis of the *Rowland v. Christian* factors finds that all favor Plaintiff to varying degrees, with the possible exception of the insurance issue, which is of no consequence in the evaluation of this particular claim. Because CACI does not include specific instructions on child sex abuse duties

and issues, Plaintiff has submitted two separate proposed special instructions on Duty that reflect the case and statutory law reviewed above. (See Attached Special Instructions 1 & 2.)

II. IMPOSITION OF DUTY AND LIABILITY IN THIS CASE DOES NOT CONTRAVENE ANY FIRST AMENDMENT PROTECTIONS.

No California court has ever held that the First Amendment shields a religious institution from liability for sexual abuse of a child. Throughout the proceedings in this case, Defendants have not cited any case that invokes the First Amendment to bar suits for sexual abuse of children. There is no exception applicable in this case that relieves Defendants from their secular duty to protect children from sexual abuse by known offenders in their organization.

A. The "Ministerial Exception" Has No Application To This Case.

California law has long applied an exception to the enforcement of employment laws against religious institutions, called the "Ministerial Exception." (*Henry v. Red Hill Evangelical Lutheran Church of Tustin* (2012) 201 Cal.App.4th 1041, 1053-54.) California has been one of many states to hold that the First Amendment religious clauses protect against interference in a religious institutions "right to decide matters affecting its Ministers' employment, free from the scrutiny and second-guessing of the civil courts." (*Ibid.* and fn. 6.)

The Ministerial Exception recognized by many states has recently been affirmed by the United States Supreme Court. (*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC,* 132 S.Ct. 694 (January 11, 2012).) Both the United States Supreme Court and California courts have limited the Ministerial Exception to employment law decisions as to the qualifications and selection of clergy: "the exception applies only to suits by or on behalf of ministers themselves." (*Id.* at p. 710.) In *Hosanna-Tabor*, the Supreme Court specifically refused to extend the doctrine to any other type of suit, including those for tortious conduct of religious employers. (*Ibid.*)

The Ministerial Exception has no applicability to this third-party liability case, both because it is not an employment case, and because perpetrator Jonathan Kendrick would not fit within the Ministerial Exception even in an employment context. A religious institution can only claim a Ministerial Exception for those individuals who have a "role distinct from that of most of its

members." (*Id.* at p. 707.) In this case, that role is held by the Elders, not individual Congregation members like Kendrick. The Ministerial Exception is applied where the purported minister has a significant degree of religious training, such as the eight college-level courses, oral examinations, and repeated multiple approvals by both Congregation and institutional administration that the minister in *Hosanna-Tabor* took six years to complete. (*Ibid.*) Perpetrator Kendrick had none of this religious training or experience. The Ministerial Exception applies where the minister carries significant responsibilities to teach religious and lead, organize, and conduct religious services. (*Id.*) Jonathan Kendrick, as a Ministerial Servant and as a Congregation member, did not perform or have any of these religious responsibilities. Ministers entitled to the exception have special sanction from the institutions for which they serve. (*Ibid.*) Jonathan Kendrick had no such sanction.

The evidence will show that a Ministerial Servant is a helper who performs non-religious services for Jehovah's Witnesses, such as janitorial work, passing out magazines, or running the projector or microphone. None of these lay services require any special religious training or education, and none entitle defendants to claim the Ministerial Exception as to their conduct regarding Jonathan Kendrick.

B. The First Amendment Does Not Extend To Child Sex Abuse.

The U.S. Supreme Court has established that the First Amendment does not absolve individuals or institutions from complying with neutral laws of general applicability. (*Employment Division v. Smith* (1990) 494 U.S. 872.) The Court has specifically refused to recognize First Amendment challenges to laws enacted for the purpose of protecting children. It declared in *Reynolds v. U.S.* (1878) 98 U.S. 145, 164-66, in upholding an anti-polygamy statute, that "to permit a man to excuse his practices to the contrary because of his religious belief . . . would be to make the professed doctrines of religious belief superior to the law of the land and in effect permit every citizen to become a law unto himself." In *New York v. Ferber*, (1982) 458 U.S. 747, 774, it found that a category of speech may constitutionally be excluded from First Amendment protection to further the interests of children. And in *Prince v. Massachusetts*, (1944) 321 U.S. 158, the Court held that

Jehovah's Witness children could not distribute religious literature in violation of child labor laws regardless of the children's status as ministers in the faith.

As a California court of appeal explained, "the free exercise of religion is not an absolute right and must be balanced against the rights of others, including one's children." (*People v. Rippberger* (1991) 231 Cal. App. 3d 1667, 1689.) Defendants' neutral and generally applicable duty to protect children in their organization from sexual abuse by a known pedophile in their congregation is not excused by their status as religious corporations.

III. THERE IS AMPLE EVIDENCE TO SUPPORT CAUSATION UNDER CALIFORNIA'S "SUBSTANTIAL FACTOR" TEST.

California follows the "substantial factor" test of causation in tort cases, as embodied in CACI 430. It is Plaintiff's position that the negligence of the institutional defendants, combined with the intentional conduct of Jonathan Kendrick, combined as concurring causes of Plaintiff's childhood sexual abuse. (CACI 431) Defendants Watchtower and Fremont Congregation, on the other hand, have previously argued that Kendrick's criminal conduct was a superseding cause of Plaintiff's harm, and that there is no evidence available to prove, even if the institutional defendants are negligent, that there is "a causal connection between the defendants' breach and the plaintiff's injury." (*Saelzler v. Advanced Group* (2001) 25 Cal.4th 763, 773.) *Saelzler* rejected the claim of a FedEx delivery driver who was attacked by unknown criminals while making a delivery to an apartment complex owned and managed by the defendants. The plaintiff predicated her claim on a negligent failure to provide adequate security. (*Id.* at p. 769.)

Saelzler is one of a series of cases against commercial property owners involving random criminal assaults by unknown criminals, with underlying claims of inadequate security precautions. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666 [store employee raped by unknown assailant at shopping center]; *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181 [sexual assault by unknown attacker in commercial parking garage]; *Nola M. v. University of Southern California* (1993) 16 Cal.App.4th 421 [unknown rapist commits night attack on college campus]; *Noble v. Los Angeles Dodgers, Inc.* (1985) 168 Cal.App.3d 912 [assault in Dodger Stadium parking lot]; and *Constance B.*

v. State of California (1986) 178 Cal.App.3d 200 [sexual assault in state highway rest area bathroom].)

The "entirely random assault by an unknown assailant in a public place" line of cases has no applicability to the facts of this case. In this case, the criminal, Jonathan Kendrick, was a specific, identifiable individual with a known history of sexual abuse of a child, and the victim a child in the small Congregation in which the criminal was a member. In this case, the criminal's propensity for sexual assault of children was known to Defendants. In this case, most case law recognizes the existence of a "special relationship" between children involved in institutional activities that include youth, and the organizations that sponsor and supervise such activities. In this case, there are specific, identifiable acts that would have prevented Kendrick from having access to Plaintiff or other children for the purposes of sexual abuse – including warning the small Congregation and Plaintiff's parents, of his prior act of child sexual molestation; providing actual supervision over Kendrick in a manner that would have prohibited him from having access to Plaintiff during field service or other activities; or "Disfellowshipping" him so that Plaintiff and her family would avoid him and prevent him from accessing Plaintiff.

California case law has consistently determined, in a wide variety of circumstances, that there is a duty to protect third persons from criminal assaults by known or identifiable criminals when the relationship and knowledge of the parties supports imposition of a duty under *Roland v. Christian*, *supra*. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224 [bar owner had duty to provide security to customers who were assaulted by other patrons after "angry stares"]; *Tarasoff v. Regents of the University of California* (1976) 17 Cal.3d 425 [therapist duty to inform victim of mentally ill patient's stated intent to kill her]; *Giraldo v. Department of Corrections* (2008) 168 Cal.App.4th 231 [transgender inmate attacked by male prisoners].)

IV. NATURE OF EXPERT TESTIMONY.

The parties disclosed six retained expert witnesses, four called by Plaintiff and two jointly by Defendants. In addition, there are a number of non-retained experts. The retained experts for the plaintiff include Lynn Ponton, M.D., a professor of psychiatry from UCSF who is Board Certified in Child

and Adolescent Psychiatry. She will testify primarily to issues of Plaintiff's damages. Anna Salter, Ph.D., is a psychologist from Harvard, who is a national author and leader in conducting trainings on sexual abuse prevention for youth organizations throughout the country. She is a former faculty member at Dartmouth Medical School in the Maternal and Child Health field, and has worked with groups all around the country for 30 years in issues of child sexual abuse prevention. Dr. Salter will testify as to applicable standards of care, and the delayed disclosure phenomena, among other issues. Carl Lewis is a licensed private investigator, and was for many years a Santa Clara District Attorney's office criminal investigator and police officer with specialized training and experience in sexual assault and child abuse cases. He will testify as to the Accommodation Syndrome and its effect on child victims of sexual abuse, on the failures of the investigation of Jonathan Kendrick performed by Defendants in 1993, and as to the common plan of Kendrick in utilizing multiple Jehovah's Witness families for sexual predator conduct. William Bowen, of Tennessee, is the Director of "Silent Lambs," an organization formed to support victims of childhood sexual abuse within the Jehovah's Witnesses. He is a former Elder, and will testify as to various policies and practices of Jehovah's Witnesses in issues of childhood sexual abuse.

Defendants have disclosed Monica Applewhite, a Park Dietz consultant, to testify about issues of standard of care. Defendants have also disclosed Martin Williams, Ph.D., a psychologist from San Jose, who has conducted the defense mental health exam of Plaintiff, and will testify as to issues of damages and causation.

There are a number of non-retained experts as well. Plaintiff's childhood family therapist, Laura Fraser, now lives in San Diego, and will appear by videotape deposition. So will Plaintiff's current healthcare providers from Kaiser, Downey: Lauren Walton, M.D., Helene Harmatz, LCSW, and Marcia Lee, MFT. Law enforcement officers Sgt. Jeffrey Baldwin, the Contra Costa County Sheriff who investigated Jonathan Kendrick in the 2003 felony conviction, and J.W. Davila, the retired Fremont Police Department Officer who conducted the investigation for Mr. Kendrick's 1994 conviction of the molestation of his stepdaughter, will testify as to the common plan and lack of inadvertence of Kendrick's molestation of the two girls which resulted in his criminal convictions.

One medical doctor, Janice Afruma, M.D., formerly of Bay Valley Medical Group, will be called by Plaintiff to read her chart entry of August, 2002, when she saw Plaintiff as a 16-year-old on one occasion only. Dr. Afruma did not form a diagnosis or prognosis at that time, but did record in her chart Plaintiff's reporting of her having been sexually abused some years earlier. She is called as a percipient witness as to her conversation with Plaintiff, for "testimony requiring only the reading of words and symbols contained in the relevant medical record," rather than for expert opinion. (C.C.P. §2034.430(a)(2).)

V. STATUTORY PROCEDURES GOVERN THE PROCESS FOR DETERMINATION OF PUNITIVE DAMAGES.

Civil Code section 3295(d) sets forth the process to be followed where punitive damages are claimed. That section provides that, on the application of any defendant, evidence of a defendant's profits or financial condition may not be admitted until the trier of fact returns a verdict for the plaintiff awarding actual damages, and a finding of malice in accordance with section 3294 and constitution of due process case law definitions. Such evidence then may be admissible only as to those defendants found to be liable and guilty of malice. However, the evidence of profit and financial condition, and the determination of punitive damages, must be presented to the same trier of fact or jury that found for the plaintiff and made the finding of malice.

Should Defendant Watchtower so apply, Plaintiff agrees that section 3295(d) sets forth the procedure to be followed. CACI provides, and Plaintiff has requested, the jury instructions for each phase of the bifurcated trial as to punitive damages: CACI 3944 and 3946.

VI. DEFAULT AS TO KENDRICK.

Jonathan Kendrick is a named defendant in this case. He has notified counsel and the Court that he will not appear for the trial, as he cannot afford the cost. However, Mr. Kendrick remains a party to the case even though he is absent from the courtroom, and he will be a party on the Special Verdict to whom fault may be assigned by the jury in the event of a verdict for Plaintiff. As a party, hearsay evidence such as extra-judicial admissions by Kendrick remain admissible. (Evid. Code §1220.)

Section 585 of the Code of Civil Procedure does not authorize the entry of a default in cases such as this where an answer is on file and the defendant does not appear at the time that the action is called for trial. (*Wilson v. Goldman* (1969) 274 Cal.App.2d 573; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 863.) Where the defendant who has filed an answer fails to appear for trial "the plaintiff's sole remedy is to move the Court to proceed with the trial and introduce whatever testimony there may be to sustain the plaintiff's cause of action." (*Warden v. Lamb* (1929) 98 Cal.App. 738, 741.) In such a case, the plaintiff is entitled to proceed under the provisions of Code of Civil Procedure section 594(a) and he may do so in the absence of the defendant provided the defendant has been given at least 15 days notice of the trial:

> In Superior Courts, either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take . . . a verdict, or judgment, . . . provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the Court that the adverse party has had 15 days notice of such trial . . . .

C.C.P. section 594(b) provides that the notice to the adverse party required by subdivision (a) may be served by mail by the Clerk of the Court or by any party. There is no proof of service on defendant Kendrick of the Order Continuing the Trial Date from March 26, 2012, to May 21, 2012, because that Order was made before Mr. Kendrick entered the case through his Motion for Relief from Default. However, he was served on March 29, 2012, with the Stipulation to Continue Pre Trial Conference which document shows the trial date is May 21, 2012. Moreover, Mr. Kendrick filed an *In Pro Per* Settlement Conference Statement on April 4, 2012, stating he was aware of the trial date and would not attend: "I do not have any issue with the trial and related proceedings taking place without me being present."

Dated: May 15, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

PLAINTIFF'S REQUESTED SPECIAL INSTRUCTION NO. 1

DUTY TO PROTECT

The defendants Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit, had a duty to take reasonable protective measures to protect Candace Conti from the risk of sexual abuse by volunteers, including Jonathan Kendrick, involved in Jehovah's Witness activities. In determining whether or not Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit, took reasonable protective measures, you may consider the following:

1. The presence or absence of any warning;

2. The availability of training and whether or not such training was provided;

3. Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses volunteers for the purpose of childhood sexual abuse prevention; and

4. Such other facts and circumstances contained in the evidence.

(Authority: Juarez v. Boy Scouts of America (2000) 81 Cal.App.4th 377,409-10).

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

PLAINTIFF'S REQUESTED SPECIAL INSTRUCTION NO. 2.

DUTY TO PROTECT

An organization that conducts, sponsors, or supervises activities involving minors and adults together has a duty to exercise reasonable care in the selection and supervision of its volunteers, so as to avoid exposing minors to the risk of harm from sexual abuse by adult volunteers.

Such an organization also has a duty to take reasonable steps and institute reasonable safeguards to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment.

(Authority: Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 828, 843; CCP Section 340.1(b)(2)).

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

8801304

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 3

DATE May 18, 2012
TIME 8:30 A.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 3.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 3 are true and correct copies of pages 1-5, and 25, 26, 64 of the deposition of Plaintiff Jane Doe.

3. Attached as Exhibit B to this declaration in Support of Defendant Watchtower

and North Fremont Congregation's Motion In Limine 3 is Evelyn Kendrick's Declaration dated March 26, 2012.

4. Attached as Exhibit C to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 3 is a true and correct copy of a letter dated November 15, 1993, from the North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") to Watchtower.

5. Attached as Exhibit D to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 3 is a true and correct copy of a letter dated December 3, 1993, from Watchtower to the North Fremont Congregation.

6. Attached as Exhibit E to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 3 is a true and correct copy of a police report number 940218027 dated February 22, 1994, and prepared by officer R.W. Davila of the Fremont, California police department.

7. Attached as Exhibit F to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 3 are true and correct copies of pages 1-4, 29, 30, 65, and 66 of Michael Clarke's deposition.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 3** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

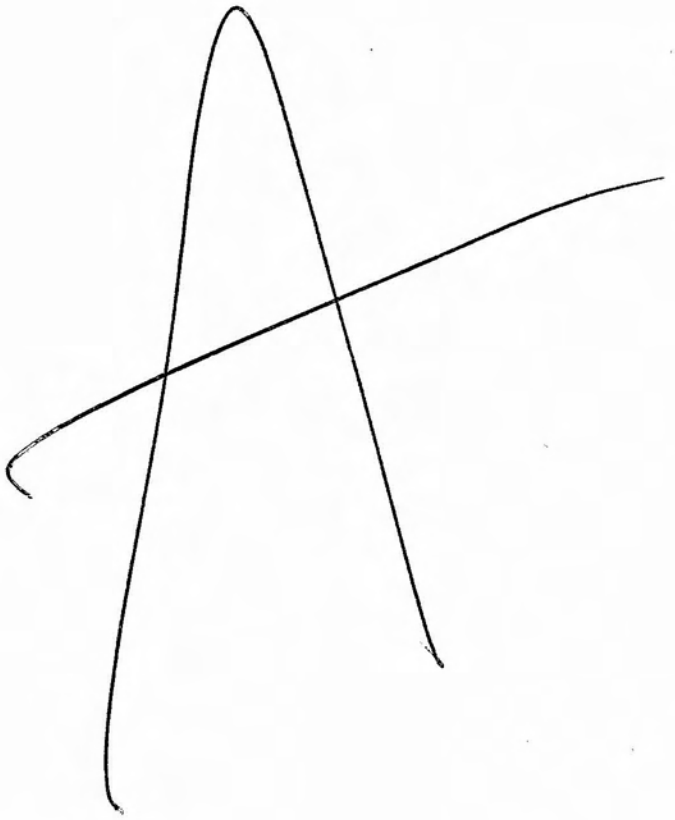
Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ♦ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

_____

Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____

Certified Shorthand Reporter
State of California
License No. 2816

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
5776 STONERIDGE MALL ROAD, SUITE 350
PLEASANTON, CALIFORNIA 94588
(925) 416-1800

To: JANE DOE
c/o JAMES M. McCABE
THE McCABE LAW FIRM.
4817 SANTA MONICA AVENUE, SUITE B
SAN DIEGO, CA 94541

SEP 0 6 2011

RE: DOE VS WATCHTOWER

Dear JANE DOE:

This is to inform you that your deposition conducted on August 25, 2011, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

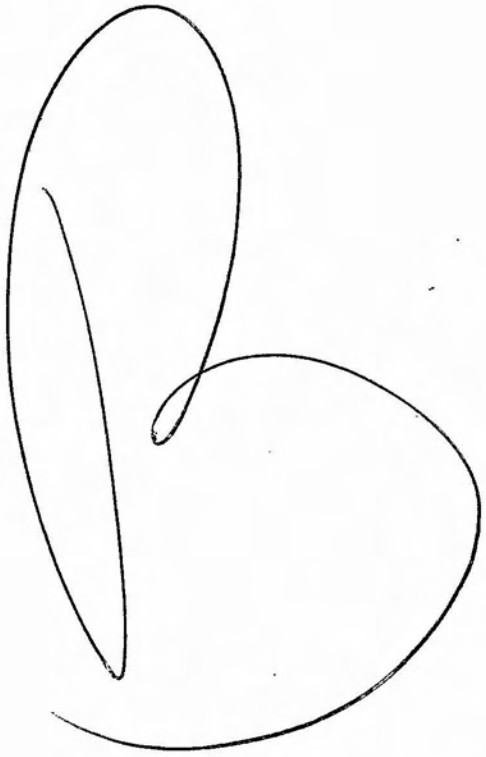
If it is more convenient, please contact Richard J. Simons, Attorney at Law, to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel



RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF EVELYN KENDRICK IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY

Date:	**5/3/12**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1232647**

I, EVELYN KENDRICK, hereby declare:

1. That I was married to Jonathan Kendrick in 1993, and am now divorced from him;

2. That I have a daughter Andrea born on July 16, 1979, who resided with us during the time Mr. Kendrick and I were married;

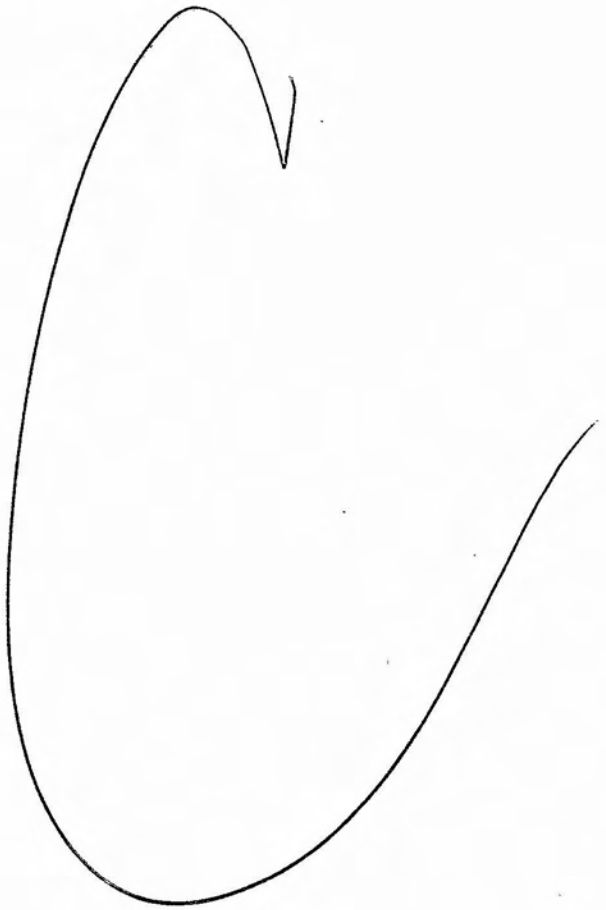
3. I was present at the meeting at our residence that occurred on November 11, 1993, and is the subject of Mr. Clarke's letter of November 15, 1993, attached to this Declaration as Exhibit 1. Mr. Kendrick, Andrea, and Elder Gary Abrahamson were also present. During the meeting, Andrea told the Elders that Jonathan Kendrick had given her Vicodin, watched T.V. with her in her bedroom, and then put his hand inside Andrea's bra, with skin-to-skin contact on her breast. Andrea also told the Elders that Kendrick placed his hand inside her pants and touched her genital area.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am competent to testify as to the facts set forth herein.

Executed this 26 day of March, 2012, at Hayward, California.

Evelyn Kendrick

EVELYN KENDRICK



North Congregation #15685
Fremont
c/o Michael L. Clarke
32852 Bass Lake St.
Fremont, Ca 94555

Nov 15, 1993

Watchtower Bible & Tract Society
25 Columbia Heights
Brooklyn, New York, 11201 USA

Dear Brothers,

We are writing to you regarding a case of child abuse. We telephoned 11/12/93 and it was suggested that we submit in writing our questions.

We met on 11/11/93 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15 yr old step daughter. The abuse occurred approximately 4 months ago. He confessed to touching the breast of his step daughter while she was sleeping. She was awaken instantly and knew what had happened. His wife was informed that evening and the 3 of them talked it out between them. Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders. He said that his conscious continued to bother him.

Evelyn, his wife, is baptized but inactive. She occasionally attends meetings.

Andrea, the step daughter, is not baptized and is no longer an unbaptized publisher. The step daughter is now using this as a tool to threaten with when she wants something. Because she has been promiscuous with 2 boys at school. the parents have tried to enforce house rules covering her comings and goings.

Andrea has recently mentioned the abuse to another young girl, Toy Register, whom she attends school with. Coincidentally, Toy attends our congregation meetings and is studying. Her mother is disfellowshipped. Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional. Mrs Register is now threatening to call the police.

Here are the facts as best as we can present them without interviewing each party. Our questions are as follows:

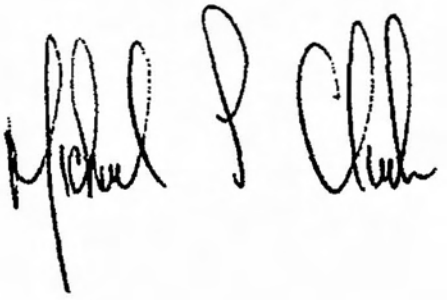
1. Can 2 elders handle this matter with Brother Kendrick as mentioned on page 93 of "Pay attention to Yourselves....Flock", under the heading Uncleanness? Or do we have to form a Judicial hearing because of it being child abuse?

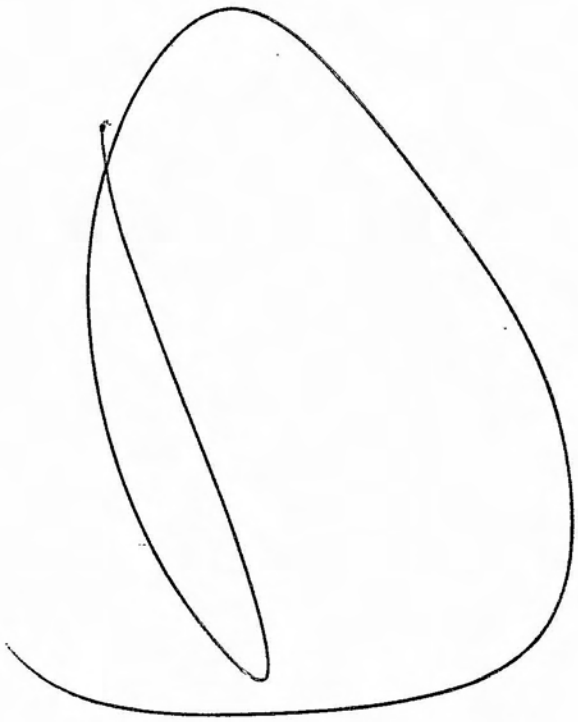
2. We assume that Brother Kendrick does not qualify any longer as a Ministerial Servant. We will announce to the congregation that he is no longer serving as such. If this is incorrect, please inform us.

3. The legal department has given us some direction as far as our legal requirements and we will follow that closely.

We will wait to hear from you regarding the above questions. If I have not been clear enough, you may reach me during the day at my work phone (510-462-7861 ext 105)

Your Brothers,





WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A. PHONE (718) 625-3600

SCN:SST December 3, 1993

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH'S WITNESSES, FREMONT, CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers:

Your letter dated November 15, 1993, has been received. As you will note from the enclosed S-52 form, Brother Jonathan Kendrick has been deleted from serving as a ministerial servant on the grounds of "uncleanness."

Your letter states: "He confessed to touching the breasts of his stepdaughter while she was sleeping. She was awakened instantly and knew what had happened." Since this incident is known by outside members of the family, it is appropriate that Brother Kendrick be deleted from serving as a ministerial servant with your congregation.

On page 92 of the Kingdom Ministry School textbook the following is stated: "Uncleanness includes an intentional momentary touching of sexual parts or caressing of breasts. Such minor uncleanness can be handled at the discretion of an elder or two; it does not require a judicial hearing. There is a need for strong counsel, admonition, and assistance to help the individual to maintain chaste conduct in the future."

In harmony with the above, it will not be necessary for a judicial committee to handle the "uncleanness" committed by Brother Kendrick. However, it would be appropriate for two elders to meet with him and provide him with strong Scriptural counsel so as to avoid a repetition of such a serious offense.

We trust the above comments will be helpful to you. With this letter we are pleased to send you an expression of our warm Christian love and best wishes.

Your brothers,

Watchtower B. & T. Society
OF NEW YORK, INC.

cc: R. Rainer, CA #40



AUTOMATED
Fremont Police Department
REPORTING

Police Report

Report No.: 940218027 Supplement No.: 000

Class: CHILD MOLEST Code: PC 288(a) Section:

Other: Code: Section:

Location: 4219 NORRIS RD.,FREMONT,CA.

Date Reported: 022294 Time: 0650

From Date: 070993 From Time: 1600 To Date: 070993 To Time: 2100

Reporting Ofc.: 1816 R.W.DAVILA Reviewed by: BANTA

Routing: C.P.S. NICOLE RADFORD

NON-DISCLOSURE
PC 293
NON-DISCLOSURE

LAW ENFORCEMENT COPY

PLFS Exhibit No. 3
Witness Baldwin
Date 1-23-12
Charlotte G. Roche CSR #4486

#03-20646
PS 18 of 26
(3-1)

Persons Section Codes
CIT Cited PER Person RES Responsible SUS Suspect VAS Victim-Suspect VIC Victim WIT Witness

Inv: SUS Name: KENDRICK,JONATHAN DAVID Sex: M Race: W DOB: 13154
Hgt: 601 Wgt: 200 Hair: BRO Eye: HZL SSN: OLN: E0612092 State: CA.
PKG: AOR267 FBI: CII:
Address: 4219 NORRIS RD. City: FREMONT State: CA. Zip:
Phone: Type: H
Bus Address: City: Bus Phone:
Miscellaneous:

Inv: PER Name: RADFORD,NICOLE Sex: Race: DOB:
Hgt: Wgt: Hair: Eye: SSN: OLN: State:
PKG: FBI: CII:
Address: City: State: Zip:
Phone: Type: H
Bus Address: 2300 FAIRMONT DR. City: SAN LEANDRO Bus Phone: 667-7438
Miscellaneous: C.P.S. CASE WORKER

Narrative

0 SECTION "B"/NARRATIVE:

1 CONFIDENTIAL REPORT: PURSUANT TO P.C. 293 AND G.C. 6254. THE VICTIM
2 WILL BE REFERRED TO ONLY AS "VICTIM" THROUGHOUT THIS REPORT.

3 THE FREMONT POLICE DEPARTMENT RECEIVED FROM CHILD PROTECTIVE

#03-20646
PG 19 of 26
(3-2)

LAW ENFORCEMENT ONLY

SERVICES A SUSPECTED CHILD ABUSE REPORT. UPON REVIEWING THIS REPORT, I DISCOVERED THE FOLLOWING INFORMATION:

THE VICTIM DISCLOSED HER STEP-FATHER (JONATHAN KENDRICK) HAS PHYSICALLY ABUSED HER FOR THE PAST FIVE YEARS. THE VICTIM ALSO DISCLOSED HER STEP-FATHER PLACED HIS HAND UNDER HER BLOUSE AND FONDLED HER BREAST, UNZIPPED HER PANTS AND FONDLED HER PELVIC AREA IN JULY OF 1993.

ON 02/18/94 AT APPROXIMATELY 1410 HOURS, C.P.S. CASE WORKER NICOLE RADFORD AND MYSELF INTERVIEWED THE VICTIM AT C.P.C. HOSPITAL. I OBTAINED AN AUDIO TAPED STATEMENT FROM THE VICTIM AND IN SUMMARY SHE TOLD US THE FOLLOWING INFORMATION:

THE VICTIM TOLD US HER STEP-FATHER AND MOTHER FOUND OUT SHE WAS SEXUALLY ACTIVE WITH HER BOYFRIEND. SHE TOOK ONE VIKADIN FOR HER BACK PROBLEM AND LAID DOWN IN HER ROOM AROUND 7:00 OR 8:00 P.M. HER STEP-FATHER WAS WATCHING FOOTBALL ON T.V. IN HER ROOM, WHILE SHE WAS SLEEPING.

SHE WOKE UP AND COULD NOT MOVE BECAUSE SHE WAS REAL WEAK. HER STEP-DAD PUT A BLANKET OVER HER. HER STEP-DAD PUT HIS HAND UP HER SHIRT AND UNDER HER BRA. HE RUBBED HER BREAST UNDERNEATH HER BRA AND UNZIPPED THE FRONT OF HER PANTS. HE PUT HIS HAND PARTIALLY UNDERNEATH HER UNDERWEAR AND TOUCHED HER PELVIC AREA. THE DOGS STARTED BARKING, SO HER STEP-DAD WENT OUT TO SEE WHY THEY WERE BARKING. SHE WENT INTO THE BATHROOM AND STARTED CRYING. SHE WENT INTO HER MOTHER'S BEDROOM AND TOLD HER MOTHER WHAT HAD HAPPENED. HER MOTHER CONFRONTED HER STEP-FATHER ABOUT IT. HE INITIALLY DENIED IT AND LATER ADMITTED GOING UP HER SHIRT AND DOWN HER PANTS. HE ALSO ADMITTED TO THE ELDERS OF CHURCH OF THIS INCIDENT. THE VICTIM TOLD ME THIS WAS THE FIRST TIME ANYTHING LIKE THIS HAD HAPPENED WITH HER STEP-FATHER. THE VICTIM TOLD ME THIS INCIDENT HAPPENED A WEEK BEFORE HER BIRTHDAY (07/16/79) THIS PAST SUMMER IN JULY. THE VICTIM TOLD ME HER STEP-FATHER BEAT HER UP LAST WEEK, WHICH SHE TOLD ME WAS REPORTED TO THE POLICE.

SUBJECT TO PROTECTIVE ORDER

H03-20646
PS 20 of 26
3-3

ON 03/04/94 AT APPROXIMATELY 1135 HOURS, SUSPECT JONATHAN AND HIS WIFE KENDRICK CAME TO THE FREMONT POLICE DEPARTMENT PER MY REQUEST. I FIRST SPOKE WITH THE VICTIM'S MOTHER (EVELYN KENDRICK) AND OBTAINED AN AUDIO TAPED STATEMENT FROM HER. IN SUMMARY, EVELYN KENDRICK TOLD ME THE FOLLOWING INFORMATION:

JONATHAN AND SHE HAD FOUND OUT HER DAUGHTER WAS HAVING SEX WITH SEVERAL DIFFERENT BOYS IN A WEEKS PERIOD. THEY FOUND A DIARY WITH EXPLICIT DETAILS. JONATHAN BECAME UPSET AND WENT TO ONE OF THE BOYS'S HOUSE WITH ONE OF THE CHURCH ELDERS AND TOLD THE BOY'S PARENTS. JONATHAN CONFRONTED THE VICTIM AND ASKED HER WHY SHE HAD TURNED THEIR HOUSE INTO A BROTHEL. LATER ON THAT EVENING, SHE WAS ON THE PHONE TO HER MOTHER. JONATHAN WENT INTO THE VICTIM'S ROOM TO WATCH THE FOOTBALL GAME AND GIVE HER (EVELYN) SOME PRIVACY ON THE PHONE. THE VICTIM WAS IN HER BED BECAUSE SHE TAKEN A VIKADIN EARLIER FOR HER BACK PAIN. APPROXIMATELY A HALF AN HOUR LATER, THE VICTIM TOLD HER (EVELYN) THAT HER FATHER HAD TOUCHED HER. THE VICTIM DISCLOSED HER FATHER HAD UNZIPPED HER PANTS AND PUT HIS HAND UNDERNEATH HER BLOUSE. SHE CONFRONTED HER HUSBAND (JONATHAN) ABOUT THIS AND HE ADMITTED TO IT. JONATHAN TOLD HER HE "LOST HIS HEAD". SHE TOLD ME JONATHAN ALSO CONFESSED TO THE ELDERS OF THE CHURCH ABOUT THIS INCIDENT. EVELYN TOLD ME JONATHAN AND HER ARE HAVING MARRIAGE PROBLEMS AND FIGHT A LOT. THEY ARE CURRENTLY IN COUNSELING FOR THEIR MARTIAL PROBLEMS. APPROXIMATELY ONE MONTH AGO, SHE WAS HAVING AN ARGUMENT WITH JONATHAN. THE VICTIM JUMPED IN THE MIDDLE OF THE ARGUMENT AND BEGAN CALLING JONATHAN DIRTY NAMES. THE VICTIM STARTED AT HIM AND HE BACK HANDED THE VICTIM ON THE BACK AND SHOULDERS. THE VICTIM WAS CLAWING AT HIM AND SCREAMING. SHE CALLED THE POLICE AND REPORTED THIS INCIDENT TO THE OFFICERS WHO ARRIVED AT HER HOUSE. EVELYN TOLD ME SHE DID NOT KNOW THE NAMES OF THE BOYS THE VICTIM WAS HAVING SEX WITH AND DID NOT WANT ME TO PURSUE THE UNLAWFUL SEXUAL INTERCOURSE.

ON 03/04/94 AT APPROXIMATELY 1148 HOURS, I SPOKE WITH JONATHAN AND OBTAINED AN AUDIO TAPED STATEMENT FROM HIM. IN SUMMARY, JONATHAN TOLD ME THE FOLLOWING INFORMATION:

H03-20646
PS 21 of 26
(3-4)

JONATHAN TOLD ME HE REACHED UP UNDERNEATH THE VICTIM'S SWEATSHIRT AND TOUCHED HER BREAST. THE VICTIM WAS WEARING A BRA AND HE DID NOT GO UNDERNEATH IT. JONATHAN TOLD ME THE INCIDENT LASTED ABOUT FIVE SECONDS. JONATHAN WAS ONLY ABLE TO NARROW DOWN THE TIME FRAME OF THIS INCIDENT TO THIS PAST SUMMER. JONATHAN LATER TOLD ME HE ALSO UNZIPPED THE FRONT OF THE VICTIM'S PANTS, BUT DID NOT TOUCH HER "THERE". HE STOPPED BECAUSE THE VICTIM STARTED MOVING. JONATHAN TOLD ME HE DID NOT KNOW WHAT HE WAS THINKING AT THE TIME OF THIS INCIDENT OR WHAT HE WAS GOING TO DO. JONATHAN DID TELL ME HE WAS NOT GOING TO MOLEST THE VICTIM OR HAVE SEX WITH HER. THIS WAS THE FIRST TIME ANYTHING LIKE THIS HAS EVER HAPPENED BETWEEN THE VICTIM AND HIM.

I RECOMMEND A COPY OF THIS INVESTIGATION BE FORWARDED TO D.D.A. FOR REVIEW AND CHARGING. NO FURTHER ACTION TAKEN BY THIS INVESTIGATOR.

SECTION "C"/EVIDENCE:

#1 TAPED INTERVIEW WITH THE VICTIM.

#2 TAPED INTERVIEW WITH JONATHAN & EVELYN KENDRICK.

LAW ENFORCEMENT USE ONLY

#03-70646
PS 22 of 26
(3-5)

AUTOMATED Fremont Police Department REPORTING

Supplemental Report

Report No.: 940218027 Supplement No.: 001

Class: CHILD MOLEST Code: PC 288 Section:

Reclass to: S/A Code: Section:

Location: 4219 NORRIS RD.

Date Reported: 031694 Time: 0645

Reporting Ofc.: 1816 R.W.DAVILA Reviewed by: BANTA

Routing: ATTACHMENT/C.P.S. NICOLE RADFORD

NON-DISCLOSURE PC 293 NON-DISCLOSURE

Persons Section Codes
CIT Cited PER Person RES Responsible SUS Suspect VAS Victim-Suspect VIC Victim WIT Witness

Inv: VIC Name: BECERRA,ANDREA Sex: F Race: W DOB: 071679
Hgt: Wgt: Hair: Eyes: SSN: OLN: State:
PKG: FBI: CII:
Address: 4219 NORRIS RD City: FREMONT State: CA. Zip: 94536
Phone: 791-9011 Type: H
Bus Address: CENTERVILLE JR. HIGH City: FREMONT Bus Phone:
Miscellaneous: MOTHER-EVELYN KENRICK & STEP-FATHER JONATHAN KENRICK.

LAW ENFORCEMENT COPY

#03-20646
PG 23 of 26
(3-6)

Inv: SUS Name: KENRICK,JONATHAN DAVID Sex: M Race: W DOB: 013154
Hgt: 601 Wgt: 200 Hair: BRO Eye: HZL SSN: DLN: E0612092 State: CA.
PKG: FBI: CII:
Address: 4219 NORRIS RD. City: FREMONT State: CA. Zip: 94536
Phone: 791-9011 Type: H
Bus Address: City: Bus Phone:
Miscellaneous: STEP-FATHER OF VICTIM.

Narrative

0 SECTION "B"/NARRATIVE:

1 THE PURPOSE OF THIS SUPPLEMENTAL REPORT IS TO PROVIDE THE VICTIM'S
2 INFORMATION PER P.C. 293 AND G.C. 6254. FOR FURTHER DETAILS REFER
3 TO FREMONT P.D. CASE #940218027.000. NO FURTHER ACTION TAKEN.

LAW ENFORCEMENT COPY

B03-20646
PS 24.F.2L
(3-7)

AUTOMATED REPORTING
Fremont Police Department

Supplemental Report

Report No.: 940218027 Supplement No.: 002

Class: CHILD MOLEST Code: PC 288 Section:

Release to: S/A Code: Section:

Location: 4219 NORRIS RD.,FREMONT,CA.

Date Reported: 031894 Time: 0615

Reporting Ofc.: 1816 R.W.DAVILA Reviewed by: BANTA

Routing: C.P.S. NICOLE RADFORD

NON-DISCLOSURE
PC 293
NON-DISCLOSURE

Person Section Codes
CIT Cited PER Person RES Responsible SUS Suspect VAS Victim Suspect VIC Victim WIT Witness

Inv: SUS Name: KENDRICK, JONATHAN DAVID Sex: M Race: W DOB: 013154
Hgt: 601 Wgt: 200 Hair: BRO Eye: HZL SSN: DLN: E0612092 State: CA.
PKG: AOR267 FBI: CII:
Address: 4219 NORRIS RD. City: FREMONT State: CA. Zip:
Phone: 791-9011 Type: H
Bus Address: City: Bus Phone:
Miscellaneous:

LAW ENFORCEMENT SOLUTIONS

#03-20646
PC 25 of 26
3-8

LAW ENFORCEMENT COPY

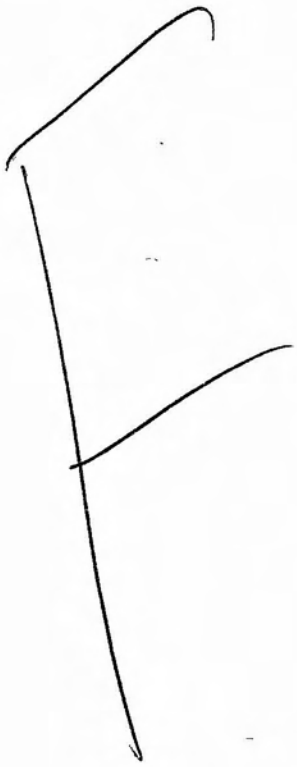
Narrative

0 SECTION "B"/NARRATIVE:

1 THIS SUPPLEMENTAL REPORT WILL BE IN REGARD TO A MOLEST
2 INVESTIGATION, WHICH OCCURRED AT 4219 NORRIS RD., FREMONT, CA. ON
3 07/09/93.

4 ON 03/17/94, I PRESENTED THIS CASE TO D.D.A. R. SAUNDERS. AFTER
5 REVIEWING THIS CASE, SAUNDERS DECIDED TO FILE A FORMAL COMPLAINT
6 AGAINST JONATHAN KENDRICK FOR ONE COUNT OF CHILD MOLEST (P.C.
7 288(a)).

#03-20646
PS 26 of 26
3-9



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

VIDEOTAPED DEPOSITION OF

MICHAEL LEE CLARKE

Tuesday, November 8, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

INDEX OF EXAMINATION

EXAMINATION BY:		PAGE
	Richard J. Simons	6
	James M. McCabe	61
FURTHER EXAMINATION BY:		PAGE
	Richard J. Simons	63

---oOo---

INDEX OF PLAINTIFF'S EXHIBITS

NO.	DESCRIPTION	PAGE
1	4-page 8-11-11 McCabe Law Firm "Affidavit of Michael L. Clarke."	11
2	2-page 11-15-93 North Congregation Fremont letter to Watchtower Bible & Tract Society from Michael L. CLarke.	27
3	1-page 12-3-93 Watchtower Bible and Tract Society of New York letter to Body of Elders, North Congregation, Fremont.	42
4	1-page 9-8-98 North Congregation of Jehovah's Witnesses letter to Oakley Congregation from Michael Clarke.	52
5	1-page 6-19-98 Watchtower Bible and Tract Society of New York letter to Body of Elders, North Congregation Fremont.	56
6	1-page 9-2-98 Watchtower Bible and Tract Society of New York letter to Body of Elders, North Congregation Fremont.	56

VIDEOTAPED DEPOSITION OF

MICHAEL LEE CLARKE

BE IT REMEMBERED that pursuant to Notice of Taking Deposition through Subpoena, and on Tuesday, November 8, 2011, commencing at the hour of 11:31 a.m. thereof, at the Law Offices of FURTADO, JASPOVICE & SIMONS, 22274 Main Street, Hayward, California, before me, CHARLOTTE C. ROCHE, a Certified Shorthand Reporter in and for the County of Alameda, State of California, personally appeared MICHAEL LEE CLARKE, a witness in the above-entitled court and cause, produced on behalf of the plaintiff therein and being by me duly affirmed under penalty of perjury, was examined as a witness herein.

APPEARANCES OF COUNSEL

RICHARD J. SIMONS, Attorney at Law, of THE LAW OFFICES OF FURTADO, JASPOVICE & SIMONS, 22274 Main Street, Hayward, California 94541, was present on behalf of Plaintiff JANE DOE.

ROBERT J. SCHNACK, Attorney at Law, of THE LAW OFFICES OF JACKSON LEWIS LLP, 801 K Street, Suite 2300, Sacramento, California 95814, was present on behalf of THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and on behalf of THE WITNESS.

JAMES MC CABE, Attorney at Law, of THE LAW OFICES OF JAMES MC CABE, 4817 Santa Monica Boulevard, San Diego, California 92107, was present on behalf of Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES IN FREMONT, CALIFORNIA and on behalf of THE WITNESS.

DAN MOTTAZ, Notary Public and Videographer, of the offices of DAN MOTTAZ VIDEO PRODUCTIONS L.L.C., One Lansdale Avenue, San Francisco, California 94127, was present as the VIDEO OPERATOR.

****

Q. Do you know whether or not it was an attorney? 12:02:53 12:02:55

A. Do not recall. No. 12:02:57

Q. In your letter, you said: 12:03:02

"We met on 11/11/93 with Jonathan Kendrick." 12:03:05

Where did that meeting occur? 12:03:10

A. His home with his wife and stepdaughter. 12:03:12

Q. Yourself and Mr. Abrahamson. 12:03:16

A. Yes. 12:03:18

Q. Anyone else present? 12:03:18

A. No, sir. 12:03:20

Q. Did you keep any notes? 12:03:21

A. No. 12:03:22

Q. And the letter says you met "with Jonathan Kendrick, a ministerial servant," quote, "who confessed to child abuse with his 15-year-old stepdaughter," end quote. 12:03:24 12:03:31 12:03:33 12:03:35

What do you specifically recall him saying in this meeting? 12:03:37 12:03:40

A. Exactly what's written there. He confessed to touching her one evening when he came home. He said the room was dark. 12:03:44 12:03:47 12:03:51

Q. Did he say what room? 12:03:55

A. Living room? She was sleeping on the couch, I believe. But I don't know if that's detailed 12:03:57 12:03:59

here or not. 12:04:02

Q. Did he say whether or not any alcohol or 12:04:09

drugs were involved? 12:04:11

A. No. 12:04:13

Q. Did you ask any questions of Mr. Kendrick 12:04:16

when he told you what had occurred? 12:04:19

A. I don't recall. 12:04:24

Q. Do you recall whether or not 12:04:26

Mr. Abrahamson asked any questions? 12:04:26

A. I don't recall specifically, no. 12:04:31

Q. Do you recall whether or not 12:04:34

Andrea Kendrick described what had occurred? 12:04:36

A. She confirmed that he, that the 12:04:43

stepfather, had touched her breast. 12:04:45

Q. Did she have anything to add to those 12:04:50

circumstances under which that touching had occurred? 12:04:53

A. No. 12:04:59

Q. Did you talk to Andrea yourself, or 12:05:02

Mr. Abrahamson or the two of you together talk to 12:05:05

Andrea Kendrick, separate from Mr. Kendrick? 12:05:09

A. You mean in another room? 12:05:13

Q. Yes. 12:05:14

A. No. 12:05:14

Q. Or outside of his presence in any way? 12:05:15

A. No. 12:05:17

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness herein was by me duly affirmed under penalty of perjury to testify the truth, the whole truth and nothing but the truth; that this deposition was held at the time and place herein stated; that the testimony was audiotape and videotape recorded by a licensed videographer, and was simultaneously reported stenographically and thereafter transcribed by me into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and the caption named, nor am I in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of November 2011.

Charlotte C. Roche, C.S.R. #4486
Alameda County, California

BAY AREA COURT REPORTERS
21573 Foothill Boulevard, Suite 215
Hayward, California 94541
(510) 889-9400

November 30, 2011

Michael Lee Clarke
c/o James M. McCabe, Attorney at Law
the McCabe Law Firm
4817 Santa Monica Avenue, Suite B
San Diego, California 92107

Re: Doe vs. Watchtower
M.L. Clarke's 11-8-11 deposition

Dear Mr. Clarke,

Please be advised that the transcript of your deposition taken in the above-entitled matter has now been completed.

If you wish to read, correct and sign your deposition, please call me at 510-889-9400, Monday through Friday, 9:00 - 4:30, for arrangements within 30 days of this notification. Because you are represented by counsel, you may want to contact your attorney regarding this procedure.

Any changes or corrections may be made in letter form directed to my attention, indicating changes by page and line references.

Charlotte C. Roche, CSR 4486

Certified Shorthand Reporter

cc: R.J. Simons, Esq.

R.J. Schnack, Esq.

8801296

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 4

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 4.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 4 are true and correct copies of pages 1-5, 25, 26, and 64 of the deposition of Plaintiff Jane Doe.

3. Attached as Exhibit B to this declaration in Support of Defendant Watchtower

and North Fremont Congregation's Motion In Limine 4 are true and correct copies of pages 1-4, 8-11, 35, and 36 of the deposition of Paul Inman.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 4** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☑ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

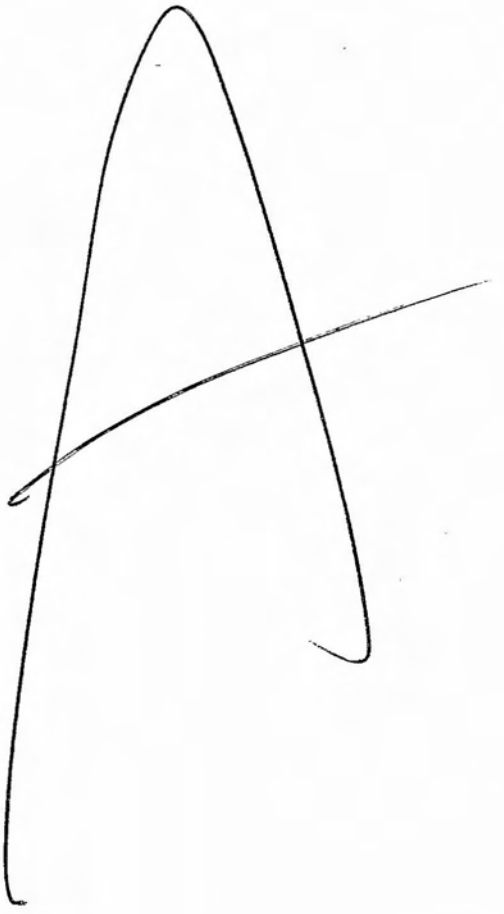
RJSchnack

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation

(925) 416-1800 ◆ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____

Certified Shorthand Reporter
State of California
License No. 2816

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
5776 STONERIDGE MALL ROAD, SUITE 350
PLEASANTON, CALIFORNIA 94588
(925) 416-1800

To: JANE DOE
c/o JAMES M. McCABE
THE McCABE LAW FIRM.
4817 SANTA MONICA AVENUE, SUITE B
SAN DIEGO, CA 94541

SEP 0 6 2011

RE: DOE VS WATCHTOWER

Dear JANE DOE:

This is to inform you that your deposition conducted on August 25, 2011, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

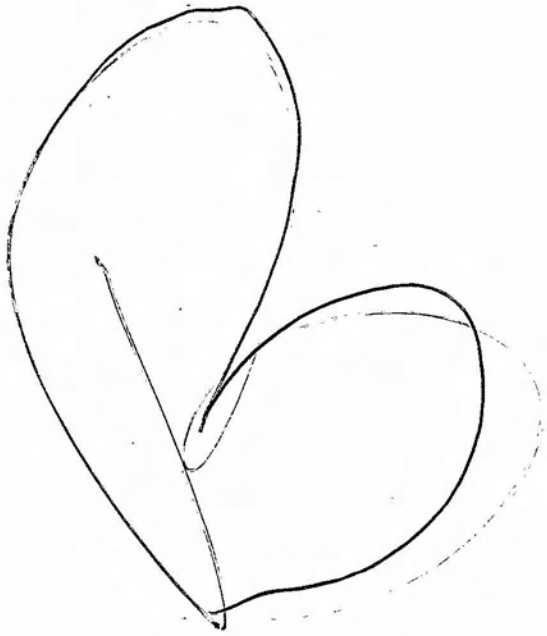
If it is more convenient, please contact Richard J. Simons, Attorney at Law, to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel



0001

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
****

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al,

Defendants.
_____/

VIDEOCONFERENCE DEPOSITION OF PAUL INMAN
FEBRUARY 21, 2012

TAKEN BEFORE JULIE L. BANTLEY
CERTIFIED SHORTHAND REPORTER
STATE OF CALIFORNIA
C.S.R. LICENSE NO. 11422

0002

INDEX OF EXAMINATION

EXAMINATION BY PAGE
MR. SIMONS 5

INDEX OF EXHIBITS

(None marked.)

0003

VIDEOCONFERENCE DEPOSITION OF PAUL INMAN

Pursuant to Notice of Taking Deposition,

and on Tuesday, February 21, 2012, commencing at the hour of 10:10 a.m., at Pizzotti & Jarnagin, 5776 Stoneridge Mall Road, Suite 350, Pleasanton, California 94588, before me, Julie L. Bantley, a Certified Shorthand Reporter of the State of California, appeared via videoconference PAUL INMAN, produced as a witness in the above-entitled action, who, being first placed under oath, was thereupon examined as a witness in said action.

****

JAMES MCCABE, Attorney at Law, The McCabe Law Firm, 4817 Santa Monica Avenue, San Diego, California 92107, (619) 224-2848, was present via videoconference on behalf of the Defendants.

RICK SIMONS, Attorney at Law, Furtado Jaspovice & Simons LC, 22274 Main Street, Hayward, CA 94541-4005, (510) 931-5148, was present on behalf of the Plaintiff.

Jamie Hollingsworth, videographer.

/ / /

THE VIDEOGRAPHER: Today's date is February the 21st, 2012. The time is approximately 1:09 p.m. Excuse me. My name is Jamie Hollingsworth. I'm the videographer. The court reporter is Julie Brantley [sic]. We're present at the offices of Sclafani Williams in Orlando, Florida. We're here for the purpose of taking the deposition of Paul Inman. The case is instituted in the Superior Court of Alameda County, case No. HG 1155832. The short style of the case is Jane Doe vs. Watchtower, et al.

I'll now ask the attorneys to introduce themselves beginning with the plaintiff's attorney.

MR. SIMONS: Rick Simons for plaintiff Jane Doe.

MR. McCABE: James McCabe for all of the defendants for purposes of this deposition.

THE VIDEOGRAPHER: Would the court reporter kindly swear in the witness.

PAUL INMAN

after being placed under oath
by the Certified Shorthand Reporter
testified as follows:

EXAMINATION BY MR. SIMONS

BY MR. SIMONS:

Q. And please state your full name.

A. Paul Raymond Inman.

Q. Mr. Inman, you are currently a resident of Florida; correct?

A. Yes.

Q. And before living in Florida, you lived in the Bay Area in California; is that correct?

A. Yes.

Q. And during that time you had some affiliation with the North Congregation of Jehovah's Witnesses in Fremont; is that true?

0008

A. Yes.
Q. Between 1994 and 2004, did you serve as an elder in any congregation of the Jehovah's Witnesses?
A. No.
Q. Did you serve during that time period, '94 to '04, as a ministerial servant in any congregation of Jehovah's Witnesses?
A. No.
Q. Are you currently a member of a congregation of Jehovah's Witnesses?
A. Yes.
Q. And which congregation are you currently a member of?
A. South Congregation Cassleberry, Florida.
Q. During the time period from 1994 to 2004 did you remain a member of the North Fremont Congregation?
A. No.
Q. Were you a member of one or more other congregations in that time period of '94 to 2004?
A. I think the question is unclear.
Q. Thank you. Between 1994 and 2004 were you a member of any congregation of Jehovah's Witnesses?
A. Contiguously?
Q. Or in sequence, either?
A. Rephrase the question again.

0009

Q. Yes. We mentioned that you were an elder at North Fremont Congregation up until 1994. After you stopped being an elder in '94, did you continue to be a member of the North Fremont Congregation?
A. No.
Q. Did you join another congregation?
A. No.
Q. Were you a member of any congregation between '94 and 2004 when you moved to Florida?
A. Yes.
Q. Which congregation?
MR. McCABE: Well, I'm going to object as to vagueness. And the reason is that -- let me just help you out here, Rick. Mr. Inman was disfellowshipped for a couple of years.
MR. SIMONS: Okay.
MR. McCABE: So you're going to have to ask him that question and find out when he was reinstated because then he would be able to tell you where he was a member of a congregation and what years.
MR. SIMONS: Okay. Very good. Thank you.
Q. Mr. Inman, you're familiar with the phrase disfellowshipped?
A. Yes.
Q. And have you ever been disfellowshipped from

0010

Jehovah's Witnesses?
A. Yes.
Q. During what time frame were you disfellowshipped?
A. I will be approximating. '94 to '97.
Q. What is your understanding of the reason that you were disfellowshipped?
A. Smoking.
Q. And after the disfellowship was rescinded, did you then become a member of a congregation in Fremont?

A. No.
Q. Did you become a member of any congregation in California after the lifting of your disfellowship?
A. No.
Q. During the time that you were at the North Fremont Congregation, were you acquainted with Jonathan Kendrick?
A. Yes.
Q. How did you come to meet Mr. Kendrick?
A. Mr. Kendrick and his wife were studying about that time, and so I would see them at the Kingdom Hall like I see all the other members.
Q. Okay. Did you attend various study groups in which Mr. Kendrick was present?
A. I don't recall.

0011

Q. Do you recall doing field service with Mr. Kendrick on any occasions?
A. I do not recall, but I probably did because I worked with everybody.
Q. Did you know the Conti family during the time that you were at North Fremont?
A. Yes.
Q. Did you know Neal Conti?
A. Yes.
Q. How did you come to meet Neal Conti?
A. Same way.
Q. During the time that you knew Neal Conti, was he married?
A. Yes.
Q. During those years that you were in the North Fremont Congregation were you married to Carolyn?
A. Yes.
Q. And did that marriage result in a separation between the two of you in August of 1994?
A. Yes.
Q. Do you recall whether or not your disfellowshipping occurred before or after the separation of yourself and Carolyn?
A. Before.
Q. During the time that you were an elder at North

0012

Fremont did you learn of a sexual molestation of a minor girl by Jonathan Kendrick?
A. No.
Q. Up until I just raised this issue and excluding any conversations you may have had with Mr. McCabe -- well, actually let me stop for a moment.
Jim, in the beginning of the deposition you listed the parties you are representing. Are you also representing Mr. Inman for today's deposition?
MR. McCABE: That's correct.
MR. SIMONS: Okay.
Q. Mr. Inman, I'm going to ask you questions about some conversations, but I do not want you to include in any answer any conversation you had with Mr. McCabe in his role as your attorney for this deposition. Do you understand that?
A. Yes.
Q. Okay. In other words, any conversation you may have had with him, treat it as if it does not exist for purposes of my question.
A. I understand.

0035

C E R T I F I C A T E

I, JULIE L. BANTLEY, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In Witness Whereof, I Have Hereunto Set My Hand This 6th of March, 2012.

_____

Julie L. Bantley
Certified Shorthand Reporter
State of California
License No. 11422

0036

PIZZOTTI & JARNAGIN CERTIFIED SHORTHAND REPORTERS
5776 Stoneridge Mall Road, Suite 350
Pleasanton, California 94588
(925) 416-1800

PAUL INMAN
c/o JAMES MCCABE, Attorney at Law
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, California 92107

RE: DOE VS. THE WATCHTOWER BIBLE

Dear Mr. Inman:

This is to inform you that your deposition conducted on February 21, 2012 has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to ensure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed.

The original transcript of your deposition

shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very Truly Yours,

Julie L. Bantley
CERTIFIED SHORTHAND REPORTER

cc: JAMES MCCABE, Attorney at Law
RICK SIMONS, Attorney at Law

0035

****

DOE VS. THE WATCHTOWER BIBLE
DEPOSITION OF PAUL INMAN
FEBRUARY 21, 2012
Page 1 to

****

Condensed Transcript and Concordance
Prepared by:
Julie L. Bantley
C.S.R. No. 11422

8801288

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 5

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 5.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 5 are true and correct copies of pages 1-5, 25, 26, and 64 of the deposition of Plaintiff Jane Doe.

///

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 5** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

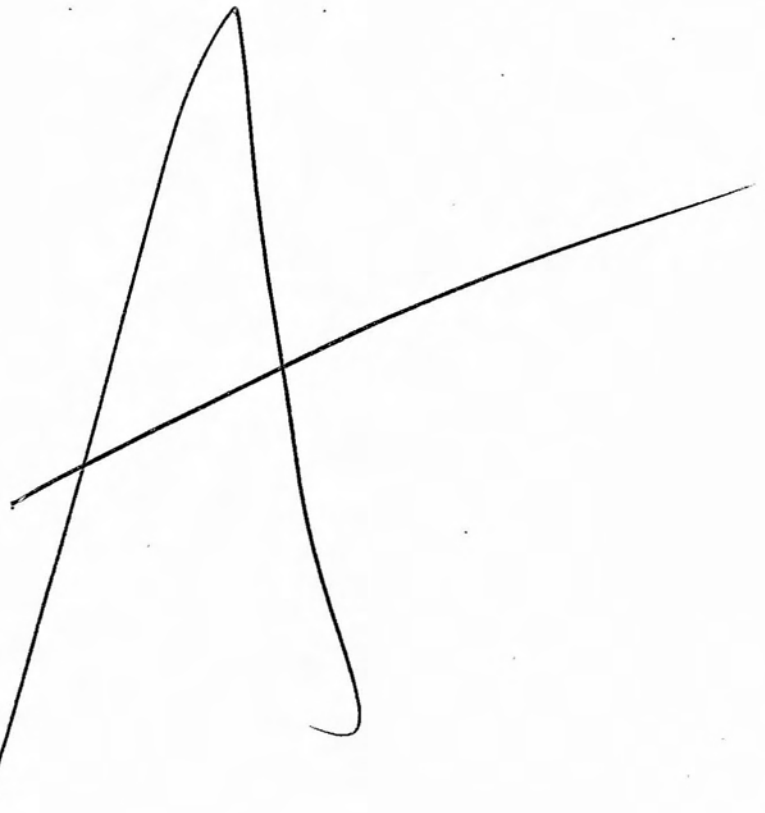
Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation

(925) 416-1800 ◆ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

_____

Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____
Certified Shorthand Reporter
State of California
License No. 2816

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
5776 STONERIDGE MALL ROAD, SUITE 350
PLEASANTON, CALIFORNIA 94588
(925) 416-1800

To: JANE DOE
c/o JAMES M. McCABE
THE McCABE LAW FIRM.
4817 SANTA MONICA AVENUE, SUITE B
SAN DIEGO, CA 94541

SEP 0 6 2011

RE: DOE VS WATCHTOWER

Dear JANE DOE:

This is to inform you that your deposition conducted on August 25, 2011, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

If it is more convenient, please contact Richard J. Simons, Attorney at Law, to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel

8801315

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 6

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 6.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 6 are true and correct copies of pages 1-5, 25, 26, and 64 of the deposition of Plaintiff Jane Doe.

3. Attached as Exhibit B to this declaration in Support of Defendant Watchtower

and North Fremont Congregation's Motion In Limine 6 is a true and correct copy of Plaintiff's initial expert disclosure.

DATED: May ___, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May ___, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 6** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

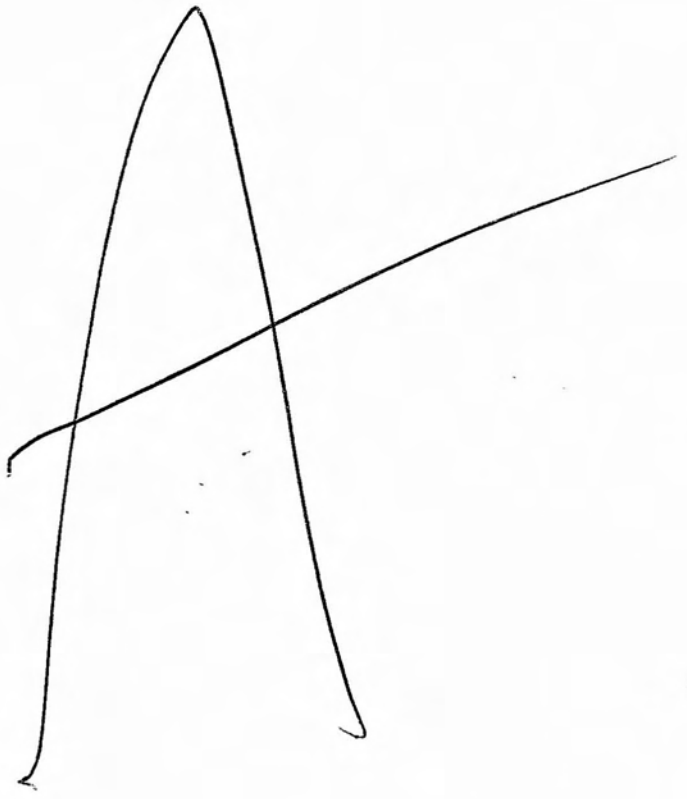
Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ♦ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

_____

Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____

Certified Shorthand Reporter
State of California
License No. 2816

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
5776 STONERIDGE MALL ROAD, SUITE 350
PLEASANTON, CALIFORNIA 94588
(925) 416-1800

To: JANE DOE
c/o JAMES M. McCABE
THE McCABE LAW FIRM.
4817 SANTA MONICA AVENUE, SUITE B
SAN DIEGO, CA 94541

SEP 0 6 2011

RE: DOE VS WATCHTOWER

Dear JANE DOE:

This is to inform you that your deposition conducted on August 25, 2011, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

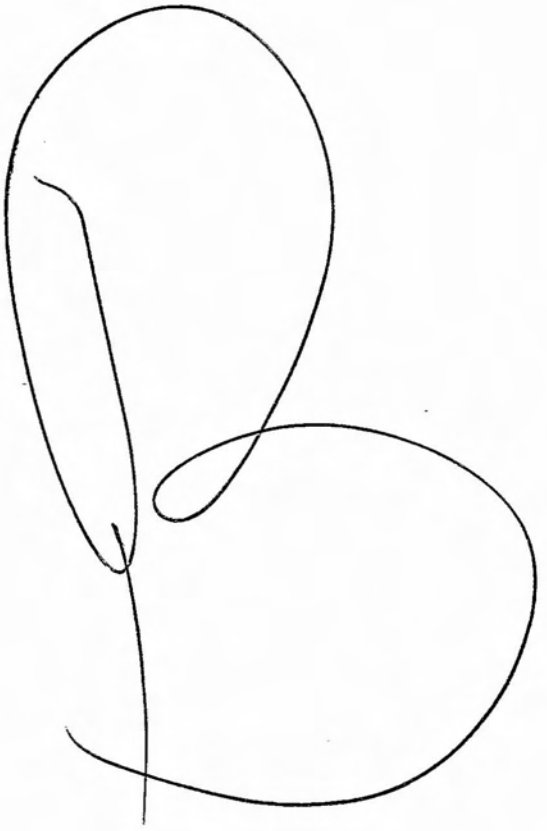
If it is more convenient, please contact Richard J. Simons, Attorney at Law, to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel



RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	**No. HG11558324** ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22 **PLAINTIFF'S DISCLOSURE OF EXPERT WITNESS INFORMATION** **Trial Date: 5/21/12**

I. NON-RETAINED EXPERTS

Plaintiff will call to testify at trial the following persons who are expert witnesses, and testify both as percipient witnesses and as experts offering opinions and conclusions based on their skill, training, and experience, but who were not specifically retained by plaintiff for the purpose of forming and expressing opinions in anticipation of litigation or in preparation for trial:

1. Sgt. Jeffrey Baldwin, #54108
Contra Costa County Sheriff's Department
1930 Muir Road
Martinez, CA 94553
925/313-2500

2. Laura Fraser, LCSW
5935 Waverly Avenue
La Jolla, CA 92037
510/517-2005

3. Lauren Walton, M. D.
Kaiser-Permanente Medical Group
9449 Imperial Hwy., Suite A206
Downey, CA, 94202

4. Helene Harmatz, PSW
Kaiser-Permanente Medical Group
9449 Imperial Hwy., Suite A206
Downey, CA, 94202

5. Marcia Lee, M.F.T.
Kaiser-Permanente Medical Group
9449 Imperial Hwy., Suite A206
Downey, CA, 94202

6. Officer J. W. Davila #1816
Fremont Police Dept.
2000 Stevenson Blvd.
Fremont, CA, 94537

II. RETAINED EXPERTS

Plaintiff will offer the testimony of the following expert witnesses who have been retained by plaintiff, in anticipation of litigation and in preparation for trial.

1. William H. Bowen
PO Box 681092
Franklin, TN 37068

2. Carl Lewis
Carl Lewis Consulting, Inc.
80 N. Cabrillo Hwy., Suite Q-104
Half Moon Bay, CA 94019

3. Lynn Ponton, M.D.
201 Edgewood Avenue
San Francisco, CA 94117

4. Anna Salter, Ph.D.
2530 Commonwealth Avenue
Madison, WI 53711

Dated: March 26, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On March 29, 2012, I served the within **PLAINTIFF'S DISCLOSURE OF EXPERT WITNESS INFORMATION** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[ ] By Email By transmitting a true copy thereof to the email address(es) shown below.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
Attorneys for Defendants
CHURCH DEFENDANTS

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

Jonathan Kendrick, In Pro Per
200 Honey Lane
Oakley, CA 94561
925/679-0411 Telephone

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 29, 2012, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION RE EXPERT WITNESSES

Trial Date: 5/21/12

I, RICHARD J. SIMONS, hereby declare, that I am the attorney for plaintiff in the above entitled action.

I further declare as follows:

1. A. Expert witness WILLIAM BOWEN has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: as to the policies, procedures, and practices of defendants generally; the application of those policies on the subject of childhood sexual abuse within the Jehovah's Witnesses; the pattern and practices of Jehovah's Witnesses institutional management of disregarding sexual abuse of children and failing to protect minors within its membership and activities from sexual abuse; the business and financial reasons behind the institutional defendants' policies on sexual abuse of children; the knowledge and data available to Jehovah's Witnesses management on the consequences of increased sexual abuse of

children resulting from its administrative policies; and as to the administrative organization and structure of Jehovah's Witnesses as to its policies and practices on secular and administrative issues.

C. Expert witness' hourly and daily fee for deposition testimony is $75.00.

2. A. Expert witness CARL LEWIS has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: the law enforcement, community, and child abuse professional body of knowledge on the identification, detection, and prevention of childhood sexual abuse as of the time periods at issue in this case; the adequacy of the investigation of Jonathan Kendrick by defendants, and its cause and effect relationship to Plaintiff's molestation; the conduct of Plaintiff; and the identifiable pattern and practice of Kendrick's pedophile conduct.

C. Expert witness' hourly and daily fee for deposition testimony is $250.00.

3. A. Expert witness ANNA SALTER, Ph.D. has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: as to applicable standards of care for the prevention of childhood sexual abuse in religious and other similar institutions as of the time period at issue in this action; the violations of those standards by the defendants; the relationship between those violations and Plaintiff's harm and injury; the conduct of Plaintiff after her molestation and it relationship to her sexual abuse; and the pattern and practice of serial pedophile sexual predatory conduct by Jonathan Kendrick.

C. Expert witness' hourly and daily fee for deposition testimony is $250.00.

4. A. Expert witness LYNN PONTON, Ph.D. has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: As to her medical and psychological evaluation of Plaintiff, including her prognosis, diagnosis, and the reasonable cost of her future care needs; the harm and injury caused Plaintiff as a result of her molestation; the significance of other factors and experiences in Plaintiff's life and their relationship to her mental health and injuries;

and as to the profile of Jonathan Kendrick as a child molester. This expert will also address the opinions of Defendants' mental health expert and the basis for those opinions.

C. Expert witness' hourly and daily fee for deposition testimony is $800.00.

Each of the above listed experts has agreed to testify at trial, and each is or will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning any opinion and its basis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is correct and that I am competent to testify as to the matters set forth herein.

Executed this 26th day of March, 2012, at Hayward, California.

RICHARD J. SIMONS

8801307

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 7

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 7.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 7 are true and correct copies of pages 1-5, 25, 26, and 64 of the deposition of Plaintiff Jane Doe.

///

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 7** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

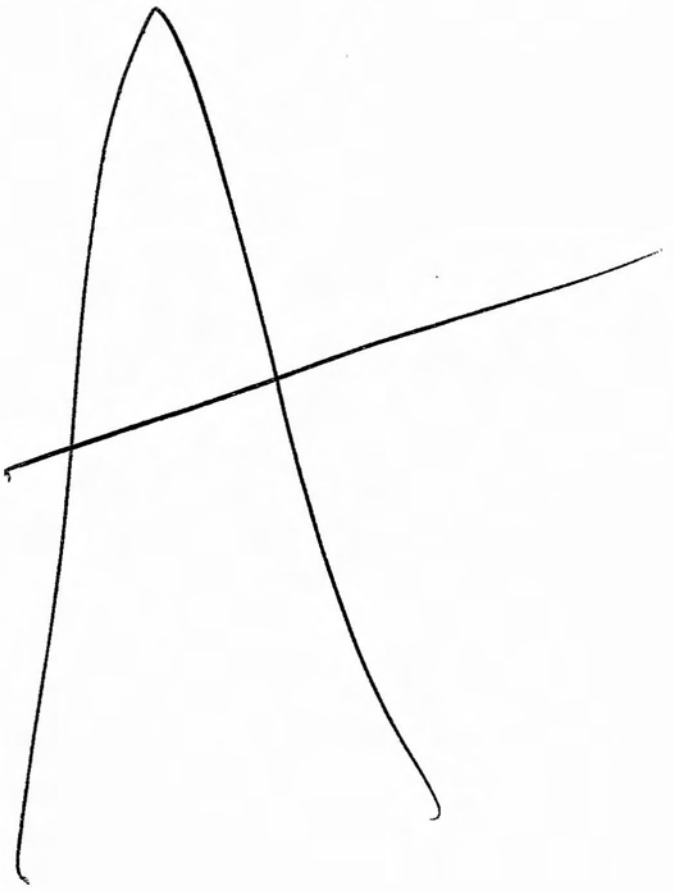
Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ♦ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____

Certified Shorthand Reporter
State of California
License No. 2816

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
5776 STONERIDGE MALL ROAD, SUITE 350
PLEASANTON, CALIFORNIA 94588
(925) 416-1800

To: JANE DOE
c/o JAMES M. McCABE
THE McCABE LAW FIRM.
4817 SANTA MONICA AVENUE, SUITE B
SAN DIEGO, CA 94541

SEP 0 6 2011

RE: DOE VS WATCHTOWER

Dear JANE DOE:

This is to inform you that your deposition conducted on August 25, 2011, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

If it is more convenient, please contact Richard J. Simons, Attorney at Law, to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel

8801299

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerley
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 8

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 8.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 8 are true and correct copies of pages 1-5, 25, 26, and 64 of the deposition of Plaintiff Jane Doe.

3. Attached as Exhibit B to this declaration in Support of Defendant Watchtower

and North Fremont Congregation's Motion In Limine 8 is Mario F. Moreno's declaration dated May 14, 2012.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 8** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

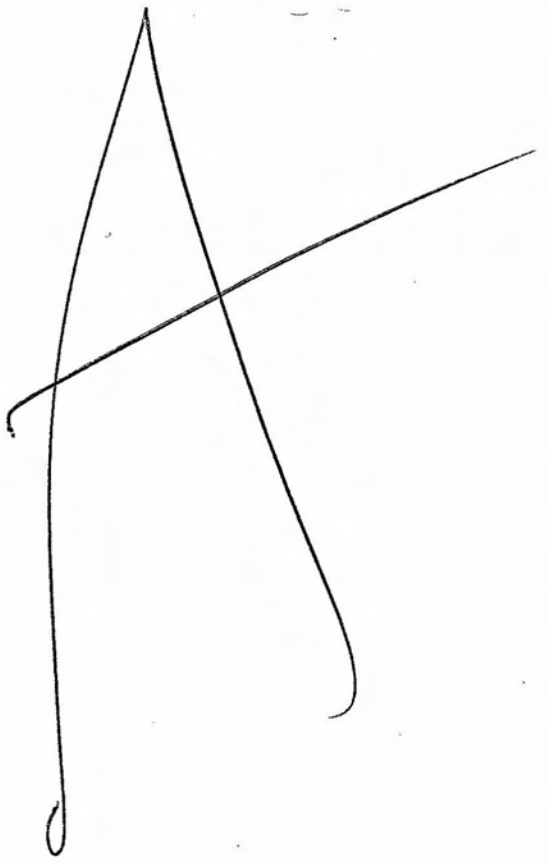
Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation

(925) 416-1800 ◆ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

_____

Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____

Certified Shorthand Reporter
State of California
License No. 2816

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
5776 STONERIDGE MALL ROAD, SUITE 350
PLEASANTON, CALIFORNIA 94588
(925) 416-1800

To: JANE DOE
c/o JAMES M. McCABE
THE McCABE LAW FIRM.
4817 SANTA MONICA AVENUE, SUITE B
SAN DIEGO, CA 94541

SEP 0 6 2011

RE: DOE VS WATCHTOWER

Dear JANE DOE:

This is to inform you that your deposition conducted on August 25, 2011, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

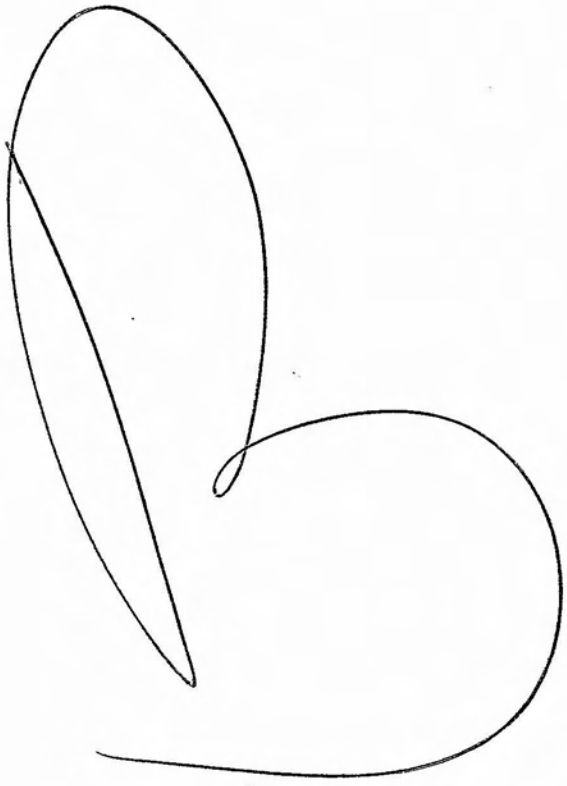
If it is more convenient, please contact Richard J. Simons, Attorney at Law, to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel



JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF MARIO F. MORENO IN SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF WILLIAM H. BOWEN EXPECTED TO BE OFFERED AT TRIAL

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

I, Mario F. Moreno, declare as follows:

1. I am an attorney licensed to practice law in the courts of the State of New York and Connecticut and I am Associate General Counsel of Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower"), Legal Department. I also served as attorney of record for Watchtower in the case entitled *Dorman, et al. v. DOE 1, Linda Vista*

Church, et al., San Diego County Superior Court Case No. 37-2010-00092450-CU-PO-CTL (hereinafter "the *Dorman* matter").

2. I have personal knowledge of the facts and circumstances contained in this Declaration except as those matters based on information and belief and as to those matters, I believe them to be true. If called and sworn as a witness, I could and would competently testify to the statements made herein.

3. In the Watchtower Legal Department, I supervise all defense litigation in the United States in which Watchtower, other corporations, or congregations of Jehovah's Witnesses are being sued in civil court, or in which the right of Jehovah's Witnesses as a whole are implicated.

Silentlambs, Inc. and William H. Bowen

4. In recent years, our office has received reports from attorneys, congregations of Jehovah's Witnesses and individual Witnesses whenever former Jehovah's Witnesses such as William Bowen are listed as expert witnesses by a party opposing the interests of Jehovah's Witnesses.

5. On February 23, 2012, I deposed Mr. Bowen in the *Dorman* matter. I have also read his deposition transcript in the only other case he admits to being deposed. Attached to and incorporated herein as Exhibit A are true and correct copies of certain excerpts from Mr. Bowen's deposition in the *Dorman* matter (hereinafter "Bowen Deposition").

6. William Bowen is on the short list of former Jehovah's Witnesses most often used as expert witnesses by parties opposing Jehovah's Witnesses. Mr. Bowen is the director of Silentlambs, Inc., and uses this organization as a platform to criticize and attack the organization of Jehovah's Witnesses. In September 2002, he organized and participated in a demonstration and march in front of the headquarters of Jehovah's Witnesses at 25 Columbia Heights, in Brooklyn, New York.

7. Mr. Bowen's deposition testimony, his website and the articles he has published on Silentlambs website (www.silentlambs.org) all attest to his animosity toward Jehovah's Witnesses and his desire to "force" Watchtower to change its position on reporting child sex

abuse allegations, even though Watchtower's child abuse reporting policy is to ensure that it complies with all state and federal law.

8. In Mr. Bowen's Manifesto/Silentlambs pamphlet, Mr. Bowen explains his objective. Disappointed that he could not change policy within the organization of Jehovah's Witnesses, Mr. Bowen wrote: "The only way in my opinion is to go public and by doing so force Jehovah's Witnesses to do right by the children." (Ex. B, Bowen's Manifesto/Silentlambs pamphlet.) As he explained in his deposition testimony, he still expects the Governing Body of Jehovah's Witnesses to adopt a policy for all congregations worldwide to report each and every allegation of child sexual abuse regardless of the legal requirements of the jurisdiction's mandatory reporting laws. (Ex. A, Bowen Deposition, p. 134:3-25.)

9. Since the formation of Silentlambs, Inc. in 2001, Mr. Bowen's strategies have evolved. Earlier he and his supporter carried toy stuffed lambs symbolizing their alleged victimization. But in March 2004, Mr. Bowen sought a larger audience in seminars, forming a loose interfaith alliance with organizations such as The Linkup (Louisville, KY), and the Survivors Network of those Abused by Priests (SNAP). The publicity Mr. Bowen has gained for himself through his Silentlambs website has apparently been lucrative, in that Mr. Bowen has given up his business as a self-employed candle maker and salesman and now sells his services as a "consultant" for attorneys who file civil cases against Jehovah's Witnesses. His alleged field of expertise is not limited to child sexual abuse cases. He testified that he has also served as an expert in child custody cases and tax matters involving Jehovah's Witnesses. (Ex. A, Bowen Deposition, pp. 34:21-37:12, 41:2-16.)

10. Mr. Bowen also claims that he has published two books. (Ex. A, Bowen Deposition, p. 29:13-20.) These so-called "books" are all self-published, with no peer review. (Bowen Deposition, p. 30:1.) Further, there is no evidence of scholarly research and his comments are consistently conclusory and accusatory of the faith and beliefs of Jehovah's Witnesses.

///

///

DATED: May 14, 2012

Watchtower Bible and Tract Society of
New York, Inc., Legal Department

By _____
Mario F. Moreno

Associate General Counsel
Defendant Watchtower Bible and Tract Society of
New York, Inc.

Declaration of Mario F. Moreno in Support of Defendant Watchtower and North Fremont Congregation's Motion in Limine to Exclude Testimony of William H. Bowen

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JOHN DORMAN, INDIVIDUALLY; AND JOEL GAMBOA, INDIVIDUALLY,	)	
Plaintiffs,	)	
vs.	)	No. 37-2010-00092450-CU-PO-CTL
DEFENDANT DOE 1, LA JOLLA CHURCH; DEFENDANT DOE 2, LINDA VISTA CHURCH; AND DEFENDANT DOE 3, SUPERVISORY ORGANIZATION; DEFENDANT DOE 4, PERPETRATOR; AND DOES 5 THROUGH 100, INCLUSIVE,	)	
Defendants.	)	

DEPOSITION OF

WILLIAM HARVEY BOWEN

San Diego, California

February 23, 2012

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

Reported by: MARGARET KINNEY, CSR No. 11398

FILE NO.: A601A24

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JOHN DORMAN, INDIVIDUALLY; AND JOEL GAMBOA, INDIVIDUALLY, Plaintiffs, vs. DEFENDANT DOE 1, LA JOLLA CHURCH; DEFENDANT DOE 2, LINDA VISTA CHURCH; AND DEFENDANT DOE 3, SUPERVISORY ORGANIZATION; DEFENDANT DOE 4, PERPETRATOR; AND DOES 5 THROUGH 100, INCLUSIVE, Defendants.	)	No. 37-2010-00092450-CU-PO-CTL

Deposition of WILLIAM HARVEY BOWEN, taken on behalf of Defendant Watchtower, at 12555 High Bluff Drive, Suite 260, San Diego, California, commencing at 9:05 A.M. and ending at 12:45 P.M., Thursday, February 23, 2012, before MARGARET KINNEY, Certified Shorthand Reporter No. 11398.

INDEX

WITNESS: WILLIAM HARVEY BOWEN

EXAMINATION

BY MR. MORENO 6

BY MR. COPLEY 89

EXHIBITS

NUMBER	DEFENDANT'S DESCRIPTION	PAGE
1	Miscellaneous letters	13
2	Miscellaneous documents	14
3	Miscellaneous E-mails	16
4	Miscellaneous documents	16
5	Child Abuse - Things You Can Do About It	18
6	"Baby Pros" and "Kiddie Porn"	18
7	Child Abuse - The Spin-Off Epidemic	18
8	When Children Give Birth	18
9	They Batter Little Children -- Why?	18
10	Information Package	18
11	CD	20
12	CD	20

INDEX (continued)

13	Rape At home	24
14	CV	37
15	Our Kingdom Ministry	75
16	Watchtower letter to all bodies of elders in the United States, dated 2/3/93	81
17	Christian Congregation of Jehovah's Witnesses, All Bodies of Elders in the United States, dated 2/15/02	85
18	Christian Congregation of Jehovah's Witnesses, All Congregations in the United States, dated 5/24/02	87

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(NONE)

INFORMATION TO BE SUPPLIED:

(NONE)

MR. MORENO: We can do it later.

MR. ZALKIN: Okay.

BY MR. MORENO:

Q So on your CV -- maybe you can look at the one Mr. Zalkin has there, No. 3. Item No. 3 mentions that you were two years at the Bethel home office. It says -- well, specifically it reads, "The two years at Bethel (home office) is viewed as an educational seminary type training by Jehova's Witnesses from 1977 - 1979." So are you saying that you served at Bethel?

A Yes.

Q And for how long did you serve at Bethel?

A In that time frame, from '77 to '79.

Q Okay. And you served for about 15 months, correct?

A Approximately 15 months. It included a leave of absence. So it's -- I haven't tabulated it, but somewhere between 15 to 18 months.

Q And what was your work assignment when you were at Bethel?

A I worked in the bindery.

Q And what did you do in the bindery?

A I worked in -- I guess you would call it bible production and the ink room.

Q And when you say "bible production," are you

talking about the physical production of bibles?

A Sewing. That's what they called it there, but it was the sewing of the signatures to put the bibles together.

Q Okay. So you weren't involved in any research and writing assignment?

A No.

Q Okay. Item No. 3 also says, "I'm heavily endorsed by media academics in the field of comparative religion." You have expertise in the field of comparative religion?

A Yes. Comparing one religion to the other.

Q Yes. So what religions have you studied to become an expert in?

A Catholics. I've had a close association with the Catholics over the issues of child abuse, and I've also worked with other groups, including Mormons. And outside of that, I've had some experience with Baptists, as well as -- I'm just trying to recall from memory here. That's all that comes to my mind at the moment.

Q Okay. Now, with respect to Jehova's Witnesses, you consider yourself an expert on their beliefs?

A More so on their practices and how the administration works and the organization in my experience.

Q So policies and practices of Jehova's Witnesses, you consider yourself an expert?

A Yes, sir.

Q With respect to Mormons, what do you consider yourself on expert on?

A I think more so the issue involving the same dynamic of how child abuse occurs and how it's covered up within the religion, as well as how victims are treated when they bring forth allegations of abuse.

Q So do you consider yourself an expert on the policies and practices of the Mormon Church?

A Not a -- I wouldn't call myself a complete expert. I'm just knowledgeable about how their practices work.

Q Do you consider yourself an expert on the policies and practices of the Catholic Church?

A I think I can speak with -- I think I can speak with expert knowledge of how the Catholics work as far as their child-abuse policies.

Q Do you consider yourself an expert with respect to the policies and practices of any other religious organizations, other than the Mormons, Catholics, and Jehova's Witnesses?

A I would hold it to there.

Q Okay. So who is it that has endorsed you? When

A No. That pretty well covers it.

Q Okay. Item No. 4 says that you published two books and manuals. Did you bring those with you?

A Yes. They should be contained on that driver (indicating).

Q I'm sorry. They should be contained on what?

MR. ZALKIN: Flash drive.

THE WITNESS: I have it on a flash drive.

MR. ZALKIN: It's all here (indicating).

BY MR. MORENO:

Q So what are those books and manuals -- what's the subject matter?

A The first one is called -- I call it "The Beast Book." And it dealt with --

Q Just generally.

A -- the United Nations and how Jehovah's Witnesses were associated with that.

Q And what's the other book or manual?

A The second book involves child custody issues. The dynamic of child custody in Jehova's Witnesses.

Q Okay. Any books or manuals that you've -- when you say you published, who published them?

A They were published on the Internet. They've been circulated widely and available.

Q So is there a publisher? Are you the publisher?

A I'm the publisher.

Q Okay. Are they for sale?

A Yes.

Q Okay. So how much do you sell each of them for?

A Each of those are $20 a piece.

Q Have you published any books or manuals on the practices and policies of Jehovah's Witnesses with respect to child abuse?

A Yes.

Q And is that on your flash drive?

A Yes, sir. It should be included in this documentation that you have here.

Q And what's the name of that book or manual?

A There is a piece I wrote called "Is there a problem?" It's about -- it's a 15-page summation of the child abuse problem.

Q Okay. And just to be clear, is it in this stack of documents or is it on the flash drive?

A It should be on the flash drive.

Q Thank you.

A It's also on my Website. So --

Q The Silentlambs Website?

A That's correct.

Q Okay. Are there any other books or manuals that you've published, other than the ones we've discussed so

A I would have to ask her and see. She is a Ph.D.
Q Where in Colorado is she?
A I'm going to say outside of Denver. I'm not exactly -- I'm not good at geography.
Q Was she ever a Jehovah's Witness?
A Yes.
Q Is she now?
A She's never been disfellowshipped or disassociated.
Q She's not active?
A Not active, correct.
Q So aside from these four formerly active Jehovah's Witnesses, any other leading professors or scholars who have endorsed your work?
A That's all that come to mind.
Q Item 7 of your CV -- "D" -- 7D says, "I've been used as an expert witness on the beliefs and practices of Jehova's Witnesses and assisted in cases in the United States, specifically Oregon." Were you an expert witness in a case in Oregon?
A I was consulted with -- concerning a tax case in Oregon involving Jehovah's Witnesses. I consulted, and I helped them with regard to that case.
Q Did you give any testimony?
A Not actual testimony. It was more of a

consultation.

Q Okay. Did you do any declarations or affidavits that were filed in court for that case?

A No.

Q Who was the attorney on that case that retained you?

A I don't recall. It was the County -- a County for city government for a county there in Oregon.

Q What city?

A It's been ten years ago. I don't remember.

Q Okay. And New Hampshire; that would be the Barry case?

A That's correct.

Q Any other cases in New Hampshire where you've been an expert witness?

A No. Not that I recall.

Q Any cases in New York where you've been an expert witness?

A New York, I assisted the Pandellos with their case.

Q I'm not familiar with -- you assisted who?

A Pinky Pandello. His father was the guy that was featured in "Dateline" going door to door. His daughter was molested, and I worked with his attorneys on some consultation and materials.

Q Was there a lawsuit involved?
A Yes.
Q Who was the lawsuit against?
A His father.
Q Okay. Not against the organization of Jehovah's Witnesses?
A You know, I don't remember to what extent it went. I know they prevailed, and they won a judgment against his estate.
Q Against his father's estate?
A Correct.
Q Okay. Did you prepare any affidavits or declarations that were used in court for that case?
A Not to my knowledge. It was a long time ago.
Q Did you give any testimony in that case?
A I primarily consulted with the law firm, and I may have provided some materials -- some substance concerning the practices. But, as I said, it's been a long time. That was about 12 years ago.
Q So you didn't testify?
A No.
Q In Indiana, what case were you an expert witness on the beliefs and practices --
A It was out of Evansville. It was a child custody case.

Q How long ago?

A That was in -- approximately in 2004.

Q And did you testify in that case either at a deposition or at trial?

A If my memory serves, I testified in trial.

Q And who was the law firm that retained you?

A I was working with one of the parties in the marriage, and I was working primarily with him. I don't remember the name of the attorneys.

Q Okay. What was the name of the party you were working -- that you testified for?

A I know his first name was Kevin, but I don't remember the last name. I'd have to -- I would have to try to look it up.

Q And what about in Kentucky? What case were you an expert witness on?

A I'm just drawing a complete blank at the moment. I can't recall.

Q Okay. And this is a copy of your CV?

A Yes.

MR. MORENO: Okay. We'll mark this as Exhibit No. 14.

(Defendant's Exhibit 14 was marked for identification by the court reporter.)

MR. ZALKIN: Did you mark that flash drive? I

guess we're not marking it.

MR. MORENO: No. We didn't mark it.

Q Did you graduate from high school, Mr. Bowen?

A Yes.

Q What year?

A 1976.

Q Do you have any college education?

A I attended a course at Vanderbilt University in approximately 1975. I've also been to various classes, from marketing to public relations, to psychology, and things of that nature concerning various companies I've worked for.

Q Do you have any college degrees?

A No. I do not.

Q So no Bachelor's or Master's or Doctorate degree?

A No.

Q Okay. Have you ever completed any kind of course or study at a university?

A Other than what I did at Vanderbilt.

Q Oh, some subjects? You've taken some classes, in other words?

A Right.

Q But never completed a course of study to the point of getting a degree?

A No.

Q Okay. Have you ever gotten anything short of a degree at some school? A certification or something?

A I have certifications pertaining to the insurance business, securities and things of that nature -- completion of courses and certificates, along that line. But --

Q Nothing related --

A Nothing related to the university level. It's all been related to business.

Q Okay. No certifications related to child abuse?

A No.

Q No certifications related to the study of religion?

A No.

Q Any professional licenses that you hold?

A No.

Q Do you hold any kind of licenses, professional or not, other than a driver's license?

A Just a driver's license.

Q Do you belong to any professional organizations?

A Not currently.

Q Do you belong to any professional societies?

A Not currently.

Q Which ones have you belonged to in the past?

A I belonged to the Kiwanis Club. I've also been a member of the Rotary Chamber of Commerce.

Q Have you ever taught at any university?

A No.

Q Taught at any college?

A I've been asked to give discourse at -- one was at a Baptist seminary outside of San Francisco. And I've given lectures at several different seminars and things of that nature concerning Jehovah's Witnesses.

Q You mentioned a Baptist seminary?

A That's correct.

Q And what did you teach there?

A I discussed the practices of Jehovah's Witnesses when it came to the child abuse policy.

Q Was that a one-time thing?

A Yes.

Q How long?

A That was in 2004.

Q And how long was your class or lecture?

A It was approximately two hours.

Q And have you had similar lectures or taught similar classes at any other college or university?

A No.

Q Are you currently employed?

A Yes.

Q And what's the nature of your employment?

A I do this work here, consulting, and things concerning legal matters.

Q So you consult on cases involving Jehova's Witnesses?

A That's correct.

Q What other types of legal matters do you consult on besides Jehovah's Witnesses?

A That's pretty well it.

Q Do you have any other source of income or employment?

A No.

Q How long has it been since you had any other source of income or employment, other than consulting on cases involving Jehova's Witnesses?

A It's been approximately a year.

Q So what was your source of employment -- last source of employment, other than consulting on cases involving Jehova's Witnesses?

A I worked in Nashville. I managed a music studio.

Q How long did you do that?

A For approximately a year.

Q And what other employment have you had going back?

distributed them. It was a company I managed for about 12 years.

Q And prior to that?

A I guess at that point I worked in Seattle. I was -- I worked for Ken Investments.

Q Any other employment that you had that prepared you to become an expert in Jehova's Witnesses or any other work that you did?

A I can't think of anything in that regard other than functions that I had for the organization.

Q Okay. And we'll go through those in a moment.

Are you currently involved in any research studies?

A No.

Q Let's talk a little bit about your experience with the organization of Jehova's Witnesses. You were one of Jehova's Witnesses at one time?

A Yes.

Q So you came to be appointed as an elder at a certain point in time; correct?

A Correct.

Q And when was the first time you were appointed an elder?

A To my knowledge, it was 1985.

Q And were you deleted?

A Yes.

Q When?

A In 1992 -- June of '92.

Q And what was the reason for your deletion?

A It was over an administrative issue.

Q What do you mean "administrative issue"? I've never heard of anybody being deleted for an administrative issue.

A Well, the issue involved the -- an elder who moved to another congregation. And we disagreed with his reappointment as a body, and they called in a special committee. And the course of the special committee, they affirmed that that was the correct decision. But in the continuing -- ongoing investigation, it was determined by the special committee that I should be deleted for being self-willed.

Q Okay. And did you -- where was that, by the way?

A That was in Conway, Arkansas.

Q And do you know approximately what year that was?

A 1992.

Q And did you eventually get reappointed?

A Yes. In June of 1994.

Q Which congregation?

A That was in Redmond, Washington.

Q Okay. And how long did you serve as an elder after being appointed in 1992?

A Until approximately December of 2000 when I submitted my resignation.

Q Okay. Now, you submitted your resignation in Kentucky, correct?

A That's correct.

Q When you moved from Washington, where did you move to?

A A little congregation called Draffenville, Kentucky.

Q So there was a period of time there when you weren't an elder after being removed?

A Yes.

Q You had to be reappointed?

A Yes.

Q It took a couple of months, maybe?

A Yes. The need was great in Draffenville, so I was used immediately, but the reappointment probably occurred about a month later.

Q And then you resigned in 2000, you say?

A December 2000.

Q Okay. And the reason for your resignation was over --

A After I resigned, I did. Yes.

Q Okay. And were you told if you had no duty to report?

A Yes.

Q You weren't told not to report it. You were told you had no duty to report; isn't that correct?

A I was told as an elder, according to my understanding, not to report the matter.

Q So the direction was not that you had no duty to report it; the direction was that you should not report it?

A The direction was to follow the advice of the legal department, which was not to report it.

Q Okay. And who gave you the direction of following the advice of the legal department?

A It was one of the attorneys for the legal department.

Q Okay. Have you held any office in the Jehovah's Witness organization, other than -- you were a ministerial servant at one time, correct?

A Oh, yes.

Q -- other than administerial servant and an elder?

A I've been a pioneer.

Q So you were appointed as a pioneer?

A Yes.

Q As far as office of leadership, administerial servant, or elder, have you held any other position?

A Other than working in the departments and conventions, working in the Quick Build. And --

Q As an elder?

A Yes.

I've done temporary construction at Bethel. So I've also assisted with teaching at the elder school. I assisted with the pioneer school.

Q As an elder?

A As an elder, yes.

Q Okay. Have you ever been a circuit overseer?

A No.

Q And what is a circuit overseer?

A He's a gentleman that reviews the records and comes around every six months and makes sure that everybody is on track and submits a report to the home office with regard to the activities of the congregation.

Q And within the organization of Jehova's Witnesses, does the circuit overseer have a higher position than an elder?

A Elders are supposed to obey whatever the circuit overseer tells them to do because he is a direct representative for the Governing Body. So I would say

based on that, he does hold a higher position as an authority figure.

Q In other words, Jehovah's Witnesses is a hierarchal organization, are they not?

A Yes.

Q So above the elders, you have the circuit overseer, correct?

A That's correct.

Q And you've never been a circuit overseer?

A No.

Q And above the circuit overseer, who do you have?

A District overseer.

Q Have you ever been a district overseer?

A No.

Q And above the district overseer, who do you have?

A At that point, I guess you would call it the branch overseer.

Q Okay. The U.S. Branch Committee?

A Yes.

Q So you have the members of the Branch Committee, correct?

A Yes.

Q Have you ever been a member the United States Branch Committee?

A No.

Q And above the United States Branch Committee, who would be at the next level?

A It might be the Governing Body.

Q Have you ever been a member the Governing Body?

A No.

Q So the highest position you ever had within the organization of the Jehovah's Witnesses was as an elder, correct?

A Yes.

Q And how many elders are there in the United States?

A Currently?

Q Yes.

A The last count I had was 29,000. That's the last notation I made. I may be off.

Q Would it surprise you to learn that there's more than 13,000 congregations in the United States?

A No.

Q Would it surprise you to learn that there's more than 80,000 elders in the United States?

A No. Not at all.

Q Okay. And do you feel that you're more qualified than other elders on the beliefs and practices and policies of Jehova's Witnesses?

Jehova's Witnesses. That's my question.

A Yes.

Q You profess to be an expert on the policies and practices of Jehova's Witnesses, correct?

A That's correct.

Q Okay. So your testimony is that by not being an elder since 2000, you have become more expert in the policies and practices than if you had continued to serve as an elder?

A Yes. Because I have looked at things on an international level. I have talked to Jehovah's Witnesses, as well as ex-Jehova's Witnesses around the world concerning various practices and how things work. So I feel I have a much broader perspective than a typical elder that serves in a little congregation and doesn't have the opportunity to do that.

Q And you are familiar with the term "traveling overseer"?

A Yes.

Q What's a traveling overseer?

A A circuit overseer.

Q Or a district overseer?

A That's correct.

Q Okay. So would it surprise you to learn that there's about 600 traveling overseers in the

Governing Body. Do you believe that you're more knowledgeable in the policies and practices of Jehova's Witnesses than they are?

A Yes.

Q There's 12 members of the United States Branch Committee. Do you believe that you're more qualified than they are on the -- as you testified, about the policies and practices of Jehova's Witnesses?

A Yes. As it pertains to child abuse, yes.

Q Is there anyone who is as qualified as you are to testify on the practices and policies of Jehova's Witnesses as it pertains to child abuse?

A Not to my knowledge.

Q Is there other areas, other then child abuse, where you feel that you're the most qualified person to testify on the policies and practices of Jehova's Witnesses?

A I feel on the issues concerning child custody, I'm qualified. But there are other people out there that do work in that field as well.

Q Are they Jehova's Witnesses?

A More than likely they're former Jehova's Witnesses.

MR. MORENO: Okay. Let's take a short break.

MR. ZALKIN: Okay.

(Recess.)

BY MR. MORENO:

Q Mr. Bowen, were you disfellowshipped on August 15, 2002, in the organization of Jehova's Witnesses?

A Yes.

Q And what was the charge for which you were disfellowshipped?

A Causing divisions.

Q And is causing divisions a form of apostasy in the beliefs and practices of the Jehovah's Witnesses? Does it fall under the sin of apostasy?

A I do not think so. I think it's a separation. Causing divisions is one charge, and apostasy is another.

Q You are an expert on beliefs and practices of Jehovah's Witnesses, are you not?

A That's correct.

Q So is it your testimony as an expert that, according to the theology of the Jehovah's Witnesses, causing divisions does not fall under apostasy?

A As it was explained to me by the appeal committee. They said --

Q I'm not asking how it was explained to you by the --

MR. ZALKIN: Wait. Let him answer his question,

Q What areas are you an expert in other than the ones that you've testified to already today in your deposition? Are there any other areas that you consider yourself to be an expert in?

A I think that's pretty well it.

Q Do you consider yourself to be an expert on child abuse, generally?

A In my knowledge that I have gained over the last 12 years in child abuse, I think I have gained a certain expertise in understanding and empathizing with the plight of abuse survivors.

Q Are you an expert more specifically on the investigation of allegations of child sexual abuse?

A No.

Q Are you an expert on historical standards of care in the area of sexual abuse?

A No.

Q Are you an expert in the standards of care for the detection of sexual abuse?

MR. ZALKIN: For the --

MR. MORENO: The detection of sexual abuse.

THE WITNESS: No.

BY MR. MORENO:

Q Are you an expert on the standards of care for detection of a potential child molester?

A Can a what?

Q Can a 10-year-old boy be a regular pioneer within the Jehovah's Witness organization?

A Yes.

Q Is that a position of authority for him?

A It could be. Yes.

Q Besides reading the publications of Jehovah's Witnesses policies, practices, and having been an elder yourself within the organization of Jehovah's Witnesses, what else makes you an expert on the policies and practices? How else have you gained your expertise?

A I've consulted with numerous elders and former elders inside and outside the organization. I've talked to people that have held authority within the organization, from the Governing Body on down, as far as their practices and how things are handled. I've also on an international level talked to people who are members and former members of Jehovah's Witnesses to see on a worldwide basis how things are dealt with in the administration within the organization.

So I think it's allowed me to gain a deeper understanding and a broader perspective. And I've been provided materials. People have sent me things -- correspondence about their experiences, what happened to them. So it's allowed me to attain a broader perspective

you talked to elders.

A Yes.

Q And were those elders part -- no.

Were those elders part of the Jehovah's Witness religion at the time you were talking to them?

A Yeah.

Q So were they active?

A Yes.

Q And would you say you -- of the elders you talked to, what percentage of the elders that you spoke with were no longer affiliated with the Jehovah's Witnesses?

A I'd say it probably runs about 70 percent not affiliated and 30 percent affiliated.

Q Okay. Now, Mr. Moreno showed you some documents that we marked as exhibits a few moments ago where there were some publications from, I guess, Watchtower. And they were talking about having the victim -- giving the victim the option to report child abuse if they so choose.

A Yes.

Q And I know you have mentioned that in your experience, notwithstanding those documents, that the religion really discourages the victims from reporting it. Am I understanding your testimony?

regard.

Q Okay. Do the policies and practices of the Jehovah's Witness religion emanate from the Governing Body?

A Yes.

Q Okay. So it starts from there, and then it goes down?

A Yes.

Q Okay. And are you aware as to when California adopted mandatory reporting for religious organizations of child abuse?

A No.

Q Okay. Are you aware as to --

A Each state has different standards for reporting. And you have to --

MR. ZALKIN: There is no question pending.

THE WITNESS: Okay.

BY MR. COPLEY:

Q Okay. That, I'm aware of.

Some states have started -- I'm going to back up. Some states adopted mandatory reporting on one particular year, and then other states followed. Am I right about that?

A Yes.

Q And then some states adopted it for one type of

profession, such as teachers. And then later on they expanded it to include hospitals and doctors. And then they expanded it to include other types of people, correct?

A Yes.

Q And do you know whether or not California has -- or strike that.

Do you know when California adopted mandatory reporting for any kind of profession of suspected child abuse?

A I don't have a specific date.

Q Okay. And if a state does not have mandatory reporting obligations required by law, are you aware of any legal authority, a statute, a case, or anything in California that would have legally required an elder to report suspected child abuse to the police?

A No.

Q Okay. Let's talk a little bit about your opinions. I listened to a lot of questions here this morning, and I'm not a Jehovah's Witness. And while I've learned a lot about the religion during the course of this case, I'm just unclear as to what your opinions are. So I would like for you to articulate for me what opinions you intend to express at trial. And if you can break them down into categories, we can address them one

by one.

A I guess I don't understand the question. Opinions about what things specifically?

Q Well, let me explain it, the process of this deposition. You've been designated as an expert in this case. And I understand from Mr. Zalkin this morning that you are going to be testifying about practices and procedures of the Jehovah's Witnesses and its structure. Am I right about that?

A That's correct.

Q Okay. And I'm sure you have spoken with Mr. Zalkin about what your opinions are; is that correct?

A Yes.

Q And you're going to testify at trial about those opinions that you told Mr. Zalkin about, correct?

A Yes.

Q So I'm asking you to tell me today, for the record, those opinions that you intend to express at the time of trial.

MR. ZALKIN: He is going to testify -- this is where -- he is going to testify as to the organizational structure of the Jehovah's Witnesses. He's going to talk about the governance of the Jehovah's Witnesses. He is going to talk about what a publisher is, what a baptized publisher is, what a pioneer is, what an administerial

servant is, what a circuit overseer is, what a -- laterally and horizontally. That is what he is being asked to testify about, what they do, what they're instructed to do, and how they do it.

I mean, if you want him to testify to all of that right now, we'll be here for six hours. That's what he's -- he's not offering opinions in the sense of -- yes. Maybe it is his opinion that this is how they do it, and there will be disagreements probably as to how they do it or why they do it or what an instruction may be. But -- I mean, that's -- that's what he's going to be testifying to. There are two books in there with instructions on what -- these different positions. He will be addressing those.

MR. COPLEY: Well, here's my problem with that, Irwin: And that is -- I'm looking at this big -- giant stack of papers there in the middle of the table.

MR. ZALKIN: Right.

MR. MORENO: And I understand those documents contain some of his opinions. And then I got -- I downloaded on my hard drive these books and some other articles and that contains some of his opinions.

MR. ZALKIN: Right.

MR. COPLEY: But while he may have expressed opinions in publications for the last ten years --

people that are viewed in -- the last thing they would think of is a person in a trench coat. So the great guys that are great with kids oftentimes are viewed as child molesters.

Q So it's not like they wear a uniform that identifies them as a child molesters?

A Or a trench coat. Or --

Q Something like that?

A Right.

Q So over the years society has recognized that it's not always easy to recognize a child abuser. So if you -- so more and more states have adopted laws to make reporting of suspected child abuse mandatory, correct?

MR. ZALKIN: First of all, I'm going to object. The question lacks foundation, it assumes facts as to why these laws were made, and it calls for speculation on the part of this witness. It's beyond the scope of his expert testimony.

BY MR. COPLEY:

Q Okay. So you're not an expert in the area of mandatory reporting for child abuse?

A No.

Q Okay. When you were an elder, were you trained on how to investigate allegations of child abuse by anyone?

A No.

Q And --

A Can I add to that?

Q Sure.

A I was given directives on how to investigate wrongdoing, which would include child abuse.

Q Okay. So the investigation of wrong doing -- you use the word "wrongdoing," what does -- does it have a meaning within the religion?

A That's basically any rule that Jehovah's Witnesses make as far as a spiritual sin is concerned. That's the perception of wrongdoing.

Q Okay. And what were you taught as to what you were supposed to do when investigating a wrong-doing within the Jehovah's Witness religion?

A It's the same procedure as what I outlined earlier with regard to child abuse. You determine if there's substance to the allegation by two elders investigating. If there's substance to the allegation, such as a confession or two eyewitnesses, you convene a judicial committee, and you proceed from there.

Q Okay. Have we covered now your opinions that you intend to give with regards to child -- the child-reporting processes in the Jehovah's Witness religion in the 1980's?

Q And you don't have any degrees in psychology?

A No. No.

Q So it's just your own personal opinion as to what the psychologist may or may not believe?

A Well, I've talked to psychologists and shared this information with them, and that was the feedback that they gave me. So I'm just basing it on their opinions, not mine.

Q That's just your personal opinion. You're not an expert?

A Absolutely not.

Q Well, let me ask you this: You mentioned that you have done some work in the Mormon -- with child-abuse issues in the Mormon religion. Can you tell me a little bit more about that? What did you do with regards to that?

A I had a friend that contacted me in the early 2000's that had written an extensive book and put up a Website concerning abuse in the Mormon religion. And I consulted with her for a while on how to set up the Website and the dynamics that go on within the Mormon Church as far as how they administrate an allegation of abuse.

And in many cases it was very similar to how Jehovah's Witnesses look and investigate child abuse.

And routinely the church wanted to avoid publicity and negative allegations. So they -- that was just a conversations we had.

MR. ZALKIN: Okay. How about -- I don't know where you're going, but this is beyond the scope of what he's going to be testifying to. He's not an expert in how Mormons deal with --

MR. COPLEY: I understand that, but I'm looking at his CV, and he talked about being an expert in this area, comparative religion. And then there were some questions about that, and he mentioned this Mormon thing. And that is why I thought, well, I need to find out a little bit more about what he did for the Mormons.

Q So other than overseeing this Website and kind of seeing some of the things that this person had written in the book, did you do anything else with regard to the Mormon religion?

A No.

Q And have you ever been hired as a consultant with regards to that field in the Mormon religion?

A No.

Q How about the Catholic religion? Have you ever -- what has been your involvement in the Catholic religion in this field?

A David Chlohessy, who heads up the

organization --

Q Could you spell that for the court reporter?

A C-h- --

MR. ZALKIN: C-h-l-o-h-e-s-s-y.

MR. COPLEY: Thanks.

Q David Chlohessy did what?

A He is the national director for SNAP, and that is Survivors Network of those Abused by Priests. And I've worked closely with him over the years, attending their conferences. I've lectured at their conferences and attended meetings that they had with the Catholic Church. I met a Catholic priest on several occasions. His name doesn't come to mind. But -- I consulted with him concerning their procedures on how abuse is handled and covered up within the Catholic Church.

I -- I've just had a lot of interaction -- there's another lady that heads up the organization. That -- prior to the SNAP organization -- I actually served on the board of directors of that organization in Louisville, and I assisted them with regard to policies they set up for assisting Catholic abuse survivors. They set up a farm there, and I was involved in helping make decisions on how to help and treat them and how to set up that facility.

Q Okay. What are your current criticisms of the

handling of child-abuse investigations -- let me start again.

What are your current criticisms of the handling of child-abuse allegations by the Jehovah's Witnesses?

A I don't think child abuse should be handled as wrongdoing within the church. I think it should be handled as a crime, and elders should not be involved in any part of that investigation. I think that it should be -- any allegation should be automatically reported to the police, and the police should be allowed to investigate.

And after the investigation by the police if the church wants to make some type of directive on how that is approached -- I think they should not be bringing the victim and the molester together. It just needs to be approached in a much more delicate manner, which is the way that it is handled now.

Q So focussing on just the religious aspect of it, not the criminal prosecution of the perpetrator, just the religious aspect of it. Is it your testimony that Jehovah's Witnesses should delegate to the police and the district attorney's office for the State of California the investigation of a child-abuse allegation. And whatever they determine, they should accept that, and then either reprove the person or disfellowship the

person within their own religion?

A No. What I'm saying is that the police investigators should be allowed to fully conduct their investigation before the elders become involved in trying to administrate wrongdoing. Once that -- let's just suppose a police investigation ensues, the guy goes to jail, and he's in jail. Now, at that point let the two elders interview the parents and the family and then go to jail and interview the molester.

And then if they want to make a ruling to disfellowship or reprove him, so be it. But don't get involved before authorities have conducted a proper investigation to determine this person's guilt. Because elders are not qualified to investigate crime, and oftentimes they taint a police investigation by telling the molester what the victim said and vice versa. Well, they prepared him for the police investigation now, and oftentimes they circumvent the police investigation as a result.

Q So you kind of follow the old adage -- or maybe putting it this way: You're basically saying, hey, the current process that is used, as well as the process that has been used since the '80s, is they put the cart before the horse by -- that you view this as a crime, and you should have the police investigate it first. And then --

then the religion gets involved with it afterwards?

A As I explained, the elders on --

Q Is that accurate?

A Yes. As I explained to the elders when they first confronted me about this, I said, "If we have a murder in the congregation, the elders wouldn't say, Oh, wait. We need to do an investigation to determine if a murder really happened. You have a dead body and you have only one eyewitness." They wouldn't get involved. They would immediately call the police and have them make the arrest and decide if he committed the crime.

Later on they may make a judicial meeting and decide to disfellowship. Why in a murder they make that decision, and with child abuse, which is a much more, in my opinion, horrendous crime -- but they say, "Oh, we've got to do all this preliminary stuff," which oftentimes screws up the investigation; and, secondly, with regard to child abuse, molesters can be used after a period of time. It's an organizational directive. They can be reused within the organization. I say they should never be used. That's my opinion; and, thirdly, molesters are required to witness, to go door to door. And, of course, the organization says, "Well, they will have somebody with them at all time."

But who's going to be with them? How is that

guy trying to understand how a child molester operates? It's left to such conjuncture.

I'm saying if you're a confessed child molester, you should never be allowed to go door to door and try to start bible studies with the unknowing public unless you want to wear a sign on your chest saying, "I'm a child molester, just be aware." So I don't think that's a proper policy, but that's a procedure within the organization.

Q When they allow a molester to -- who's been disfellowshipped to come back into the religion, are they permitted to go -- what do they call going door to door?

A Field Service.

Q Field service.

Are they permitted to do that?

A They're required to. It states in the 1995 Watchtower, that's -- the way they prove their repentance is by participating in the field ministry, which I don't agree with. In my opinion -- I don't -- and I think that most of the public -- if they knew that, it would give them pause as to the Jehovah's Witnesses calling at their door.

Q Okay. Have we covered now all of your opinions that you intend to testify at trial concerning the child-reporting processes for the Jehovah's Witness

organization?

A I would just like to say there are three things that I have stated from day one since I resigned as an elder that I think needs to change in the policy of Jehovah's Witnesses, and I have never deviated from that.

And those three things are -- is what we've covered here, but I'd just like to make sure we are clear on that. No. 1, any allegation of child abuse should be reported to the police first before elders get involved; No. 2, molesters should never have any position of authority or exemplary position within the church; and No. 3, molesters should never be allowed to go in the door-to-door witnessing work of Jehovah's Witnesses.

And those are the three things that I maintain are the problem with the policy of Jehovah's Witness on child abuse. And to this day they have never fully been enacted or changed, in my opinion.

Q And the basis of those three opinions is what?

A Well, based on the instructions that I had when I was an elder within the church and based on the testimony of literally thousands of people that have come to me during the course of the last 12 years saying this is the reason there has been a problem. And in each of those instances, those policies have allowed children to be molested and allowed them to be hurt. If those were

I, WILLIAM HARVEY BOWEN, do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____, 20____, at _____, _____.
(City) (State)

_____
WILLIAM HARVEY BOWEN

STATE OF CALIFORNIA)
: ss
COUNTY OF SAN DIEGO)

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

_____
MARGARET KINNEY
CSR No. 11398

Declaration of Mario F. Moreno in Support of Defendant Watchtower and North Fremont Congregation's Motion in Limine to Exclude Testimony of William H. Bowen

Exhibit B

IT IS TIME TO PROTECT CHILDREN. IT IS TIME TO STOP BEING A SILENTLAMB!

The bottom line is after much effort to try and change Watchtower policy from within I found I could no longer "wait on the Lord", I do not believe the Lord wants or would allow one child to be hurt, much less the many that have suffered and been molested as a result of Watchtower policy. The only way in my opinion is to go public and by doing so with public outcry, force Jehovah's Witnesses to do right by the children. This effort is truly a gift to all children of Jehovah's Witnesses to be able to live their young fives with a fair chance of not being molested. I encourage one and all to write, call, **e-mail** and through the media, let the Watchtower Organization know this policy must change, children are being hurt, policy must be changed now.

If you need assistance we can be reached at:
Silentlambs
PO Box 311,
Calvert City, KY 42029
www.silentlambs.org
1-877-WTABUSE (982-2873)

This Brochure was not sent by Bill Bowen. It is being **sent** in order to persuade the Body of Elders to come forward in your congregation. Sex with a minor is wrong and **is** never consensual. This matter should be brought before the local law enforcement authorities. It doesn't matter if it **is** an **Uncle.** Our **next** step **is** to go to **the local** media with this information. **Lives** have been ruined. Fleming Granger, Jr. **has** HIV possibly because of this pedophile Uncle and Felicia now has children out of wedlock. Fleming **and Felicia** (young **adults** now) need help. Felicia's parents have been told by the local congregation to not assist her. Your Brother in the faith/Publisher **is** allowed to go from door to door **with** a slapped wrist possibly looking for prey. We will be watching this **closely. We know** which territory Steven & Gina farm in field service and **will be** monitoring and **possibly** video taping **Stevens' actions.**

Is The

Rivertown Congregation Protecting

Steven Granger?



I Believe They Are!!!

When Witness officials have chosen to respond to the media about this question, they offer misinformation and tell uninformed Jehovah's Witnesses that this is not a problem. An example of how the Watchtower responds when asked about this problem is in a statement made to news media on January 5, 2001, by JR Brown of Watchtower Public Relations Department, he released this written statement when asked about this problem:

"We do not condone the actions of those who exploit children by this terrible crime and such persons are disfellowshipped (excommunicated) from the congregation. A known child molester does not qualify for appointment as a church elder or for any other position of responsibility in any congregation of Jehovah's Witnesses."

Is this statement true? Notice a comment made in an internal letter to "All Body Of Elders" dated **6-1-01**:

"There is one exception to the above direction: The elders may have written to the brunch office and given full details about a former child abuser who is currently serving as an elder or ministerial servant. In such a case, if the branch office has decided that he can be appointed or continue serving in a position of trust because the sin occurred many years ago and because he has lived an exemplary life since then, his name should not appear on the List, nor is it necessary to pass on information about the brother's past sin if he moves to another congregation unless contrary instructions have been given by the branch."

Not only is a child molester not disfellowshipped in many cases but some are used as leaders within the organization with complete anonymity, as this internal communique brings out. Why would misleading information be given to the public on this matter? The Watchtower has developed a position toward molested children that is harmful. This is done through a church policy that dictates that local elders involve themselves **first** when molestation issues arise. They use an ancient old law edict that requires two eyewitnesses before a matter can be established. The elders who investigate have no experience with pedophiles or child molestation as a rule. When the pedophile denies the charge the elders then bring pressure to bear on the victim to produce eyewitnesses to prove the allegation. In effect the victim is accused of lying unless he/she can prove they are telling the truth by producing an additional witness who watched it happen. **As** you can guess in **90%** of the cases the victim cannot, and as a result is told since he/she cannot prove their case the victim is required to view the pedophile **as** an innocent **man.** Hence, the victim cannot warn others or speak about the matter to anyone, otherwise he/she will be guilty of slander **and** this could result in being "disfellowshipped" from the congregation. "Disfellowshipped" means complete cutting off from family and all friends who are in the faith until you agree to live by the above guidelines. In many cases victims **are** encouraged not to go the authorities as it will bring reproach on God and make the church look bad. When a victim presses charges anyway he/she is on their own with absolutely no help or support from the elders. The elders will claim ecclesiastical privilege to get out of offering any corroborating testimony and anyone in the church is discouraged from helping for the reasons offered above. The pedophile on the other hand is given great sympathy as a falsely accused person and often has the full support of the church. This result: in a pedophile refuge mentality in the Watchtower organization; pedophiles can freely move about, discreetly molest children and have the protection of church leadership to keep charges from being established.

I believe, rather than the church involving itself in determining whether an accused person is innocent or guilty of molestation, the first step the church should take is to notify the local authorities that will investigate whether the accusation has merit. Then if found guilty in a court of law, the pedophile will be publicly identified and punished. This protects the innocent and could help give closure to the victim. Until that day happens, the lambs have been silenced, the victimized little ones, who look to their Jehovah's Witness leadership for protection, but instead are crushed and ostracized by an organizational policy where **they need** help the most.

I have formed an organization to publicly expose Jehovah's Witnesses for hurting children. It is call silentlambs, please review our website at **www.silentlarnbs.org.** Therein. you will find the testimony of hundreds of victims of molestation whose experiences agree with my conclusions. Our organization is endeavoring to reach out to those who suffer as silentlambs, who are afraid to speak out because of the threats and sanctions their religion may place against them. **Silentlambs** is a **(501,C,3) non-profit organization** solely dedicated to victims of child molestation who so desperately need a voice. The first step to expose this great wrong that has been wrought on so many innocent children is to **SPEAK OUT.**

8801312

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerley DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 2

DATE May 18, 2012
TIME 8:30 A.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 2.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 2 are true and correct copies of pages 1-5, 25, 26, and 64 of the deposition of Plaintiff Jane Doe.

3. Attached as Exhibit B to this declaration in Support of Defendant Watchtower

and North Fremont Congregation's Motion In Limine 2 are true and correct copies of pages 1-6, 26, 27, 95, and 96 of the deposition of Kathleen Conti.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 2** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

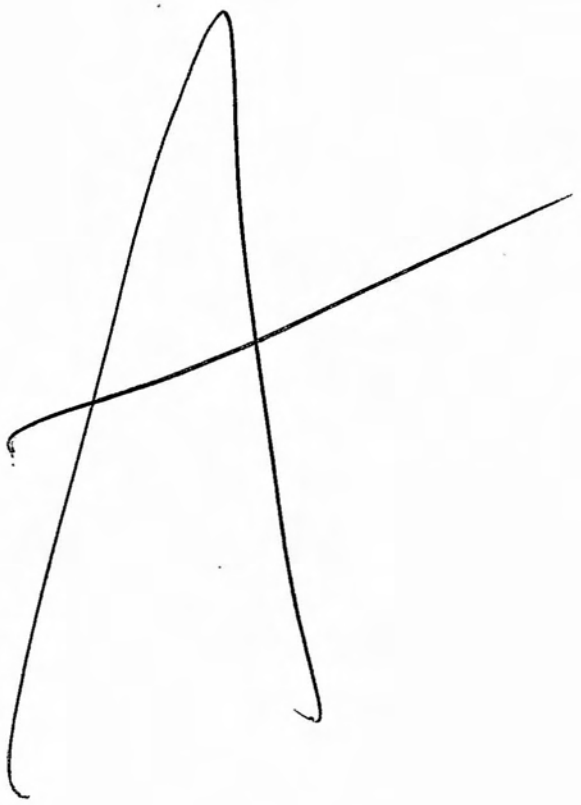
Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ◆ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

_____

Signature of Witness

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____

Certified Shorthand Reporter
State of California
License No. 2816

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
5776 STONERIDGE MALL ROAD, SUITE 350
PLEASANTON, CALIFORNIA 94588
(925) 416-1800

To: JANE DOE
c/o JAMES M. McCABE
THE McCABE LAW FIRM.
4817 SANTA MONICA AVENUE, SUITE B
SAN DIEGO, CA 94541

SEP 0 6 2011

RE: DOE VS WATCHTOWER

Dear JANE DOE:

This is to inform you that your deposition conducted on August 25, 2011, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

If it is more convenient, please contact Richard J. Simons, Attorney at Law, to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel



SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	CASE NO. HG11558324

VIDEOTAPED DEPOSITION OF KATHLEEN CONTI

NORWALK, CALIFORNIA

OCTOBER 21, 2011

ATKINSON-BAKER, INC.
COURT REPORTERS
(800)288-3376
www.depo.com

REPORTED BY: PAULETTE RADCLIFF, CSR No. 12111

FILE NO. A50931C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	CASE NO. HG11558324

VIDEOTAPED DEPOSITION OF KATHLEEN CONTI, taken on behalf of Defendant at, 10902 Firestone Boulevard, Norwalk, California, beginning at 8:59 a.m. and ending at 11:53 a.m. on Friday, October 21, 2011, before PAULETTE RADCLIFF, Certified Shorthand Reporter No. 12111,

APPEARANCES:

For Plaintiffs:

FURTADO JASPOVICE & SIMONS
BY: RICK SIMONS
22274 Main Street
Hayward, California 94541
510-582-1080

For Defendant:

THE MCCABE LAW FIRM
BY: JAMES MCCABE
4817 Santa Monica Avenue, Ste B
San Diego, California 92107
619-224-2848

For Defendant:

JACKSON LEWIS
BY: ROBERT SCHNACK
801 K Street, Suite 2300
Sacramento, California 95814
916-341-0404

The Videographer:

DAN ACKLEY

I N D E X

WITNESS:

Kathleen Conti

EXAMINATION	PAGE
By Mr. McCabe	5
By Mr. Schnack	57

EXHIBITS

DEFENDANT	PAGE
(NONE)	

Norwalk, California; Friday, October 21, 2011

8:59 a.m. - 11:53 a.m.

KATHLEEN CONTI,

having been first duly sworn, was examined and testified as follows: 09:01:14

THE VIDEOGRAPHER: I am Dan Ackley, your videographer, and I represent Atkinson Baker Court Reporters in Glendale, California. Today is October 21st, 2011. Time is approximately 8:59 A.M. This deposition is taking place at the Best Western Hotel, 10902 Firestone Boulevard in Norwalk, California. 09:02:09

This is case No. HG 11558324, titled Jane Doe versus the Watchtower, et al. Deponent is Kathleen Conti. This is volume 1, beginning of disk 1. Your court reporter is Paulette Radcliff. 09:02:29

Would you counsel please introduce yourselves. 09:02:51

MR. SIMONS: Rick Simons for Jane Doe and for the witness Kathleen Conti.

MR. SCHNACK: Robert Schnack representing Watchtower New York.

MR. MCCABE: James McCabe representing 09:03:02

Fremont Congregational Jehovah Witnesses.

THE VIDEOGRAPHER Please swear in the witness.

EXAMINATION 09:03:10

BY MR. MCCABE:

Q. Ms. Conti, would you state your name for the record and spell your last name, please?

A. Kathleen Conti, C-o-n-t-i.

Q. My name is James McCabe. I just introduced myself to the record and to you earlier. I represent the North Congregation of Jehovah Witnesses in Fremont, California, and we're here to take your deposition in connection with the case that your daughter has filed against the Watchtower Bible and Tract Society and the congregation of Jehovah Witnesses of Fremont. 09:03:30 09:03:48

Do you understand that?

A. Yes, I do.

Q. And you've just sworn to tell the truth in these proceedings under oath, and you understand that your testimony here today, even though we're in a conference room at a hotel in Norwalk, California, has the same force and effect as if you were testifying in a court of law with the judge and jury 09:03:57 09:04:10

on that first occasion when you learned that she had been molested by Jonathan Kendrick, had she told you how many times she had been molested by him?

A. Many times.

Q. Did she tell you over what period of time, months or years? 09:42:03

A. Just that it was during the -- before we divorced and during it.

Q. Did she tell you what type of abuse she suffered on this first occasion? 09:42:33

A. No.

Q. Where were you when you had this discussion with your daughter?

A. On the balcony.

Q. Of your home? 09:42:48

A. Of my mother-in-law's home.

Q. And where was that?

A. Fremont.

Q. And what was your mother-in-law's name?

A. Dorothy Conti. 09:43:03

Q. What was your reaction to your daughter telling you the story?

A. I was very upset.

Q. What did you tell her?

A. That I couldn't believe that it happened to 09:43:43

her, and it happened to me also.

Q. When you say it happened to you also, were you a victim of child molestation?

A. Yes.

Q. At what age? 09:44:18

A. 13.

Q. Did you report that molestation?

A. It happened to three girls and myself, and the other two girls told the father.

Q. Was the perpetrator prosecuted criminally? 09:45:05

A. No, he was an elder.

Q. In what congregation?

A. I don't know what congregation that he went to.

Q. Was he disfellowshipped? 09:45:30

A. No.

Q. Did the elders ever talk to you about that?

A. No, it was kept quiet.

Q. This took place when you were age 13?

A. Uh-huh. 09:45:50

Q. What was the name of the perpetrator?

A. Dave Wood.

Q. Is he still alive?

A. Yes.

Q. Do you know the names of the other two 09:46:03

there a period of time where you knew he wasn't?

A. I believe that he may have not when he was getting a divorce. I think maybe he wasn't a ministerial servant. I can't say for sure, but I think maybe he wasn't at the end. 10:21:34

Q. Do you know when Mr. Kendrick got a divorce?

A. No, I don't remember.

Q. Was it before your divorce?

A. I don't remember that.

Q. Do you ever recall Mr. Kendrick inappropriately touching Candace at the kingdom hall at north Fremont congregation of Jehovah's witnesses? 10:21:58

A. I don't remember that. I just remember that he was very friendly with her.

Q. Do you remember seeing him give her bear hugs at the kingdom hall? 10:22:25

A. I don't remember.

Q. Do you ever remember seeing Candace sitting on his lap at the kingdom hall?

A. No, but there is a period of time that I wasn't there at the hall at the end. It was quite a few months I was not there. 10:22:53

Q. That would be '96 up to July 1997?

A. I believe that would be during '95 '96 and '97. 10:23:23

DECLARATION UNDER PENALTY OF PERJURY

I, Kathleen Conti, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on October 21, 2011; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 20___, at _____, California.

_____
Kathleen Conti

REPORTER CERTIFICATION

I, Paulette Radcliff, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this _____ day of _____, 20____.

_____
Paulette Radcliff, CSR No.12111

8801320

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 1

DATE May 18, 2012
TIME 8:30 A.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney of record for Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and I personally read and prepared the attached exhibits to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 1.

2. Attached as Exhibit A to this declaration in Support of Defendant Watchtower and North Fremont Congregation's Motion In Limine 1 are true and correct copies of pages 1-5, 25-28, 30-34, 40, 43-45, 49, 50, 64 of the deposition of Plaintiff Jane Doe.

3. Attached as Exhibit B to this declaration in Support of Defendant Watchtower

and North Fremont Congregation's Motion In Limine 1 are true and correct copies of pages 1-6, 26, 27, and 47 of the deposition of Kathleen Conti.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF SUPPORT OF DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE 1** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

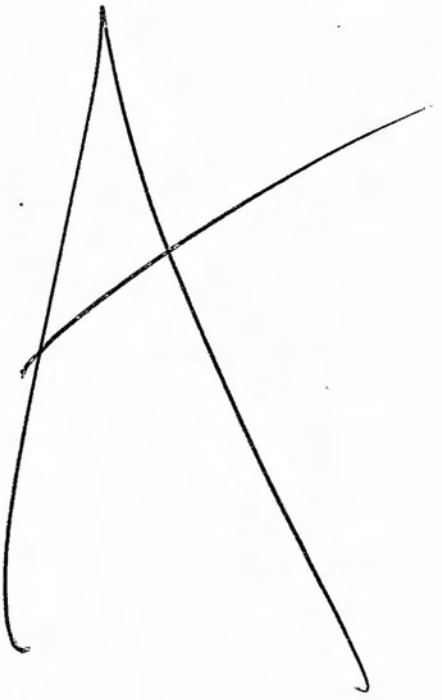
Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

CERTIFIED COPY

JANE DOE,

Plaintiff,

vs. NO. HG 11558324

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., A CORPORATION; WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., A CORPORATION; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, AN UNINCORPORATED ASSOCIATION; JEHOVAH'S WITNESSES ON PERALTA BLVD., FREMONT, AN ENTITY; KINGDOM HALL OF JEHOVAH'S WITNESSES, A CORPORTAION.

Defendants.

_____/

DEPOSITION OF JANE DOE

AUGUST 25, 2011

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation

(925) 416-1800 ◆ FAX (925) 416-0971

INDEX OF EXAMINATION

EXAMINATION BY:	PAGE
MR. McCABE	5

****

INDEX OF EXHIBITS

NO.	PAGE	DESCRIPTION

NO EXHIBITS MARKED.

****

DEPOSITION OF JANE DOE

Pursuant to Notice of Taking Deposition and on Wednesday, August 24, 2011, commencing at the hour of 10:00 o'clock a.m., at the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, before Barbara Jarnagin, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared JANE DOE, produced as a witness in the above-entitled action, who, being first duly sworn, was thereupon examined as a witness in said action.

****

RICHARD J. SIMONS, Attorney at Law, of the Law Offices of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, was present on behalf of the Plaintiff.

JAMES M. McCABE, Attorney at Law, of the Law Offices of The McCabe Law Firm, 4817 Santa Monica Avenue, Suite B, San Diego, California 92107, was present on behalf of the Defendants.

APPEARANCES CONTINUED

FRANCIS J. McNAMARA, Associate General Counsel, Watchtower Bible and Tract Society Of New York, Inc., 100 Watchtower Drive, Patterson, New York 12563-9204, was also present on behalf of the Defendants.

A. In the L.A. area.

Q. I guess we can move onto questions I don't want to ask you, but we need to get into.

This is a lawsuit involving allegations of your being sexually abused when you were a minor. Who were the perpetrator of your abuse?

A. Jonathan Kendrick.

Q. How did you know Jonathan Kendrick?

A. He was a member of the North Fremont Congregation.

Q. Was he a friend of your family?

A. Yes.

Q. Was he someone who would visit your parents' home?

A. Yes.

Q. Your parents visit his home?

A. No.

Q. When did the abuse first take place?

A. I don't know the exact date or exact time. Around the age of nine.

Q. You were nine years old?

A. (Witness nods head affirmatively.)

Q. This is while your parents were still married?

A. Yes.

Q. Where did this abuse take place?

A. The Kingdom Hall, North Fremont Kingdom Hall Congregation.

Q. Where in the Kingdom Hall?

A. Just in the Kingdom Hall.

Q. In the main auditorium?

A. Yeah.

Q. What took place in the Kingdom Hall? What did he do to you?

A. He would grab me and hold onto me.

Q. Where would he grab you?

A. Just like bear hug me. Hold me.

Q. Were other people present when this happened?

A. Yes.

Q. Who was present?

A. The attendees of the North Fremont Congregation.

Q. So like during a meeting?

A. Yes.

Q. During the time the meeting was going on or before or after?

A. Before, after.

Q. Other than the bear hug what did he do?

A. He used to make me sit on his lap during meeting.

Q. Were your parents at these meetings?

A. My dad was.

Q. So the first time this took place was when you were about nine years old?

A. (Witness nods head affirmatively.)

Q. How many times did it take place; the bear hugs?

A. I couldn't give you a number.

Q. Frequently?

A. Very frequently.

Q. Every meeting?

A. I would -- I could safely say that.

Q. Did you ever complain about these bear hugs to anyone?

A. I would try to get away.

Q. What would you do to get away?

A. Squirm and try to get away.

Q. Were you able to get away?

A. (Witness shakes head in the negative.)

Q. Did you ever say anything to your father about it when you were nine years old?

A. It seemed like it was acceptable conduct.

Q. So you didn't say anything?

A. Besides trying to get away, no.

Q. How long did the bear hugs and sitting on his lap last in terms of, if you can reference it, with your

age? Starting with nine years old how long did it continue?

A. Up until he moved away.

Q. Do you know when that was?

A. Shortly after my parents divorced.

Q. Did the abuse ever increase to be more than just bear hugs?

A. Yes.

Q. When did it increase to be more? How old were you?

A. Still nine.

Q. What happened?

A. He would take me to his house after meetings.

Q. Were these day meetings or night meetings?

A. Sunday meetings.

Q. Sunday meetings?

What happened when he would take you to his house after a Sunday meeting?

A. He would bear hug me. He wouldn't let me go. He would touch me. Put his hands up my shirt.

Q. This started when you were age nine?

A. (Witness nods head affirmatively.)

Q. While you were age nine did he do anything else besides bear hug you and put his hands up your shirt?

A. I don't know at what age it was when it

A. No.
Q. Before you were 12?
A. Yes.
Q. Can you tell me about how many times this incident took place where he would use pens?
A. Several times a month.
Q. Over what time period? Number of years? All within one year?
A. After it escalated?
Q. Yes.
A. Couple years.
Q. When did the abuse stop?
A. When he moved.
Q. He moved about the time your parents divorced?
A. (Witness nods head affirmatively.)
Q. That was in 1997?
A. That's correct.
Q. The abuse started when you were nine years old, so about 1994?
A. (Witness nods head affirmatively.)
Q. Were there occasions of abuse anywhere else other than what you have described at the Kingdom Hall and at his home?
A. No.
Q. Was there any other type of abuse other than

what you have already described?

A. Oral. He used to make me touch him and he used to lick me.

Q. Was he clothed or unclothed when you touched him?

A. Unclothed.

Q. What did he make you touch?

A. His genital area.

Q. Did he disrobe? How was he dressed?

A. He was unclothed.

Q. Completely?

A. Yes.

Q. What about you? Did he unclothe you?

A. Yes.

Q. How often did this happen?

A. Several times a month.

Q. Did you ever go to meetings at the Fremont Kingdom Hall by yourself?

A. No.

Q. Did you always go with your dad or your mom?

A. Yes.

Q. Or both of your parents while they were married?

A. Yes.

Q. Where did you usually sit? Did you sit with

your parents?

A. Yeah. I sat with my parents.

Q. Did Jonathan Kendrick sit with your parents too?

A. Not all the time.

Q. But he would on occasion?

A. (Witness nods head affirmatively.)

Q. Did Jonathan Kendrick have children?

A. A step daughter. That's all I know of.

Q. What's her name?

A. Her name is Andrea.

Q. Are you a friend of hers?

A. No.

Q. Have you talked to her since you filed this case?

A. No.

Q. Did you ever talk to her about this abuse?

A. No.

Q. How old is she in relation to you? Is she older or younger?

A. I think she's around the age of my brother.

Q. How old is your brother?

A. Four years older than me. That's my guess, anyway. I didn't know her for that long. I didn't even -- she wasn't there for that long.

Q. Is there any other abuse with Jonathan Kendrick that you haven't told me about?

A. He took pictures.

Q. What would he take pictures of?

A. Me.

Q. Undressed?

A. Undressed.

Q. How old were you when he did that?

A. Nine.

Q. Was that a continuing part of his pattern?

A. Yes.

Q. Now, the incidents of taking photos, where did they take place?

A. At his house.

Q. And the incidents involving him being unclothed or you being unclothed, inappropriate touching, did that all take place at his house, too?

A. The inappropriate touching started at the Kingdom Hall.

Q. Okay. Well, I'm talking about other than the bear hugs.

A. Yes. It took place at his house.

Q. Was there any other inappropriate touching at the Kingdom Hall that you didn't tell me about other than the bear hugs and sitting on his lap?

A. And grabbing me.
Q. Where would he grab you?
A. Around my top section.
Q. Grab your breast or your arms or --
A. Yeah.
Q. -- shoulders?
A. Yes.
Q. All three?
A. Yes.
Q. But at all times that you were at the Kingdom Hall one or both of your parents were there; is that correct?
A. One. Yeah. One or both of my parents were there.
Q. Okay. Who was the first person you told that this was going on?
A. My dad asked me about it in 2003.
Q. What did he ask you?
A. He said -- well, he asked me if something had ever happened to me.
Q. What did you tell him?
A. I said, "Yes."
Q. Did you tell him the details that you have told me here today?
A. No.

talked to Cliff and Neff. It wasn't any more than six months.

Q. Did you have more than one meeting with Mike Clark and Larry Lamberton?

A. No.

Q. Did you talk to them on the telephone?

A. Yes.

Q. How many times?

A. I think we corresponded twice.

Q. By telephone?

A. By telephone.

Q. Did you tell Cliff Williams and Neff Beltran about being abused on a train trip?

A. Yes.

Q. Can you tell me about what that was about? What happened?

A. My -- we went to go se Gone With The Wind in Sacramento, my dad and my -- and Jonathan Kendrick. And they were drunk on the train ride back. And Jonathan Kendrick grabbed me and wouldn't let me go. Made me sit on his lap and I was trying to get away.

Q. What kind of train was it? Was it Amtrak?

A. Uh-huh.

Q. It was an Amtrak train from Sacramento to....

A. Sacramento to somewhere in the Bay Area.

Q. Did you ever go to the Rail Museum in Sacramento with your father?

A. Yes.

Q. Did you take that trip by train?

A. Yes.

Q. Was anyone else on that trip besides you and your father?

A. We've gone several times with family.

Q. What family?

A. My mom, my brother, my grandmother, grandparents. Train Museum was a family event that we would usually go to.

Q. How often have you been there?

A. At least six times.

Q. But none of those trips Jonathan Kendrick accompanied anybody in your family?

A. No.

MR. McCABE: It's been about an hour. Can we take a little breaK?

MR. SIMONS: Sure.

(RECESS TAKEN FROM 10:55 A.M. TO 11:03 A.M.)

BY MR. McCABE:

Q. Referring to the abuse that took place at Kendrick's home, was anyone else present during any of these instances?

A. No.
Q. Was he married at the time?
A. No.
Q. Did he live alone?
A. Yes.
MR. SIMONS: And while we were off the record I mentioned that there is one more thing that I'm afraid that Ms. Conti has to tell you about.
MR. McCABE: Okay.
Q. Is there something else that we haven't covered yet that you need to tell me?
A. He used to lick me, but he also used to make me -- he used to make me orally please him.
Q. How often did that happen?
A. After it started it was quite frequent.
Q. Do you know when it first started how old you were?
A. Probably 10.
Q. Did he orally copulate you?
A. (Witness nods head affirmatively.)
Q. Same amount of frequency?
A. (Witness nods head affirmatively.)
Q. What would happen after these incidents?
A. He would take me home.
Q. And....

A. And my dad would pick me up.
Q. Your dad would pick you up?
A. (Witness nods head affirmatively.)
Q. Where would your dad pick you up?
A. Back at the Kingdom Hall.
Q. Do you know, what was the purpose for you going to Jonathan Kendrick's home in your parent's eyes? Do you have any idea?
A. I think they saw him as a trusted person to babysit me.
Q. What would your parents do when you were with Jonathan Kendrick?
A. I don't know. I wasn't with them.
Q. And starting from about age nine he would take you to his house several times a month?
A. (Witness nods head affirmatively.)
Q. Every month?
A. (Witness nods head affirmatively.)
Q. Until 1997?
A. (Witness nods head affirmatively.)
Q. Was there ever a time when you didn't recall that these things took place? That you blocked it out of your memory?
A. Yeah. Claudia Francis had told me of a time that I don't remember.

after the abuse stopped?

A. I -- I never forgot the abuse.

Q. So they were always part of your memory banks?

A. Yes.

Q. Nothing happened to you in your late teenage years or anything after that all of a sudden jogged your memory that these things had taken place that you had forgotten?

A. I never forgot about the abuse.

Q. Okay. Did you ever look up Jonathan Kendrick on the sex abuse list?

A. After my dad -- or yes. I have. Yes.

Q. When did you do that?

A. After my dad had said something -- or asked me and told me that -- he asked me what had happened and I looked it up.

Q. Some time after 2003?

A. Yes.

Q. What did you find out?

A. I had found out that he had a conviction.

Q. Do you know when the conviction was?

A. No. I don't.

Q. Conviction for some type of sex abuse?

A. Yes.

Q. Do you remember what list it was you looked up,

which web site?

A. I think it was familywatchdog.com.

Q. Familywatchdog.com?

We've talked about it, but you know what an elder is?

A. Yes.

Q. What is an elder?

A. Elder, in my mind, is somebody who protects the flock and overseas the school, overseas the structure of the Kingdom Hall.

Q. So kind of like the leaders of the congregation?

A. Yes.

Q. And did you ever know Jonathan Kendrick to be an elder?

A. No.

Q. Do you know what a ministerial servant is?

A. Yes.

Q. What's that?

A. Ministerial servant has different roles in the Kingdom Hall. Some -- some are in charge of emergency contact lists. Some are in charge of seating. Some are in charge of literature. Some are in charge of parts of the school.

If there's any other designations, I really

A. Yes.

MR. McCABE: I think that's all I have.

MR. SIMONS: All right.

(Deposition proceedings adjourned at 11:44 a.m.)

_____

Signature of Witness

REPORTER CERTIFICATE

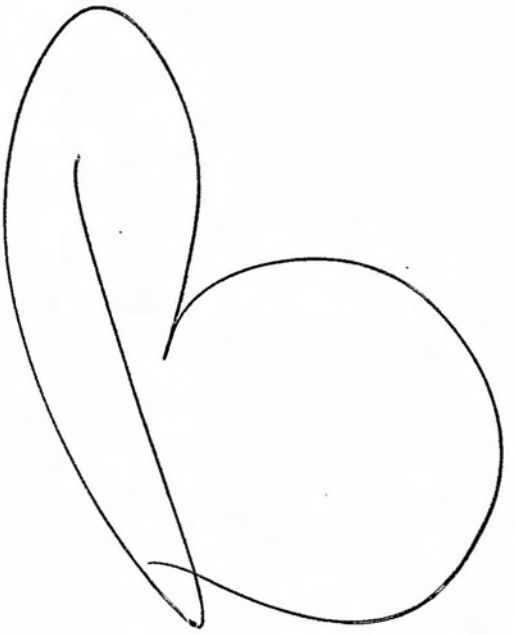
I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand this 2nd day of September 2011.

_____

Certified Shorthand Reporter
State of California
License No. 2816



SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	CASE NO. HG11558324

VIDEOTAPED DEPOSITION OF KATHLEEN CONTI

NORWALK, CALIFORNIA

OCTOBER 21, 2011

ATKINSON-BAKER, INC.
COURT REPORTERS
(800)288-3376
www.depo.com

REPORTED BY: PAULETTE RADCLIFF, CSR No. 12111

FILE NO. A50931C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC, a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	CASE NO. HG11558324

VIDEOTAPED DEPOSITION OF KATHLEEN CONTI, taken on behalf of Defendant at, 10902 Firestone Boulevard, Norwalk, California, beginning at 8:59 a.m. and ending at 11:53 a.m. on Friday, October 21, 2011, before PAULETTE RADCLIFF, Certified Shorthand Reporter No. 12111,

APPEARANCES:

For Plaintiffs:

FURTADO JASPOVICE & SIMONS
BY: RICK SIMONS
22274 Main Street
Hayward, California 94541
510-582-1080

For Defendant:

THE MCCABE LAW FIRM
BY: JAMES MCCABE
4817 Santa Monica Avenue, Ste B
San Diego, California 92107
619-224-2848

For Defendant:

JACKSON LEWIS
BY: ROBERT SCHNACK
801 K Street, Suite 2300
Sacramento, California 95814
916-341-0404

The Videographer:

DAN ACKLEY

I N D E X

WITNESS:

Kathleen Conti

EXAMINATION	PAGE
By Mr. McCabe	5
By Mr. Schnack	57

EXHIBITS

DEFENDANT	PAGE
(NONE)	

Norwalk, California; Friday, October 21, 2011

8:59 a.m. - 11:53 a.m.

KATHLEEN CONTI,

having been first duly sworn, was examined and testified as follows: 09:01:14

THE VIDEOGRAPHER: I am Dan Ackley, your videographer, and I represent Atkinson Baker Court Reporters in Glendale, California. Today is October 21st, 2011. Time is approximately 8:59 A.M. This deposition is taking place at the Best Western Hotel, 10902 Firestone Boulevard in Norwalk, California. 09:02:09

This is case No. HG 11558324, titled Jane Doe versus the Watchtower, et al. Deponent is Kathleen Conti. This is volume 1, beginning of disk 1. Your court reporter is Paulette Radcliff. 09:02:29

Would you counsel please introduce yourselves. 09:02:51

MR. SIMONS: Rick Simons for Jane Doe and for the witness Kathleen Conti.

MR. SCHNACK: Robert Schnack representing Watchtower New York.

MR. MCCABE: James McCabe representing 09:03:02

Fremont Congregational Jehovah Witnesses.

THE VIDEOGRAPHER Please swear in the witness.

EXAMINATION 09:03:10

BY MR. MCCABE:

Q. Ms. Conti, would you state your name for the record and spell your last name, please?

A. Kathleen Conti, C-o-n-t-i.

Q. My name is James McCabe. I just introduced myself to the record and to you earlier. I represent the North Congregation of Jehovah Witnesses in Fremont, California, and we're here to take your deposition in connection with the case that your daughter has filed against the Watchtower Bible and Tract Society and the congregation of Jehovah Witnesses of Fremont. 09:03:30 09:03:48

Do you understand that?

A. Yes, I do.

Q. And you've just sworn to tell the truth in these proceedings under oath, and you understand that your testimony here today, even though we're in a conference room at a hotel in Norwalk, California, has the same force and effect as if you were testifying in a court of law with the judge and jury 09:03:57 09:04:10

or a judge present.

Do you understand that?

A. Yes.

Q. Have you ever had your deposition taken before? 09:04:17

A. No.

Q. Let me give you a little ground rules that might be helpful to us and to the court reporter. Everything that's being said in this room is being taken down by the court reporter. At the end of the 09:04:27 deposition it will be put together in a book. It's kind of like a script for a play, and that will be provided to you, you'll be able to read and make any corrections that you think need to be made and eventually sign it. 09:04:42

I do have to caution you though that if you do make any corrections that are substantive in nature, different from what you testify here today, some lawyers at some future proceeding can comment on that, and it could affect your credibility as a 09:04:53 witness.

Do you understand that?

A. Yes.

Q. What I mean by that, if it was an automobile accident case and you said the light was green and 09:05:02

on that first occasion when you learned that she had been molested by Jonathan Kendrick, had she told you how many times she had been molested by him?

A. Many times.

Q. Did she tell you over what period of time, months or years? 09:42:03

A. Just that it was during the -- before we divorced and during it.

Q. Did she tell you what type of abuse she suffered on this first occasion? 09:42:33

A. No.

Q. Where were you when you had this discussion with your daughter?

A. On the balcony.

Q. Of your home? 09:42:48

A. Of my mother-in-law's home.

Q. And where was that?

A. Fremont.

Q. And what was your mother-in-law's name?

A. Dorothy Conti. 09:43:03

Q. What was your reaction to your daughter telling you the story?

A. I was very upset.

Q. What did you tell her?

A. That I couldn't believe that it happened to 09:43:43

her, and it happened to me also.

Q. When you say it happened to you also, were you a victim of child molestation?

A. Yes.

Q. At what age? 09:44:18

A. 13.

Q. Did you report that molestation?

A. It happened to three girls and myself, and the other two girls told the father.

Q. Was the perpetrator prosecuted criminally? 09:45:05

A. No, he was an elder.

Q. In what congregation?

A. I don't know what congregation that he went to.

Q. Was he disfellowshipped? 09:45:30

A. No.

Q. Did the elders ever talk to you about that?

A. No, it was kept quiet.

Q. This took place when you were age 13?

A. Uh-huh. 09:45:50

Q. What was the name of the perpetrator?

A. Dave Wood.

Q. Is he still alive?

A. Yes.

Q. Do you know the names of the other two 09:46:03

there a period of time where you knew he wasn't?

A. I believe that he may have not when he was getting a divorce. I think maybe he wasn't a ministerial servant. I can't say for sure, but I think maybe he wasn't at the end. 10:21:34

Q. Do you know when Mr. Kendrick got a divorce?

A. No, I don't remember.

Q. Was it before your divorce?

A. I don't remember that.

Q. Do you ever recall Mr. Kendrick inappropriately touching Candace at the kingdom hall at north Fremont congregation of Jehovah's witnesses? 10:21:58

A. I don't remember that. I just remember that he was very friendly with her.

Q. Do you remember seeing him give her bear hugs at the kingdom hall? 10:22:25

A. I don't remember.

Q. Do you ever remember seeing Candace sitting on his lap at the kingdom hall?

A. No, but there is a period of time that I wasn't there at the hall at the end. It was quite a few months I was not there. 10:22:53

Q. That would be '96 up to July 1997?

A. I believe that would be during '95 '96 and '97. 10:23:23

DECLARATION UNDER PENALTY OF PERJURY

I, Kathleen Conti, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on October 21, 2011; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 20___, at _____, California.

_____
Kathleen Conti

REPORTER CERTIFICATION

I, Paulette Radcliff, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this _____ day of _____, 20____.

_____
Paulette Radcliff, CSR No.12111

8801283

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG115558324

DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION TO (1) BIFURCATE PLAINTIFF'S PUNITIVE DAMAGES CLAIM AND (2) BIFURCATE LIABILITY FROM DAMAGES; AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendants Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower"), and Fremont California Congregation of Jehovah's Witnesses, North Unit (hereafter "North Fremont Congregation") (hereinafter collectively "the Church Defendants")

move this Court for an order: (1) bifurcating the issue of punitive damages from the liability phase of trial; and (2) bifurcating liability from damages issues in this action.

This motion is based upon the following memorandum of points and authorities, the papers and pleadings on file, and any oral argument the court permits at the time of hearing.

POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, who was never baptized in the Jehovah's Witness faith, alleges that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (*See* First Amended Complaint dated May 3, 2012, p. 2 ¶ 6.) Plaintiff contends that the Church Defendants negligently supervised, managed, and controlled Kendrick "in his membership and participation in the Fremont religious facility" and "failed to protect the plaintiff" or warn her "of the propensity and risk that Kendrick would sexually molest or abuse minor girls." (*Id.* at p. 3 ¶ 7.) Plaintiff specifically complains about an alleged policy established for administration "throughout the world" by the "Governing Body" of Jehovah's Witnesses and followed by the Church Defendants at the time this plaintiff was injured. (*Id.* at p. 4 ¶ 12.)

In the Third Cause of Action, Plaintiff alleges that Watchtower New York acted with malice by following church policy "to maintain secrecy concerning KENDRICK" that resulted in the failure to warn or otherwise protect minors against the risk of abuse. (*Id.* at ¶ 17.) Plaintiff's punitive damage claim relies on that alleged written policy, which Plaintiff alleges is "still in effect today, to keep all such information secret." (*Id.*) Plaintiff maintains that "the secrecy policy of WATCHTOWER NEW YORK," which is the same for "all entities of the Jehovah's Witnesses" worldwide, "despicably placed children at risk of sexual abuse by child molesters known only to a few Elders within Jehovah's Witnesses and kept secret from all others." (*Id.* at ¶¶ 12, 18.)

Plaintiff thus seeks not only to impose on the Church Defendants an unprecedented affirmative duty to warn congregation members about an alleged perpetrator but also to punish Watchtower for adhering to and "refusing to amend" a policy that Plaintiff alleges keeps secret "the identity of known child molesters active in their Congregations."

The Church Defendants contend that policies affecting congregation activities for the fifteen (15) years following Plaintiff's claimed injury are irrelevant to the negligence claim because the relevant time period is limited to the years 1994 to 1996 or 1997. The Church Defendants also anticipate that Plaintiff will attempt to introduce evidence of Kendrick's 2004 felony conviction and testimony from Plaintiff's mother Kathleen Conti that she (Kathleen Conti) was abused by a church elder in the past. The Church Defendants thus seek an order preventing Plaintiff from confusing the issues and misleading and/or inflaming the jury by mentioning, testifying about, or arguing facts concerning: (a) any church policy that existed after 1996 or 1997 when the Plaintiff's alleged abuse ended (including a prohibition to any reference to current church policies concerning the manner in which information about suspected sex offenders is handled, and any reference that the Church Defendants refused to amend any such policy); (b) Kendrick's 2004 felony conviction; and (c) witness Kathleen Conti's alleged past abuse by a church elder. Alternatively, if any of that evidence is ruled admissible, that this Court then bifurcate the liability phase of this trial from the damages phase.

II. LEGAL ARGUMENT

Plaintiff's negligence claim seeks to impose on the Church Defendants an unprecedented affirmative duty to warn members of a congregation about an alleged perpetrator. Plaintiff also seeks to punish Watchtower for adhering to and "refusing to amend" a religious policy that Plaintiff contends keeps secret "the identity of known child molesters active in their Congregations." Because an affirmative duty to warn has not been recognized by any court, anywhere, a breach of any such duty cannot justify an award of punitive damages. The two issues should not be tried together.

A. The Court should bifurcate the issue of whether Watchtower acted with malice from the negligence issues because of the heightened risk of undue prejudice from issues involving sexual abuse of children.

California Code of Civil Procedure section 598 provides that the court may bifurcate the issues presented at trial "when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby."

The Church Defendants seek an order bifurcating the trial to address the negligence

claim separately and completely independently from the punitive damages claim. The two issues should not be tried together because of the inflammatory nature of the subject matter. (*See Williams v. Superior Court* 36 Cal.3d 441 (1984) (explaining that there is a heightened danger of undue prejudice where there is evidence of sex acts involving children).) This is especially true because the claim for punitive damages is not constitutionally permissible.

The United States Supreme Court crafted the constitutional parameters governing state court awards of punitive damages. Those parameters encompass both when an award of punitive damages is constitutionally permissible and when a permissible award becomes excessive. (*See Philip Morris USA v. Williams* (2007) 549 U.S. 346; *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559.) To constitutionally award punitive damages, "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." (*BMW* at p. 574.)

In this case, Plaintiff first asserts that the Church Defendants were negligent for their alleged failure to affirmatively warn the congregation members about an alleged perpetrator who was not an appointed Elder or Ministerial Servant at the time the alleged abuse of Plaintiff occurred. Plaintiff then contends that adherence to a policy that prevents the issuance of such a warning constitutes malice and subjects Watchtower to exposure for punitive damages. The Church Defendants have found no court decision in any jurisdiction that has imposed such a duty to warn congregation members about the danger that may exist from other congregation members. Importantly, during the relevant time period from the years 1994 through 1996 or 1997, no criminal or statutory rules existed in California that required the Church Defendants to provide notice about members who were suspected sex offenders.

Thus, whether the alleged failure to warn under these facts can support an award predicated on negligence is one thing; however, it is quite another thing altogether for a court to hold that a defendant's failure to adhere to a previously non-existent duty can also support an award for punitive damages. The Court should bifurcate the punitive damages claim to avoid confusing the issues and misleading and/or inflaming the jury.

B. The Court should preclude certain evidence that unfairly prejudices the Church Defendants, will mislead and/or inflame the jury, will confuse the issues, and will waste judicial resources. However, to the extent the Court rules such evidence admissible, the liability phase should be bifurcated from the damages phase.

1. The Court should excluded evidence that during the fifteen years since Plaintiff's alleged abuse ended the Church Defendants have maintained a "secrecy policy" because any such evidence is irrelevant to the negligence claim.

This case involves considerable debate as to whether the Church Defendants owed the Plaintiff a duty to warn about the danger presented by Kendrick's membership in the North Fremont Congregation. The Church Defendants contend that because no legal duty existed, Plaintiff's claim fails as a matter of law. Even if the Court should, *arguendo*, determine that such a legal duty existed during the relevant time period from 1994 to 1996 or 1997, the Church Defendants' policies since 1996 or 1997 are simply not relevant to the determination of this action. Thus, church policy concerning the handling of confidential private information about members suspected of sex crimes during the fifteen year period since Plaintiff's alleged abuse ended is inadmissible because it is irrelevant. Admitting the evidence would serve only to confuse the issues, mislead and/or inflame the jury and waste judicial resources required to clarify the issues, respond to evidence and attempt to "unring the bell."

2. The Court should excluded evidence of Kendrick's 2004 felony conviction because any such evidence is irrelevant, will mislead and/or inflame the jury, will confuse the issues, and will unfairly prejudice the Church Defendants.

The Church Defendants have filed a separate motion in limine specifically addressing the issue of Kendrick's 2004 felony conviction and seeking complete exclusion of any evidence of this conviction during trial. (*See* Motion in Limine No. 1.) Should the Court deny that motion, the Church Defendants hereby move to exclude evidence of Kendrick's 2004 felony conviction during the liability phase of trial for the same reasons articulated in the Church Defendants' Motion in Limine No. 1.

Evidence of Kendrick's 2004 conviction is curtailed by Evidence Code section 1107(a) and it is not relevant to prove any fact at issue in this case. The events leading up to the 2004 conviction occurred more than five years *after* the events of which Plaintiff complains.

Moreover, evidence the conviction is highly inflammatory and there is a heightened danger of undue prejudice where there is evidence of a sex act involving children. (*See Williams v. Superior Court* (1984) 36 Cal.3d 441.) Evidence of the conviction has absolutely no probative value and serves only to confuse the issues, mislead the jury and waste judicial resources. Thus, the Court should completely exclude evidence of Kendrick's 2004 conviction. However, should the Court allow the evidence to come in at trial, it should be limited to the damages phase only and not the liability phase due to the great risk of prejudice to the Church Defendants.

3. The Court should exclude evidence and testimony from Kathleen Conti of her alleged past abuse by a church elder because any such evidence is irrelevant, will mislead and/or inflame the jury, will confuse the issues, and will unfairly prejudice the Church Defendants.

Like Kendrick's 2004 conviction, testimony from Plaintiff's mother Kathleen Conti that she was allegedly abused in about 1975 by a church elder serves absolutely no purpose but to mislead and/or inflame the jury and confuse the issues. This issue is also a subject of another motion in limine. (*See* Motion in Limine No. 2.) Should the Court deny that motion, the Church Defendants hereby move to exclude evidence and testimony from the liability phase of trial that Kathleen Conti was abused by a church elder in the past for the same reasons articulated in the Church Defendants' Motion in Limine No. 2.

As an initial matter, the religious affiliation of Kathleen Conti's alleged abuser when she was 13 years old in about 1975 has absolutely no probative value to this case and will unfairly prejudice the Church Defendants. It is completely irrelevant to Plaintiff's claims. Should such evidence come in during the liability phase of trial, some jurors may erroneously conclude that Plaintiff's testimony about her alleged extended abuse is true merely because her mother claims to have also been sexually abused by an elder of the same faith. (*Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515.) Moreover, it can only serve to evoke an emotional bias from jurors against the Church Defendants, motivating the jury to use the information improperly instead of logically evaluating the real issues in this case, and to improperly and unfairly reward Plaintiff or punish the Church Defendants because of the jurors' emotional reaction. Thus, the Court should completely exclude evidence and testimony that Kathleen Conti was also allegedly

abused by a church elder. However, should the Court allow the evidence to come in at trial, it should be limited to the damages phase and not the liability phase due to the great risk of prejudice to the Church Defendants.

III. CONCLUSION

For each of the independent reasons stated herein, this Court should (a) bifurcate the trial to hear matters pertaining to Plaintiff's claim for negligence separately from matters pertaining to the punitive damages claim against Watchtower; and (b) bifurcate the liability phase from the damages phase to the extent the evidence discussed above is ruled admissible.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION TO (1) BIFURCATE PLAINTIFF'S PUNITIVE DAMAGES CLAIM AND (2) BIFURCATE LIABILITY FROM DAMAGES; AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

4816-5306-9071, v. 1

8801359

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANTS THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEWYORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S PROPOSED JURY INSTRUCTIONS AND SPECIAL JURY INSTRUCTIONS

Pre-Trial Conference: May 18, 2012
Trial: May 21, 2012

///

///

///

INDEX

Type	Number	Instruction	Page
CACI	100	Preliminary Admonitions	1
CACI	101	Overview of Trial	4
CACI	102	Taking Notes During the Trial	6
CACI	103	Multiple Parties	7
CACI	104	Nonperson Party	8
CACI	106	Evidence	9
CACI	107	Witnesses	10
CACI	111	Instruction to Alternate Jurors	12
CACI	112	Questions From Jurors	13
CACI	113	Bias	14
CACI	114	Bench Conferences and Conferences in Chambers	15
CACI	116	Why Electronic Communications and Research Are Prohibited	16
CACI	200	Obligation to Prove-More Likely True than Not True	17
CACI	201	More Likely True-Clear and Convincing Proof	18
CACI	202	Direct and Indirect Evidence	19
CACI	203	Party Having Power to Produce Better Evidence	20
CACI	206	Evidence Admitted for Limited Purpose	21
CACI	207	Evidence Applicable to One Party	22
CACI	208	Deposition as Substantive Evidence	23
CACI	211	Prior Conviction of a Felony	24
CACI	212	Statements of a Party Opponent	25
CACI	215	Exercise of a Communication Privilege	26
CACI	216	Exercise of Witness' Right Not to Testify	27
CACI	219	Expert Witness Testimony	28
CACI	220	Experts–Questions Containing Assumed Facts	29
CACI	221	Conflicting Expert Testimony	30
CACI	223	Opinion Testimony of Lay Witness	31
CACI	400	Negligence--Essential Factual Elements	32
CACI	406	Apportionment of Responsibility	33
CACI	430	Causation: Substantial Factor	34
CACI	434	Alternative Causation	35
CACI	1005	Business Proprietor's Liability for the Negligent/Intentional/Criminal Conduct of Others [m]	36

Type	Number	Instruction	Page
CACI	3700	Vicarious Responsibility--Introduction	37
CACI	3701	Tort Liability Asserted Against Principal--Essential Factual Elements	38
CACI	3705	Existence of "Agency" Relationship Disputed	39
CACI	3720	Scope of Employment	40
CACI	3900	Introduction to Tort Damages - Liability Contested	41
CACI	3902	Economic and Noneconomic Damages	42
CACI	3903	Items of Economic Damages	43
CACI	3903A	Medical Expenses--Past and Future (Economic Damage)	44
CACI	3903C	Past and Future Lost Earnings (Economic Damage)	45
CACI	3903D	Lost Earning Capacity (Economic Damage)	46
CACI	3904A	Present Cash Value	47
CACI	3904B	Use of Present-Value Tables	48
CACI	3905	Items of Noneconomic Damage	50
CACI	3905A	Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)	51
CACI	3924	No Punitive Damages	52
CACI	3925	Arguments of Counsel Not Evidence of Damages	53
CACI	3930	Mitigation of Damages	54
CACI	3933	Damages From Multiple Defendants	55
CACI	3934	Damages on Multiple Legal Theories	56
CACI	3946	Punitive Damages-Entity Defendant-Bifurcated Trial (First Phase) [m]	57
CACI	3949	Punitive Damages--Individual and Corporate Defendants	58
CACI	3960	Comparative Fault [m]	60
CACI	3964	Jurors Not to Consider Attorney Fees and Court Costs	61
CACI	5000	Duties of the Judge and Jury	62
CACI	5002	Evidence	64
CACI	5003	Witnesses	65
CACI	5005	Multiple Parties	67
CACI	5006	Nonperson Party	68
CACI	5009	Predeliberation Instructions	69
CACI	5010	Taking Notes During the Trial	71
CACI	5011	Reading Back of Trial Testimony in Jury Room	72
CACI	5012	Introduction to Special Verdict Form	73

Type	Number	Instruction	Page
CACI	5016	Judge's Commenting on Evidence	74
CACI	5017	Polling the Jury	75
CACI	5019	Questions From Jurors	76
CACI	5020	Demonstrative Evidence	77
Special	1		78
Special	2		79
Special	3		80
Special	4		81

[m] = modified

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

JURY INSTRUCTION NO. ____

CACI 100

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and co-workers, spiritual leaders, advisors, or therapists.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or Web site, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to the court [attendant/bailiff] as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but you are not required to do so. During the trial, do not read, listen to, or watch any news reports about this case. [I have no information that there will be news reports concerning this case.] This prohibition extends to the use of the Internet in any way, including

reading any blog about the case or about anyone involved with it or using Internet maps or mapping programs or any other program or device to search for or to view any place discussed in the testimony.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. If you do need to view the scene during the trial, you will be taken there as a group under proper supervision.

[If you violate any of these prohibitions on communications and research, including prohibitions on electronic communications and research, you may be held in contempt of court or face other sanctions. That means that you may have to serve time in jail, pay a fine, or face other punishment for that violation.]

You must decide this case based only on the evidence presented in this trial and the instructions of law that I will provide. Nothing that you see, hear, or learn outside this courtroom is evidence unless I specifically tell you it is. If you receive any information about this case from any source outside of the courtroom, promptly report it to the court [attendant/bailiff]. It is important that all jurors see and hear the same evidence at the same time.

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

Do not concern yourselves with the reasons for the rulings I will make during the course of the trial. Do not guess what I may think your verdict should be from anything I might say or do.

When you begin your deliberations, you may discuss the case only in the jury room and only when all the jurors are present. You must decide what the facts are in this case. And, I

repeat, your verdict must be based only on the evidence that you hear or see in this courtroom. Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 101

To assist you in your tasks as jurors, I will now explain how the trial will proceed. I will begin by identifying the parties to the case. Jane Doe filed this lawsuit. She is called a plaintiff. She seeks damages from The Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), the North Congregation of Jehovah's Witnesses, Fremont, California ("Fremont Congregation"), and Jonathan Kendrick, who are called defendants.

Jane Doe claims negligence against Watchtower and the Fremont Congregation, intentional and willful acts of sexual abuse against Jonathan Kendrick, and acts of malice against Watchtower. Defendants deny those claims. Watchtower and the North Fremont Congregaiton also contend that Jonathan Kendrick was not their agent and that they have no responsibility for Jonathan Kendrick's alleged conduct away from church property.

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. Also, because it is often difficult to give you
the evidence in the order we would prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence.

Next, the jury will hear the evidence. Jane Doe will present evidence first. When Jane Doe is finished, Watchtower, the Fremont Congregation, and Jonathan Kendrick will have an opportunity to present evidence.

Each witness will first be questioned by the side that asked the witness to testify. This is called direct examination. Then the other side is permitted to question the witness. This is called cross-examination.

Documents or objects referred to during the trial are called exhibits. Exhibits are given a [number/letter] so that they may be clearly identified. Exhibits are not evidence until I admit them into evidence. During your deliberations, you will be able to look at all exhibits admitted into evidence.

There are many rules that govern whether something will be admitted into evidence. As

one side presents evidence, the other side has the right to object and to ask me to decide if the evidence is permitted by the rules. Usually, I will decide immediately, but sometimes I may have to hear arguments outside of your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. What the parties say in closing argument is not evidence. The arguments are offered to help you understand the evidence and how the law applies to it.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 102

You have been given notebooks and may take notes during the trial. Do not take the notebooks out of the courtroom or jury room at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify. Nor should you allow your impression of a witness or other evidence to be influenced by whether or not other jurors are taking notes. Your independent recollection of the evidence should govern your verdict, and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

The court reporter is making a record of everything that is said. If during deliberations you have a question about what the witness said, you should ask that the court reporter's records be read to you. You must accept the court reporter's record as accurate.

At the end of the trial, your notes will be [collected and destroyed/collected and retained by the court but not as a part of the case record].

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 103

There are three defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of its or his own defenses.

Unless I tell you otherwise, all instructions apply to the plaintiff and each defendant.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 104

Watchtower and the Fremont Congregation are parties in this lawsuit. Watchtower and the Fremont Congregation are entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in these instructions to refer to a party, those instructions also apply to Watchtower and the Fremont Congregation.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 106

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a "stipulation." No other proof is needed and you must accept those facts as true in this trial.

Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

An attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as though it did not exist.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 107

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 111

As [an] alternate juror[s], you are bound by the same rules that govern the conduct of the jurors who are sitting on the panel. You will observe the same trial and should pay attention to all of my instructions just as if you were sitting on the panel. Sometimes a juror needs to be excused during a trial for illness or some other reason. If that happens, an alternate will be selected to take that juror's place.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 112

If, during the trial, you have a question that you believe should be asked of a witness, you may write out the question and send it to me through my courtroom staff. I will share your question with the attorneys and decide whether it may be asked.

Do not feel disappointed if your question is not asked. Your question may not be asked for a variety of reasons. For example, the question may call for an answer that is not allowed for legal reasons. Also, you should not try to guess the reason why a question is not asked or speculate about what the answer might have been. Because the decision whether to allow the question is mine alone, do not hold it against any of the attorneys or their clients if your question is not asked.

Remember that you are not an advocate for one side or the other. Each of you is an impartial judge of the facts. Your questions should be posed in as neutral a fashion as possible. Do not discuss any question asked by any juror with any other juror until after deliberations begin.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 113

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 114

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess to discuss matters outside of your presence. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Do not be concerned about our discussions or try to guess what is being said.

I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of my view of the evidence.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 116

I know that many of us are used to communicating and perhaps even learning by electronic communications and research. However, there are good reasons why you must not electronically communicate or do any research on anything having to do with this trial or the parties.

In court, jurors must make important decisions that have consequences for the parties. Those decisions must be based only on the evidence that you hear in this courtroom.

The evidence that is presented in court can be tested; it can be shown to be right or wrong by either side; it can be questioned; and it can be contradicted by other evidence. What you might read or hear on your own could easily be wrong, out of date, or inapplicable to this case.

The parties can receive a fair trial only if the facts and information on which you base your decisions are presented to you as a group, with each juror having the same opportunity to see, hear, and evaluate the evidence.

Also, a trial is a public process that depends on disclosure in the courtroom of facts and evidence. Using information gathered in secret by one or more jurors undermines the public process and violates the rights of the parties.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 200

A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as "the burden of proof."

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 201

Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true. I will tell you specifically which facts must be proved by clear and convincing evidence.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 202

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial evidence." In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 203

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 206

During the trial, I explained to you that certain evidence was admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described, and not for any other purpose.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 207

During the trial, I explained that certain evidence could be considered as to only one party. You may not consider that evidence as to any other party.

During the trial, I explained that certain evidence could be considered as to one or more parties but not to every party. You may not consider that evidence as to any other party.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 208

During the trial, you heard testimony read from a deposition. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you in the same way as you consider testimony given in court.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 211

You have heard that a witness in this trial has been convicted of a felony. You were told about the conviction only to help you decide whether you should believe the witness. You must not consider it for any other purpose.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 212

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.
2. If you believe that the statement was made, do you believe it was reported accurately?

You should view testimony about an oral statement made by a party outside the courtroom with caution.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 215

People have a legal right not to disclose what they told their clergy in confidence because the law considers this information privileged. People may exercise this privilege freely and without fear of penalty.

You must not use the fact that a witness exercised this privilege to decide whether he or she should be believed. Indeed, you must not let it affect any of your decisions in this case.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 216

Jonathan Kendrick has exercised his legal right not to testify concerning certain matters. Do not draw any conclusions from the exercise of this right or let it affect any of your decisions in this case. A party may exercise this right freely and without fear of penalty.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 219

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

a. The expert's training and experience;

b. The facts the expert relied on; and

c. The reasons for the expert's opinion.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 220

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called "hypothetical questions."

In determining the weight to give to the expert's opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 221

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 223

A witness who was not testifying as an expert gave an opinion during the trial. You may, but are not required to, accept that opinion. You may give the opinion whatever weight you think is appropriate.

Consider the extent of the witness's opportunity to perceive the matters on which the opinion is based, the reasons the witness gave for the opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 400

Jane Doe claims that she was harmed by the negligence of Watchtower and the Fremont Congregation. To establish this claim, Jane Doe must prove all of the following:

1. That Watchtower or the Fremont Congregation was negligent;
2. That Jane Doe was harmed; and
3. That Watchtower's or the Fremont Congregation's negligence was a substantial factor in causing Jane Doe's harm.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 406

Watchtower and the Fremont Congregation claim that the fault of Jonathan Kendrick and nonparties, including Plaintiff's parents Neal and Kathleen Conti, contributed to Jane Doe's harm. To succeed on this claim, Watchtower and the Fremont Congregation must prove both of the following:

1. That Jonathan Kendrick or any nonparty was at fault; and
2. That the fault of Jonathan Kendrick or any nonparty was a substantial factor in causing Jane Doe's harm.

If you find that the fault of more than one person including Watchtower and the Fremont Congregation and Jonathan Kendrick and any nonparty was a substantial factor in causing Jane Doe's harm, you must then decide how much responsibility each has by assigning percentages of responsibility to each person listed on the verdict form. The percentages must total 100 percent.

You will make a separate finding of Jane Doe's total damages, if any. In determining an amount of damages, you should not consider any person's assigned percentage of responsibility. "Person" can mean an individual or a business entity.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 430

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 434

You may decide that more than one of the defendants was negligent, but that the negligence of only one of them could have actually caused Jane Doe's harm. If you cannot decide which defendant caused Jane Doe's harm, you must decide that each defendant is responsible for the harm.

However, if a defendant proves that it did not cause Jane Doe's harm, then you must conclude that defendant is not responsible.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 1005 [modified]

An owner of property open to the public must use reasonable care to protect patrons from another person's harmful conduct on its property if the owner of the property can reasonably anticipate such conduct.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3700

A corporation is responsible for harm caused by the wrongful conduct of its agents while acting within the scope of their authority.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3701

Jane Doe claims that she was harmed by the negligence of agents of Watchtower and the Fremont Congregation. Jane Doe also claims that Watchtower and the Fremont Congregation are responsible for the harm because their agents were acting within the scope of their authority when the harm occurred. If you find that the agents' negligence harmed Jane Doe, then you must decide whether Watchtower and the Fremont Congregation are responsible for the harm.

Watchtower is responsible if Jane Doe proves both of the following:

1. That the negligent actor was Watchtower's agent; and
2. That the negligent actor was acting within the scope of his or her agency when Jane Doe was harmed;
3. That the negligence was a substantial factor in causing Jane Doe's harm.

The Fremont Congregation is responsible if Jane Doe proves both of the following:

1. That the negligent actor was the Fremont Congregation's agent; and
2. That the negligent actor was acting within the scope of his or her agency when Jane Doe was harmed;
3. That the negligence was a substantial factor in causing Jane Doe's harm.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3705

Jane Doe claims that the alleged negligent actors were Watchtower's and the Fremont Congregation's agents and that Watchtower and the Fremont Congregation are therefore responsible for the alleged negligent actors' conduct. If Jane Doe proves that Watchtower gave the alleged negligent actors authority to act on its behalf, then the alleged negligent actors were Watchtower's agents. If Jane Doe proves that the Fremont Congregation gave the alleged negligent actors authority to act on its behalf, then the alleged negligent actors were the Fremont Congregation's agents. This authority may be shown by words or may be implied by the parties' conduct. This authority cannot be shown by the words of the alleged negligent actors alone.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3720

Jane Doe must prove that the alleged negligent actors were acting within the scope of their authority when Jane Doe was harmed. Conduct is within the scope of authority if:

(a) It is reasonably related to the kinds of tasks that the agent was employed to perform; or

(b) It is reasonably foreseeable in light of the corporation's business or the agents' responsibilities.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3900

If you decide that Jane Doe has proved her claim against Watchtower, the Fremont Congregation, or Jonathan Kendrick, you also must decide how much money will reasonably compensate Jane Doe for the harm. This compensation is called "damages."

The amount of damages must include an award for each item of harm that was caused by Watchtower's, the Fremont Congregation's, or Jonathan Kendrick's wrongful conduct, even if the particular harm could not have been anticipated.

Jane Doe does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3902

The damages claimed by Jane Doe for the harm caused by Watchtower, the Fremont Congregation, or Jonathan Kendrick fall into two categories called economic damages and noneconomic damages. You will be asked on the verdict form to state the two categories of damages separately.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3903

The following are the specific items of economic damages claimed by Jane Doe: (1) Medical Expenses—Past and Future; (2) Past and Future Lost Earnings; and (3) Lost Earning Capacity.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3903A

(1) Past and future medical expenses. To recover damages for past medical expenses, Jane Doe must prove the reasonable cost of reasonably necessary medical care that she has received.

To recover damages for future medical expenses, Jane Doe must prove the reasonable cost of reasonably necessary medical care that she is reasonably certain to need in the future.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3903C

(2) Past and future lost earnings. To recover damages for past lost earnings, Jane Doe must prove the amount of earnings that she has lost to date.

To recover damages for future lost earnings, Jane Doe must prove the amount of earnings she will be reasonably certain to lose in the future as a result of the injury.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3903D

(3) Lost earning capacity. To recover damages for the loss of the ability to earn money as a result of the injury, Jane Doe must prove the reasonable value of that loss to her. It is not necessary that she have a work history.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3904A

If you decide that Jane Doe's harm includes economic damages for future medical expenses or future loss of earnings, then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future. Defendants must prove the amount by which future damages should be reduced to present value.

To find present cash value, you must determine the amount of money that, if reasonably invested today, will provide Jane Doe with the amount of her future damages.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3904B

Use Worksheet A and Table A to compute the present value of future medical expenses and future loss of earnings.

1. Determine the amount of Jane Doe's future loss for medical expenses and earnings each year. Enter this amount into Worksheet A, Step 1.
2. Determine the number of years that this loss will continue. Enter this amount into Worksheet A, Step 2.
3. Select the interest rate that you decide represents the most likely rate of return on money invested today over that period of years. Enter this amount into Worksheet A, Step 3.
4. Select the appropriate Present Value Factor from Table A. To locate this factor, use the Number of Years from Step 2 on the worksheet and the Interest Rate from Step 3 on the worksheet and find the number that is the intersection of the Interest Rate column and Number of Years row. (For example, if the number of years is 15 and the interest rate is 10 percent, the corresponding Present Value Factor is 7.61.) Enter the factor into Worksheet A, Step 4.
5. Multiply the amount of Jane Doe's annual future loss from Step 1 by the factor from Step 4. This is the present value of Jane Doe's total future loss for medical expenses and earnings. Enter this amount into Worksheet A, Step 5.

WORKSHEET A

STEP 1	Repeating identical annual dollar amount of future loss:	$ _____
STEP 2	Number of years that this loss will continue:	_____
STEP 3	Interest rate that represents a reasonable rate of return on money invested today over that period of years:	_____%
STEP 4	Present Value Factor from Table A:	_____
STEP 5	Amount from Step 1 times Factor from Step 4:	$ _____

Enter the amount from Step 5 on your verdict form as Jane Doe's total future economic loss for medical expenses and earnings.

NOTE: INSERT TABLE A

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3905

The following are the specific items of noneconomic damages claimed by Jane Doe: Past and future physical, mental, and emotional injuries.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3905A

Past and future physical, mental, and emotional injuries.

No fixed standard exists for deciding the amount of these noneconomic damages.

You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future physical, mental, and emotional injuries, Jane Doe must prove that she is reasonably certain to suffer that harm.

For future physical, mental, and emotional injuries, determine the amount in current dollars paid at the time of judgment that will compensate Jane Doe for future physical, mental, and emotional injuries.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3924

You must not include in your award any damages to punish or make an example of Watchtower or the Fremont Congregation. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate Jane Doe for her loss.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3925

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3930

If you decide Watchtower, the Fremont Congregation, or Jonathan Kendrick is responsible for the original harm, Jane Doe is not entitled to recover damages for harm that that defendant proves Jane Doe could have avoided with reasonable efforts or expenditures.

You should consider the reasonableness of Jane Doe's efforts in light of the circumstances facing her at the time, including her ability to make the efforts or expenditures without undue risk or hardship.

If Jane Doe made reasonable efforts to avoid harm, then your award should include reasonable amounts that she spent for this purpose.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3933

In this case, Jane Doe seeks damages from more than one defendant. You must determine the liability of each defendant to Jane Doe separately. If you determine that more than one defendant is liable to Jane Doe for damages, you will be asked to find Jane Doe's total damages and the comparative fault of Watchtower, the Fremont Congregation, Jonathan Kendrick, and other nonparties.

In deciding on the amount of damages, consider only Jane Doe's claimed losses. Do not attempt to divide the damages among the defendants. The allocation of responsibility for payment of damages among multiple defendants is to be done by the court after you reach your verdict.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3934

Jane Doe seeks damages from Watchtower, the Fremont Congregation, and Jonathan Kendrick under more than one legal theory. However, each item of damages may be awarded only once, regardless of the number of legal theories alleged.

You will be asked to decide whether Watchtower and the Fremont Congregation are liable to Jane Doe under the following legal theory: Negligence.

You will be asked to decide whether Jonathan Kendrick is liable to Jane Doe under the following legal theory: Intentional and willful sexual abuse.

The following items of damages are recoverable only once under all of the above legal theories:

1. Physical, mental, and emotional injuries;
2. Medical expenses; and
3. Loss of earnings and earning capacity.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ___

CACI 3946 [Punitive Damages – First Phase] [modified]

If you decide that Watchtower's conduct caused Jane Doe harm, you must decide whether that conduct justifies an award of punitive damages. The amount, if any, of punitive damages will be an issue decided later.

At this time, you must decide whether Jane Doe has proved that Watchtower engaged in that conduct with malice, oppression, or fraud. To do this, Jane Doe must prove the following by clear and convincing evidence: That the conduct constituting malice, oppression, or fraud was committed by one or more managing agents of Watchtower who acted on behalf of Watchtower.

"Malice" means that Watchtower acted with intent to cause injury or that Watchtower's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that Watchtower's conduct was despicable and subjected Jane Doe to cruel and unjust hardship in knowing disregard of her rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that Watchtower intentionally misrepresented or concealed a material fact and did so intending to harm Jane Doe.

An individual is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her ministerial decision making such that his or her decisions ultimately determine Watchtower policy.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3949 [Punitive Damages – Second Phase]

You must now decide the amount, if any, that you should award Jane Doe in punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

There is no fixed formula for determining the amount of punitive damages and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following factors separately for each defendant in determining the amount:

(a) How reprehensible was that defendant's conduct? In deciding how reprehensible a defendant's conduct was, you may consider, among other factors:

1. Whether the conduct caused physical harm;
2. Whether the defendant disregarded the health or safety of others;
3. Whether Jane Doe was financially weak or vulnerable and the defendant knew Jane Doe was financially weak or vulnerable and took advantage of her;
4. Whether the defendant's conduct involved a pattern or practice; and
5. Whether the defendant acted with trickery or deceit.

(b) Is there a reasonable relationship between the amount of punitive damages and Jane Doe's harm or between the amount of punitive damages and potential harm to Jane Doe that the defendant knew was likely to occur because of its conduct?

(c) In view of that defendant's financial condition, what amount is necessary to punish it and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because a defendant has substantial financial resources. Any award you impose may not exceed that defendant's ability to pay.

Punitive damages may not be used to punish a defendant for the impact of its alleged misconduct on persons other than Jane Doe.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3960 [modified]

If you decide that a nonparty's negligence combined with Watchtower's, the Fremont Congregation's, or Jonathan Kendrick's negligence or conduct in causing Jane Doe's harm, then you must decide the percentage of responsibility for the harm that you attribute to each of them.

First, decide the total amount of Jane Doe's damages.

Then decide the percentage of responsibility that the nonparty, Watchtower, the Fremont Congregation, and Jonathan Kendrick have for the damages. Then reduce the total damages by the percentage of responsibility that you attribute to the nonparty.

After you make these calculations, state the reduced damage award in your verdict.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 3964

You must not consider, or include as part of any award, attorney fees or expenses that the parties incurred in bringing or defending this lawsuit.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5000

Members of the jury, you have now heard all the evidence and the closing arguments of the attorneys. It is my duty to instruct you on the law that applies to this case. You must follow these instructions as well as those that I previously gave you. You will have a copy of my instructions with you when you go to the jury room to deliberate.

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial. Do not allow anything that happens outside this courtroom to affect your decision. Do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists. Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials.

These prohibitions on communications and research extend to all forms of electronic communications. Do not use any electronic devices or media, such as a cell phone or smart phone, PDA, computer, tablet device, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or website, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial. You must not let bias, sympathy, prejudice, or public opinion influence your decision.

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys [have said/say] anything different about what the law means, you must follow what I say.

In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions, that does not mean that these ideas or rules are more important than the others. In addition, the order in which the instructions are given does not make any difference.

Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5002

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you have seen or heard during the trial, including any exhibits that I admit into evidence. You may not consider as evidence anything that you saw or heard when court was not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggested that it was true.

However, the attorneys for both sides have agreed that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial.

Each side had the right to object to evidence offered by the other side. If I sustained an objection to a question, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness already answered, you must ignore the answer.

During the trial I granted a motion to strike testimony that you heard. You must totally disregard that testimony. You must treat it as though it did not exist.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5003

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony. In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

///

///

///

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact. You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5005

There are three defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of its or his own defenses.

Unless I tell you otherwise, all instructions apply to the plaintiff and each defendant.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5006

Watchtower and the Fremont Congregation are parties in this lawsuit. Watchtower and the Fremont Congregation are entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in these instructions to refer to a party, those instructions also apply to Watchtower and the Fremont Congregation.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5009

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations or immediately announce how you plan to vote as it may interfere with an open discussion. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense, but do not use or consider any special training or unique personal experience that any of you have in matters involved in this case. Your training or experience is not a part of the evidence received in this case.

Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see any exhibits admitted into evidence that have not already been provided to you. Also, jurors may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the [clerk/bailiff/court attendant]. I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

At least nine jurors must agree on a verdict. When you have finished filling out the form, your presiding juror must write the date and sign it at the bottom and then notify the [bailiff/clerk/court attendant] that you are ready to present your verdict in the courtroom.

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5010

If you have taken notes during the trial, you may take your notebooks with you into the jury room.

You may use your notes only to help you remember what happened during the trial. Your independent recollection of the evidence should govern your verdict. You should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

At the end of the trial, your notes will be [collected and destroyed/collected and retained by the court but not as a part of the case record].

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5011

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you. You may request that all or a part of a witness's testimony be read.

Your request should be as specific as possible. It will be helpful if you can state:

1. The name of the witness;
2. The subject of the testimony you would like to have read; and
3. The name of the attorney or attorneys asking the questions when the testimony was given.

The court reporter is not permitted to talk with you when she or he is reading the testimony you have requested.

While the court reporter is reading the testimony, you may not deliberate or discuss the case.

You may not ask the court reporter to read testimony that was not specifically mentioned in a written request. If your notes differ from the testimony, you must accept the court reporter's record as accurate.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5012

I will give you verdict forms with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the forms carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict forms in the order they appear. After you answer a question, the form tells you what to do next. All 12 of you must deliberate on and answer each question. At least 9 of you must agree on an answer before all of you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

When you have finished filling out the forms, your presiding juror must write the date and sign it at the bottom of the last page and then notify the [bailiff/clerk/court attendant] that you are ready to present your verdict in the courtroom.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5016

In this case, I have exercised my right to comment on the evidence. However, you the jury are the exclusive judges of all questions of fact and of the credibility of the witnesses. You are free to completely ignore my comments on the evidence and to reach whatever verdict you believe to be correct, even if it is contrary to any or all of those comments.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5017

After your verdict is read in open court, you may be asked individually to indicate whether the verdict expresses your personal vote. This is referred to as "polling" the jury and is done to ensure that at least nine jurors have agreed to each decision.

The verdict forms that you will receive ask you to answer several questions. You must vote separately on each question. Although nine or more jurors must agree on each answer, it does not have to be the same nine for each answer. Therefore, it is important for each of you to remember how you have voted on each question so that if the jury is polled, each of you will be able to answer accurately about how you voted.

Each of you will be provided a draft copy of the verdict forms for your use in keeping track of your votes.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5019

If, during the trial, any of you had a question that you believed should be asked of a witness, you were instructed to write out the question and provide it to me through my courtroom staff. I shared your questions with the attorneys, after which, I decided whether the question could be asked.

If a question was asked and answered, you are to consider the answer as you would any other evidence received in the trial. Do not give the answer any greater or lesser weight because it was initiated by a juror question.

If the question was not asked, do not speculate as to what the answer might have been or why it was not asked. There are many legal reasons why a suggested question cannot be asked of a witness. Give the question no further consideration.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

JURY INSTRUCTION NO. ____

CACI 5020

During the trial, materials have been shown to you to help explain testimony or other evidence in the case. Some of these materials have been admitted into evidence, and you will be able to review them during your deliberations.

Other materials have also been shown to you during the trial, but they have not been admitted into evidence. You will not be able to review them during your deliberations because they are not themselves evidence or proof of any facts. You may, however, consider the testimony given in connection with those materials.

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

SPECIAL JURY INSTRUCTION NO. 1

Criminal sexual misconduct falls outside the course and scope of agency and should not be imputed to the principal. A person is otherwise responsible for harm caused by the wrongful conduct of his agent while the agent is acting within the scope of the authority given to him.

AUTHORITY:

1. CACI 3700 (Vicarious Liability);
2. *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App. 4th 377, 393-394 (vicarious liability does not impute negligence to a church for the intentional molestation committed by one of its volunteers).

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

SPECIAL JURY INSTRUCTION NO. 2

From 1994 through 1997, the relevant time period in this case, Defendant Jonathan Kendrick was not an agent of Defendant Watchtower Bible and Tract Society of New York, Inc. or Defendant North Congregation of Jehovah's Witnesses, Fremont, California. Defendant Jonathan Kendrick's intentional acts harming Plaintiff Jane Doe, if any, were not within any scope of authority because he had no authority from Defendant Watchtower Bible and Tract Society of New York, Inc. or Defendant North Congregation of Jehovah's Witnesses, Fremont, California. Further, even if he had some authority from Defendant Watchtower Bible and Tract Society of New York, Inc. or Defendant North Congregation of Jehovah's Witnesses, Fremont, California, Defendant Jonathan Kendrick's intentional acts harming Plaintiff Jane Doe, if any, were not reasonably related to the kinds of tasks he was authorized to do and his actions were not reasonably foreseeable in light of his responsibilities.

AUTHORITY:

1. CACI 3720 (Scope of Employment);
2. *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal. 4th 291, 298 ("That the employment brought the tortfeasor and victim together in time and place is not enough . . . [T]he incident leading to injury must be an 'outgrowth' of the employment [or] the risk of tortious injury must be 'inherent in the working environment' or 'typical of or broadly incidental to the enterprise [the employer] has undertaken.'")
3. *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App. 4th 377, 393-394 (liability does not impute negligence to a church for the intentional molestation committed by one of its volunteers).

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

SPECIAL JURY INSTRUCTION NO. 3

No special relationship existed between Plaintiff Jane Doe and Defendant Watchtower Bible and Tract Society of New York, Inc. No special relationship existed between Plaintiff Jane Doe and Defendant North Congregation of Jehovah's Witnesses, Fremont, California. Thus, neither Defendant Watchtower Bible and Tract Society of New York, Inc. nor Defendant North Congregation of Jehovah's Witnesses, Fremont, California owed a duty of care to Plaintiff Jane Doe.

AUTHORITY:

1. Rest. 2d Torts, § 302B, com. e;
2. *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App. 4th 377, 393-394 (special relationships exist between children *and their adult caregivers*, such as operators of a preschool or daycare center, or a school district standing in loco parentis).

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

SPECIAL JURY INSTRUCTION NO. 4

A parent has a duty to adequately supervise and protect his or her child from the conduct of the custodian with whom the child has been left.

AUTHORITY:

1. Cal. Wel. & Inst. Code § 300;
2. *Williams v. Garcetti* (1993) 5 Cal. 4th 561, 570 (it is well established that parents have a legal responsibility in regard to the care and protection of their children, including from external forces).

GIVEN AS REQUESTED ___

GIVEN AS MODIFIED: ___

REFUSED: ___

WITHDRAWN: ___

_____
Judge of the Superior Court

8801284

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 1

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO JONATHAN KENDRICK AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church

Defendants") move this Court *in limine* for an order excluding any and all evidence, references to evidence, testimony or argument relating to 1) Defendant Jonathan Kendrick's (hereinafter "Kendrick") activities after 1997, when the alleged abuse of Plaintiff by Kendrick ended; 2) Kendrick's criminal conviction for child abuse in or about 2004; and 3) any incident involving the Plaintiff and Kendrick on property other than that owned by the Church Defendants, or alternatively, an order instructing the jury that any such evidence in this number 3 is to be considered only against defendant Kendrick.

This motion is based upon the ground that the evidence is irrelevant, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative of any fact at issue, will necessitate undue consumption of time, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The Church Defendants further move this court to instruct Plaintiff and her counsel, and all witnesses called or examined by Plaintiff, as set forth below.

1. That Plaintiff be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon or make any argument relating to Kendrick's activities after 1997, when the alleged abuse of Plaintiff by Kendrick ended, as such evidence is irrelevant, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative, will necessitate undue consumption of time, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and unfairly and unduly prejudicial to the Church Defendants and in violation of the law. The Church Defendants request that the court order Plaintiff, her counsel, and any and all witnesses called by them, to abstain from any reference to, comment on, or attempt to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the court to preclude from being introduced at trial.

2. That Plaintiff be instructed not to introduce evidence on, make reference to,

introduce testimony on, comment upon or make any argument relating to Kendrick's criminal conviction for child abuse in or about 2004, as such evidence is irrelevant, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative, will necessitate undue consumption of time, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and unfairly and unduly prejudicial to the Church Defendants and in violation of the law. The Church Defendants request that the court order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference to, comment on, or attempt to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the court to preclude from being introduced at trial.

3. That Plaintiff be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon or make any argument relating to any incident involving the Plaintiff and Kendrick on property other than that owned by the Church Defendants, as such evidence is irrelevant, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative, will necessitate undue consumption of time, is substantially more prejudicial than probative, and that there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and unfairly and unduly prejudicial to the Church Defendants and in violation of the law. The Church Defendants request that the court order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference to, comment on, or attempt to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the court to preclude from being introduced at trial. Alternatively, the Church Defendants request that the Court instruct the jury that any such evidence in this number 3 is to be considered only against Kendrick.

This motion is based upon the following Memorandum of Points and Authorities, the

papers and pleadings on file, and any oral argument permitted by the Court.

STATEMENT OF FACTS

The Church Defendants anticipate that Plaintiff intends to introduce evidence consisting of testimony relating to: 1) Kendrick's activities after 1997, when the alleged abuse of Plaintiff by Kendrick ended; 2) Kendrick's criminal conviction for child abuse in or about 2004; and 3) incidents involving the Plaintiff and Kendrick on property other than that owned by the Church Defendants. Defendants believe that the statements will include a description of certain purported, improper contact allegedly committed on her by defendant Kendrick.

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[1] (Amended Complaint at ¶¶ 2, 4.)

Plaintiff, who was never baptized in the Jehovah's Witness faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint at ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of worship used by Jehovah's Witnesses. (Ex. A, Plaintiff Deposition, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint at ¶ 7.)

The Church Defendants ask the court to rule on this evidentiary issue to assist the parties in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and

[1] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

prejudicial information were presented at trial, and to promote judicial economy. California Rules of Court, Rule 3.1112 (f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT I.

Evidence of Kendrick's Activities after 1997 is Irrelevant and Substantially and Unfairly Prejudicial Pursuant to the Evidence Code

A party may attempt to preclude or limit the introduction of evidence by presenting a motion *in limine* to the trial court in chambers. (Evidence Code sections 350, 352; *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1.) The purpose of a motion *in limine* is "to avoid the obviously futile attempt to 'unring the bell' in the event a motion to strike is granted in the proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.) The court is entitled to hear and determine the question of the admissibility of evidence outside of the presence and hearing of the jury. (Evidence Code section 402.)

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The Comment provides that relevant evidence "includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred." To be relevant, therefore, evidence must have some probative value it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See*, *People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston* (1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant

portions of evidence should be considered to protect against undue prejudice).) It involves a determination of whether the evidence "logically, naturally and by reasonable inference tends to establish some [disputed] fact." (*People v. Simms* (1970) 10 Cal.App.3d 299.) An inference may not be drawn from facts that are too remote in time or too speculative. (*Id.* at p. 311.)

Moreover, Evidence Code section 352, provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See, People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal. 3d 576, 585.) The court must strike a balance between the probative value of the evidence and the danger of prejudice. To strike that balance, the court considers "[1] the relationship between the evidence and the relevant inferences to be drawn from it, [2] whether the evidence is relevant to the main or only a collateral issue, and [3] the necessity of the evidence to the proponent's case as well as the reasons recited in section 352 for exclusion." (*Id.* at p. 445.)

During discovery, Plaintiff disclosed that Kendrick had abused her on a regular basis between the years 1994 (when she was nine years old) and 1997 (when she was eleven and one-half years of age). (Ex. A, Plaintiff Deposition, pp. 27:2-28:5, 30:12-20.) Plaintiff testified that the abuse stopped when Kendrick moved away, which occurred around the time of her parents' divorce in 1997. (*Id.* at 30:12-20.) Therefore, the relevant time period for this action is limited to 1997 at the very latest. There are no disputed issues of fact "of consequence to the determination of the action" connected with events that happened after 1997. (Evidence Code section 350.) Nothing that occurred after 1997 would support Plaintiff's claims that the Church Defendants had a legal duty or failed—between 1994 and 1997—to warn Plaintiff, to protect Plaintiff and/or to supervise Kendrick.

The admission of this evidence is curtailed by Evidence Code section 1100(a) which limits the use of any inferences that might be drawn from Kendrick's conduct after 1997. The

evidence would have extremely limited, if any, probative value to establish Kendrick's character. Evidence Code section 1101(a) provides that character evidence is "*inadmissible* when offered to prove his or her conduct on a specified occasion" (emphasis added). (*People v. Hovarter* (2008) 44 Cal.4th 983, 1002.) The California Legislature and the courts reason that character evidence is of slight probative value and may be unfairly prejudicial. The evidence "tends to distract the trier of fact from the main question of what actually happened on the particular occasion and simply permits the [fact finder] to reward the good . . . and to punish the bad . . . because of their respective characters." The courts are cautious on the admission of character evidence because it "may result in confusion of issues and require extended collateral inquiry." (*Bowen v. Ryan* (2008) 163 Cal.App.4th 916, 923.)

Kendrick's post-1997 conduct has no bearing whatsoever on the issue whether the Church Defendants had notice that Kendrick posed a threat to Plaintiff. In *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, the California Supreme Court explained the notice requirement. First, the entity being sued for acts of molestation by its agent or employee must have had knowledge or notice of the perpetrator's unlawful sexual conduct. Second, the term "knew" means actual knowledge and the term "reason to know" refers to a type of constructive knowledge. Third, this does not mean "inquiry notice," i.e., notice of facts that would put the entity on notice of a duty to inquire and thereby learn that molestation had occurred. Fourth, reason to know means that the entity defendant has acquired actual knowledge of facts from which a reasonable person of ordinary intelligence, or one of the superior intelligence of the actor, would either infer, or consider highly probable, that the agent had previously committed an act of unlawful sexual conduct with the minor. (*Id.* at pp. 545-549.)

Similarly, in *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, victims of molestation offered evidence of events that occurred after the abuse stopped to infer that someone might have put church defendants in that case on notice of the conduct of the perpetrator. The appellate court upheld the trial court's exclusion of that evidence, explaining that "knowledge of facts concerning an agent's unlawful sexual conduct after he has stopped abusing a plaintiff does not amount to notice under section 340.1." (*Id.* at p. 733.) The same is

true here where Plaintiff must demonstrate that the Church Defendants owed and breached a duty to warn or protect her from Kendrick. Plaintiff cannot infer from events that occurred after 1997 that the Church Defendant's knew or had reason to know of Kendrick's misconduct prior to 1994-1997.

In any event, the facts themselves support the reason why the evidence is inadmissible. Soon after learning of the allegation that Kendrick had engaged in improper behavior in 1993, the elders of the North Fremont Congregation determined that his conduct was unclean and Kendrick was no longer allowed to serve as a "ministerial servant." His removal as a ministerial servant was announced to the entire congregation, which announcement alerts the congregation to a possible problem. Kendrick never served again in any position of responsibility in any congregation of Jehovah's Witnesses after that announcement.

Therefore, such evidence of specific events that happened after 1997 is nothing more than inadmissible character evidence that should be excluded from trial. It would be extremely and unfairly prejudicial to the Church Defendants to permit the jury to hear such evidence. No clarifying or limiting instruction to the jury would suffice so as to protect the Church Defendants from the resulting prejudicial effect of the evidence itself.

ARGUMENT II.

The Court Should Bar Evidence that Kendrick was Convicted of Child Abuse in or about 2004 because that Evidence is Irrelevant and Substantially Prejudicial, and it is Inadmissible Character Evidence.

Plaintiff testified in deposition that she consulted an online database at www.familywatchdog.com after her father had asked her whether she had been molested by Kendrick. (Ex. A, Plaintiff Deposition, pp. 49:10-50:3.) As a result of her investigation, Plaintiff learned that Kendrick had a felony conviction in 2004. Evidence of Kendrick's subsequent bad acts, including the conviction in or about 2004, should be precluded from trial.

The admission of this evidence is curtailed by Evidence Code section 1107(a) which limits the admission of character evidence. Plaintiff will likely argue Evidence Code section 1101(b) applies. Section 1101(b) states that nothing in section 1101 "prohibits the admission of evidence that a person committed a crime, civil wrong, or other act *when relevant to prove some*

fact" (emphasis added). In this case, the admission of such subsequent character evidence completely unrelated to Kendrick's conduct with Plaintiff , including his 2004 conviction, has no probative value whatsoever and is not at all relevant to prove any fact at issue in this lawsuit.

The events leading up to the 2004 conviction occurred more than five years *after* the events of which Plaintiff complains, and that evidence is completely irrelevant to establish motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or accident. Moreover, evidence of conduct that falls within the definition of lewd and lascivious acts prohibited by Penal Code section 288 is particularly volatile because it is "highly inflammatory." Thus, there is a heightened danger of undue prejudice where there is evidence of sex acts involving children. (*See*, *Williams v. Superior Court* (1984) 36 Cal. 3d 441.) Evidence of the 2004 conviction has no probative value in this case. It has no tendency to prove or disprove any fact of consequence to the determination of this action. The 2004 conviction has no bearing on any genuine issue in this case, nor does any substantial legal issue in this case require evidence of the 2004 conviction. Therefore, evidence of Kendrick's 2004 conviction should be excluded, including for impeachment purposes. It would be extremely and unfairly prejudicial to the Church Defendants to permit the jury to hear such evidence, and it also would confuse the issues and mislead the jury.

In addition, the 2004 conviction is not relevant and cannot be used to "prove some fact" in this lawsuit where the facts related to the conviction are completely dissimilar to the facts Plaintiff alleges regarding her alleged abuse by Kendrick. Evidence of prior misconduct is admissible to show a common design or plan only where, among other things, the prior conduct is similar to the claims at issue. (*People v. Ewoldt* (1994) 7 Cal. 4th 380, 397.) In *Ewoldt*, the California Supreme Court admitted evidence of other misconduct only because it was almost identical to the conduct at issue in that case. Specifically, the evidence showed that on three occasions, the defendant molested his stepdaughter at night while she was asleep in her bed. When discovered, the defendant claimed he was only straightening up the covers. Evidence of other misconduct was admissible because it too was against a stepdaughter that the defendant

had molested in an almost identical manner and, when discovered, the defendant had offered a similar excuse. (*Id.* at 403.)

Here, Plaintiff's allegations and the facts leading to Kendrick's 2004 conviction are completely different. Plaintiff, who has no relation to Kendrick, testified that the abuse took place at a variety of locations, including in a house of worship, in her father's garage, on an Amtrak train, and in Kendrick's home. (Ex. A, Plaintiff Deposition, pp. 30:21-24, 40:12-23.) Plaintiff also testified that the abuse occurred on a monthly basis from 1994 to 1997. (*Id.* at 45:14-20.) In contrast, the 2004 conviction involved Kendrick's step-granddaughter and involved a one-time incident only. These events are so dissimilar that it would unfairly prejudice the Church Defendants to permit the jury to hear evidence concerning the 2004 conviction, as well as confuse the issues and mislead the jury.

ARGUMENT III.

Evidence of Jonathan Kendrick's 2004 Conviction is Not Admissible Impeachment Evidence because that Evidence is Unfairly Prejudicial to the Church Defendants; if Admitted, However, the Court Must Exclude the Details of the 2004 Conviction.

Evidence Code section 788 allows a party to submit evidence of a prior felony conviction to impeach a witness. However, this evidence is still subject to the constraints of Evidence Code section 352, which gives the court discretion to exclude such evidence if the probative value is outweighed by the risk of unfair prejudice. (*See Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 879 (exclusion of criminal conviction for murder proper where court found danger of undue prejudice, misleading the jury, and confusing the issues); *People v. Kent* (1981) 125 Cal.App.3d 207, 215 (trial court erred in allowing evidence of prior felony conviction where cross-examiner's only and "obvious purpose" was to put before the jury highly prejudicial evidence).)

As explained in Argument II above, the 2004 conviction and the events leading up to the conviction occurred more than five years *after* the alleged events of which Plaintiff complains, and are completely irrelevant to establish any fact at issue in this case. The evidence is particularly volatile and highly prejudicial because it involves a sex act with a child. (*See Williams, supra*, 36 Cal. 3d 441.) The 2004 conviction has absolutely no probative value in this

case. Therefore, Plaintiff should not be permitted to impeach Kendrick with his 2004 conviction. It would be extremely and unfairly prejudicial to the Church Defendants to permit the jury to hear such evidence, as well as confuse the issues and mislead the jury.

Should the Court be inclined, however, to admit the evidence of the 2004 conviction if Kendrick testifies, then the Church Defendants request: 1) the evidence be admitted for the limited purpose of the fact of the felony conviction, but without any evidence on the nature of the conviction, i.e., that the conviction involved child abuse, because the mention of the nature of the conviction would be severely and unfairly prejudicial to the Church Defendants, confuse the issues for the jury and mislead the jury; and 2) that a limiting instruction be issued to the jury directing them that they are permitted to consider the evidence as impeachment evidence against Kendrick only for purposes of his credibility as a witness.

ARGUMENT IV.

The Court Must Bar Evidence Involving Plaintiff and Kendrick that Occurred on Property Not Owned or Controlled by the Church Defendants Because that Evidence is Irrelevant and Extremely and Unfairly Prejudicial

Plaintiff testified that there were no occasions of abuse in places other than the house of worship, in her father's garage, on an Amtrak train, and in Kendrick's home. (Ex. A, Plaintiff Deposition, pp. 30:21-24, 40:12-23.) The Church Defendants cannot be held civilly liable for Kendrick's alleged criminal acts that were committed away from the property of the Church Defendants.

The Court of Appeal opinion in *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727, provided an overview of the law of premises liability in the context of a convicted child molester allegedly molesting a child on property owned by the defendants. There, the appellate court affirmed a grant of nonsuit for the defendants because "there was no relationship between the harm and any premises owned by family members on which the harm occurred." (*Id.* at p. 717.) The court explained that, in the context of business or public property, "liability has been allowed only when there is something foreseeably dangerous about the nature of the activity conducted on the property or the property itself which fixes on the landowner the duty to take some sort of precaution or the owner has in some way undertaken, as part of the organized

activity on the land, care for the safety of the plaintiff as against criminal acts of third parties." (*Id.* at p. 721.)

Here, Plaintiff testified in deposition that she never went to the house of worship by herself; she always went with one or both of her parents and she sat with them. (Ex. A, Plaintiff Deposition, pp. 31:17-32:7.) Plaintiff contends that the abuse occurred "in the main auditorium" of the house of worship where many people were present. (*Id.* at 25:18-26:6.) Plaintiff described what happened: Kendrick grabbed her "like a bear hug" and made her "sit on his lap" before and after the meetings. (*Id.* at 26:7-27:1.) He 'grabbed' her around the 'top section breast arms shoulders.' (*Id.* at 33:23-34:14.) Despite Plaintiff's contentions, her parents deny seeing any inappropriate contact between Kendrick and Plaintiff in the house of worship. (Ex. B, Kathleen Conti Deposition, p. 47:10-22.)

Eventually, according to Plaintiff, Kendrick started taking her away from the house of worship and to his residence following the Sunday meeting program. (Ex. A, Plaintiff Deposition, p. 28:6-22.) Kendrick returned Plaintiff to her parents' care. (*Id.* at 44:19-45:5.) Inside Kendrick's residence, Plaintiff contends she was subjected to repeated acts of child abuse. (*Id.* at 43:23-45:5.) None of the Church Defendants had any control over the person into whose custody the Plaintiff's parents entrusted their daughter's care. Nor did either of the Church Defendants have any interest in or control over Kendrick's personal residence. It is the parents, not the Church Defendants who have the responsibility to adequately supervise and protect their child from the conduct of the custodian with whom the child has been left. (Welfare and Institutions Code section 300; *Williams v. Garcetti* (1993) 5 Cal.4th 561, 570.)

Therefore, in her case against the Church Defendants, Plaintiff should be precluded from offering evidence of acts that occurred in any place other than the "main auditorium" of the house of worship. If any such evidence is admitted in connection with Plaintiff's case against Kendrick, the court should instruct the jury to disregard the evidence as it pertains to the Church Defendants.

CONCLUSION

For each of the independent reasons stated above, the Church Defendants respectfully request the Court to enter a pretrial ruling proscribing any person from mentioning Kendrick's actions after 1997, Kendrick's conviction in or about 2004, and events that occurred anywhere other than the "main auditorium" of the house of worship.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO JONATHAN KENDRICK AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801291

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 10

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OTHER LAWSUITS AGAINST OR SETTLEMENTS WITH CHURCH DEFENDANTS

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California

(hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") move this Court *in limine* for an order excluding any and all evidence, references to evidence, testimony or argument relating to other lawsuits or claims against and/or settlements with the Church Defendants.

This motion is based upon the ground that the evidence is irrelevant, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative of any fact at issue, will necessitate undue consumption of time, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors.

STATEMENT OF FACTS

The Church Defendants anticipate that Plaintiff Jane Doe ("Plaintiff") may attempt to introduce evidence of other lawsuits or claims of alleged child abuse against and/or settlements with one or both of the Church Defendants. As a worldwide organization, Watchtower has, of course, been the subject of other lawsuits and has elected to settle many of those without any admission of liability or wrongdoing.

ARGUMENT I.

Evidence of Any Other Lawsuits or Claims Against and/or Settlements with the Church Defendants Must Be Excluded Because the Evidence is Irrelevant and Unfairly Prejudicial Pursuant to the Evidence Code

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The Comment provides that relevant evidence "includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred." To be relevant, therefore, evidence must have some probative value—it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston*

(1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant portions of evidence should be considered to protect against undue prejudice).) It involves a determination of whether the evidence "logically, naturally and by reasonable inference tends to establish some [disputed] fact." (*People v. Simms* (1970) 10 Cal.App.3d 299, 311.) An inference may not be drawn from facts that are too remote in time or too speculative. (*Id.* at p. 311.)

Moreover, Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal.3d 576, 585.) The court must strike a balance between the probative value of the evidence and the danger of prejudice. To strike that balance, the court considers "[1] the relationship between the evidence and the relevant inferences to be drawn from it, [2] whether the evidence is relevant to the main or only a collateral issue, and [3] the necessity of the evidence to the proponent's case as well as the reasons recited in section 352 for exclusion." (*Id.* at p. 445.)

Whether or not any other individuals ever filed claims or reached settlements with one or both of the Church Defendants is wholly irrelevant to Plaintiff's claims. Plaintiff has not produced any evidence that would link these other claims to her own situation or to explain their purported relevance. The probative value of other potential claims and/or settlements is extremely low, and indeed, non-existent, because it does not prove that Plaintiff was the victim of Defendant Jonathan Kendrick's acts or that the Church Defendant's alleged negligence led to any of Plaintiff's purported damages claimed in this case.

Undue prejudice occurs where evidence "is of such nature as to inflame the emotions of the jury, motivating them to use the information . . . to reward or punish one side because of the jurors' emotional reaction." (*People v. Doolin* (2009) 45 Cal.4th 390, 439.) Evidence or argument relating to other claims and/or settlements would undoubtedly be unduly and unfairly

prejudicial to the Church Defendants. Such evidence may inflame the jury, leading them to improperly infer that the Church Defendants were negligent merely because Plaintiff implies, without proof, that others have also filed claims and/or settled with the Church Defendants. Obviously, the fact that a claim may have been asserted does not necessarily establish that the claim is meritorious. However, jurors who are not familiar with the legal process are likely to improperly infer, independent of the actual evidence, that the mere assertion and/or settlement of claims means such claims had some sort of merit and, therefore, that Plaintiff's claim also has merit. This is precisely the type of evidence that section 352 is designed to exclude. (*See Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515 (motion *in limine* granted in breach of fiduciary duty action to exclude evidence that brokerage firm previously had been suspended as a corporation because this evidence was irrelevant and prejudicial).) Indeed, if evidence of claims or settlements is admitted, the Court will be faced with multiple "trials within a trial" with respect to each and every purported former claim or settlement that Plaintiff might attempt to bring forward. Such evidence should consequently be excluded.

ARGUMENT II.

Evidence of Any Settlements with the Church Defendants Must Be Excluded Because the Evidence is Inadmissible Under the Evidence Code

Under Evidence Code section 1152, evidence that a person has, in compromise, offered money or any other thing, act, or service to another who has sustained or will sustain or claims that she has or will sustain damage or loss, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove liability for the loss or damage or any part of it. (Evidence Code section 1152(a).) Therefore, evidence relating to settlements between other purported claimants and the Church Defendants is inadmissible.

CONCLUSION

For each of the reasons stated above, the Church Defendants respectfully request the Court to enter an order excluding any and all evidence, references to evidence, testimony, or argument relating to other lawsuits or claims against and/or settlements with the Church Defendants.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OTHER LAWSUITS AGAINST OR SETTLEMENTS WITH CHURCH DEFENDANTS** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801287

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 11

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE WITNESSES FROM COURTROOM PRIOR TO TESTIFYING

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church

Defendants") move this Court *in limine* for an order restricting witnesses from entering the courtroom until called to testify. This motion is based on the ground that the witnesses will be testifying on similar matters and allowing one to hear the questions and answers of another will undermine the Church Defendant's cross-examination of the witnesses (*i.e.*, allowing a witness to hear the testimony of another witness will unfairly educate the witness on the forthcoming interrogation). The court has discretion to exclude witnesses from the courtroom pursuant to Evidence Code section 777(a).

Based on the foregoing, the Church Defendants respectfully request an order restricting witnesses from entering the courtroom until called to testify.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE WITNESSES FROM COURTROOM PRIOR TO TESTIFYING** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801208

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 12

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO THE SILENTLAMBS ORGANIZATION

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church

Defendants") move this Court *in limine* for an order excluding any and all evidence, references to evidence, testimony or argument relating to the Silentlambs organization and its website located at www.silentlambs.org (hereinafter "Silentlambs").

This motion is based upon the ground that the evidence is irrelevant, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative of any fact at issue, will necessitate undue consumption of time, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors.

The Church Defendants anticipate that Plaintiff Jane Doe ("Plaintiff") will attempt to introduce evidence relating to Silentlambs. William Bowen, one of Plaintiff's expert witnesses in this case, is the director of Silentlambs. He uses this organization as a platform to criticize and attack the organization of Jehovah's Witnesses. On his Silentlambs website, Mr. Bowen claims that he has used Silentlambs to assist in "the first series of major civil lawsuits against Watchtower over the mishandling of child abuse" and to expose the leaders of the Jehovah's Witnesses faith "for creating, covering up and defending the abuse policies of the organization including those past and present members of the Governing Body."

According to Mr. Bowen's Silentlambs website, Watchtower must do the following to "rectify what has happened": "(1) Apologize to all who have suffered as silentlambs due to [Watchtower] policy; (2) Open all congregation confidential files and have any record of pedophile behavior reported to the authorities; and (3) Amend [Watchtower] policy so that when any report of molestation is reported to elders it immediately is reported to the police for investigation." Clearly, Mr. Bowen uses the Silentlambs website as a forum to air his personal grievances against his former religious associates. Many of Mr. Bowen's opinions expressed on his website are based on unverified hearsay statements that he has received from other former Jehovah's Witnesses.

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in

reason to prove or disprove any disputed fact that is of consequence to the determination of the action." To be relevant, evidence must have some probative value, it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston* (1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant portions of evidence should be considered to protect against undue prejudice).)

Moreover, Evidence Code section 352, provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal. 3d 576, 585.) For example, there is a heightened danger of undue prejudice where there is evidence of sex acts involving children. (*See Williams v. Superior Court* (1984) 36 Cal. 3d 441.)

Any evidence, testimony or argument relating to the Silentlambs website is highly prejudicial to the Church Defendants and must be excluded. The website includes, for example, numerous "personal experiences" alleging sexual abuse, molestation and rape by church elders and other Jehovah's Witnesses. Should such evidence be admitted, the Church Defendants will be severely and unfairly prejudiced. They will be forced to defend themselves against numerous unrelated "mini-trials" and face unsubstantiated allegation after unsubstantiated allegation. This will waste trial time, confuse the issues, mislead the jury, and, ultimately prejudice the Church Defendants. There is no probative value in introducing evidence concerning the Silentlambs website as the information contained therein, and especially the "personal experiences" have absolutely nothing to do with the determination of any fact at issue in this case. Further, the contents of the Silentlambs website is comprised of unverified hearsay and, therefore, must be excluded pursuant to Evidence Code section 1200.

For the reasons stated above, the Church Defendants respectfully request the Court to enter an order excluding any and all evidence, references to evidence, testimony or argument relating to Silentlambs.

DATED: May 16, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 16, 2012

THE McCABE LAW FIRM, APC

By _____
for James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO THE SILENTLAMBS ORGANIZATION** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

8801316

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 2

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE REFERENCE TO KATHLEEN CONTI'S CHILD ABUSE & RELIGIOUS AFFILIATION OF PERPETRATOR OF KATHLEEN CONTI'S CHILD ABUSE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter

"Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") move this Court *in limine* for an order excluding any and all evidence, references to evidence, testimony or argument relating to testimony from Kathleen Conti (who is Plaintiff's mother) of her claim that she was the victim of child abuse by a perpetrator who she claims was a member or an elder of the congregation of Jehovah's Witnesses that she attended as a minor. The Church Defendants do not object to Kathleen Conti testifying that she was a victim of childhood sexual abuse, but she should be precluded from stating that it was one of Jehovah's Witnesses that was the alleged perpetrator.

This motion is based upon the ground that the evidence constitutes hearsay, is irrelevant, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative of any fact at issue, will necessitate undue consumption of time, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The Church Defendants further move this court to so instruct Plaintiff and her counsel, and all witnesses called or examined by Plaintiff, as set forth below:

1. That Plaintiff and her counsel be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon or make any argument relating to the religious affiliation of the perpetrator of the alleged sexual abuse of Kathleen Conti as such evidence is irrelevant, substantially more prejudicial than probative, and that there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and prejudicial to the Church Defendants and in violation of the law. The Church Defendants request the Court to order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference, comment, or attempts to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the Court to preclude from being introduced at trial.

This motion is based upon the following Memorandum of Points and Authorities, the

papers and pleadings on file, and any oral argument permitted by the Court.

STATEMENT OF FACTS

The Church Defendants anticipate that Plaintiff intends to introduce evidence consisting of testimony from Kathleen Conti, who as noted is Plaintiff's mother, that she had been the victim of child molestation at the age of 13 by "an elder" in the faith of Jehovah's Witnesses. During direct examination in her deposition, Kathleen Conti testified that she was "very upset" when she learned of her daughter's experiences. "I couldn't believe it happened to her, and it happened to me also." (Ex. B, Kathleen Conti Deposition, pp. 26:21-27:1.) Kathleen Conti volunteered information in her deposition that she had been the victim of child molestation at the age of 13 at the hands of "an elder." (*Id.*, at 27:2-11.) The term "an elder" is a religious term associated with the Jehovah's Witnesses faith.

The fact that Plaintiff's mother alleges that in the past she had been a victim of childhood sexual abuse may be relevant to Plaintiff's case insofar as Kathleen Conti testified at her deposition that she was hyper-vigilant in protecting her daughter, Plaintiff here, from abuse and would never have allowed Plaintiff to be taken from the Kingdom Hall by individual Defendant Jonathan Kendrick (hereinafter "Kendrick"). However, the religious affiliation of the alleged perpetrator of that abuse of Kathleen Conti is clearly not relevant to any factual or legal issue in Plaintiff's case. The jury could be misled into believing that the Church Defendants should pay damages or be punished for acts involving the Plaintiff's mother instead of focusing attention on the real issue in dispute—the alleged acts involving Plaintiff and Kendrick.

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[1] (Amended Complaint at ¶¶ 2, 4.)

[1] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

Plaintiff, who was never baptized in the Jehovah's Witness faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint at ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of worship used by Jehovah's Witnesses. (Ex. A, Plaintiff Deposition, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint at ¶ 7.)

The Church Defendants ask the court to rule on this evidentiary issue to assist the parties in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and prejudicial information were presented at trial, and to promote judicial economy. California Rules of Court, Rule 3.1112 (f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT I.

The Religious Affiliation of the Alleged Perpetrator of Kathleen Conti's Past History of Abuse is Irrelevant Pursuant to the Evidence Code

A party may attempt to preclude or limit the introduction of evidence by presenting a motion *in limine* to the trial court in chambers. (Evidence Code sections 350, 352; *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1.) The purpose of a motion *in limine* is "to avoid the obviously futile attempt to 'unring the bell' in the event a motion to strike is granted in the proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d

325, 337.) The court is entitled to hear and determine the question of the admissibility of evidence outside of the presence and hearing of the jury. (Evidence Code section 402.)

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The Comment provides that relevant evidence "includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred." To be relevant, therefore, evidence must have some probative value—it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See*, *People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston* (1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant portions of evidence should be considered to protect against undue prejudice).) It involves a determination of whether the evidence "logically, naturally and by reasonable inference tends to establish some [disputed] fact." (*People v. Simms* (1970) 10 Cal.App.3d 299, 311.) An inference may not be drawn from facts that are too remote in time or too speculative. (*Id.* at p. 311.)

Evidence consisting of testimony from Kathleen Conti that she had been the victim of child molestation at the age of 13 is relevant only insofar as it relates to her heightened awareness and vigilance in protecting Plaintiff from abuse and that she would never have allowed Kendrick to take Plaintiff to his home from the house of worship (Kingdom Hall). However, the religious affiliation of the alleged perpetrator of the abuse of Kathleen Conti has no probative value in this case whatsoever. It has no tendency in reason to prove or disprove any fact of consequence to the determination of this action. Nor does any substantial legal issue in this case require evidence of the religious affiliation of Kathleen Conti's purported abuser. Therefore, Kathleen Conti's testimony and any related evidence that she had been the victim of child molestation by "an elder" or even someone else within the Jehovah's Witnesses faith has no relevance in this action and should be excluded.

ARGUMENT II.

The Religious Affiliation of Kathleen Conti's Alleged Abuser is Substantially More Prejudicial than Probative of Any Fact at Issue

Evidence Code Section 352, provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See*, *People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal. 3d 576, 585.) The Court must strike a balance between the probative value of the evidence and the danger of prejudice. To strike that balance, the court considers "[1] the relationship between the evidence and the relevant inferences to be drawn from it, [2] whether the evidence is relevant to the main or only a collateral issue, and [3] the necessity of the evidence to the proponent's case as well as the reasons recited in section 352 for exclusion." (*Id.* at p. 445.)

Application of these principles to the anticipated testimony of Kathleen Conti warrants its exclusion. The testimony from Kathleen Conti that it was allegedly one of Jehovah's Witnesses who molested her at the age of 13 has no tendency to prove any fact of consequence in this case. The evidence has no probative value, but instead has the potential of great prejudice to the Church Defendants and could cause some jurors to erroneously conclude that Plaintiff's testimony about her alleged extended abuse is true because her mother claims to have been sexually abused by another member of the same faith. (*Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515.) Moreover, it can only serve to evoke an emotional bias from jurors against the Church Defendants, motivating the jury to use the information improperly instead of logically evaluating the real issues in this case, and to improperly and unfairly reward Plaintiff or punish the Church Defendants because of the jurors' emotional reaction.

In fact, there is a heightened danger of undue prejudice where evidence pertains to sex acts involving children. (*Williams v. Superior Court* (1984) 36 Cal.3d 441.) Under these circumstances the court must exercise great caution and exclude the evidence.

CONCLUSION

For the reasons stated above, the Church Defendants respectfully request that Plaintiff and her counsel be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon, or make any argument relating to testimony from Kathleen Conti of the religious affiliation of the person who allegedly molested her as a child, as such evidence is irrelevant, substantially more prejudicial than probative, and that there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. This exclusion should also apply to all medical and counseling records introduced in evidence at trial in this action that reference such alleged abuse of Kathleen Conti. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and prejudicial to the Church Defendants and in violation of the law. The Church Defendants further request that the Court order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference, comment, or attempts to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the court to preclude from being introduced at trial.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE REFERENCE TO KATHLEEN CONTI'S CHILD ABUSE & RELIGIOUS AFFILIATION OF PERPETRATOR OF KATHLEEN CONTI'S CHILD ABUSE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☒ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801308

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 3

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE HEARSAY STATEMENTS OF EVELYN KENDRICK AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church

Defendants") move this Court *in limine* for an order excluding any and all evidence, references to evidence, testimony, or argument relating to testimony from Evelyn Kendrick, or anyone else, relating to hearsay statements of Andrea Kendrick purportedly made on or about November 11, 1993.

This motion is based upon the ground that the evidence constitutes hearsay, creates a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury because the evidence is substantially more prejudicial than probative of any fact at issue, would necessitate undue consumption of time, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The Church Defendants further move this court to instruct Plaintiff and her counsel, and all witnesses called or examined by Plaintiff, as set forth below:

1. That Plaintiff be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon, or make any argument relating to testimony from Evelyn Kendrick (individual Defendant Jonathan Kendrick's former wife) relating to statements that Andrea Kendrick (Evelyn Kendrick's daughter and this Defendant Kendrick's then step-daughter) purportedly made on or about November 11, 1993, as such evidence constitutes hearsay. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and prejudicial to the Church Defendants and in violation of the law. The Church Defendants request the court to order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference, comment, or attempt to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the Court to preclude from being introduced at trial.

This motion is based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument permitted by the Court.

STATEMENT OF FACTS

The Church Defendants anticipate that Plaintiff intends to introduce evidence consisting of testimony from Evelyn Kendrick relating to statements of Andrea Kendrick purportedly made on or about November 11, 1993, to elders of the North Fremont Congregation. The Church

Defendants believe that the statements will include a description of certain purported, improper sexual contact allegedly committed by defendant Jonathan Kendrick (hereafter "Kendrick") on Andrea when she was 15 years of age. The Church Defendants further anticipate that Plaintiff may alternatively seek admission of the evidence on the basis that the statements are non-hearsay in that the statements are not being introduced for the truth of the allegations, but for some other reason. The Church Defendants contend either manner in which the evidence is offered is a veiled attempt to get the uncorroborated and highly prejudicial hearsay statements allegedly made by Andrea Kendrick into evidence and before the jury.

During his deposition, North Fremont elder Michael Lee Clarke testified that Kendrick admitted coming into a darkened house and touching his 15-year-old step-daughter's breast over her clothes while she was sleeping on the living room couch. (Ex. F, Michael Clarke Deposition, p. 29-30.) This admission-against-interest statement by Kendrick is clear and it is undisputed by the Church Defendants. Therefore, there is no issue of notice in this case to the Church Defendants. In support of Mr. Clarke's testimony is the documentary evidence from both Defendant North Fremont Congregation and the reply back to the congregation by Defendant Watchtower. (Ex. C, North Fremont Congregation letter dated November 15, 1993, at p. 1 ¶2, p. 2 ¶"2.", which states that Kendrick "confessed to touching the breast of his step daughter [Andrea] while she was sleeping" and that the North Fremont Congregation elders had removed Kendrick from his position as a Ministerial Servant in the congregation; Ex. D, Watchtower's response dated December 3, 1993, at p. 1 ¶2, agreeing that it was proper to have removed Kendrick from serving as a Ministerial Servant.)

Evelyn Kendrick set forth in her declaration in support of Plaintiff's motion to amend the complaint a completely different version of what Andrea allegedly told the elders. According to Evelyn Kendrick's hearsay declaration, Andrea told the elders that Kendrick had drugged her with Vicodin, went into her bedroom, and fondled her breasts and genitals under her clothes. (Ex. B, Evelyn Kendrick Declaration at ¶ 3.) The reason Plaintiff wants to have Evelyn Kendrick give this hearsay testimony is to prove *the truth of the matters asserted* therein and thereby unfairly prejudice the jurors against the Church Defendants, not to prove notice to

the Church Defendants, which notice is conceded from Kendrick's admission to the elders on November 11, 1993. Indisputably, the sole purpose of that testimony from Evelyn Kendrick would be to prove the truth of the matters asserted therein.

Interestingly, a report was made several months later that is a combination of alleged facts heard by the elders in the November 11, 1993, meeting with the family and the declaration of Evelyn Kendrick. (Ex. B, Evelyn Kendrick Declaration at ¶ 3.) But even in this report Defendant Kendrick continues to assert Andrea "was wearing a bra and he did not go underneath it. … [T]he incident lasted about five seconds." (Ex. E, Police Report [attached to Sergeant Baldwin Tr., as exhibit 3] at 5:70-73.)

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[1] (Amended Complaint at ¶¶ 2, 4.)

Plaintiff, who was never baptized in the Jehovah's Witness faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint at ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of worship used by Jehovah's Witnesses. (Ex. A, Plaintiff Depostion, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint at ¶ 7.)

The Church Defendants ask the court to rule on this evidentiary issue to assist the parties

[1] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and prejudicial information were presented at trial, and to promote judicial economy. California Rules of Court, Rule 3.1112 (f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT I.

The Andrea Kendrick Statement is an Inadmissible Hearsay Statement Pursuant to the Evidence Code

The California Evidence Code defines hearsay as "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evidence Code section 1200(a)). Stated simply, hearsay is "an out-of-court statement offered to prove the truth of [an] assertion." (*Plancarte v. Guardsmark, LLC* (2004) 118 Cal.App.4th 640, 647.) Clearly, if Evelyn Kendrick attempts to testify about what Andrea Kendrick told the elders of the North Fremont Congregation on November 11, 1993, her testimony is indisputably hearsay and should be barred from admission.

On the other hand, Plaintiff will likely argue that they are not offering the Evelyn Kendrick statement about what Andrea Kendrick said for the truth of the content of her words, and therefore, her statement is non-hearsay and not in violation of the hearsay rule. An out-of-court statement is not hearsay if offered to show the effect on the hearer rather than to prove the truth of the content of the statement. For example, such evidence may be admissible when it is necessary to prove notice. However, such evidence is admissible only ***where it is relevant*** to an issue in the case. (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 591–592.) As indicated both above and below, notice to the Church Defendants is *not* a disputed issue in this case, so the Evelyn Kendrick hearsay statement should be excluded.

ARGUMENT II.

Evelyn Kendrick's Testimony Would be Hearsay and Would be Inadmissible Pursuant to the Evidence Code

A party may attempt to preclude or limit the introduction of evidence by presenting a motion *in limine* to the trial court in chambers. (Evidence Code section 350, 352; *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1) The purpose of a motion *in limine* is "to avoid the obviously futile attempt to 'unring the bell' in the event a motion to strike is granted in the proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.) The court is entitled to hear and determine the question of the admissibility of evidence outside of the presence and hearing of the jury. (Evidence Code section 402.)

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The Comment provides that relevant evidence "includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred." To be relevant, therefore, evidence must have some probative value—it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See, People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston* (1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant portions of evidence should be considered to protect against undue prejudice).) It involves a determination of whether the evidence "logically, naturally and by reasonable inference tends to establish some [disputed] fact." (*People v. Simms* (1970) 10 Cal.App.3d 299, 311.) An inference may not be drawn from facts that are too remote in time or too speculative. (*Id.* at p. 311.)

Evidence consisting of hearsay testimony from Evelyn Kendrick relating to alleged statements of Andrea Kendrick purportedly made on or about November 11, 1993, is clearly objectionable on that basis; plus, the hearsay testimony has no probative value. The hearsay

testimony has no tendency in reason to prove or disprove any fact of consequence to the determination of this action. The Church Defendants *acknowledge* that they received notice of Kendrick's conduct on or about November 11, 1993. As a result, there is no genuine issue in this case concerning the date that the Church Defendants received notice of Kendrick's conduct. No substantial legal issue rests upon the issue of notice to the Church Defendants either. In fact, as the evidence will establish, it was upon receipt of this notice that the Church Defendants took immediate steps to remove Kendrick from any position of responsibility in the congregation of Jehovah's Witnesses. Therefore, the Evelyn Kendrick hearsay testimony relating to alleged statements of Andrea Kendrick have no relevance in this action. Moreover, the fact that Plaintiff may argue a non-hearsay use of the testimony does not save it from exclusion. Simply because hearsay is being offered for a purpose other than its truth does not make it admissible. The statement must still be relevant to some issue in the case. (*People v. Lucero* (1998) 64 Cal.App.4th 1107, 1109–1110.) Evelyn Kendirck's hearsay testimony should be excluded.

ARGUMENT III.

Andrea Kendrick's Hearsay Statement is Substantially and Unfairly Prejudicial

Evidence Code Section 352, provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See*, *People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal. 3d 576, 585.) The court must strike a balance between the probative value of the evidence and the danger of prejudice. To strike that balance, the court considers "[1] the relationship between the evidence and the relevant inferences to be drawn from it, [2] whether the evidence is relevant to the main or only a collateral issue, and [3] the necessity of the evidence to the proponent's case as well as the reasons recited in section 352 for exclusion." (*Id.* at p. 445.)

Application of these principles to the Evelyn Kendrick hearsay statements offered by Plaintiff warrants their exclusion. Admission of hearsay evidence consisting of testimony from Evelyn Kendrick relating to hearsay statements of Andrea Kendrick purportedly made on November 11, 1993, has no tendency to prove any fact at issue in this case. Moreover, it can only serve to evoke an emotional bias from jurors as against the Church Defendants, motivating the jury to improperly use the information instead of logically evaluating the point upon which it might be relevant (if at all), and to improperly reward Plaintiff or punish the Church Defendants because of the jurors' emotional reaction. Plaintiff should be barred from using this hearsay evidence to inflame the jury against the Church Defendants by claiming the basis for notice to them was more egregious conduct than what was reported by the North Fremont Congregation to Watchtower. The North Fremont Congregation conceded in their correspondence to Watchtower that Kendrick "confessed to child abuse." (Ex. C, North Fremont Congregation letter dated November 15, 1993, at p. 1 ¶ 2.) The specific details of that abuse of Andrea by Kendrick are not relevant to any issue in this action and instead would tend to confuse the issues, mislead the jury, and unfairly and unduly prejudice the jury against the Watchtower Defendants.

CONCLUSION

For the reasons stated above, the Church Defendants respectfully request that Plaintiff be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon or make any argument relating to hearsay testimony from Evelyn Kendrick relating to hearsay statements of Andrea Kendrick purportedly made on November 11, 1993, because such evidence constitutes double hearsay and is extremely and unfairly prejudicial to the Church Defendants in that there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony, or the attempt to introduce such evidence or testimony, will be highly improper and prejudicial to the Church Defendants and in violation of the law. The Church Defendants further request the Court to order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference, comment, or attempts to introduce any of the evidence, either by way of documents or

testimony, which the Church Defendants are requesting the Court to preclude from being introduced at trial.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE HEARSAY STATEMENTS OF EVELYN KENDRICK AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801300

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 4

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO PAUL INMAN AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California

(hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") move this Court *in limine* for an order excluding any and all evidence, references to evidence, testimony, or argument relating to testimony from anyone regarding allegations of child abuse committed by Paul Inman and which is not in any way connected to the issues in this case.

This motion is based upon the ground that the evidence constitutes hearsay, is irrelevant, substantially more prejudicial than probative, and that there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The Church Defendants further move this court to instruct Plaintiff and her counsel, and all witnesses called or examined by Plaintiff, as set forth below:

1. That Plaintiff and her counsel be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon, or make any argument relating to testimony from anyone regarding allegations of child abuse committed by Paul Inman, because such evidence is irrelevant, substantially more prejudicial than probative, will confuse the issues, mislead the jury, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and prejudicial to this moving party and in violation of the law. The Church Defendants request the Court to order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference, comment, or attempts to introduce any of the evidence, either by way of documents or testimony, which this moving party is requesting the court to preclude from being introduced at trial , as well as to exclude any such references from Plaintiff's medical and counseling records admitted in evidence in this action.

This motion is based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument permitted by the Court.

STATEMENT OF FACTS

The Church Defendants anticipate that Plaintiff intends to introduce evidence consisting of the fact that Plaintiff's stepmother, Carolyn Conti, was once married to Mr. Paul Inman.

During the divorce proceedings from Paul Inman, Carolyn Conti accused Mr. Inman of some sort of sexual abuse of one of their children and that the elders in the North Fremont Congregation did not investigate the allegations. However, at his deposition, Mr. Inman testified that he was not a member of the North Fremont Congregation at the time that Carolyn Conti made her allegations. (Ex. B, Paul Inman Deposition, pp. 8:15-17; 9:25-10:5.) In fact, Mr. Inman testified in his deposition that he was disfellowshipped from the North Fremont Congregation prior to August 2004 and was not a member of another California congregation in the future. (Ex. B, Paul Inman Deposition, pp. 10:9-14, 11:21-24.) His evidence has no more bearing on the issues in this case than that of any other divorcing father in the state of California who may be the object of such allegations during an acrimonious divorce.

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[1] (Amended Complaint ¶¶ 2, 4.)

Plaintiff, who was never baptized in the Jehovah's Witnesses faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of worship used by Jehovah's Witnesses. (Ex. A, Plaintiff Deposition, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint ¶ 7.)

[1] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

The Church Defendants believe that the Plaintiff may attempt to bolster her claims by a subtle innuendo that the elders were generally negligent and did not investigate these other charges against a former member. The Church Defendants ask the court to rule on this evidentiary issue to assist the parties in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and prejudicial information were presented at trial, and to promote judicial economy. California Rules of Court, Rule 3.1112 (f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT I.

Evidence Relating to Sexual Misconduct with a Minor by Paul Inman is Irrelevant Pursuant to the Evidence Code

A party may attempt to preclude or limit the introduction of evidence by presenting a motion *in limine* to the trial court in chambers. (Evidence Code sections 350, 352; *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1.) The purpose of a motion *in limine* is "to avoid the obviously futile attempt to 'unring the bell' in the event a motion to strike is granted in the proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.) The court is entitled to hear and determine the question of the admissibility of evidence outside of the presence and hearing of the jury. (Evidence Code section 402.)

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The Comment provides that relevant evidence "includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred." To be relevant, therefore, evidence must have some probative

value—it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See*, *People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston* (1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant portions of evidence should be considered to protect against undue prejudice).) It involves a determination of whether the evidence "logically, naturally and by reasonable inference tends to establish some [disputed] fact." (*People v. Simms* (1970) 10 Cal.App.3d 299, 311.) An inference may not be drawn from facts that are too remote in time or too speculative. (*Id* at p. 311.)

Evidence consisting of testimony from anyone regarding allegations of child abuse committed by Paul Inman, or evidence of the same from Plaintiff's medical or counseling records, has no probative value in this case. It has no tendency in reason to prove or disprove any fact of consequence to the determination of this action. Nor does any substantial legal issue in this case require evidence of allegations of child abuse committed by Paul Inman. It could be used improperly by the jury to infer that the North Fremont Congregation of Jehovah's Witnesses was a spawning ground for pedophiles or, since the elders of the North Fremont Congregation of Jehovah's Witnesses did not investigate the allegations against a former member, they are more likely to be somehow negligent in the present case involving Plaintiff.

ARGUMENT II.

Allegations of Child Abuse Committed by Paul Inman are Substantially More Prejudicial than Probative

Evidence Code Section 352, provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal. 3d 576, 585.) The Court must strike a balance between the probative value of the evidence and the danger of prejudice. To

strike that balance, the court considers "[1] the relationship between the evidence and the relevant inferences to be drawn from it, [2] whether the evidence is relevant to the main or only a collateral issue, and [3] the necessity of the evidence to the proponent's case as well as the reasons recited in section 352 for exclusion." (*Id.* at p. 445.)

Application of these principles to the anticipated testimony or other evidence that Paul Inman was accused of sexually abusing a child warrants its exclusion. Such evidence has no probative value in this action, and instead has the potential of great and unfair prejudice to the Church Defendants. (*Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515.) Moreover, it can only serve to evoke an emotional bias from jurors as against the Church Defendants, motivating the jury to improperly use the information and not to logically evaluate the issues in this case, but to reward Plaintiff or punish the Church Defendants because of the jurors' emotional reaction.

In fact, there is a heightened danger of undue prejudice where evidence pertains to sex acts involving children. (*Williams v. Superior Court* (1984) 36 Cal.3d 441.) Under these circumstances the court must exercise great caution and exclude the evidence.

CONCLUSION

For the reasons stated above, the Church Defendants respectfully request that Plaintiff be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon, or make any argument relating to allegations of child abuse committed by Paul Inman, as such evidence is irrelevant, substantially more prejudicial than probative, will confuse the issues, mislead the jury, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony will be highly improper and unfairly prejudicial to the Church Defendants and in violation of the law. The Church Defendants further request that the Court order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference, comment, or attempts to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the Court to preclude from being introduced at trial.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO PAUL INMAN AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801292

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 5

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO THE DISCIPLINING OF MEMBERS OF THE RELIGION AND MEMORADUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California

(hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") move this Court for a pretrial order proscribing all attorneys, parties, and witnesses from referring to, relying on, or testifying about the following matters: Evidence relating to religious, ecclesiastical discipline within the beliefs of Jehovah's Witnesses, including, but not limited to, evidence relating to the fact of, and/or the act of, disciplining members of the Jehovah's Witnesses faith, including, but not limited to the fact of, and/or the act of, the formation of a judicial committee of elders, and the fact of and the act of disfellowshipping a member of the religion.

This motion is based upon the ground that the evidence is irrelevant, substantially more prejudicial than probative, will confuse the issues, mislead the jury, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors and the review of such purely religious internal church matters by a civil court or jury is beyond the subject matter jurisdiction of the civil court. The Church Defendants further move this court to instruct Plaintiff and her counsel, and all witnesses called or examined by Plaintiffs, as set forth below:

That Plaintiff and her counsel be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon, or make any argument relating to evidence relating to religious, ecclesiastical discipline within the beliefs of Jehovah's Witnesses, including, but not limited to, evidence relating to the fact of, and/or the act of, disciplining a member of the religion, including, but not limited to the fact of, and/or the act of, the formation of a judicial committee of elders, and the fact of, and/or the act of, disfellowshipping members of the religion, as such evidence is irrelevant, is a violation of the First Amendment of the United States Constitution and its California analog, is a violation of the Ecclesiastical Abstention doctrine, is severely and unfairly prejudicial, will confuse the issues and mislead the jury, and there is a substantial danger that the evidence will unfairly inflame the passions or emotions of the jurors. The introduction of such evidence or testimony, or the attempt to introduce such evidence or testimony, will be highly improper and unfairly prejudicial to the Church Defendants and in violation of the law. The Church Defendants request that the Court order

Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference to, comment on, or attempt to introduce any of the evidence that deals with the spiritual counseling and discipline of members the Jehovah's Witness faith.

This motion is based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument permitted by the Court.

STATEMENT OF FACTS

The Church Defendants anticipate that Plaintiff intends to introduce evidence consisting of testimony relating to the fact of and/or the act of disciplining members of the Jehovah's Witnesses faith, including, but not limited to, the fact of and the act of the formation of a judicial committee of elders, and the fact of and the act of giving public reproof, private reproof, and disfellowshipping (excommunicating and thereafter shunning) members of the religion as part of the church's ecclesiastical or religious discipline.

The Church Defendants anticipate that Plaintiff intends to introduce such evidence in order to create the basis for this Court, including the jury, to pass judgment on the religious tenants and beliefs of the Jehovah's Witnesses faith as it relates to the internal church discipline of its members.

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[1] (Amended Complaint ¶¶ 2, 4.)

Plaintiff, who was never baptized in the Jehovah's Witness faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of

[1] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

worship used by Jehovah's Witnesses. (Ex. A., Plaintiff Deposition, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint ¶ 7.)

The Church Defendants ask the court to rule on this evidentiary issue to assist the parties in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and prejudicial information were presented at trial, and to promote judicial economy. California Rules of Court, Rule 3.1112 (f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT I.

This Court Must Bar Evidence Relating to the Ecclesiastical Discipline of Members of the Religion because it is Irrelevant and Severely Prejudicial

A party may attempt to preclude or limit the introduction of evidence by presenting a motion *in limine* to the trial court in chambers. (Evidence Code sections 350, 352; *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1.) The purpose of a motion *in limine* is "to avoid the obviously futile attempt to 'unring the bell' in the event a motion to strike is granted in the proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.) The court is entitled to hear and determine the question of the admissibility of evidence outside of the presence and hearing of the jury. (Evidence Code section 402.)

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in

reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The Comment provides that relevant evidence "includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred." To be relevant, therefore, evidence must have some probative value—it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See*, *People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston* (1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant portions of evidence should be considered to protect against undue prejudice).) It involves a determination of whether the evidence "logically, naturally and by reasonable inference tends to establish some [disputed] fact." (*People v. Simms* (1970) 10 Cal.App.3d 299, 311.) An inference may not be drawn from facts that are too remote in time or too speculative. (*Id.* at p. 311.)

Moreover, Evidence Code section 352, provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See*, *People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal. 3d 576, 585.) The court must strike a balance between the probative value of the evidence and the danger of prejudice. To strike that balance, the court considers "[1] the relationship between the evidence and the relevant inferences to be drawn from it, [2] whether the evidence is relevant to the main or only a collateral issue, and [3] the necessity of the evidence to the proponent's case as well as the reasons recited in section 352 for exclusion." (*Id.* at p. 445.)

A full evaluation of the constitutional prohibition and the prejudicial effect of the admission of any evidence relating to religious, ecclesiastical discipline of members within the beliefs of the Jehovah's Witnesses faith, including, but not limited to, evidence relating to the fact of and/or the act of disciplining members of the religion, including, but not limited to, the

fact of and the act of forming a judicial committee of elders, and the fact of and the act of giving public reproof, private reproof, and disfellowshipping members of the religion as part of the church's ecclesiastical or religious discipline, can only lead to the conclusion that such evidence must not reach the jury.

ARGUMENT II.

The First Amendment Bars this Court's Consideration of, Reference to, or Comment on Religious, Ecclesiastical, and Doctrinal Decisions and Beliefs of the Jehovah's Witnesses Faith, Including the Religious Discipline of its Members

The law is well-settled that "civil courts exercise no jurisdiction" over disputes "which concern theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." (*Watson v. Jones* (1871) 80 U.S. 679, 733.) The United States Supreme Court has recognized that secular tribunals must accept "as final, and as binding on them" the decisions of ecclesiastical institutions on such matters and observed that

> it would be of a vain consent ... if any one aggrieved by one of [an ecclesiastical institution's] decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance.

(*Id.* at pp. 727, 729; *see also Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 713; *Jones. v. Wolf* (1979) 443 U.S. 595, 602-04.)

Plaintiff desires to use the position and authority of this Court to essentially comment on religious belief and religious discipline by introducing evidence relating to religious, ecclesiastical discipline within the beliefs of the Jehovah's Witnesses faith, including, but not limited to, evidence relating to the fact of and/or the act of disciplining members of the religion, including, but not limited to, the fact of and the act of the formation of a judicial committee of elders and the fact of and the act of disfellowshipping members of the religion. By seeking to introduce such evidence, Plaintiff is, in effect, attempting to obtain a civil court's involvement into the religious practices and religious beliefs of the Jehovah's Witnesses faith. Plaintiff seeks to have the jury take the place of the ecclesiastical authority of the church and essentially pass

judgment on the religious practice of the Jehovah's Witnesses faith. This is the precise sort of inquiry that is forbidden by the First Amendment. The *Watson* Court noted:

> That in so far as the fundamental laws of the church confer powers on its tribunals, the civil courts will recognize them, and where civil rights are involved, *will give effect to their exercise without inquiring into the motives or grounds of action of the ecclesiastical tribunal*; and will enforce with the same respect the action of the inferior tribunal acting within its sphere, as they will that of the supreme court of the church.

(*Watson*, 80 U.S. at p. 710 (emphasis added).)

As noted above, the Ecclesiastical Abstention doctrine, based on the First Amendment, ***precludes civil courts from exercising jurisdiction*** over internal church disciplinary decisions about church membership and decisions of church polity. This constitutional bar precludes Plaintiff from introducing evidence relating to religious, ecclesiastical discipline within the beliefs of the Jehovah's Witnesses faith, including, but not limited to, evidence relating to the fact of and/or the act of disciplining members of the religion, including, but not limited to the fact of and the act of the formation of a judicial committee of elders and the fact of and the act of disfellowshipping members of the religion as part of the church's ecclesiastical or religious discipline.

Courts across this nation have consistently recognized that the First Amendment prohibits an inquiry into the reasons for a church's discipline of its members and for its polity decisions. (*See*, *Abrams v. Watchtower Bible and Tract Society of New York, Inc.* (Ill. App. Ct. 1999) 715 N.E.2d 798 (dismissing a claim that a polity decision had the "intent to destroy [plaintiffs] 'good name and reputation in the [religious] community.'"); *Higgins v. Maher* (1989) 210 Cal.App.3d 1168, 1173, 1176; *Hiles v. Episcopal Diocese of Mass.* (Mass. 2002) 773 N.E.2d 929, 938; *Van Osdol v. Vogt* (Colo. 1996) 908 P.2d 1122, 1127-28, 1134; *O'Connor v. Diocese of Honolulu* (Haw. 1994) 885 P.2d 361, 368, 370, 371; *Korean Presbyterian Church of Seattle Normalization Com. v. Lee* (Wash. App. 1994) 880 P.2d 565, 569-70; *Schoenals v. Mains* (Minn. App. 1993) 504 N.W.2d 233, 236; *Thomas v. Fuerst* (Ill. App. 2004) 803 N.E.2d 619; *Anderson v. Watchtower Bible and Tract Soc'y of New York, Inc.* (Tenn. App. 2007) No. M2004-01066-COA-R9-CV, 2007 WL 161035.)

The Supreme Court of California has also repeatedly held that ecclesiastical and theological controversies, including "matters of faith, discipline, and the general polity and tenets of the church," ***are issues beyond the jurisdiction of secular courts***. (*Horsman v. Allen* (1900) 129 Cal. 131, 138-139; *see also Comm. of Missions v. Pac. Synod* (1909) 157 Cal. 105, 128; *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 541-542; *New v. Kroeger* (2008) 167 Cal.App.4th 800, 816-817.)

"Within the context of ecclesiastical discipline, churches enjoy an absolute privilege from scrutiny by the secular authority." (*Hadnot v. Shaw* (Ok. 1992) 826 P.2d 978, 987.)

> Because *religious judicature is immune from any civil court inquest*, it is also protected from intrusion by discovery. The church's immunity from disclosure rests neither on a statute nor a code of evidence. Rather its shield is of a *constitutional dimension*. It is founded on the Free Exercise Clause's prohibition against secular re-examination of merits and procedure in ecclesiastical judicature.

(*Id.* at p. 989.) The United States Supreme Court agrees that it is the "process of inquiry" into the religious reasons for an ecclesiastical decision that "impinge[s] on the rights guaranteed by the Religion Clauses." (*National Labor Relations Board v. Catholic Bishop of Chicago* (1979) 440 U.S. 490, 502.)

When it comes to ecclesiastical decisions, "the state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content." (*Rayburn v. General Conference of Seventh-Day Adventists* (4th Cir. 1985) 772 F.2d 1164, 1169; *Young v. Northern Illinois Conference of United Methodist Church* (7th Cir. 1994) 21 F.3d 184, 186.)

The Fourth Circuit in *Rayburn* further explained why the reasons for ecclesiastical decisions regarding the selection and deletion of ministers are also not subject to civil court inquiry as follows:

> On a procedural level, entanglement might also result from a protracted legal process pitting church and state as adversaries ... '[P]ervasive monitoring by public authorities ... infringes precisely those Establishment Clause values at the root of the prohibition of excessive entanglement.' ... Church personnel and records would inevitably become subject to subpoena, discovery, cross-examination, the full panoply of legal process designed to probe the mind of the church in the selection of its ministers.... There is the danger that churches, wary of EEOC or judicial review of their decisions, might make them with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of

> their own personal and doctrinal assessments of who would best serve the pastoral needs of their members.

(*Rayburn*, 772 F.2d at p. 1171 (citations omitted); *see also, Minker v. Baltimore Annual Conference of United Methodist Church* (D.C. Cir. 1990) 894 F.2d 1354, 1357.) Thus, plaintiffs are precluded from introducing evidence relating to religious, ecclesiastical discipline within the beliefs of Jehovah's Witnesses, including, but not limited to, evidence relating to the fact of and/or the act of disciplining members of the religion, including, but not limited to, the fact of and the act of the formation of a judicial committee of elders and the fact of and the act of disfellowshipping members of the religion as part of the church's ecclesiastical or religious discipline.

CONCLUSION

In summary, religious doctrine and religious belief are beyond civil court jurisdiction because civil courts lack the constitutional authority or the legal competence to examine and evaluate such information. In this case, because the information sought is not even relevant to Plaintiff's claims, Plaintiff and her counsel should clearly be precluded from making any reference to evidence relating to religious, ecclesiastical discipline within the beliefs of the Jehovah's Witnesses faith, including, but not limited to, evidence relating to the fact of and/or the act of disciplining members of the religion, including, but not limited to, the fact of and the act of the formation of a judicial committee of elders and the fact of and the act of giving public reproof, private reproof, and disfellowshipping members of the religion. This Court cannot ignore the First Amendment bar which precludes civil court review or evaluation of matters involving church beliefs, doctrine, membership, discipline, or polity.

For the reasons stated above, the Church Defendants respectfully request the Court to enter a pretrial ruling proscribing any reference to evidence relating to religious, ecclesiastical discipline within the beliefs of the Jehovah's Witnesses faith, including, but not limited to, evidence relating to the fact of and/or the act of disciplining members of the religion, including, but not limited to the fact of and the act of the formation of a judicial committee, and the fact of and the act of giving public reproof, private reproof, and the act of disfellowshipping members

of the religion. Such matters may only be determined by the "Church" following its own religious tenants, religious beliefs, and religious practices.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO THE DISCIPLINING OF MEMBERS OF THE RELIGION AND MEMORADUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801319

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 6

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO ALLEGED CLERGY MALPRACTICE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California

(hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") move the court for a pretrial order proscribing all attorneys, parties, and witnesses from referring to, relying on, or testifying about the following matters: Alleged clergy malpractice and any related standard of care under which ministers of Jehovah's Witnesses should have investigated or otherwise handled the November 1993 allegation of child abuse against individual defendant Jonathan Kendrick (hereinafter "Kendrick").

The Church Defendants further move this court to instruct Plaintiff and her counsel, and all witnesses called or examined by Plaintiff, as set forth below. This motion is based upon the ground that the evidence is barred by the First Amendment to the United States Constitution and by Article I, section 4, of the California constitution. Further, the California courts have specifically held that plaintiffs cannot sue clergymen and churches for clergy malpractice. The Church Defendants move as follows:

That Plaintiff and her counsel be instructed not to introduce evidence on, make reference to, introduce testimony on, comment upon, or make any argument relating to any alleged clergy malpractice and any related standard of care under which the elders of the North Fremont Congregation should have acted upon receiving an accusation in November 1993 that Kendrick had abused his stepdaughter Andrea. The introduction of such evidence or testimony or the attempt to introduce such evidence or testimony is forbidden by both the United States and California constitutions. The Church Defendants request that the Court order Plaintiff, her counsel, and any witnesses called by them, to abstain from any reference to, comment on or attempt to introduce any of the evidence, either by way of documents or testimony, which the Church Defendants are requesting the Court to preclude from being introduced at trial.

This motion is based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument permitted by the Court.

STATEMENT OF FACTS

The Church Defendants anticipate that Plaintiff intends to introduce evidence consisting of testimony relating to the adequacy of the North Fremont Congregation's investigation of the allegations against Kendrick and whether the Church Defendants met a religious or secular

standard of care in the way that the elders of the North Fremont Congregation followed up on the allegations made against Kendrick. (Ex. B, Plaintiff's Disclosure of Expert Witnesses.)

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[1] (Amended Complaint at ¶¶ 2, 4.)

Plaintiff, who was never baptized in the Jehovah's Witnesses faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint at ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of worship used by Jehovah's Witnesses. (Ex. A, Plaintiff Deposition, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint at ¶ 7.)

The Church Defendants ask the court to rule on this evidentiary issue to assist the parties in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and prejudicial information were presented at trial, and to promote judicial economy. California Rules of Court, Rule 3.1112 (f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial

[1] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT I.

The First Amendment and its California Analog Prohibit Inquiries into Whether Clergymen Meet a Minimum Standard of Care

Plaintiff essentially asks this Court to evaluate whether the Church Defendants met a religious or secular standard of care in the way that the Church Defendants investigated and otherwise dealt with the November 1993 allegation that Kendrick abused his stepdaughter Andrea. In attempting to do so, Plaintiff would have her experts testify as to what the standard of care in such situations would have been in the fields of law enforcement and psychology and their respective communities, thereby alleging what amounts to a clergy malpractice claim. However, those standards cannot constitutionally be applied to religious organizations such as the Church Defendants. Ministers do not have the training, skills, or authority to act as doctors or law enforcement officers. Instead, when an accusation of wrongdoing comes to the elders, their role and obligations within the Jehovah's Witnesses faith are to provide spiritual counseling and admonition in an attempt to help the wrongdoer spiritually. (*See*, James 5:14, 15.)

Plaintiff also seeks to establish a standard of care of dealing with child abuse among religions. However, the First Amendment's Establishment Clause and its California analog forbid courts from establishing such standards of care among religions, because to do so would impermissibly allow a cause of action for clergy malpractice.

A bedrock principle of First Amendment law is that the state cannot entangle itself in religious affairs. (*See Lemon v. Kurtzman* (1971) 403 U.S. 602, 612-13.) Among religious matters in which government absolutely cannot become involved is the interpretation of religious doctrine, practices, and beliefs. Since *Watson v. Jones* (1871) 80 U.S. (13 Wall.) 679, the United States Supreme Court has repeatedly held that "'civil courts exercise no jurisdiction'" over "'a matter which concerns theological controversy.'" (*Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 713-14 (quoting *Watson v. Jones*).)

Thus, civil courts can never "engage in the forbidden process of interpreting and weighing church doctrine." (*Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church* (1969) 393 U.S. 440, 451.) The First Amendment bars courts from undertaking "an analysis or examination of ecclesiastical polity or doctrine in settling [civil] disputes." (*Jones v. Wolf* (1979) 443 U.S. 595, 605.)

Given the absolute bar on civil courts entangling themselves in the interpretation or examination of religious doctrines, beliefs, or church polity, the unconstitutionality of clergy malpractice claims is self-evident. In *Schmidt v. Bishop* (S.D.N.Y. 1991) 779 F. Supp. 321, the court analyzed a claim for clergy malpractice against a Presbyterian pastor for engaging in sexual relations during a counseling relationship. The court rejected the clergy malpractice claim because it would necessarily entail the examination of religious doctrine, thus fostering excessive entanglement with religion:

> It would be impossible for a court or jury to adjudicate a typical case of clergy malpractice, without first ascertaining whether the cleric, in this case a Presbyterian pastor, performed within the level of expertise expected of a similar professional (the hypothetical "reasonably prudent Presbyterian pastor"), following his calling, or practicing his profession within the community.... Any effort by this Court to instruct the trial jury as to the duty of care which a clergyman should exercise, would of necessity require the Court or jury to define and express the standard of care to be followed by other reasonable Presbyterian clergy of the community. This in turn would require the Court and the jury to consider the fundamental perspective and approach to counseling inherent in the beliefs and practices of that denomination. This is as unconstitutional as it is impossible. It fosters excessive entanglement with religion.

(*Id.* at pp. 327-28 (citations omitted).)

Numerous other courts have reached the same result on the same grounds. (*See, e.g., Dausch v. Rykse* (7th Cir. 1994) 52 F.3d 1425, 1432 (noting that courts have unanimously rejected clergy malpractice claims "based on the difficulty that would be encountered in evaluating such a claim without entangling the civil courts in extensive investigation and evaluation of religious tenets") (citation omitted); *Amato v. Greenquist* (Ill. Ct. App. 1997) 679 N.E.2d 446, 450 ("To permit claims for clergy malpractice would require courts to establish a standard of reasonable care for religious practitioners practicing their respective faiths, which necessarily involves the interpretation of [religious] doctrine.").)

Clergy malpractice claims violate the First Amendment because they infringe upon the constitutionally-protected autonomy of churches. For well over a century, the United States Supreme Court's "church autonomy doctrine" has protected the right of churches to govern their ecclesiastical affairs free from government interference. The Supreme Court's church autonomy doctrine is rooted in the decision in *Watson v. Jones, supra,* where the Supreme Court first outlined the broad principles of judicial abstention in disputes over fundamentally ecclesiastical matters:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

(*Id.* at pp. 728-29.)

In *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*, the Supreme Court held that the rule of judicial noninterference "applies with equal force to church disputes over church polity and church administration." (*Id.* at p. 710.) Again drawing from *Watson*, the Court reiterated that under the First Amendment civil courts cannot adjudicate "'a matter which concerns ... church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.'" (*Id.* at p. 714.)

Clergy malpractice claims like that raised here by Plaintiff directly inject civil courts into ecclesiastical affairs and thus are an unconstitutional infringement upon the right of church autonomy. Adjudication of such claims requires civil courts to interpret church doctrine, displacing the role of authoritative church interpreters. Also, in cases where deficient ecclesiastical counseling is alleged, clergy malpractice claims interfere with the right of a church to determine its own standards for ecclesiastical counseling, replacing the church's norms with either the court's interpretation of those norms or an outright secular rule.

Further, as a practical matter, it would be impossible to create a standard of care to be followed by clergy, given the extremely diverse religious traditions in our society, each with its own unique conceptions of the role of clergy in an ecclesiastical polity. If a state or court were permitted to second-guess religious policy, procedure, or action by requiring a church or its ministers to meet secular standards of "care," the state would effectively control the religious organization and its operations by threat of tort litigation and liability. Such judicial review of church decision making would improperly

> cause the State to intrude upon matters of church administration and government which have so many times before been proclaimed to be matters of a singular ecclesiastical concern. Control of strictly ecclesiastical matters could easily pass from the church to the State. The church would then be without the power to decide for itself, free from state interference, matters of church administration and government.

(*McClure v. Salvation Army* (5th Cir. 1972) 460 F.2d 553, 560.)

In sum, although churches do not have blanket immunity from civil liability, the First Amendment's church autonomy doctrine bars claims like clergy malpractice that, by their nature or as a practical matter, inject the state and the courts into important ecclesiastical concerns.

ARGUMENT II.

California Does Not Recognize Torts that are Premised in Clergy Malpractice

Plaintiff seeks to establish that the Church Defendants were negligent in their conduct toward Plaintiff because the Church Defendants did not meet some alleged standard of care for religious organizations in the way they investigated and then imposed ecclesiastical discipline on Kendrick, including their alleged failure to expressly warn others that Kendrick was a danger. It is axiomatic that a tort, whether intentional or negligent, involves the violation of a legal duty owed by the alleged wrongdoer to the person injured. (*Nally v. Grace Cmty. Church of the Valley* (1988) 47 Cal.3d 278, 292.) To support a finding of negligence, a plaintiff must show that the defendant had a duty of care, that the duty was breached, and that the breach was the proximate cause of the resulting injury. (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594.) However, "one is ordinarily not liable for the actions of another and is under *no duty to protect another from harm, in the absence of a special relationship* of

custody or control." (*Nally*, 47 Cal.3d at p. 293 (emphasis added).) Furthermore, absent a special relationship, one has "no duty to warn those who may be endangered by such conduct." (*Peterson v. San Francisco Cmty. College Dist.* (1984) 36 Cal.3d 799, 806.)

The California Supreme Court in *Nally* firmly rejected the extension of a duty of care to personal or religious counseling relationships because it would be amount to a claim for clergy malpractice. (*Nally*, 47 Cal.3d at 294.) The California Supreme Court reasoned "that access to the clergy for counseling should be free from state imposed counseling standards, and that 'the secular state is not equipped to ascertain the competence of counseling when performed by those affiliated with religious organizations.'" (*Id.* at p. 298 (citation omitted).) Thus, *Nally* is widely recognized for the proposition that a negligence cause of action cannot be brought against a clergy member or church for alleged improper counseling. Furthermore, none of the Church Defendants, policies, procedures, or actions related to their pastoral care can be evaluated to see if they met a certain standard of care.

In *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, the Court of Appeal reiterated that a clergy member cannot be held liable for "breach of a duty arising out of a special relationship" with a parishioner. The court stated:

> Even if a reasonable standard could be devised, which is questionable, it could not be uniformly applied without restricting the free exercise rights of religious organizations which could not comply without compromising the doctrines of their faith. The application of such a standard would also result in the establishment of judicially acceptable religions, because it would inevitably differentiate ecclesiastical counseling practices that are judicially acceptable from those that are not.

(*Id.* at p. 270.) Thus, the court concluded that the plaintiffs' cause of actions for negligence could not be sustained without running afoul of the clergy malpractice doctrine.

Therefore, a secular court is prohibited from evaluating alleged inadequacy of internal church policies and procedures. (*Richelle L.*, 106 Cal.App.4th at p. 270.) As the California Supreme Court noted in *Nally*, it is unconstitutional to impose a duty of care on pastoral counselors. (*Nally*, 47 Cal.3d at p. 299.) Thus, Plaintiff's attempt here to introduce evidence that the Church Defendants' policies, procedures, and pastoral actions did not meet a standard of care is nothing more than an attempt to assert an impermissible "clergy malpractice claim," and

such claims are barred by the U.S. Constitution. (*Dausch v. Rykse*, 52 F.3d 1425, 1429 (7th Cir. 1994).)

CONCLUSION

For the reasons stated above, the Church Defendants respectfully request that the Court enter a pretrial ruling proscribing any person from mentioning a clergy malpractice claim and any related standard of care that the Church Defendants should have followed after receiving the November 1993 allegations of Kendrick abusing a minor.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO ALLEGED CLERGY MALPRACTICE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801311

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 7

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLAINTIFF'S POLICE EXPERTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church

Defendants") move this Court in limine for an order excluding any and all testimony from Plaintiff's police experts because it falls outside of the scope of the triable issues in this case, in that 1) the Church Defendants are not part of the "law enforcement community"; 2) the law imposes no duty on Church Defendants to conduct a criminal investigation into the activity of either Jonathan Kendrick, or of any other suspected lawbreaker; and 3) the "duty" owed by the Church Defendants to the Plaintiff, if any, presents an issue of law that can only be addressed by the court, and not by the testimony of either a fact witness, or an expert witness.

STATEMENT OF FACTS

In the Declaration supporting "Plaintiff's Disclosure of Expert Witness Information," dated March 26, 2012, the Plaintiff disclosed that Carl Lewis would provide expert testimony on the following subjects: "the law enforcement community, and child abuse professional body of knowledge on the identification, detection, and prevention of childhood sexual abuse as of the time periods at issue in this case; the adequacy of the investigation of Jonathan Kendrick by defendants, and its cause and effect relationship to Plaintiff's molestation; the conduct of Plaintiff; and the identifiable pattern and practice of Kendrick's pedophile conduct." Plaintiff also disclosed Sergeant Jeffrey Baldwin and Officer J.W. Davila as "non-retained experts." The Church Defendants anticipate Plaintiff intends to solicit testimony from Sgt. Baldwin and Officer Davila consistent with Mr. Lewis' expected testimony described in the disclosure.

Plaintiff alleges in her Complaint and deposition that she was sexually molested as a child between the years 1994 to 1997 by Defendant Jonathan Kendrick (hereinafter "Kendrick"), a member of the North Fremont Congregation at that time. Plaintiff's claims against the Church Defendants sound in negligence and arise from allegations that her abuse resulted from her being hugged by Kendrick and forced to sit on Kendrick's lap during meetings at the house of worship for North Fremont Congregation (i.e., the Kingdom Hall) with her parents present. Plaintiff also contends that her parents allowed Kendrick to take her to his home after Sunday meetings at the Kingdom Hall several times a month. Once at his home, Kendrick allegedly abused Plaintiff by undressing her, touching her genitals, penetrating her vagina with a pen, licking her, making her touch his genitals, as well as having oral sex with her. Plaintiff

further alleged that Kendrick then delivered her back to her parents at the Kingdom Hall or at her parents' home. She alleges that the North Fremont Congregation elders saw her being taken away from the Kingdom Hall by Kendrick.

In November 1993, Kendrick made a private penitential confession to North Fremont Congregation elders, claiming that he had "inadvertently touched" the breast of his 15-year-old stepdaughter, Andrea, over her clothing while she slept on a couch in the living room of the Kendrick home. As a result of the private confession *about his stepdaughter*, Church elders removed Kendrick from his non-supervisory[1] position with the North Fremont Congregation and a public announcement was made to the congregation that he was no longer serving in his former position. Kendrick never again held any position in any congregation of Jehovah's Witnesses.

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action for negligence against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[2] (Amended Complaint ¶¶ 2, 4.)

Plaintiff, who was never baptized in the Jehovah's Witnesses faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of worship used by Jehovah's Witnesses. (Ex. A, Plaintiff Deposition, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control

[1] Kendrick held the position of "ministerial servant."

[2] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint ¶ 7.)

The Church Defendants ask the court to rule on this evidentiary issue to assist the parties in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and prejudicial information were presented at trial, and to promote judicial economy. California Rules of Court, Rule 3.1112 (f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT I.

Carl Lewis is Not a Qualified Expert in this Case

California courts have uniformly limited Carl Lewis' testimony to a general discussion of Child Sexual Abuse Accommodation Syndrome without any reference to the facts of the case or the results of his investigation of the particular victim of abuse. As noted in *People v. Gruber* (Cal. Ct. App. May 22, 2008) No. H031005, 2008 WL 2139546, at 14, the trial court expressly ruled as follows concerning Lewis testimony:

> "[T]aking into consideration the totality of the circumstances and the state of the evidence, the Court will permit Mr. Lewis to testify in the People's case in chief with respect to the Child Sexual Abuse Accommodation Syndrome [CSAAS]. [¶] He is limited to discussion in general terms and not to be applied to the specific facts of this case." The court denied defendant's request for a hearing under section 402. Before Lewis testified regarding CSAAS, the trial court instructed the jury pursuant to CALJIC No. 10.64 (see infra).

The California Court of Appeals in *People v. Bowker* (1988) 203 Cal.App.3d 385, provided guidelines for the admission of CSAAS evidence at trial to such cases as where the defendants attack the child's credibility by suggesting that the child's conduct after the incident, such as a delay in reporting, is inconsistent with the child's testimony claiming molestation. CSAAS evidence may not be used to determine whether a child's molestation claim is true. (*Bowker*, 203 Cal.App.3d at p. 393; *see also Gruber,* at p. *15, quoting *People v. Gilbert* (1992)

5 Cal.App.4th 1372, 1383, "Because the line between impermissible use of expert testimony to prove the child was abused, and permissible use of such testimony to 'explain the emotional antecedents of abused children's seemingly self-impeaching behavior,' . . . is by no means a bright one, the better practice is to limit the experts testimony to observations concerning the behavior of abused children as a class and to avoid testimony which recites either the facts of the case at trial or obviously similar facts.") The *Bowker* court was explicit that "the jury must be instructed simply and directly that the expert's [Carl Lewis] testimony is not intended and should not be used to determine whether the victim's molestation claim is true." (*Bowker,* 203 Cal.App.3d at p. 394.) The Church Defendants also expressly cite the similar testimony limits actually placed on Carl Lewis in each of the cases cited in this motion.

The Church Defendant's expect to bring out the fact that Plaintiff never reported this alleged abuse until in or about 2009 or 2010. This is the only area in which Carl Lewis' testimony might be relevant. However, on that issue, Mr. Lewis' testimony will be duplicative of the testimony of Plaintiff's expert Dr. Anna Salter and thus should not be allowed. (*Douillard v. Woodd* (1942) 20 Cal.2d 665, 669 (the court is not bound to allow cumulative testimony on the same point).)

ARGUMENT II.

Carl Lewis, Sgt. Baldwin, and Officer Davila Have No Expertise in the Area of Comparative Religions or Church Organization

Carl Lewis, Sgt. Baldwin, and Officer Davila are not qualified to testify *in this case.* Evidence Code section 720(a) provides in part that "[a] person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." The competency of an expert is relative to *the specific topic and fields of knowledge* about which the person is asked to make a statement. (*People v. Watson* (2008) 43 Cal.4th 652, 692.)

In some cases, an expert on the policy, organization, and procedures of a religious organization is both relevant and helpful to the trier of fact. (*See Stevens v. Roman Catholic Bishop of Fresno* (1975) 49 Cal.App.3d 877, 882.) However, using the analysis in *Stevens* as a

standard, Mr. Lewis, Sgt. Baldwin, and Officer Davila have absolutely no expertise or experience in the areas of proposed testimony in this particular case. Contrary to the scope of expert evidence identified in "Plaintiff's Disclosure of Expert Witness Information":

1. The Church Defendants are not law enforcement entities and their elders are not law enforcement personnel, such that they are not a part of the "law enforcement community" nor do they know police investigation standards or techniques. Mr. Lewis, Sgt. Baldwin, and Officer Davila have no knowledge of comparative religious organizations and their respective religious policies or procedures such that they would be qualified to testify about a religious organization's duty to employ police investigatory standards and techniques, especially during a period of time when clergy were not legally obligated to report suspected child abuse.

2. Mr. Lewis, Sgt. Baldwin, and Officer Davila have no expertise with regard to the "adequacy" of any religious entity to investigate the criminal behavior of Jonathan Kendrick or investigate the criminal activity of any other person who might attend church services.

3. Mr. Lewis, Sgt. Baldwin, and Officer Davila have no expertise, or experience, in the area of organizational negligence, particularly where the sexual abuse of a minor is related to the supposedly failed policies and procedures of a religious organization, as compared to a law enforcement organization.

ARGUMENT III.

The Police Experts' Testimony is Not Relevant to the Material Issues in this Case

It is important to note that the agents and servants of the Church Defendants *are not* accused in this case of actually abusing the Plaintiff. The Church Defendants are accused of organizational negligence, or of contributing to the occurrence of Plaintiff's claimed injury through allegedly failed organizational religious policies and protocols. The alleged perpetrator of the abuse of Plaintiff is someone who attended worship services at the North Fremont Congregation's house of worship but had no position of authority or responsibility within the congregation or Watchtower.

California Evidence Code section 350 provides that "[n]o evidence is admissible except relevant evidence." Relevance means that the evidence has a "tendency in reason to prove or

disprove any disputed fact that is of consequence to the determination of the action," including "the credibility of a witness or hearsay declarant." (California Evidence Code section 210.) Two elements are involved: 1) the evidence must relate to some matter at issue in the case; and 2) it must have probative worth (i.e., some logical tendency to prove the matter at issue).

For the most part, the evidence in chief to be offered by Carl Lewis, Sgt. Baldwin, and/or Officer Davila does not relate to a matter properly at issue in the case, i.e., some issue raised in the pleadings, pretrial orders, or applicable substantive law. For example, with the exception to testimony regarding Plaintiff's delay in reporting the alleged abuse, the proposed testimony of Carl Lewis has no logical tendency to prove the disputed matter of negligence, i.e., to create a reasonable inference as to the existence or nonexistence of the fact at issue. (*See Ruiz v. Minnesota Mining & Mfg. Co.* (1971) 15 Cal.App.3d 462, 467-468.) Mr. Lewis, Sgt, Baldwin, and Officer Davila have no knowledge of the organization, practices, and procedures of the Jehovah's Witnesses faith, or of apparently any other religion. The Church Defendants do not believe these experts have ever testified about the organizational activity of any organization, much less a religious organization—but for the activity of the police in gathering criminal evidence for the prosecution of child abusers. They have no sound or reliable opinions to offer to assist the Court or the jury to determine any relevant issues concerning the religious policies, procedures, or activity of the Church Defendants.

ARGUMENT IV.

A Duty of Care is a Question of Law to be Determined by the Court Alone

In order to prove facts sufficient to support any sort of finding of negligence, Plaintiff must show that the Church Defendants had a duty to use due care, that the agents of the Church Defendants breached that duty, and that the breach was the proximate or legal cause of the resulting injury to Plaintiff. (*Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 265.)

For Plaintiff's claims against these Church Defendants to be legitimate they must arise from the existence of a viable tort. They must arise from the violation of a legal duty imposed by statute, contract or otherwise, owed by the Church Defendants to this particular Plaintiff. (*Id.*)

The existence of a duty of care owed by these Church Defendants to Plaintiff is a question of law to be determined by the Court alone. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 572, fn. 6; *Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 822; *Raymond v. Paradise Unified School Dist.* (1963) 218 Cal.App.2d 1, 8.) This is because "legal duties are . . . merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done." (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434.) 'Duty is simply a shorthand expression for the sum total of policy considerations favoring a conclusion that the plaintiff is entitled to legal protection.' (*Dillon v. Legg* (1968) 68 Cal.2d 728, 734.)

Carl Lewis, Sgt. Baldwin, and Officer Davila cannot supplant the role of the Court by resolving questions of law through expert testimony on the "duty" of these Church Defendants. "Opinion testimony is inadmissible and irrelevant to adjudging questions of law." (*Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 266, citing *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 884; Evidence Code section 801, subd. (b).) The same rule of evidence would exclude these experts' opinions on "the adequacy of the investigation of Jonathan Kendrick by defendants, and cause and effect relationship to Plaintiff's molestation."

In *Williams v. Coombs* (1986) 179 Cal.App.3d 626, 638, disapproved on another point in *Sheldon Appel Co. v. Albert & Oliker*, *supra*, the court explained: "'[I]t is thoroughly established that experts may not give opinions on matters which are essentially within the province of the court to decide.' Consequently, the 'opinion of a witness on a question of law is obviously incompetent.'"

Thus, the fact-finding jury in this case, after being given instructions on the law by this Court, must determine whether the Church Defendants had a duty to prevent Plaintiff's alleged abuse and "whether a 'special relationship' was formed between the parties without relying on the expert testimony presented at trial." (*Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 266.)

CONCLUSION

Carl Lewis, Sgt. Baldwin, and Officer Davila's testimony is not likely to assist the Court or the trier of fact. Their opinions about the alleged "duty" of the Church Defendants to perform an "adequate investigation of Kendrick" and to reform their religious policies and practices are not relevant. Mr. Lewis' limited expertise in CSAAS matters pertain to issues that are not before this court. This is not a criminal investigation and, contrary to the position of Lewis, Sgt. Baldwin, or Officer Davila, the Church Defendants *are not* part of the law enforcement community. The Church Defendants have no duty to conduct "adequate" *criminal* investigations. Mr. Lewis, Sgt. Baldwin, and Officer Davila's testimony must be excluded because, in addition to being a waste of the court's time, the testimony is irrelevant, unreliable, prejudicial, likely to confuse the issues and mislead the jury, and not reasonably calculated to be of help to the finder of fact.

DATED: May ___, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLAINTIFF'S POLICE EXPERTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801303

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 8

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF WILLIAM H. BOWEN EXPECTED TO BE OFFERED AT TRIAL AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California

(hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") move the court for a pretrial order to exclude the testimony of William H. Bowen, whom Plaintiff intends to offer at trial as an expert witness.

This motion is based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument permitted by the Court.

STATEMENT OF FACTS

Plaintiff has disclosed William H. Bowen as an expert witness who purports to be qualified to render an opinion as follows:

> [William H. Bowen] will testify in general substance as follows: as to the policies, procedures, and practices of defendants generally; the application of those policies on the subject of childhood sexual abuse within the Jehovah's Witnesses; the pattern and practices of Jehovah's Witnesses institutional management of disregarding sexual abuse of children and failing to protect minors within its membership and activities from sexual abuse; the business and financial reasons behind the institutional defendants' policies on sexual abuse of children; the knowledge and data available to Jehovah's Witnesses management on the consequences of increased sexual abuse of children resulting from its administrative policies; and as to the administrative organization and structure of Jehovah's Witnesses as to its policies and practices on secular and administrative issues.

(Declaration Re Expert Witnesses signed by Richard J. Simons, Esq., on March 26, 2012.)

By his admission in prior deposition testimony,[1] Mr. Bowen, a disgruntled former member of Jehovah's Witnesses, earns his living as a "consultant" to attorneys who are suing any corporate entity used by Jehovah's Witnesses or any individual who is one of Jehovah's Witnesses. Although he is a self-described "expert in . . . comparative religion" (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 132:4-18), Plaintiff has offered him as an expert to explain, among other things, the policies and practices of Jehovah's Witnesses.

As the discussion below will show, Mr. Bowen's testimony is not relevant and also is a *constitutionally impermissible* attack on the religious policies of Jehovah's Witnesses.

[1] The references to Mr. Bowen deposition testimony are to his deposition in *Dorman, et al., v. Doe, et al.,* San Diego County Superior Court Case No. 37-2010-00092450-CU-PO-CTL, taken on February 23, 2012. True and correct excerpts of Mr. Bowen's deposition are attached to and incorporated into the Declaration of Mario Moreno (hereinafter "Moreno Declaration") (the Moreno Declaration is attached to this memorandum as Ex. B) filed in support of this motion (hereinafter "Moreno Declaration, Ex. A, Bowen Deposition").

Mr. Bowen fails to qualify as an expert in this or any field of study. Mr. Bowen's testimony is not based on reliable methods or evidence. The use of his testimony would so taint the judicial process that the Church Defendants cannot have, and will not have, a fair trial if his testimony is admitted, even if it is later stricken. Notwithstanding the constitutional prohibition against Mr. Bowen's testimony, Evidence Code Section 789 additionally bars Mr. Bowen's testimony and requires its exclusion because he intends to use religious testimony to attack the credibility of witnesses at trial who are Jehovah's Witnesses.

PROCEDURAL BACKGROUND

Plaintiff's First Amended Complaint for Damages for Childhood Sexual Abuse (hereinafter "Amended Complaint") contains causes of action against the Church Defendants (one cause of action against both Watchtower and the North Fremont Congregation and one against Watchtower only).[2] (Amended Complaint at ¶¶ 2, 4.)

Plaintiff, who was never baptized in the Jehovah's Witnesses faith, contends that she was molested by a "fellow member, volunteer, and leader of the religious facility and congregation in Fremont." (Amended Complaint at ¶ 6.) She testified in deposition that the abuse, which began when she was about 9 years old, first occurred "in the main auditorium" inside a house of worship used by Jehovah's Witnesses. (Ex. A, Plaintiff Deposition, pp. 25:18-26:6.)

Plaintiff seeks damages against the Church Defendants on the theory that the Church Defendants were negligent because they (1) failed to warn or protect Plaintiff from criminal acts allegedly committed by Kendrick, and (2) failed to reasonably supervise, manage, and control Kendrick "in his membership and participation in the Fremont religious facility." (Amended Complaint at ¶ 7.)

The Church Defendants ask the court to rule on this evidentiary issue to assist the parties in trial preparation, to avoid unfair and undue prejudice that would result if irrelevant and

[2] Plaintiff actually originally sued two corporations, Watchtower Bible and Tract Society of New York, Inc., and Watch Tower Bible and Tract Society of Pennsylvania, as well as three other entities described as the Governing Body of Jehovah's Witnesses, Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses.

prejudicial information were presented at trial, to avoid confusion of the issues, to avoid misleading the jury, and to promote judicial economy. California Rules of Court, Rule 3.1112(f) permits the filing of motions *in limine* to obtain pretrial rulings on the admissibility of evidence. Rule 3.1112 leaves the timing of motion practice to the discretion of the trial judge. Alameda County Superior Court Local Rule 3.35(e) requires the parties to personally serve and file all motions *in limine* one court day before the pretrial conference. Therefore, the Church Defendants' motions *in limine* are timely.

MEMORANDUM OF POINTS AND AUTHORITIES

A party may attempt to preclude or limit the introduction of evidence by presenting a motion *in limine* to the trial court in chambers. (Evidence Code sections 350, 352; *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1.) The purpose of a motion *in limine* is "to avoid the obviously futile attempt to 'unring the bell' in the event a motion to strike is granted in the proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.) The court is entitled to hear and determine the question of the admissibility of evidence outside of the presence and hearing of the jury. (Evidence Code section 402.)

Evidence Code section 350 states that "(n)o evidence is admissible except relevant evidence." Evidence Code section 210 defines relevant evidence as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The Comment provides that relevant evidence "includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred." To be relevant, therefore, evidence must have some probative value—it must have a tendency in reason to prove or disprove a fact, and the fact proved or disproved must be in dispute and of consequence to the determination of the action. (*See, People v. Kelly* (1992) 1 Cal.4th 495, 523 (only relevant evidence is admissible); *People v. Haston* (1968) 69 Cal.2d 233, 245 (in every case the possibility of severing relevant from irrelevant portions of evidence should be considered to protect against undue prejudice).) It involves a determination of whether the evidence "logically, naturally and by reasonable inference tends to

establish some [disputed] fact." (*People v. Simms* (1970) 10 Cal.App.3d 299, 311.) An inference may not be drawn from facts that are too remote in time or too speculative. (*Id.* at p. 311.)

Moreover, Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Prejudicial evidence "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." (*See People v. Harlan* (1990) 222 Cal.App.3d 439, 445, *quoting People v. Wright* (1985) 39 Cal.3d 576, 585.) The court must strike a balance between the probative value of the evidence and the danger of prejudice. To strike that balance, the court considers "[1] the relationship between the evidence and the relevant inferences to be drawn from it, [2] whether the evidence is relevant to the main or only a collateral issue, and [3] the necessity of the evidence to the proponent's case as well as the reasons recited in section 352 for exclusion." (*Harlan* at p. 445.)

There must be a need for an expert's opinion in a case. The expert opinion itself must be more than speculation and conjecture; it must be accompanied by a reasoned explanation of the facts and their connection to the conclusion. Additionally, the opinions must be "sufficiently beyond the realm of common experience [so] that the expert's opinion will assist the trier of fact." (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1116.) In this case, no aspect of Mr. Bowen's expected testimony comes anywhere near these threshold requirements.

ARGUMENT I.

Mr. Bowen's Testimony is Not Relevant and Does Not Relate to Any Matter at Issue in this Case.

California Evidence Code section 350 provides that "[n]o evidence is admissible except relevant evidence." Relevance means that the evidence has a "tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action," including "the credibility of a witness or hearsay declarant." (Evidence Code section 210.) Two elements

are involved: 1) the evidence must relate to some matter at issue in the case; and 2) it must have probative worth (i.e., some logical tendency to prove the matter at issue).

The evidence must relate to a matter properly at issue in the case, i.e., some issue raised in the pleadings, pretrial orders, or applicable substantive law. Although Plaintiff has pled that the Church Defendants are liable for damages resulting from the sexual abuse of a minor, a serious matter does not become relevant simply because it appears in the pleadings. (*See Decter v. Stevenson Properties, Inc.* (1952) 39 Cal.2d 407, 420 (where the court stated that an "[i]rrelevant matter, though pleaded, is still irrelevant.").) Mr. Bowen claims to be an expert on the "policies and practices of Jehova[h]'s Witnesses." (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 27:1-3.) In fact, Plaintiff intends to offer Mr. Bowen's testimony specifically on the internal religious policies, procedures, and practices of the Jehovah's Witnesses faith. (Declaration Re Expert Witnesses signed by Richard J. Simons, Esq., on March 26, 2012, ¶1.B.) Regardless of the way Plaintiff and her attorneys attempt to portray Mr. Bowen's testimony, the fact of the matter is simple: Mr. Bowen necessarily intends to testify about and offer opinions concerning the religious policies, practices, and internal government of the Jehovah's Witnesses faith.

The Church Defendants are just that—religious entities related to the active religious practice of the Jehovah's Witnesses faith. These are not matters of a secular nature that need expert testimony from Mr. Bowen. Even if there were such a need, Mr. Bowen would fail to qualify to render such an opinion.

His testimony cannot assist the jury to determine *relevant* facts, such as whether the Church Defendants are liable in that they "negligently failed to warn plaintiff JANE DOE, her family, and other members of the congregation, of the propensity and risk that defendant KENDRICK would sexually molest or abuse minor girls" or, whether the Church Defendants are liable in that they "were negligent in failing to exercise reasonable care to protect plaintiff JANE DOE, and other minors, who were members of, or participants in, activities at the religious facility in Fremont, from the risk of sexual abuse or molestation by perpetrators, including defendant JONATHAN KENDRICK." (Amended Complaint at ¶7.) The Church

Defendants anticipate that Mr. Bowen will be offered as a kind of glossary, or someone to define terms used in the congregations of Jehovah's Witnesses, such as "publisher" or "pioneer." (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 96:2-97:4.) However, anyone called to testify on behalf of the Church Defendants are all publishers and can easily define such terms as the need arises.

ARGUMENT II.

Mr. Bowen's Testimony is of No Probative Value to the Trier of Fact

The second part of the "relevance" test is that the evidence must have a logical tendency to prove the disputed matter, i.e., to create a reasonable inference as to the existence or nonexistence of the fact at issue. (*See Ruiz v. Minnesota Mining & Mfg. Co.* (1971) 15 Cal.App.3d 462, 467-468.)

Mr. Bowen's knowledge of the organization, practices, and procedures of the Jehovah's Witnesses faith is limited. Mr. Bowen has testified that Jehovah's Witnesses are a hierarchical religious organization. He testified that he has served at the branch office as a volunteer where he sewed Bibles from 1977 to 1979 (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, pp. 25:12-26:7) and that he served as a congregation elder from 1985 until 1992 when he was removed as an elder by the congregation. He also served as an elder a second time from June 1994 until he resigned in December 2000. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, pp. 43:19-45:8.) Mr. Bowen admitted that he served as an elder, just as 80,000 other men in the United States do. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 50:20-22.) Mr. Bowen admitted that the basis of his expertise is undocumented conversations with active and former Jehovah's Witnesses. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 64:12-13.) Mr. Bowen has no more expertise in the religious practices and policies of the worldwide organization of the Jehovah's Witnesses faith than any other elder in any of the more than 110,000 congregations worldwide. Mr. Bowen never had any dealings with the members of the Jehovah's Witnesses faith who make religious policy and protocol decisions. So, even if this Court were, *arguendo*, to find that any of those issues are relevant to this case, Mr. Bowen is not qualified as an expert to opine on these matters and

further, he has no sound or reliable opinions to offer to assist the Court or the jury to determine any relevant issues before the Court.

ARGUMENT III.

Mr. Bowen's Testimony and Involvement in this Case Constitute an Impermissible Attack on Watchtower's First Amendment Rights to Direct the Governance of its Religious Beliefs, Practices, and Organization

Watchtower is one of several corporations used by the Governing Body of Jehovah's Witnesses to manage legal matters associated with the work of preaching and teaching the good news of Jehovah God's established Kingdom. The United States Supreme Court has ruled that the legal rights of such a corporation are protected by the Equal Protection Clause of the Fourteenth Amendment. (*Santa Clara County v. Southern Pacific Railroad* (1886) 118 U.S. 394.)

The Church Defendants' position is analogous to the position of the National Association for the Advancement of Colored People (NAACP) and the African American community, for example. Addressing this relationship, the United States Supreme Court has recognized that a corporation can represent the voice of many and that the corporation itself had rights protected by the First Amendment. (*See NAACP v. Button* (1963) 371 U.S. 415, 428-429.) Similarly, the legal rights of Jehovah's Witnesses and their religious faith are infringed whenever Watchtower's rights are violated.

The Supreme Court of California has repeatedly held that ecclesiastical and theological controversies, including "matters of faith, discipline, and the general polity and tenets of the church," are issues beyond the jurisdiction of secular courts. (*Horsman v. Allen* (1900) 129 Cal. 131, 138-139; *Comm. of Missions v. Pac. Synod* (1909) 157 Cal. 105, 128; *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 541-542; *New v. Kroeger* (2008) 167 Cal.App.4th 800, 816-817.) California courts have consistently ruled that internal church procedures are wholly ecclesiastical in nature and that the First Amendment bars judicial review of such matters by secular courts. In fact, the courts have held that "[t]he authorities are next to unanimous in concluding that civil courts may not involve themselves in reviewing the

termination of clergy for theological or disciplinary reasons." (*Higgins v. Maher* (1989) 210 Cal.App.3d 1168, 1173.)

Watchtower's representative, Allen Shuster, is a long-time member of the Jehovah's Witnesses headquarters' staff who is competent to testify about Watchtower's religious policies and practices. The jury may not compare and evaluate Mr. Shuster's testimony with that of Mr. Bowen's to make a determination on what constitutes, or should constitute, Watchtower's religious policies, practices, and internal government. This is exactly the situation the First Amendment and its California analog are designed to avoid. The Governing Body of Jehovah's Witnesses, not the jury or this Court, must have the final word in defining its religious policies, procedures, practices and internal government for handling wrongdoing in the congregations of Jehovah's Witnesses. On this matter, the United States Supreme Court has specifically held: "*In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.*" (*Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 724-25 (emphasis added); *see also Horsman* (1900), *supra*, 129 Cal. at p. 138-139; *Committee of Missions* (1909) *supra*, 157 Cal. at p. 128; *Catholic Charities of Sacramento* (2004) *supra*, 32 Cal.4th at pp. 541-542; *New* (2008) *supra*, 167 Cal.App.4th at pp. 816-817.)

Therefore, Mr. Bowen's criticism of the Governing Body's religious policies concerning the disciplining of alleged child molesters (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, pp. 133:25-137:25) is nothing more than a back door attempt to bring a claim of clergy malpractice, which is barred by the U.S. and California Constitutions. (*Nally v. Grace Cmty. Church* (1988) 47 Cal.3d 278, 300; *Richelle L.*, *supra*, 106 Cal.App.4th at p. 269 ("There is no such thing in the law as clerical malpractice.").) Mr. Bowen is prohibited, therefore, from interpreting religious policies, practices, and internal government of the Church Defendants.

As the proceedings progress, Mr. Bowen's mixed motive for offering testimony in this case becomes more obvious; he is using the courts as a forum to vindicate his own position with (or against) Watchtower and to advocate his theory that Watchtower's and the Jehovah's

Witnesses religious policies are heretical. As he explained in deposition, he is on a crusade to force the Governing Body of Jehovah's Witnesses to change its religious policies on handling allegations of child abuse. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, pp. 134:3-25, 138:19-25.)

As Mr. Bowen explained in his manifesto "*Is There A Problem?*", he wants to compel the Governing Body of Jehovah's Witnesses to reject its Bible-based system of internal congregation judicial proceedings, in which elders provide Bible-based counseling and Bible-based discipline, and instead adopt a system requiring all elders to report any allegation of sexual abuse, even though this standard is significantly more liberal than the current laws concerning mandatory reporting. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 138:6-15.) Mr. Bowen should be excluded as an expert witness in this matter.

ARGUMENT IV.

Mr. Bowen is Not Qualified as an Expert in this Matter

Evidence Code section 720(a) provides in part that "[a] person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." The competency of an expert is relative to the topic and fields of knowledge about which the person is asked to make a statement. (*People v. Watson* (2008) 43 Cal.4th 652, 692.) In some cases, an expert on the policy, organization, and procedures of a religious organization may be both relevant and helpful to the trier of fact. (*See Stevens v. Roman Catholic Bishop of Fresno* (1975) 49 Cal.App.3d 877, 882.)

However, using the analysis in *Stevens* as a standard, by his own admissions, Mr. Bowen lacks each and every qualification the Court should expect from an expert on comparative religion or on the practices and procedures of a hierarchical religious organization. For example, Mr. Bowen testified that he had:

- No degree or certificate in comparative religion. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 39:13-15.)

- No degree in psychology. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 131:1-2.)
- No college education. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 38:13, 14.)
- No post baccalaureate degree. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 38:15-17.)
- Never taught at college or university. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 40:5-18.)
- Never published a peer-reviewed work of research. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 30:1.)
- No membership in any academically recognized societies or organizations. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 39:21-24.)
- No licenses granted by any government or professional organization, except the state Department of Motor Vehicles. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 39:18-21.)
- Been disciplined and removed as an elder in the Jehovah's Witnesses faith on two occasions and he has been disfellowshipped (expelled) from and is no longer active in the Jehovah's Witnesses faith, his target religion of study, since August 2002. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 55:3-9.)

According to Mr. Bowen's Declaration, he has specialized knowledge because he "lived the lifestyle of a child of Jehovah's Witness parents from age one to 43 (1957-2001)." (Declaration Re Expert Witnesses signed by Richard J. Simons, Esq., on March 26, 2012, Bowen Vita attached as Exhibit 1, ¶2.) He has held positions of privilege including serving as a pioneer, ministerial servant, and elder.

While he did enjoy some privileges, Mr. Bowen admitted that he never held any responsibility or position that was even remotely connected with religious policy making for the congregations or the worldwide organization, and he never served in any supervisory capacity at the branch office of the Jehovah's Witnesses faith. (Ex. B, Moreno Declaration, Ex. A thereto,

Bowen Deposition, pp. 47:24-50:5.) In spite of admitting to having no knowledge of California's mandatory reporting statutes for clergy (Ex. B, Moreno Declaration, Ex. A thereto A, Bowen Deposition, pp. 94:9-12, 95:8-11), and having no training on investigating allegations of child sex abuse (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, pp. 122:23-123:1), Mr. Bowen testified that he was better qualified than any member of the Governing Body of Jehovah's Witnesses (the highest ecclesiastical authority of the Jehovah's Witnesses religion), any member of the Branch Committee for Jehovah's Witnesses in the United States, any elder in the U.S. Service Department, all of the elders serving as traveling overseers of the Jehovah's Witnesses faith, and all 80,000 elders now serving in congregations in the United States, to testify about how the Jehovah's Witnesses faith handles allegations of child sex abuse. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 54:1-9.)

For these reasons and other issues raised in following sections, Mr. Bowen is not qualified to give expert testimony and should be excluded from this matter.

ARGUMENT V.

Mr. Bowen's Testimony is Inadmissible because it is Based in Whole or in Part on the Unreliable Opinions or Statements of Other Persons, and His Conclusions are Unsound

"An expert opinion has no value if its basis is unsound." (*In re Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, 564.) The basis of Mr. Bowen's expert opinions and testimony are inadmissible because it is based in whole or in part on the unreliable opinions or statements of other persons and his conclusions are unsound. (Evidence Code section 801(b).) During depositions, Mr. Bowen has testified that his expertise and his opinions were based on undocumented conversations with unnamed Jehovah's Witnesses, the majority of whom Mr. Bowen estimated some 70 percent were *former* Jehovah's Witnesses. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, pp. 52:10-16, 64:12-13, 91:13-14.) At deposition and in his Declaration, he offered no other basis for his expertise and presented no evidence of any "specialized knowledge." Thus, the Court may reason that Mr. Bowen's opinions at trial will be wholly based "upon factors which are speculative, remote or conjectural, [and rightly conclude that Mr. Bowen's testimony] has no evidentiary value." (*In re Lockheed Litigation*

Cases (2004) 115 Cal.App.4th 558, 563, *citing Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135.)

"[W]hen an expert's opinion amounts to nothing more than an expression of his or her beliefs on how a case should be decided, it does not *aid* the jurors, it *supplants* them" and is inadmissible. (*Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1183 (italics in original).

Mr. Bowen has admitted that he has no degrees in psychology or any other academic discipline (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 131:1-2), and that he denies being an expert in "investigation of allegations of child sexual abuse" (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 57:12-14), and also denies being an expert "on the standards of care for the detection of child molesters." (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, pp. 57:24-58:6.) This is but a glimmer of the unqualified and unsupported opinions that Mr. Bowen renders in cases in which he is hired to testify as an alleged expert against Watchtower. As indicated, it is reasonable to conclude that at best, his opinions are based on assumptions and speculation and, at worst, he is testifying from his prejudice against the Jehovah's Witnesses faith. Expert opinions based on assumptions of fact that are without evidentiary support or that are based upon factors that are speculative or conjectural have no evidentiary value and do not assist the trier of fact. (*Lopez v. City of Los Angeles* (2011) 196 Cal.App.4th 675, 689.) Mr. Bowen's proposed testimony clearly meets these criteria, 'assumptions of fact without evidentiary value' that do "not assist the trier of fact." Therefore, Mr. Bowen's testimony should be excluded.

ARGUMENT VI.

Mr. Bowen's Testimony Would Create Substantial Danger of Undue Prejudice, of Confusing the Issues and of Misleading the Jury

It is generous to say that Mr. Bowen's testimony has minimal probative value. However, such value, if any, is far outweighed by the substantial risk of undue prejudice, the confusion of the issues, misleading of the jury, and the substantial waste of the Court's time.

Mr. Bowen is the founder of Silentlambs, Inc. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 30:21, 22.) Mr. Bowen's declaration explained: "Since 2001, I have been National Director of Silentlambs, Inc., a child abuse awareness organization that assists Jehovah's Witness victims of abuse." (Declaration Re Expert Witnesses signed by Richard J. Simons, Esq., on March 26, 2012, Bowen Vita attached as Exhibit 1, ¶1.) In furtherance of these goals, Mr. Bowen has given up all other means of income and now pursues a full-time occupation as a consultant in civil cases against legal entities or individuals who are associated with the Jehovah's Witnesses faith. (Ex. B, Moreno Declaration, Ex. A thereto, Bowen Deposition, p. 41:2-16.)

In evaluating undue prejudice, the court may consider whether the evidence poses an intolerable "risk to the fairness of the proceedings or the reliability of the outcome." (*People v. Waidla* (2000) 22 Cal.4th 690, 724.) Mr. Bowen's self-published essay on child sexual abuse describes Watchtower as a pedophile paradise and explains that his work is to require Watchtower to rethink this issue, to change its policy and realize that protecting children is the highest priority in an Organization that wants to lead people to worship God. Even if Mr. Bowen's testimony was limited to the religious policies and procedures of Jehovah's Witnesses, his presence and his effort to interject his personal opinions about the correctness or the proper interpretation of the Jehovah's Witnesses' internal management of their congregations and the handling of wrongdoing by judicial committees of elders would inevitably taint this proceeding and the integrity of the judicial process.

CONCLUSION

For each of the independent reasons discussed above, Mr. Bowen's purported expert testimony will not assist a trier of fact. His complaints about the need for Watchtower to reform the policies and practices of the Jehovah's Witnesses religious organization are not relevant and not reliable testimony in determining any legitimate issue in this case. In reality, his testimony is being offered to contradict the testimony of active Jehovah's Witnesses concerning the definition of the religious beliefs and practices of the Jehovah's Witnesses faith. His testimony is barred by the United States and California constitutions and is thus constitutionally

impermissible. It is also unreliable, biased, will confuse the issues and mislead the jury, and is extremely and unfairly prejudicial. Therefore, it is respectfully submitted that Mr. Bowen's purported expert testimony must be excluded.

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF WILLIAM H. BOWEN EXPECTED TO BE OFFERED AT TRIAL AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801295

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 16 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

MOTION IN LIMINE No. 9

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY REGARDING THE CREDIBILITY OF OTHER WITNESSES

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

TO PLAINTIFF JANE DOE and HER ATTORNEYS OF RECORD:

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church

Defendants") move this Court *in limine* for an order excluding any and all witness testimony regarding the credibility of another witness or party. This motion is based upon the ground that such testimony is not permissible pursuant to Evidence Code sections 786, 787, and 790, and merely introduces collateral material that is unnecessary to a proper determination of any legitimate issue in the action.

The Church Defendants anticipate that Plaintiff Jane Doe ("Plaintiff") intends to solicit from witnesses, including experts, testimony supporting or vouching for the credibility of Plaintiff. By way of example, among others, the Church Defendants anticipate Plaintiff will submit or elicit expert testimony that Plaintiff's "delayed report" of her alleged abuse by Defendant Kendrick is credible or believable. Evidence Code section 786 expressly states that such character evidence "is inadmissible to . . . support the credibility of a witness." Similarly, Evidence Code section 787 states that evidence of specific instances of conduct relevant only to prove a character trait "is inadmissible to . . . support the credibility of a witness." Evidence of good character is only admissible if an opposing party first "opened the door" by attacking the witness's credibility. (Evidence Code section 790; *People v. Sweeney* (1960) 55 Cal.2d 27, 38-39 (trial court properly omitted evidence of party's credibility where the opposing party had not offered any evidence challenging his credibility).) Any such evidence should also be excluded under Evidence Code section 352 because it is more prejudicial than probative, would confuse the issues, and mislead the jury.

Plaintiff, her witnesses, and her experts must all abide by the Evidence Code sections cited above and refrain from offering any testimony that in any way supports Plaintiff's credibility as a witness. To delve into a witness's credibility will create a side issue that unnecessarily distracts and misleads the jury, confuses the issues, and does not help in resolving the issues in the action. Therefore, the Church Defendants request an order excluding any and all witness testimony regarding the credibility of another witness or party. This order is necessary to prevent any such testimony from being solicited and to prevent a situation where the Court and parties will be unable to "unring the bell."

DATED: May 15, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 15, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 16, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY REGARDING THE CREDIBILITY OF OTHER WITNESSES** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801244

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 1 IN RE JONATHAN KENDRICK

Trial Date: 5/21/2012

INTRODUCTION

Defendants' Motion in Limine No. 1 seeks to exclude conduct of Jonathan Kendrick after 1997; his felony conviction for sexual abuse of a child in 2004; and any sexual abuse of plaintiff by Kendrick other than on property owned by the Church defendants.

All of the evidence is relevant and admissible, and the Motion should be denied in its entirety.

I. KENDRICK'S PRIOR AND SUBSEQUENT SEXUAL CONDUCT WITH CHILDREN AND WITHIN JEHOVAH'S WITNESSES IS ADMISSIBLE EVIDENCE.

Defendant Jonathan Kendrick committed his sexual abuse of Plaintiff Jane Doe from 1994 to 1996 or 1997. In 1993, Defendant Kendrick molested his stepdaughter, for which he was convicted of sexual battery under Penal Code section 243.4(d), a misdemeanor. Afterwards, he carried on a sexual affair with Claudia Francis, wife of Elder Rodney Francis. He bought a black bra for a 10-year-old member of the Fremont Congregation named Brianna. In 2003, after transferring to the Oakley Congregation and marrying Congregation member Linda Hood, Kendrick molested her 8-year-old

granddaughter, for which he was convicted of two felony counts of Penal Code section 288(a). During the investigation of that case, the Contra Costa Sheriff's Department received computer downloads from Kendrick's computer that contained pornographic videos of young looking girls. Evidence of these prior, contemporaneous, and subsequent acts is admissible is relevant and probative evidence on the issues of Kendrick's intent, absence of accident, and common plan.

An exception to the general prohibition on admissibility of character evidence exists when the evidence shows a person committed a crime, civil wrong, or other act relevant to prove any fact other than the person's disposition to commit the conduct at issue. (Cal. Evid. Code § 1101(b)) Evidence of these other acts may be properly admitted with a limiting instruction to show "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident." (*Ibid.*) This rule applies to civil actions as well as criminal prosecutions, and to uncharged acts as well as convictions. (*Ghadrdan v. Gorabi* (2010) 182 Cal. App. 4th 416, 420.) It is equally applicable to prior and subsequent conduct. (*People v. Garcia* (2001) 89 Cal.App.4th 1321, 1335; also see *People v. Balcom* (1994) 7 Cal.4th 414, 425-26.)

Defendants have argued to this Court, and its Elders have testified in deposition and in Declarations filed in this case, that the 1993 incident consisted only of Kendrick "briefly and inadvertently touching his stepdaughter's breast over the clothing." Although this version is disputed, Elder Gary Abrahamson testified that Kendrick "mentioned that he had inadvertently or perhaps he used the word 'accidentally' touched the breast of Andrea while she was asleep. And that it was over the clothing." (Abrahamson Depo., Ex. 1, 124:17-21.) Defendants have argued to the Court they "had no notice of child abuse by Kendrick" because there no "confirmed allegation of child molestation." They claim the 1993 occurrence was unintentional, and an accident, and therefore did not provide the requisite notice to hold them liable for Plaintiff's molestation. Kendrick's 2003 molestation of his step-granddaughter, as proven by the testimony of Sgt. Baldwin and the Court record of his felony conviction, his adulterous conduct with Claudia Francis, and his identifiable "grooming" activity with Brianna, are all admissible to prove intent and absence of accident in groping his stepdaughter's breast. (Evid. Code § 1101(b).)

The admissibility of prior and subsequent acts of sexual abuse under section 1101(b) in child molestation cases to refute a claim of accidental touching is well-established. In *People v. Branch* (2001) 91 Cal.App.4th 274, 281, the defendant maintained "if he ever touched [the victim], it was unintentional." The Court of Appeal held that evidence of the defendant's inappropriate touching of another girl was properly admitted to prove intent under 1101(b), and that Evidence Code 352 did not prohibit introduction of that evidence. (91 Cal. App. 4th at 281-2) In *People v. Escudero* (2010) 183 Cal.App.4th 302, 305, the Court of Appeal found that evidence of the defendant's sex crimes against adult women was admissible as highly probative of his intent to touch the minor victim for sexual gratification, dispelling the defendant's contention that the touching was the result of accident or mistake, even though the victims were not close in age. (*Id.* at p. 306.) The court also ruled that admission of testimony about his molestation of teenage girls was also proper to prove intent and absence of mistake. (ibid.)

The California Supreme Court has recognized that evidence a defendant possessed sexual images is also admissible to show intent to commit molestation. (*People v. Page* (2008) 44 Cal. 4th 1, 40.) An example is *People v. Memro* (1995) 11 Cal.4th 786, 865, in which the court upheld the admission of magazines and photographs possessed by the defendant that "yielded evidence from which the jury could infer that he had a sexual attraction to young boys and intended to act on that attraction." That holding applies to the evidence in this case.

Expert Dr. Anna Salter, Ph.D., will testify as she did in deposition that Kendrick was able to groom his stepdaughter by becoming part of her family and moving into her home. He married Evelyn Kendrick, a Jehovah's Witness, and gained access to her young daughter. Kendrick repeated this conduct with Candace, Claudia Francis, and Amy in 2003.

Plaintiff's parents were devoted members of the Fremont Congregation and brought Plaintiff to meetings, where Kendrick began the abuse. He continued to ingratiate himself with Plaintiff's family by spending time at their home and going on excursions with them. He insinuated himself into the family to the point he was able to conduct field service with Plaintiff and take her to his home after meetings where he sexually assaulted her. Kendrick's abuse of Plaintiff fit squarely into his

ongoing plan and design of finding, grooming, and exploiting victims through his position in the Jehovah's Witnesses community.

Kendrick continued to execute his plan by moving into the home of Fremont Congregation Elder Rodney Francis and forming an adulterous sexual relationship with Mr. Francis' wife, Claudia. As Claudia Francis testified, "he preyed on me . . . he was kind of like in the family." As the Court of Appeal in *Escudero* explained in upholding admission under 1101(b) of sexual conduct by the perpetrator with an adult woman, "Persons with deviant sexual urges do not always limit their sex crimes to victims of the same age group." (183 Cal. App. 4th at 311) Kendrick's ingratiation into the Francis family is consistent with his common plan, design, method, and scheme to prey on vulnerable victims within the intimate Jehovah's Witnesses congregation to accomplish sexual abuse.

It was also during the time he was taking advantage of Claudia Francis that Kendrick gained access to another young female member of the Fremont Congregation, a 10-year-old named Brianna, whom he took on a shopping trip with Claudia Francis' son and for whom he bought a black bra. By using his position as a "member in good standing" in the Fremont Congregation "as a way to get to know kids . . . and see kids outside church services," he was able to groom young Brianna as he groomed his stepdaughter, Claudia Francis, and Plaintiff.

When Kendrick left the Francis home, he joined the Oakley Congregation, and married into another devoted Jehovah's Witnesses family, gaining access to his new wife's young granddaughter, whom he molested in 2003 under circumstances similar to his molestation of his stepdaughter. As Dr. Salter testified, Kendrick's scheme of grooming included moving in with the families of his victims and doing activities with them. As with his stepdaughter and Claudia Francis, he became part of the household. And as with all his victims, Kendrick used his membership in good standing with the Jehovah's Witnesses Congregation to gain the trust and complacently of devout families to accomplish his sexual abuse. Evidence relating to Kendrick's 2003 molestation of his step-granddaughter is immensely probative to show the common plan, pattern, scheme, and method Kendrick used to accomplish his sexual abuse of Plaintiff. It is independently admissible in this case for that purpose under section 1101(b).

Defendant cites and relies upon *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708. However, in *Santillan*, "there is no dispute that Herdegen [the perpetrator] sexually abused the Santillans when they were boys attending the Wasco Parish School." (202 Cal.App.4th at 712) The issue in *Santillan* was notice, and no 1101b issue was before the Court. The same notice issue was the subject of *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, which again is not an Evidence Code §1101b case.

Defendants cite *People v. Ewoldt* (1994) 7 Cal.4th 380, but fail to mention that in that case uncharged sexual misconduct of the perpetrator was held to be admissible under §1101b. The Supreme Court in *Ewoldt* not only upheld the admissibility of uncharged criminal conduct involving the sexual abuse of another child under §1101, but also further held "that the trial court was not required to exclude this evidence on the ground that its prejudicial effect outweighed its probative value under Evidence Code §352." (7 Cal.4th at 386-7)

II. THE "PROPERTY RULE" IS INAPPLICABLE IN THIS CASE.

Defendants further argue that only conduct by Kendrick at the Kingdom Hall is admissible in this case. They rely solely on *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715. *Eric J.* held that family members have no liability under either negligence or premises liability for their adult son's molestation of his girlfriend's son. However, *Eric J.* has been distinguished as not applicable to institutional defendants who sponsor or supervise activities involving children. (*Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377 at 410-11)

In addition, the nature and extent of plaintiff's abuse is relevant to her damages. Defendants' argument that, once having introduced a known sexual abuser into the plaintiff's family and life through their mutual association in the Congregation, that there is a bright line that stops responsibility for his sexual abuse of plaintiff at the Kingdom Hall door, is without legal authority and would improperly exclude relevant evidence.

///

///

III. THE EVIDENCE CONCERNING KENDRICK MAY BE ADMISSIBLE FOR OTHER PURPOSES AS WELL.

The Watchtower's policies and procedures of preventing child sexual abuse within its Congregations are at issue in this case. The defendants deny that there is any problem with their policies. The policy has been the same from 1989 to the present time, as is admitted by all of the Watchtower agents in their depositions. Defendants' denial that there is any problem with their policies is impeached by the fact that Kendrick continued to abuse within the Jehovah's Witnesses Congregations and families for more than a decade after he was identified and confirmed as a child sex offender.

The question of duty in this case, and the reasonableness of defendants' conduct, also involves evidence of the foreseeability of future harm. There will be evidence that defendants not only knew that offenders were likely to offend again, but in this case, that actually occurred. The evidence of Kendrick's subsequent conduct is admissible to demonstrate "deliberate indifference", a requisite element of the malice equation for purposes of punitive damages.

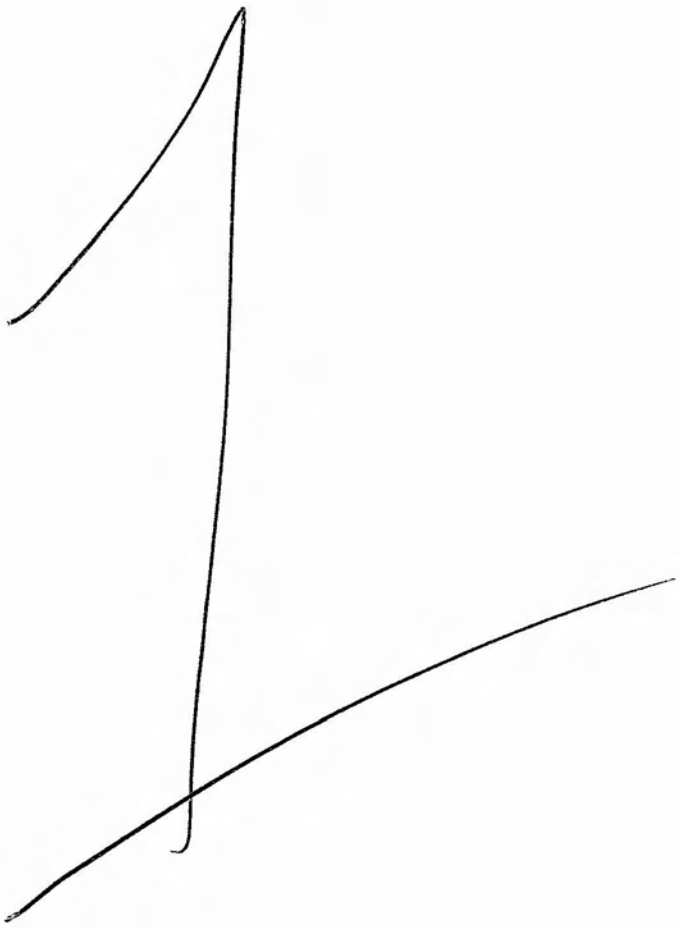
CONCLUSION

There are multiple reasons why the evidence of Mr. Kendrick's sexual misconduct and abuse of other children is admissible, both prior to and subsequent to, his abuse of plaintiff. This Motion is properly denied.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

GARY A. ABRAHAMSON, VOLUME II

PAGES 113 TO 142

Tuesday, October 25, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

A. Yeah, a normal procedure would be that we would explain why we're there, why two of us are there. And also open with a word of prayer. 09:19:33 09:19:35 09:19:39

Q. Um-hum. Okay. 09:19:43

Did Andrea say anything during the course of this meeting? 09:19:46 09:19:49

A. I can't recall her saying anything. 09:19:50

Q. Did Evelyn Kendrick say anything? 09:19:53

A. I can't recall anything that she said. 09:19:57

Q. You mentioned that there was an admission of some inadvertent touching. Was that something that Mr. Kendrick said? 09:20:03 09:20:05 09:20:09

A. Yes. 09:20:11

Q. And thinking back as your memory best allows you to, what do you remember, if anything, of his exact words? 09:20:12 09:20:18 09:20:20

A. Well, I would say that he mentioned that he had inadvertently or perhaps he used the word "accidentally" touched the breast of Andrea while she was asleep. 09:20:24 09:20:31 09:20:36 09:20:39

And that it was over the clothing. 09:20:41

And so, that's basically what I heard. 09:20:45

Q. Do you recall where this touching occurred? Not where on the body but where in the house? 09:20:49 09:20:51 09:20:55

8801248

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 2 IN RE KATHLEEN CONTI

Trial Date: 5/21/2012

Kathleen Conti, plaintiff's mother, was sexually abused as a teenage girl in Jehovah's Witnesses. Her abuser was an Elder's son. Kathleen Conti believed and told her daughter that she was disfellowshipped for accusing the Elder's son of the molestation, although other victims also came forward.

Defendants' Motion in Limine No. 2 seeks to exclude any evidence that Ms. Conti's abuse was by a Jehovah's Witness Congregation member. However, the Motion should be denied, as the evidence is relevant to a number of factual issues in the case.

Defendants have questioned whether or not plaintiff Candace Conti is truthful in her allegation because she did not immediately report the sexual abuse to the Jehovah's Witnesses or to her parents. The evidence that Candace believed that, if she reported the abuse by Kendrick to Jehovah's Witnesses, she would be disfellowshipped like her mother, is relevant to explain part of her failure to disclose. Candace's parents' marriage had disintegrated, the Jehovah's Witnesses functioned much as her "family", and she was afraid that if she was disfellowshipped she would have

no one to look after her. Her father, a very devout Jehovah's Witness to this day, would certainly have shunned her if she was disfellowshipped, and has in fact had no relationship with his daughter from the time that she was in high school because of her withdrawal from Jehovah's Witnesses. At the time, as plaintiff's counselor Laura Fraser testified in her videotaped deposition, plaintiff was trying to keep a relationship with her parents. The threat of being disfellowshipped for reporting childhood sexual abuse was a strong factor in why she did not come forward, and that fear was based on her understanding of her mother's experience.

In addition, the existence of Ms. Conti's prior reported childhood sexual abuse within a Congregation provides another piece of evidence that the risk of childhood sexual abuse within the Congregations was known to defendants, and that defendants' policies and procedures in 1995 were inadequate to address that known risk.

Lastly, defendants have questioned the motive of Candace Conti in bringing this lawsuit. Part of her motive, as stated to 2 Southern California Congregation Elders in 2009 when she first reported her abuse to Watchtower, and before any lawyers or lawsuit were involved, was to change the policy of protecting offenders while putting children at risk. Candace's motivation for this lawsuit arises as much from her mother's experience as well as her own, and is stronger by their common experience. Defendants cannot be allowed to attack the plaintiff for bringing this lawsuit, and then to exclude evidence of the reasons behind her case.

For all of these reasons, the testimony of Kathleen Conti is admissible and probative.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

8801252

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 3 IN RE TESTIMONY OF EVELYN KENDRICK

Trial Date: 5/21/2012

Evelyn Kendrick is the former spouse of perpetrator Jonathan Kendrick, and the mother of Kendrick's first known victim, Andrea. Evelyn Kendrick was at a meeting with Andrea, Jonathan Kendrick, and Elders Abrahamson and Clarke, in which Andrea reported her sexual abuse by Jonathan Kendrick to the Elders.

This Motion in Limine seeks to preclude Evelyn Kendrick's testimony as to what was reported to the Elders by Andrea concerning her abuse by Kendrick. The objection is that the testimony of Evelyn Kendrick is hearsay. This same objection has previously been raised, and overruled, at the time of the hearing on plaintiff's Motion to Amend her Complaint to allege a claim for punitive damages. The Court's ruling correctly held that the testimony of Ms. Kendrick as to what was said by Andrea to the Elders, in her presence, was "offered as evidence that Watchtower was on notice, not for truth of the matter asserted". (Order, May 3rd)

The testimony also impeaches the testimony of Elders Abrahamson and Clarke, who deny they were told any skin to skin contact occurred, or that any drugs were involved.

For these reasons, the Motion in Limine should be denied.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

8801256

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerley DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 5 RE DISFELLOWSHIPPING

Trial Date: 5/21/2012

Defendants argue that their decision not to "Disfellowship" Jonathan Kendrick, once he had been found to have sexually abused a child, is a decision protected by the First Amendment, and the decision itself cannot be litigated in a secular civil court setting. Plaintiff does not disagree with this premise.

However, defendants argue from that agreed premise that evidence that the sanction of Disfellowshipping Kendrick was available as a tool to prevent his further sexual abuse of children in the Congregation is inadmissible. This conclusion is not agreed to.

Plaintiff's experts have opined that, once the defendants were on notice of the molestation of a child by defendant Kendrick, they had an obligation to prevent future molestations of children within the Congregation. The evidence will show that there were a number of ways in which plaintiff could have been protected, including warning the Congregation that Mr. Kendrick had previously sexually molested a child, supervising him so that he would not have access to children or be allowed to participate in activities with them, or Disfellowshipping him so that all members of the

Congregation, including children, would shun him. The evidence that the remedy of Disfellowshipping was available as a tool is not the same as reevaluating whether or not Mr. Kendrick should have been Disfellowshipped. It merely shows that there was a tool available if Watchtower instructed the Elders to use it. However, once Watchtower decided that Disfellowshipping was not appropriate, a decision which is defendants' and defendants' alone to make under the First Amendment, it is incumbent upon the defendants to take other steps to protect children from sexual abuse by an identified child molester.

The availability of Disfellowshipping as a tool to protect children from identified child sexual abusers is admissible into evidence. The defendants' decision not to use that tool is also admissible, but not subject to relitigation. However, having chosen to reject the tool of Disfellowshipping, the secular standard of care that requires defendants then take alternative actions to protect children from Kendrick is admissible.

Because defendants' Motion in Limine blurs the distinctions between all of these evidentiary points and arguments, and instead lumps all issues into one argument under which failure to protect children from sexual abuse by identified molesters within the Congregations is protected by the First Amendment; the Motion in Limine must be denied.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

8801260

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 6 RE: CLERGY MALPRACTICE

Trial Date: 5/21/2012

Defendants' Motion in Limine No. 6 seeks to exclude all evidence as to the manner in which defendants and their agents, the Fremont Elders, "investigated or otherwise handled the November, 1993 allegation of child abuse against individual defendant Jonathan Kendrick." Defendants claim such evidence is inadmissible because of the well recognized prohibition on "clergy malpractice" cases.

Defendants' Motion is difficult to follow, as this is not a clergy malpractice case. Defendants correctly set forth that California does not recognize clergy malpractice. However, the two cases cited for that proposition do not involve issues of childhood sexual abuse. In *Nally v. Grace Community Church of the Valley* (1988) 47 Cal.3d 278, the parents of a deceased adult brought a wrongful death case, claiming the clergy member who counseled the decedent should have referred him to a psychiatrist for depression. In *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, a clergy member entered into a consensual sexual affair with an adult congregation member who he

was counseling. Neither case has any relationship to issues involving childhood sexual abuse by a previously identified offender.

Nor are the policies and procedures involving sexual abuse of children and the prevention of that outrage protected by the First Amendment. None of the many, many cases cited by defendants as "foreign authorities" discuss or refer to childhood sexual abuse arising from institutional activities. The subject of childhood sexual abuse prevention is not "a matter which concerns theological controversy". (Defs.' MIL 6, 4:27). Defendants have not yet argued, or presented any evidence in discovery or expert testimony, that sexual abuse of children is an approved religious practice under Jehovah's Witnesses theological viewpoint. The two cases most relied upon by defendants in their Motion are *Watson v. Jones* (1871) 80 U.S.679, a dispute between two groups within a church over the use of property, and *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S.696, involving a church reorganization and a Bishop's loss of title.

Given the voluminous amount of "foreign authorities" and California cases presented by defendants in their pre-trial Motions, and throughout the case, if there was a First Amendment case holding that childhood sexual abuse is protected by the First Amendment, the Court and counsel would long have been aware of it.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

8801264

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 7 IN RE: LAW ENFORCEMENT WITNESSES

Trial Date: 5/21/2012

INTRODUCTION

Defendants move to exclude the testimony of Carl Lewis, a retained expert in child sexual abuse investigation; and non-retained experts Sgt. Jeffrey Baldwin, who investigated Kendrick in the 2003 Contra Costa County case that resulted in his conviction for felony P.C. 288, and Retired Officer Davila of the Fremont Police Dept., who investigated Kendrick for the 1994 Andrea charge that resulted in a conviction for P.C. 243.4(d), sexual battery.

Some of the arguments concerning these witnesses are moot, as Plaintiff will not be asking questions of these witnesses in many of the areas to which an anticipatory objection is made in limine. However, all three have relevant and admissible testimony that is properly elicited for the jury's consideration.

///

///

I. CARL LEWIS HAS ADMISSIBLE EXPERT TESTIMONY ON MULTIPLE MATTERS AT ISSUE.

Mr. Lewis is an experienced professional investigator who has specialized in child abuse cases for both a police department and the Santa Clara District Attorney's Office. He will offer opinions on Child Sexual Abuse Accommodation Syndrome; on the adequacy of the Elders' investigation of Kendrick in 1993; on the nature and pattern of grooming behavior exhibited by Kendrick; and on the comparative investigatory ability of law enforcement to investigate Kendrick. Contrary to the concerns of Defendants, Mr. Lewis will not testify as to his opinion of the Defendants' duty; will not testify as to whether or not Plaintiff's allegations against Kendrick are "true", and will not give an opinion as to whether Plaintiff herself suffers from CSAAS.

Mr. Lewis testified in deposition that he would offer opinions as to CSAAS and delayed disclosures. (Depo Lewis, Ex. 1 6:10-15) Defendants argue he is not qualified by experience and is precluded by case law from giving such opinions. (Def. MPA 4:13-5:10). The first case cited is called *P. v. Gruber,* an unpublished opinion that is cited in violation of C.R.C. 8.1115(a). Counsel should be admonished to refrain from such unethical conduct in the future. The second case cited is *People v. Bowker* (1988), 203 Cal. App. 3d 385. This 25 year old case is no longer up to date on the question of the use of CSAAS or other victim response expert testimony. (*People v. Brown* (2004) 33 Cal. 4th 892, 905-7) The Concurring opinion in *Bowker* is the current analysis. As stated in *Brown,* the testimony of victim accommodation is not admissible to show the testimony given is true, but is admissible where doubt has been cast on the victim's veracity to rehabilitate their credibility. This would include in Candace Conti's case the opinion that delayed reporting is not inconsistent with on who is abused, that recantations are also consistent with abuse victims (*Bowker, supra.,* 203 Cal. App. 3d at 393-4), and that inconsistent recollections of the nature or timing of the abuse are not inconsistent with having been molested.

Mr. Lewis' testimony is not cumulative with Dr. Anna Salter, although both incorporate CSAAS into their opinions. Dr. Salter is a Psychologist who has trained youth and religious organizations for over 30 years in child sexual abuse prevention, and is testifying as to the standards of care for organizations like Defendants in 1993-5 with regard to child sexual abuse issues. Part of the basis for

Dr. Salter's opinion that Defendants violated standards of care in their response to Kendrick and in their lack of adequate training and education in child sexual abuse prevention rests on the knowledge from CSAAS that these events often go unreported and unrecognized. Mr. Lewis, on the other hand, is testifying as to CSAAS itself, and the features which are not inconsistent with actual molestation that are present in this case. Dr. Ponton, a UCSF Psychiatrist who has evaluated Plaintiff for damages, also mentions CSAAS in her testimony as part of the experience, training, and body of knowledge she applied in her opinions that Plaintiff suffers from Post-Traumatic Stress Syndrome and Depression secondary to having been sexually based as a child. None of these opinions are cumulative, as each is a separate analysis of a different aspect of the case.

A quick reading of his summary of opinions at deposition shows Mr. Lewis is neither trespassing on the Court's role nor ranging out of his field. Defendants chose to investigate Mr. Kendrick themselves, according to Watchtower policy. In undertaking to investigate, they chose not to involve law enforcement. The fact that local law enforcement was specially trained and experienced in such investigations is a relevant factor in considering whether or not the Elders and Watchtower acted in a reasonable manner in failing to involve the Police in looking into Kendrick. (Lewis Depo. Ex 1 7:7-9:6)

The Watchtower Elders also chose to protect the children of the Congregation from Kendrick by "supervising" him. They failed to discover or recognize numerous acts of "Grooming Behavior", which is relevant both to the sufficiency of the education and training programs of Watchtower and to the adequacy of their supervision of Kendrick. Lewis' testimony is relevant to these issues. (Depo. 49:20-53:18)

II. THE TESTIMONY OF BALDWIN AND DAVILLA IS RELEVANT AND ADMISSIBLE.

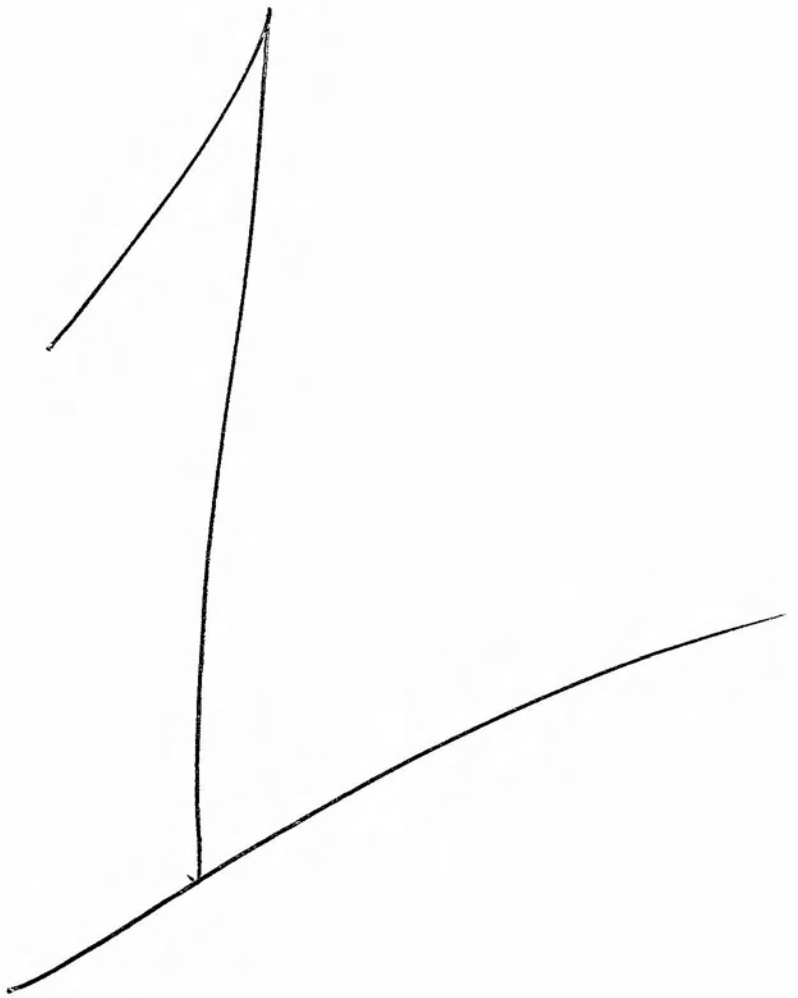
Sgt. Baldwin and Officer Davila will not be asked the type of opinion testimony that Defendants' speculate about in their Motion. These non-retained experts can, however, testify to the work they did and investigative information they developed and obtained in 1994 and 2003, which resulted in separate convictions of Kendrick for child sexual abuse crimes. They are not presented as experts in "Comparative Religions or Church Organization". (Def. MPA 5:18-19). Since Sgt. Baldwin was

deposed, and Defendants do not present any of his actual deposition testimony as objectionable in this Motion, Plaintiff is uncertain why he is even included.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE



SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

- - -

JANE DOE,

Plaintiff,

vs. Case No. HG11558324

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

DEPOSITION OF CARL LEWIS

199 Fremont Street, Tenth Floor

San Francisco, California

Wednesday, May 16, 2012

Atkinson-Baker, Inc.
Court Reporters
(800) 288-3376
www.depo.com

REPORTED BY: CARRIE HEWERDINE, RDR, CSR NO. 4579

FILE NO.: A6043A3

activities for protecting the public; the disclosure process of the various minor children involved in this case.

Q All right.

A The response of the elders, the defendants in this case, to allegations brought to their attention.

Q Okay. Anything else?

A The activities of Kendrick in relation to his grooming behavior and activities towards children.

Q Okay. You've given me four topics. Any others that you've been asked to render opinions on in this case?

A Just to be clear, included in the reactions or the disclosure process of the complaining witnesses would be the child sexual abuse accommodation syndrome.

Q And which of the four is that coming under, the disclosure process?

A Yes.

Q Any other topics or areas that you've been asked to render opinions on in this case?

A No. And those are general. What I just outlined are very general topics.

Q Okay. It's fair to say those four are the general topics you've been asked to opine on?

A Yes.

Q Okay. Let's start with the first topic, then.

As my notes reflect, it's the conduct of law enforcement in child sex abuse investigations and the effect on the public; is that correct?

A No. Their -- their actions to protect the public, based on child sexual abuse investigations.

Q And what opinions do you have on that topic?

A That law enforcement, particularly at the time these actions were reported, was in a very good position to conduct a thorough, objective criminal investigation into the reported sexual abusive activities of Kendrick and could have and likely would have sought a criminal complaint to be filed against him based on the initial allegations that we're aware of.

Q And by "law enforcement," what agencies specifically are you referring to in this case?

A The police department and the district attorney's office.

Q Which police department?

A Fremont.

Q And what time frame are we talking about that law enforcement was in a good position to conduct an investigation in this case?

A The late '80s through the present day.

Q So what information was available in the late

'80s about Mr. Kendrick that you're aware of?

A Well, I'm describing the period of time that law enforcement was prepared to deal with that; had become better equipped to address the issue of child sexual abuse.

Q So you're not talking about Mr. Kendrick specifically, then; you're talking about law enforcement generically during that time frame.

A That's right.

Q So with respect to this first topic on the conduct of law enforcement being in a good position to conduct an investigation and actions it could take to protect the public, do you have any specifics with respect to Mr. Kendrick at all with respect to that opinion?

A No. As I said, this was a general topic and the fact that law enforcement, in my opinion, is in the best position to deal with allegations of the sexual abuse of children; not just for resolving a current criminal case, but also for providing protection to the public as a result of that investigation.

Q So, again, now -- and the reason I ask this, you made a specific point that these topics you identified were general.

A Yes.

Q But I want to then delve into the specifics

with respect to this first topic of law enforcement being in a good position.

Again, you have nothing specific regarding Jonathan Kendrick or Candace Conti in that opinion; is that correct?

A Correct.

Q When was Jonathan Kendrick first reported to the police for any incident of child sexual abuse?

A I would have no way of knowing that.

Q So you have -- as you sit here today, you have no way of knowing that?

A I don't know whether he was reported prior to what brings us here today or not.

Q You haven't reviewed any police records in that regard; is that correct?

A Oh, I have. I've -- I've reviewed what has been provided to me, which goes back to '93, but if there was -- I don't know what Mr. Kendrick's activities were before then.

Q Okay. But you just told me you don't know when any report was made to the police concerning Mr. Kendrick.

Did I understand you correctly?

A No, I --

MR. SIMONS: The first report. Your question

A I would have -- I would have expected to see a swift, specific response with particular direction about what was to be done with Kendrick or ...

Q Anything else?

A No.

Q And who is it within the Watchtower New York organization that should have given that swift, specific response?

A Well, that's difficult to say because the communications are signed by the -- by the organization.

I don't know that there's an individual named.

Q Well, what about which department in the U.S. Branch should have handled that?

A Because I don't know the departments within the organization, I couldn't tell you.

Q Any other criticism you have or opinions you have about what Watchtower New York should have done in this situation with Jonathan Kendrick?

A No.

Q Do you have any other opinions that we haven't talked about with respect to this third topic dealing with the response of the elders or of the Jehovah's Witnesses hierarchy?

A No.

Q And the fourth topic, my notes reflect that it

deals with the activities of Kendrick relative to grooming behavior.

Why don't you restate that topic for me, and then I'll ask some follow-up questions.

A Certainly.

Based on my reading of the materials provided to me, Kendrick took advantage of a number of situations involving young children allowing him to sexually molest them.

He would isolate them. He would groom them by giving them special treatment, spending lots of time with them, paying attention to them, giving gifts, including inappropriate gifts, such as purchasing bras for young girls. And that covers the number of children who were named as reported victims in this case.

Coupled with the fact that the additional information I've seen about reports that Kendrick had been seen in a photograph in his underwear accompanied by a couple of children not related to him in his underwear and the manner in which he responded when that picture was reportedly found.

I've also been made aware that there was pornography found on the computer of Kendrick. Pornography and the image files I've seen are consistent with people who have an unnatural and abnormal interest in

children.

Q Anything else with respect to the additional information that you've learned about Kendrick?

A His conviction for molesting Amy Hood; the reported filing of a criminal complaint against him by Alameda County in 1994, although I haven't seen court records regarding that.

Q Any other additional information that you've learned about Kendrick before I go back over it?

A No.

Q Okay. With respect to the photo with children not related to him, what are you referring to there?

A I read of an incident in which such a photograph was found in some belongings of Kendrick's and that when it was found, he dismissed it. But it was something that -- that stuck in the mind of the person who found it and would stick in my mind as something significant.

Q Did you see that photo?

A No.

Q And when you mentioned Kendrick's response to it, you said "he dismissed it."

Anything else about his response?

A No.

Q And you mentioned pornography that was found

on his computer.

A Yes.

Q When was that found on his computer?

A I believe it was 2003.

Q That was during the Amy Hood investigation?

A Yes.

Q What's your understanding as to when Candace Conti was abused by Kendrick?

A 1996 and '97.

Q Do you have any information that Kendrick viewed pornography prior to 2003?

A No.

Q And when you mentioned the "image files" that you've seen, are you referring to the pornography?

A Yes.

Q And where did you see those image files?

A At Mr. Simons' office, Simons' office.

Q He has pornography on his computer?

A No.

Q I'm just kidding. I'm just kidding.

A And counsel will tell you that I made sure that that was done in a proper way.

Q So they wouldn't end up on his computer, correct?

A Nor would I.

Q So the image files you saw, were they from the police records from the 2003 investigation?

A Yes.

Q And then you mentioned the conviction for Amy Hood; that Jonathan Kendrick was convicted for molesting Amy Hood in roughly 2003; is that correct?

A Yes.

Q And then you said there was a criminal complaint filed in '94.

Was that concerning the Andrea incident?

A Yes.

Q But you haven't seen any conviction papers or any court papers in that regard?

A Correct.

Q Any other opinions that you're going to testify to at trial regarding Kendrick taking advantage of the situation that you called the "grooming behavior"?

A No.

Q Okay. Why don't you take a look at Exhibit 3. And the only question I'm going to ask you: Is that a current C.V. of yours?

A Yes.

Q And you looked at it very quickly. How can you be sure?

A The date in the lower left-hand corner. I

8801268

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Colgrove
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 8 IN RE WILLIAM BOWEN

Trial Date: 5/21/2012

Defendants have filed a Motion in Limine to exclude the testimony of one of plaintiff's expert witnesses, William Bowen, on the grounds that Mr. Bowen's testimony violates the First Amendment and Evidence Code §789.

Mr. Bowen previously submitted a Declaration in Support of Plaintiff's Motion to Amend her Complaint to add a claim for punitive damages. A copy of the Declaration is attached as Ex. 1 to this Opposition, as is the portion of Plaintiff's Expert Witness Declaration regarding Mr. Bowen (Ex. 2).

Mr. Bowen does not testify as to his religious belief or lack thereof, or anyone else's. His testimony is not offered to attack or support the credibility of a witness based upon the religious belief or lack thereof. Defendants' first argument as to Mr. Bowen, that his testimony violates Evidence Code §789, has no applicability to this case.

Mr. Bowen further does not testify as to any matter that violates the First Amendment. The substance of his Declaration is the organizational structure and policies with regard to sexual abuse of children for Jehovah's Witnesses. None of the Declaration intrudes upon the First Amendment, as

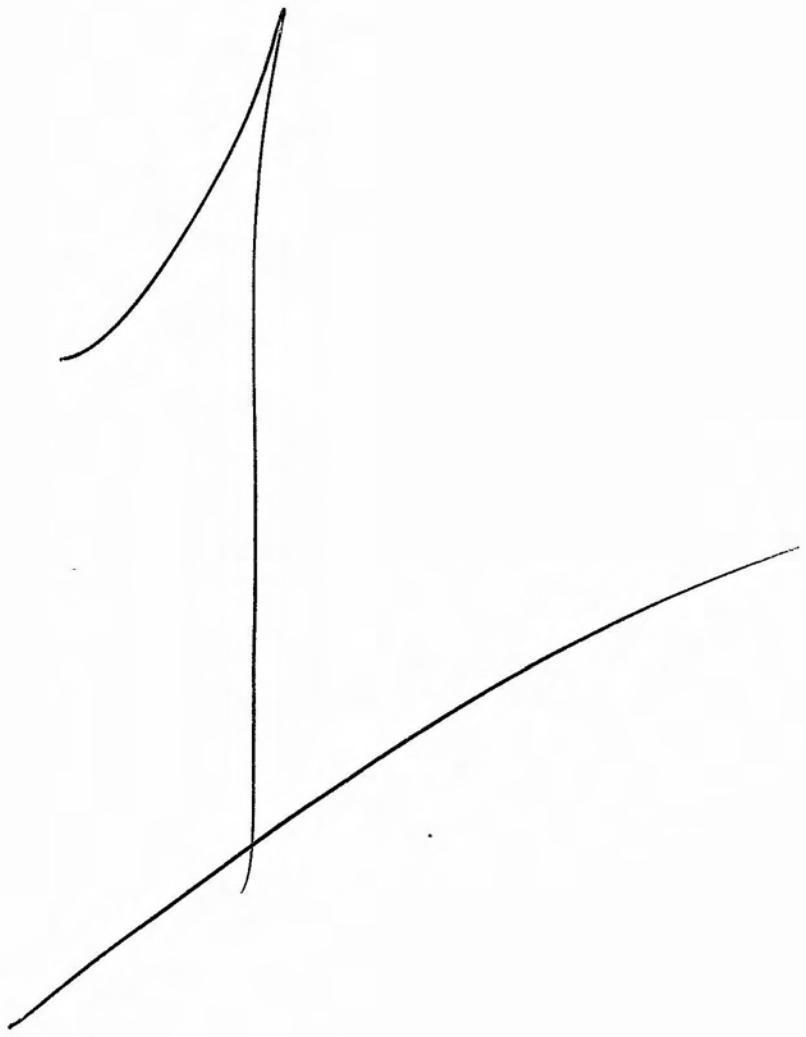
none of it involves a theocratic or religious doctrine debate. Plaintiff acknowledges that Mr. Bowen and the Jehovah's Witnesses organizations have an extremely hostile relationship, and some of that mutual hostility may be permissible evidence on the issue of his bias. However, it does not disqualify him as a witness.

The Court previously, at the time of the submission of Mr. Bowen's Declaration, ruled upon his evidence, and held that, to the extent it was based on personal knowledge, it was admissible. (Order, May 3rd) The Court did rule that the portion of the Declaration at Page 5, Lines 7 through 9, (Para. 11), stating the underlying purpose of the policies and procedures on sexual abuse that are at issue in this case are "purely secular and financial", is inadmissible, and Plaintiff will follow that ruling. However, that does not render the balance of his testimony inadmissible.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE



RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

DECLARATION OF WILLIAM H. BOWEN IN SUPPORT OF MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY

Date:	**5/3/12**
Time:	**3:00 p.m.**
Dept:	**22**
Reservation No:	**1232647**

I, WILLIAM H. BOWEN, hereby declare:

1. I was an active member of the Jehovah's Witnesses Organization until age 43. I served at the Organization's home office in Brooklyn, New York from 1977 to 1979. I served as a Pioneer (full time missionary) from 1974 to 1976 and 1979 to 1981. I was appointed with the approval of the Governing Body of Watchtower Bible and Tract Society of New York, Inc. to be a Ministerial Servant in 1979, and to be an Elder in 1985. These positions are of administrative responsibility within Jehovah's Witnesses. Jehovah's Witnesses are viewed as 'lay ministers' and do not have any formal clergy or pastors and have no paid full time employees in Congregations or administration. I served as an Elder from 1985 to 1992 and again from 1994 to 2001. I served as Presiding Overseer,(Coordinator) a position equivalent to administrative coordinator, for two congregations in early 1990's and late 1990's. I served as a Theocratic Ministry School Overseer

from 1985 to 1989, Secretary from 1990-1991 and 1994-1998, Watchtower Overseer from 1995-1998, Book Study Overseer during the duration I was an elder, and many other managerial positions within the congregation. I have taught and participated in Elder training and instruction in the procedures and policies of Jehovah's Witnesses in the KINGDOM MINISTRY SCHOOLS and Pioneer Schools. I have worked as an overseer or assistant at the convention level and also worked in the Administration Office at District Conventions represented by Jehovah's Witnesses world headquarters in New York State, and in many branches of Circuit Assemblies and District Conventions including Food Service, Public Relations, Parking, Rooming, Volunteer Service, Accounting, and Security and Attendant Departments. I have presided or participated in over one hundred judicial, special and appeal committees relating to Judicial Matters, which is the internal administrative procedures for investigation and discipline of Jehovah's Witnesses accused of misconduct or other improprieties.

2. Since 2001, I have been the Executive Director of a non-profit organization called Silentlambs, with its office in Nashville, TN. The purpose of Silentlambs is to provide support for victims of sexual abuse suffered as a child in Jehovah's Witnesses activities and Congregations. I have researched extensively the policies and procedures of Jehovah's Witnesses from public and accessible private sources, I have been interviewed internationally for numerous published articles and documentaries on the polices and practices of Jehovah's Witnesses, including New York Times, Newsweek, VH1, Dateline, Fifth Estate, Panorama, Associated Press, Christianity Today, etc...

3. During the time I served in administrative positions for the Jehovah's Witnesses' Organization, I had access to internal confidential documents and communications, I attended Elder training on several occasions and received instructions on how to handle matters within the congregation involving abuse survivors including reports of child molestation within the Organization's congregations; and became personally familiar with the organizations policies and procedures on the subject matters of reporting, preventing, investigating and maintaining secrecy concerning child sexual abuse within the Jehovah's Witnesses membership and Congregations; on the relationships of Jehovah's Witnesses Elders to secular law enforcement; and on disciplinary policies and procedures for those accused of sexual abuse of children.

4. The Governing Body of Jehovah's Witnesses is the ruling council of the Jehovah's Witnesses Organization, and represents the Organization's leadership and administration. All Jehovah's Witnesses' policies and procedures for any corporation or entity of the religion are set by the Governing Body. The "Organized to Accomplish Our Ministry" manual states on Pages 26-27, "These and other legal corporations are used by the modern day Governing Body of Jehovah's Witnesses to facilitate the preaching of the good news world-wide and to care for the spiritual needs of the entire congregation of God in all parts of the earth." A true and correct copy of the cover and excerpts of the Manual are attached as Exhibit 1 to this Declaration.

5. All Elders or other Jehovah Witness members involved in the reporting, investigation or disciplinary phases of childhood sexual abuse accusations and conduct must follow the procedures and policies established and communicated by the Governing Body through its various corporate agencies. These corporate entities include the Legal Department of the Watchtower Bible and Tracts Society of New York, Inc.; the Service Department that was formerly a part of Watchtower New York until 2001; and a separate corporation established in 2001 known as The Christian Congregation of Jehovah's Witnesses that has succeeded in administering the Service Dept. functions formerly held by the New York corporation. I have reviewed the deposition of Alan Schuster taken in this matter on February 15, 2012, who I know personally, and agree with his testimony on page 38 at lines 14 through 19 that the policies of the Jehovah's Witnesses as expressed in Body of Elder letters, including the letter of July 1, 1989, would have been approved by the Governing Body.

6. When an Elder or other member in a position of authority in a Jehovah's Witness congregation receives a report of child molestation or sexual assault, Jehovah's Witness policy as set forth in the July 1, 1989 Body of Elder letter requires Elders first call the Service and Legal Departments of the WBTSNY, Inc. Thereafter, all acts or omissions of the Elders are directed by and through the Service and Legal Department. The Service and Legal Departments direct the investigation by congregation Elders for all allegations of child abuse;

7. Jehovah's Witnesses practice and policy discourages members' associations with non-members. Members customarily associate only with other congregation or Jehovah's Witness

members for all non-work, recreational, or social activity for their members. Children and adults participate together frequently in meetings held in members or Elders' homes, or at the Kingdom Halls which are the official property of the entities organized by the Governing Body. Children and adults go together in small groups into residential neighborhoods and other public places to perform the "service" work, or religious solicitations that are the largest time commitment and activity of the members. Because nearly all of these activities are conducted outside of the homes of members, it is common for members of a congregation to trust other adults to transport children to meetings, Kingdom Hall for services, and into neighborhoods for service work.

8. The Jehovah's Witnesses, through the Governing Body, have a punishment called "Disfellowshipping." When a member is disfellowshipped, no other member of the Congregation is allowed to talk to them or engage in activities with the disfellowshipped member. Disfellowshipping is an administrative procedure that would, if applied to a child molester, prevent that individual from having contact with or participating in activities with children of the Congregation and Jehovah's Witnesses community. Disfellowshipping Jonathan Kendrick in this case after his molestation of at least one minor girl would have prevented his association with Plaintiff Jane Doe and advised her parents and the entire Congregation that he was unfit to be associated with.

9. The written and practiced policy of Jehovah's Witnesses applicable to protecting children from known childhood sexual abusers within the membership is set forth by the Governing Body in the Body of Elders letter of July 1, 1989. I agree with the testimony of Mr. Shuster in his deposition at page 38, line 20, to page 39, line 24, stating this letter remains the policy today. That policy, as stated in the letter of July 1, 1989, is to keep information identifying a known specific child molester secret from Congregation members, law enforcement, and other possible victims.

10. As of the present time, Silentlambs has received reports from over 7,000 individuals that they were sexually abused as children in the organization of Jehovah's Witnesses. **During my service as an Elder, I learned that there is a database kept by WBTSNY of childhood sexual abuse offenders and victims. I personally reported child molesters to this database by telephone to the Service and Legal Departments. In 2002 I was made aware by managerial level personnel that the database at**

that time contained over 23,720 reports of confessed/confirmed child molesters within the United States, Canada and parts of Europe. My own experience with Silentlambs is that sexual abuse of children is and has been for many decades a widespread problem within Jehovah's Witnesses, as in many other organizations and groups where adults and youth participate.

11. All of the policies and procedures concerning maintaining secrecy as to the identities of known childhood sexual abusers within the Jehovah's Witnesses Congregations are the policies set forth by the Governing Body to apply to all associated with the Jehovah's Witness organization. In my experience and opinion, the true purpose of these policies and procedures is not religious, but purely secular and financial. The secrecy policy has been applied to protect the organization and its leaders from exposure to legal liability for the harm caused to children abused within the activities of the Witnesses, as well as to protect the Jehovah's Witnesses religion and its corporate entities from adverse publicity that could negatively affect membership levels, and in turn reduce financial income. The Body of Elder letter of July 1, 1989 sets forth these purposes explicitly and repeatedly, and the same concerns were taught in the Elders training sessions I participated in. The policy of secrecy is set and enforced by the Governing Body with full knowledge that sexual abusers of children, if not identified and adequately protected against, will continue to abuse other children.

12. The evidence I have reviewed in this case includes the depositions of Elders Abrahamson, Clarke, Iglesias, Inman, and Lammerdin; the deposition of Mr. Shuster; the depositon of Claudia Francis; the documents produced by Defendants in response to written discovery requests or marked as exhibits to depositions; the deposition of Candace Conti and of her parents, Neal Conti and Kathleen Conti; the Declaration of Evelyn Kendrick; and the deposition of Contra Costa County Sheriff Baldwin. This evidence establishes for my analysis and opinions that Jonathan Kendrick continued to sexually approach and abuse children after the first report to the Elders in 1993 of his abuse of his step daughter. This is found in the criminal records and felony conviction of Kendrick for sexual abuse of a minor victim while he and his spouse Linda Kendrick were members of the Oakley Congregation of Jehovah's Witnesses; the report of the Plaintiff in this case; and also the report of "grooming" activity of purchasing a bra for a 10 year old girl as set forth in the deposition testimony of Claudia

Francis. This type of recurring conduct is facilitated and enabled because of the policy of the Jehovah's Witnesses to keep secret past sexual abuse of children by its members.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I have personal knowledge of the facts set forth herein, and that I am competent to testify as to the facts set forth herein.

Executed this 9 day of APRIL, 2012, at Nashville, Tennessee

WILLIAM H. BOWEN

Exhibit 1
to William H. Bowen's Declaration

ORGANIZED TO ACCOMPLISH OUR MINISTRY

"You, though, keep your senses in all things, suffer evil, do the work of an evangelizer, fully accomplish your ministry."—2 Tim. 4:5.

and to care for all His "belongings," or Kingdom interests on earth. (Matt. 24:45-47; Luke 12:42-44) Rather than being an individual Christian, the 'faithful slave' today is the remnant, still living on earth, of the composite body of Christ's anointed footstep followers. Such remaining ones are a part of spiritual Israel, the anointed congregation of God. (Gal. 6:16; compare Isaiah 43:10.) This remnant is faithfully discharging the responsibilities of the "slave" during this time of the end by taking the lead in the preaching of "this good news of the kingdom" throughout all the earth and by providing spiritual food at the proper time for the household of faith.—Matt. 24:14.

USE OF RELIGIOUS CORPORATIONS

During these last days of the present wicked system of things, the "belongings" of the Master have increased abundantly throughout all the earth. This has placed a heavy responsibility on the 'faithful slave.' In discharging its responsibility to provide spiritual food at the proper time and in order to get the good news of the Kingdom preached before the end comes, the remnant on earth, as "the faithful and discreet slave" class, has formed certain agencies, or legal entities. It has proved to be the course of wisdom for the 'faithful slave' to organize certain corporations that are recognized by the laws of various countries. These religious corporations own and operate printing facilities that produce and distribute Bibles and Bible literature on a worldwide basis for use in the Kingdom ministry.

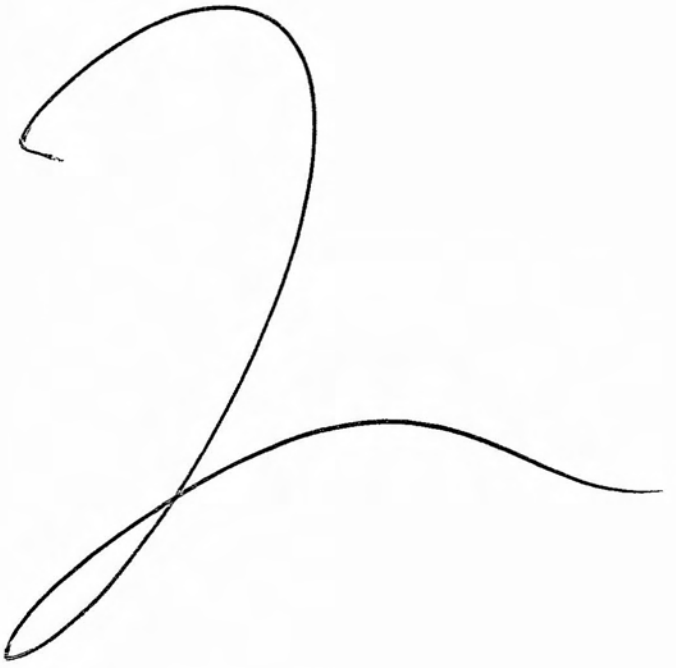
The first in time and the principal corporation used in this way is the Watch Tower Bible and Tract Society of Pennsylvania. This nonprofit religious society was incorporated in 1884, is made

up of dedicated, baptized Christians and is exclusively devoted to advancing the interests of true worship in the earth. The Watch Tower Society has extended its works worldwide, establishing branch offices in various countries. Also, in compliance with local governmental regulations, a number of other religious societies have been legally formed, such as the Watchtower Bible and Tract Society of New York, Inc. (1909) and the International Bible Students Association in London, England (1914). All these legal instrumentalities cooperate with one another. These and other legal corporations are used by the modern-day Governing Body of Jehovah's Witnesses to facilitate the preaching of the good news worldwide and to care for the spiritual needs of the entire congregation of God in all parts of the earth.

STRUCTURE UNDER BRANCH ORGANIZATION

Whenever a branch office is established, a Branch Committee of three or more elders is appointed to care for the various responsibilities involved in looking after the work in the country or countries under the jurisdiction of that particular branch. One member of the committee serves as the coordinator of the Branch Committee.

Local congregations under each branch organization are arranged into circuits and a number of circuits make up a district. Circuits and districts may be of various sizes depending on geographical and language considerations, as well as the number of congregations within the area assigned to a branch. A circuit overseer is appointed to serve the congregations in each circuit. District overseers visit the different circuits, serve at circuit assemblies and spend some time serving



RICHARD J. SIMONS, ESQ. State Bar No. 72676
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com

Attorneys for Plaintiff
JANE DOE

COURT - OST SUSTAINED SO NOT THIS

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al., Defendants.	**No. HG11558324** **ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22** **DECLARATION RE EXPERT WITNESSES** **Trial Date: 5/21/12**

I, RICHARD J. SIMONS, hereby declare, that I am the attorney for plaintiff in the above entitled action.

I further declare as follows:

1. A. Expert witness WILLIAM BOWEN has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: as to the policies, procedures, and practices of defendants generally; the application of those policies on the subject of childhood sexual abuse within the Jehovah's Witnesses; the pattern and practices of Jehovah's Witnesses institutional management of disregarding sexual abuse of children and failing to protect minors within its membership and activities from sexual abuse; the business and financial reasons behind the institutional defendants' policies on sexual abuse of children; the knowledge and data available to Jehovah's Witnesses management on the consequences of increased sexual abuse of

children resulting from its administrative policies; and as to the administrative organization and structure of Jehovah's Witnesses as to its policies and practices on secular and administrative issues.

C. Expert witness' hourly and daily fee for deposition testimony is $75.00.

2. A. Expert witness CARL LEWIS has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: the law enforcement, community, and child abuse professional body of knowledge on the identification, detection, and prevention of childhood sexual abuse as of the time periods at issue in this case; the adequacy of the investigation of Jonathan Kendrick by defendants, and its cause and effect relationship to Plaintiff's molestation; the conduct of Plaintiff; and the identifiable pattern and practice of Kendrick's pedophile conduct.

C. Expert witness' hourly and daily fee for deposition testimony is $250.00.

3. A. Expert witness ANNA SALTER, Ph.D. has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: as to applicable standards of care for the prevention of childhood sexual abuse in religious and other similar institutions as of the time period at issue in this action; the violations of those standards by the defendants; the relationship between those violations and Plaintiff's harm and injury; the conduct of Plaintiff after her molestation and it relationship to her sexual abuse; and the pattern and practice of serial pedophile sexual predatory conduct by Jonathan Kendrick.

C. Expert witness' hourly and daily fee for deposition testimony is $250.00.

4. A. Expert witness LYNN PONTON, Ph.D. has the following qualifications: See attached Curriculum Vitae.

B. Expert witness will testify in general substance as follows: As to her medical and psychological evaluation of Plaintiff, including her prognosis, diagnosis, and the reasonable cost of her future care needs; the harm and injury caused Plaintiff as a result of her molestation; the significance of other factors and experiences in Plaintiff's life and their relationship to her mental health and injuries;

8801272

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 17 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerley
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 12 IN RE SILENT LAMBS

Trial Date: 5/21/2012

Although portions of Motion in Limine No. 12 are not disputed, the Motion to exclude any and all reference to the Silent Lambs organization in any respect is overbroad. Mr. Bowen is entitled to provide evidence as to what his occupation is, and in fact, defendants have made much of the issue to demonstrate his bias against them. Their proposed Exhibit List has several items from Silent Lambs, including web pages and pamphlets. Thus this Motion is somewhat confusing and inconsistent.

In addition, the defendants have taken the position during the course of this case that they do not keep any statistical information concerning the frequency or number of childhood sexual abuse reports or offenders from within Jehovah's Witnesses. The frequency and number of offenders is relevant testimony as to multiple issues on the effectiveness of the policies and procedures in place to prevent childhood sexual abuse within Jehovah's Witnesses, and impeaches the testimony of defendants' managerial employee Mr. Shuster, and expert witness Monica Applewhite, that their

programs are successful in preventing childhood sexual abuse, and that childhood sexual abuse is not an issue within Jehovah's Witnesses.

Because this Motion is overbroad and does not identify any specific evidence, it should be denied. Specific inappropriate, impermissible, or inadmissible testimony, if plaintiff should attempt to elicit it, can be objected to at the time such questions, if any, may be asked.

Dated: May 17, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Case Management Conference on May 18, 2012.

Not Reported.

Jane Doe represented by Richard J. Simons and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unt represented by James McCabe.

Court and respective counsel discuss that "Standing" Pretrial Orders and Motions In Limine off the record.

June 1, 2012 Department 22 will be in session for the trial.

The Court orders the matter continued to May 21, 2012 at 1:30 p.m. in Department 22 for Jury Trial/Motions In Limine.

Minutes of 05/18/2012
Entered on 05/18/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

8801275
FILED
ALAMEDA COUNTY
MAY 18 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton
DEPUTY

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANTS THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S PROPOSED VERDICT FORMS

Pre-Trial Conference: May 18, 2012
Trial: May 21, 2012

Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Fremont, California respectfully request that the Court submit the following verdict forms to the jury: VF-3700 [modified] and VF-3904 [modified].

///

///

DATED: May 18, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 18, 2012

THE McCABE LAW FIRM, APC

By _____
for James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

VF – 3700. Negligence – Vicarious Liability [modified]

We answer the questions submitted to us as follows:

1. Was Gary Abrahamson negligent?

_____ YES _____ NO

Was Michael Clarke negligent?

_____ YES _____ NO

Was Larry Lamerdin negligent?

_____ YES _____ NO

If you answered YES in any part of question 1, then answer question 2. If you answered NO to all parts of question 1, then skip questions 2, 3, and 4, and answer question 5.

2. For each agent that received a YES answer in question 1, answer the following:

Was Gary Abrahamson's negligence a substantial factor in causing harm to Plaintiff Candace Conti?

_____ YES _____ NO

Was Michael Clarke's negligence a substantial factor in causing harm to Plaintiff Candace Conti?

_____ YES _____ NO

Was Larry Lamerdin's negligence a substantial factor in causing harm to Plaintiff Candace Conti?

_____ YES _____ NO

If you answered YES in any part of question 2, then answer question 3. If you answered NO to all parts of question 1, skip questions 3 and 4, and answer question 5.

3. Was Gary Abrahamson an agent of Defendant Watchtower and Bible Tract Society of New York, Inc.?

_____ YES _____ NO

Was Michael Clarke an agent of Defendant Watchtower and Bible Tract Society of New York, Inc.?

_____ YES _____ NO

Was Larry Lamerdin an agent of Defendant Watchtower and Bible Tract Society of New York, Inc.?

_____ YES _____ NO

Was Gary Abrahamson an agent of Defendant North Congregation of Jehovah's Witnesses, Fremont, California?

_____ YES _____ NO

Was Michael Clarke an agent of Defendant North Congregation of Jehovah's Witnesses, Fremont, California?

_____ YES _____ NO

Was Larry Lamerdin an agent of Defendant North Congregation of Jehovah's Witnesses, Fremont, California?

_____ YES _____ NO

If you answered YES in any part of question 3, then answer question 4. If you answered NO to all parts of question 3, skip question 4, and answer question 5.

4. Was Gary Abrahamson acting within the scope of his agency with Defendant Watchtower Bible and Tract Society of New York, Inc. when his negligence harmed Plaintiff Candace Conti?

_____ YES _____ NO

Was Michael Clarke acting within the scope of his agency with Defendant Watchtower Bible and Tract Society of New York, Inc. when his negligence harmed Plaintiff Candace Conti?

_____ YES _____ NO

Was Larry Lamerdin acting within the scope of his agency with Defendant Watchtower Bible and Tract Society of New York, Inc. when his negligence harmed Plaintiff Candace Conti?

_____ YES _____ NO

Was Garry Abrahamson acting within the scope of his agency with Defendant North

Congregation of Jehovah's Witnesses, Fremont, California when his negligence harmed Plaintiff Candace Conti?

_____ YES _____ NO

Was Michael Clarke acting within the scope of his agency with Defendant North Congregation of Jehovah's Witnesses, Fremont, California when his negligence harmed Plaintiff Candace Conti?

_____ YES _____ NO

Was Larry Lamerdin acting within the scope of his agency with Defendant North Congregation of Jehovah's Witnesses, Fremont, California when his negligence harmed Plaintiff Candace Conti?

_____ YES _____ NO

5. Did Defendant Jonathan Kendrick willfully and intentionally sexually abuse and molest Plaintiff Candace Conti?

If you answered YES to any part of question 4 or YES to question 5, then answer question 6. If you answered NO to all parts of question 4 and to question 5, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are Plaintiff Jane Doe's total damages?

   a. Past economic loss.

      i. Past medical expenses: $_____

      ii. Past lost earnings: $_____

   b. Future economic loss.

      i. Future medical expenses: $_____

      ii. Future lost earnings: $_____

   c. Past noneconomic loss for physical, mental, and emotional injuries.

      $_____

   d. Future noneconomic loss for physical, mental, and emotional injuries.

      $_____

TOTAL of a, b, c, and d: $_____

7. Was Neal Conti negligent?

_____ YES _____ NO

Was Kathleen Conti negligent?

_____ YES _____ NO

Was any other non-party negligent?

_____ YES _____ NO

If you answered YES to any part of question 7, then answer question 8. If you answered NO all parts of question 7, go to question 9.

8. Was neal Conti's, Kathleen Cont's, or any other non-party's or non-parties' negligence a substantial factor in causing harm to Plaintiff Candace Conti?

_____ YES _____ NO

9. What percentage of responsibility for Plaintiff Candace Conti's harm do you assign to the following? Insert a percentage only for those who received YES answers to questions 4, 5, or 8.

Jonathan Kendrick	_____%
Watchtower Bible and Tract Society of New York, Inc.	_____%
North Congregation of Jehovah's Witnesses, Fremont, California	_____%
Neal Conti	_____%
Kathleen Conti	_____%
Any other non-party or non-parties	_____%
TOTAL:	100%

Signed: _____
Presiding Juror

Dated: _____

After the verdict form has been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict to the courtroom.

VF-3904. Punitive Damages – Entity Defendant – Authorization [modified]

We answer the questions submitted to us as follows:

1. Do you find by clear and convincing evidence that an agent of Defendant Watchtower Bible and Tract Society of New York, Inc. engaged in conduct with malice, oppression, or fraud?

   _____ YES _____ NO

   If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Do you find by clear and convincing evidence that a managing agents of Defendant Watchtower Bible and Tract Society of New York, Inc. engaged in conduct with malice, oppression, or fraud authorize this conduct?

   _____ YES _____ NO

   If your answer to question 2 is YES, then answer question 3. If you answered NO, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What amount of punitive damages, if any, do you award Plaintiff Candace Conti against Defendant Watchtower Bible and Tract Society of New York, Inc.?

   $_____

Signed: _____
Presiding Juror

Dated: _____

After the verdict form has been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict to the courtroom.

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
Case No. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 18, 2012, I served the following document(s) described as **DEFENDANTS THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA'S PROPOSED VERDICT FORMS** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 18, 2012, at Oakland, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.

Case No. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801279

FILED
ALAMEDA COUNTY
MAY 18 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S TRIAL MEMORANDUM

JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 1

THE LAW 5

I. Kendrick was not an agent of Watchtower or Fremont 5

II. Watchtower and the North Fremont Congregation cannot be held liable for the negligent or intentional conduct of a congregation member 6

III. Plaintiff's claim of negligent supervision is barred by the First Amendment of the U.S. Constitution and its California analog 6

IV. Plaintiff's negligence claim against Watchtower and the North Fremont Congregation must fail because they had no "Special Relationship" with Plaintiff and, therefore, owed no duty to Plaintiff 7

V. The Church Defendants had no legal duty to report child sexual abuse to authorities 10

VI. Watchtower and the North Fremont Congregation cannot be held liable for conduct by a member unrelated to congregation activity and away from the Kingdom Hall 11

CONCLUSION 12

TABLE OF AUTHORITIES

CASES:

Ayon v. Gourley (D. Colo. 1998) 47 F. Supp.2d 1246 7

Berry v. Watchtower Bible and Tract Society of New York, Inc. (N.H. 2005) 879 A.2d 1124 6

Bryan R. v. Watchtower Bible and Tract Society of New York, Inc. (Me. 1999) 738 A.2d 839 6

Eric J. v. Betty M. (1999) 76 Cal.App.4th 715 ..... 8, 11, 12

Garcia v. Superior Court (1990) 50 Cal.3d 728 8

Gillet v. Watchtower Bible and Tract Society of Pennsylvania, Inc. (Fla. Dist. Ct. App. 2005) 913 So.2d 618 6

Hooks v. Southern Ca. Permanente MedicalGroup (1980) 107 Cal.App.3d 435 7

Mallory v. Fong (1951) 37 Cal.2d 357 5

Meyer v. Lindala (Minn. Ct. App. 2004) 675 N.W.2d 635 6

Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257 ..... 8, 9, 10

Romero v. Superior Court (2001) 89 Cal.App.4th 1068 ..... 7, 8

Schmidt v. Bishop (S.D.N.Y. 1991) 779 F. Supp. 321 6

Seo v. All-Makes Overhead Doors (2002) 97 Cal.App.4th 1193 8

STATUTES:

California Penal Code section 11166 10

OTHER AUTHORITIES:

5 Witkin, *Summary of Cal. Law* (10th ed. 2005) Torts, § 6, p. 48 7

RESTATEMENT (SECOND) OF TORTS (1965) section 314 ..... 7, 8, 10

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted on behalf of defendants Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Fremont, California, Congregation of Jehovah's Witnesses, North Unit (hereinafter "North Fremont Congregation") (hereinafter "the Church Defendants").

STATEMENT OF FACTS

The Parties

Plaintiff Candace Conti was born on November 25, 1985, and is presently 26 years old. Plaintiff alleges that she was sexually abused by defendant Jonathan Kendrick (hereinafter "Kendrick") during 1994 to 1996 or 1997, while she was 9 to 11 years of age.

Kendrick was baptized as one of Jehovah's Witnesses in 1988, at the age of 34. Thereafter, in 1990, he was appointed as a "ministerial servant" in the North Fremont Congregation. The duties of a ministerial servant in a congregation of Jehovah's Witnesses include making sure that the congregation members have sufficient literature for use in their door-to-door ministry, assisting with the cleaning and maintenance of the Kingdom Hall (i.e., church or house of worship), attending to the sound system at the Kingdom Hall used during meetings, assisting meeting late-comers to find seats, as well as helping to collect, count and deposit in the bank funds anonymously placed in boxes in the Kingdom Hall. These ministerial functions are designed to assist the congregation members and the congregation elders.

The North Fremont Congregation elders, as in each of the more than 110,000 congregations of Jehovah's Witnesses worldwide, oversee the spiritual welfare of the congregation. They convey Bible-based teachings to the congregation and maintain the moral and spiritual cleanliness of the congregation. In keeping with Bible tradition, the elders, or "older men," are the spiritual shepherds of the flock. They dispense guidance and direction to the members of the congregation based on the Bible. There is no such thing as a paid "clergy class" in the Jehovah's Witnesses faith. Jehovah's Witness elders are volunteers and self-supporting, either by secular employment or otherwise.

Watchtower is a New York, not-for-profit, religious corporation. It is used by the

Governing Body of Jehovah's Witnesses to operate various religious schools used by the Jehovah's Witnesses faith and to hold title to and operate the administrative offices and other facilities in New York. In addition, Watchtower was the legal corporation through which the U.S. Branch Service Department communicated spiritual supervision and the appointment and deletion of elders and ministerial servants to congregations of Jehovah's Witnesses in the 48 contiguous states.

Background Information

In 1993, Kendrick asked the North Fremont Congregation elders to visit his home to discuss a matter on which he and his family needed spiritual guidance and direction. In response, elders Michael Lee Clarke and Gary Abrahamson visited the Kendrick home in November 1993. As is the normal procedure and protocol for Jehovah's Witness elders when giving confidential spiritual guidance to families, the meeting included Kendrick, his then-wife Evelyn, and Evelyn's 15-year-old daughter Andrea. In the presence of Evelyn and Andrea, Kendrick confessed to the elders that four months earlier he had come into the darkened home where Andrea was sleeping on the couch in the living room. Kendrick further confessed that on that occasion he had momentarily touched Andrea's breast over her clothing. Neither Evelyn nor Andrea contradicted Kendrick's version of events at that meeting. In fact, Evelyn agreed with Kendrick when he told the elders that 15-year-old Andrea was trying to use Kendrick's conduct as a weapon to force them to allow her (Andrea) to continue having her boyfriend stay in her bedroom with her. During that meeting, Andrea also alleged that another young girl whose mother was a member of the congregation, Toi Register (now Toi Register Hayes), had told her that Kendrick had accidentally touched her inappropriately. (However, Toi Register Hayes will testify she was never touched inappropriately by Kendrick and also will deny ever telling Andrea anything of that nature.)

In December 1993 an ecclesiastical determination was made based upon the scriptures that Kendrick's conduct was "uncleanness" and because he was no longer irreprehensible (or free from accusation), he was removed by the North Fremont Congregation elders from his position as a "ministerial servant." An announcement was made to the entire congregation that

Kendrick was no longer serving as a ministerial servant, alerting the congregation to a problem with Kendrick. Never again did Kendrick serve in any position of responsibility in any congregation of Jehovah's Witnesses. Unknown to the elders and Church Defendants, a few months later Kendrick was investigated by the Fremont police and thereafter pleaded guilty to a misdemeanor arising out of Andrea's allegations against him.

In about 2010, shortly after she was released from jail, Plaintiff contacted elders in the North Congregation in Downey, California, and alleged that Kendrick had sexually abused her when she was a child. This was the first time that plaintiff ever notified any elder about her alleged abuse.

Plaintiff's Allegations

In January 2011 Plaintiff commenced this lawsuit. In her Complaint, Plaintiff alleged that Kendrick abused her during 1996 and 1997. During her deposition, she testified that the abuse began in 1994 and continued until her parents' divorce in July 1997. Plaintiff alleged Kendrick was frequently allowed to take her from the Kingdom Hall after Sunday services to his home, where he abused her, and he then returned Plaintiff to the Kingdom Hall or her parent's home.

The Evidence

There is no other witness who will corroborate plaintiff's allegations of abuse in this case. In fact, the evidence from other witnesses contradicts certain allegations of Plaintiff.

Her father, Neal Conti, will testify that he never allowed plaintiff to leave the Kingdom Hall with Kendrick. Because his wife, plaintiff's mother, Kathleen Conti, had been abused as a child, he was very careful and vigilant in protecting his daughter from such things. He also denies ever allowing plaintiff to sit on Kendrick's lap at the Kingdom Hall.

Plaintiff's mother, Kathleen Conti, denied ever allowing plaintiff to sit on Kendrick's lap at the Kingdom Hall. She also vehemently denied allowing Kendrick to take plaintiff to his home from the meetings at the Kingdom Hall.

The elders will testify that they kept a close watch on Kendrick after he was removed as a ministerial servant (the removal was in December 1993). They made sure that he did not pay

inappropriate attention to children in the Kingdom Hall. They will confirm that they never saw plaintiff leave the Kingdom Hall with Kendrick. In fact, if they had seen such conduct, they would have put a stop to it. Similarly, they never saw Kendrick bear hugging plaintiff or having plaintiff sit on his lap at the Kingdom Hall.

Several persons who were members of the congregation at the time of the alleged abuse of plaintiff will testify that they never saw plaintiff, a 9, 10, or 11 year-old-girl, sitting on Kendrick's lap. They will add that they would have found such conduct to be inappropriate. Similarly, they will testify that they never saw plaintiff being taken from the Kingdom Hall by Kendrick, and that they would have considered such conduct even more inappropriate and upsetting. They will point out that they would have notified the elders of it if they had ever seen it happening.

Testimony will be adduced at trial that it would have been very unusual, even in the early 1990's, for a single male in his 40's in a congregation of Jehovah's Witnesses to take a girl between 9 and 11 years of age to his home by herself. The testimony of the elders and defendants' expert, Monica Applewhite, Ph.D., will bring out that a congregation of Jehovah's Witnesses is based on the family unit. Within the Jehovah's Witnesses faith, there is no "Sunday School," "church camp," or other children's activities in which children are separated from their parents. The parents of children in the congregation are expected to guide, direct and attend to the needs of their children. The elders are there to give spiritual guidance and direction and any other practical assistance possible, but the parents are there to monitor and discipline their children. Jehovah's Witness children are not separated from their parents for *any* spiritual programs or activities.

In addition, the evidence will show that Watchtower has for decades, through its publications, advised and warned parents about the dangers of child abuse. Using the latest expert research, studies and reports, Watchtower has for decades provided its members advice about how to avoid the scourge of child sexual abuse. It will be shown that these publications have been distributed worldwide to all Jehovah's Witnesses and the public in general.

///

THE LAW

I. Kendrick was not an agent of Watchtower or Fremont

It is undisputed that Kendrick was removed as a ministerial servant in December 1993 and never served in a position of authority or responsibility in any congregation of Jehovah's Witnesses at any time thereafter. Therefore, Kendrick was no more than a congregation member from that point in time forward. Kendrick was the equivalent of a parishioner sitting in a pew in a Catholic or other denomination's church attending church services.

If plaintiff was abused during 1994 to 1997 as she claims, then it occurred at a time when Kendrick was, as a matter of law, not an agent of Watchtower or the North Fremont Congregation. In *Mallory v. Fong* (1951) 37 Cal.2d 357, 370, the Court reiterated the well-settled law that "[t]he existence of the right of control and supervision establishes the existence of an agency relationship." At the time of the alleged abuse, Kendrick was not in any appointed position in the Jehovah's Witnesses faith, and he was not subject to the control and supervision of either Watchtower or the North Fremont Congregation.

To hold that Kendrick was an agent subject to the control and supervision of Watchtower or Fremont under these circumstances flies in the face of agency law and would mean every member of every religious organization or every associate of any not-for-profit organization can impose liability on the organization by tortious conduct committed away from the organization's property and wholly unconnected to the organizations activities.

Additionally, Plaintiff seems to contend that the elders of the North Fremont Congregation had a duty to warn members of the congregation that Kendrick was a serial pedophile based on the one known incident with his stepdaughter. This would create an entirely new duty and obligation for a religious organization. It would be the equivalent of creating a duty on the part of the religious leaders of any faith to announce to all in attendance at a church service that a person sitting in the church had recently confessed to molesting a minor. There was no such legal duty then and there is no such duty today. To create such a duty would be improper and unconstitutional, as discussed below.

///

II. Watchtower and the North Fremont Congregation cannot be held liable for the negligent or intentional conduct of a congregation member

There have been several cases across the nation that have held that neither Watchtower nor a local congregation of Jehovah's Witnesses can be held liable for the negligent or even intentional conduct of a congregation member. (*See Berry v. Watchtower Bible and Tract Society of New York, Inc.* (N.H. 2005) 879 A.2d 1124; *Gillet v. Watchtower Bible and Tract Society of Pennsylvania, Inc.*(Fla. Dist. Ct. App. 2005) 913 So.2d 618; *Meyer v. Lindala* (Minn. Ct. App. 2004) 675 N.W.2d 635; *Bryan R. v. Watchtower Bible and Tract Society of New York, Inc.* (Me. 1999) 738 A.2d 839.) These holdings are in recognition of the injustice of holding a party liable for the conduct of a person over whom they have no control or supervision.

In the instant action, Watchtower and the North Fremont Congregation will present indisputable evidence that, at the time of the alleged abuse of plaintiff by Kendrick, Kendrick was nothing more than a member of the congregation. Kendrick then held no position of authority or responsibility, and he was not then an agent of Watchtower or the North Fremont Congregation. Plaintiff has no evidence to contradict this fact. Therefore, plaintiff's cause of action for negligent supervision must fail.

III. Plaintiff's claim of negligent supervision is barred by the First Amendment of the U.S. Constitution and its California analog

The evidence is uncontradicted that Kendrick was not an agent of Watchtower or Fremont when he allegedly abused plaintiff. However, even if there were evidence that Kendrick then was an agent or subject to the control and supervision of Watchtower or the North Fremont Congregation, plaintiff's claim for negligent supervision would fail, because it is barred by the First Amendment of the U.S. Constitution and its California analog.

The Court in *Schmidt v. Bishop* (S.D.N.Y. 1991) 779 F. Supp. 321, 332, in dealing with this issue stated:

> [A]ny inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement discussed above, which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor of a Presbyterian Church is not analogous to a common law employee. . . . The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation. …

> It would therefore also be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained the defendant Bishop. Any award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the establishment clause.

(*See also Ayon v. Gourley* (D. Colo. 1998) 47 F. Supp.2d 1246, 1250-51 (inappropriate for court to examine whether church procedures for supervision were "reasonable and adequate").)

In this action, the alleged perpetrator of the abuse of plaintiff was not even a member of the "clergy" or religious leaders of the North Fremont Congregation. Kendrick then had no position within that congregation, nor was he subject to the Church Defendants' control or supervision. How much more unjust, improper and unconstitutional it would be, then, to subject the Church Defendants to liability for the conduct of Kendrick.

IV. Plaintiff's negligence claim against Watchtower and the North Fremont Congregation must fail because they had no "Special Relationship" with plaintiff and, therefore, owed no duty to Plaintiff

A tort involves the violation of a *legal* duty, imposed by statute, contract or otherwise, owed by the defendant to the person injured. (*Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1078.) If a legal duty does not exist, "any injury is 'damnum absque injuria'—injury without wrong." (5 Witkin, *Summary of Cal. Law* (10th ed. 2005) Torts, § 6, p. 48; *Romero, supra.*) Because the existence of a duty is an essential element of a tort claim and thus a necessary precondition for liability, the first determination a court must make when examining a negligence claim is whether the defendant owed a legal duty to Plaintiff. (*Hooks v. Southern Ca. Permanente MedicalGroup* (1980) 107 Ca1.App.3d 435, 443.)

It is axiomatic that a person does *not* have a legal duty to come to the aid of another. RESTATEMENT (SECOND) OF TORTS (1965) section 314. This is true irrespective of the gravity of the danger to which the other is subjected and the insignificance of the trouble, effort or expense of giving aid or protection. (*Id.*, section 314, comment c.) "A determination that as a matter of law no duty is owed to the Plaintiff is particularly common in situations in which the defendant's responsibility for the activities of third parties is involved." (*Hooks*, 107 Ca1.App.3d at p. 443.) However, this general "no duty" rule is subject to an exception in certain situations where a "special relationship" exists between the parties. (RESTATEMENT (SECOND) OF

TORTS (1965) section 314A.)

California courts have long adhered to these "no duty to aid" principles. As the Court of Appeal noted, "'[a] person is ordinarily not liable for the actions of another and is under no duty to protect another from harm in the absence of a *special relationship* of custody or control.'" (*Romero,* 89 Cal.App.4th at p. 1078-79 (emphasis in original) (citations omitted); *see also Garcia v. Superior Court* (1990) 50 Cal.3d 728, 734 ("A special relationship is a prerequisite for liability based on a defendant's *failure to act.*") (emphasis in original).) Furthermore, "[a]bsent a 'special relationship,' one cannot be held liable for mere nonfeasance, such as not protecting another from a criminal attack by a third party." (*Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727.)

According to the Court of Appeal, "'the common law concept of special relationships covers: landowner or possessor and person coming on the land; manufacturer or supplier of goods and buyer or user; vendor, lessor, or contractor and purchaser, lessee or owner of 'real property.'" (*Seo v. All-Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1203 (citations omitted).) Additionally, affirmative duties may arise in relationships such as those of a "common carrier and passenger," "innkeeper and guest," possessor of land and invitee, and a "person who is required by law to take, or who voluntarily takes, custody of another under circumstances that deprive the other of his normal opportunities for protection." (*Id.*; *see also* RESTATEMENT (SECOND) OF TORTS (1965) section 314A(1)-(4).)

Then, the question becomes whether a church has a "special relationship" with its parishioners by virtue of the priest/parishioner relationship. The Court of Appeal directly addressed this question in *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257. In *Richelle L.*, the plaintiff sued a Catholic priest and the Archdiocese of San Francisco, seeking damages for injuries she allegedly sustained as a result of a sexual relationship initiated by the priest. (*Id.* at p. 264.) The complaint in *Richelle L.* contained seven causes of action, including one for "general negligence" made against both the priest and the Archdiocese. (*Id.* at p. 265.) The trial court sustained the defendants' demurrers without leave to amend; that ruling was affirmed by the Court of Appeal.

The Court of Appeal noted that "the thesis of all the demurrers, which rested on the First Amendment, was that respondents 'did not owe a civil duty, fiduciary or otherwise, to [appellant] in these *or any other circumstances*,' and '[t]his lack of duty is fatal to each cause of action.'" (*Id.* at p. 265 (emphasis in original).) The court considered whether a "special relationship"—a prerequisite for a negligence claim—existed between a priest and a sexual abuse victim. The court reasoned that the priest "cannot be liable to appellant [the victim] for breach arising out of a duty arising out of a special relationship" because it would be the equivalent to a prohibited clergy malpractice claim. (*Id.* at p. 270.)

At the end of its opinion, the Court of Appeal turned its attention to the duty of the Archdiocese. "Appellant does not attempt to hold respondent Archdiocese vicariously liable under the theory of *respondeat superior*, but directly liable for breach of a fiduciary duty and for negligence in hiring and supervision. In order to prevail against the Archdiocese, however, appellant must show, among other things, that she suffered an injury the law recognizes. For the reasons we have explained, appellant cannot make such a showing; accordingly, there is no need to inquire whether the Archdiocese can be subjected to any duty." (*Id.* at p. 282-83.) Thus, the Court of Appeal affirmed the demurrers granted to the Archdiocese as the supervisory organization over the defendant priest.

In order for Plaintiff's negligent supervision claim in this action to survive against the Church Defendants, she must establish that the Church Defendants owed her a duty. But there is no duty to aid, unless she can show a "special relationship" existed directly between herself and one or both of the Church Defendants.

To state this differently, in order for Plaintiff to prevail on her negligent supervision claim against the Church Defendants, she would have this Court hold that a "special relationship" between minor parishioners and a local church entity (i.e., the North Fremont Congregation), as well as between minor parishioners and a national church entity (i.e., Watchtower). No prior California decision has suggested that all minors who attend religious services have a "special relationship" with their churches, temples, or other places of worship (and by extension the corporate structures used by such churches, temples, or places of

worship), simply by virtue of the minors' association with the church. Furthermore, *Richelle L.*, *supra*, stands for the proposition that such a "special relationship" does not exist.

Plaintiff cannot establish that she had a "special relationship" with the Church Defendants, including the corporate entity used by the local congregation or the religious corporation used by Watchtower. In California, it has never been held that a corporate church entity had a "special relationship" with its members, unlike holdings regarding "common carrier and passenger" or "innkeeper and guest." (RESTATEMENT (SECOND) OF TORTS (1965) § 314A (1)-(4).)

Plaintiff here cannot show under these circumstances that she had a "special relationship" with either the North Fremont Congregation or Watchtower. Therefore, the negligence claim against them should be dismissed.

V. The Church Defendants had no legal duty to report child sexual abuse to authorities

It is expected that plaintiff will elicit testimony at trial that Watchtower and the North Fremont Congregation did not notify the authorities of the 1993 incident between Kendrick and his step-daughter. Of course, the purpose of this testimony will be to prejudice the jury against the Church Defendants. However, during that time period, the State of California did not require ministers or religious leaders to report allegations of child sexual abuse to the authorities.

It was not until January 1997 that the California legislature created a statutory duty on the part of ministers to report allegations of child abuse to the authorities. (*See* California Penal Code section 11166.) Even then, the California legislature preserved the clergy-penitent privilege. It did not require ministers to disclose penitential communications of any kind to the authorities. Penal Code section 11166(d) states that "[a] clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a)" (i.e., the reporting requirement).

In this case, the two elders received a confession in November 1993 from Jonathan Kendrick as stated above. The elders had no legal duty to report the incident to the authorities, because the law at that time did not require ministers to do so. In addition, this confession by

Kendrick was received by the elders in the course of the discipline and practice of the Jehovah's Witness faith and was intended to be kept confidential. As such, it was also privileged and not subject to disclosure in any fashion beyond those dictated by the protocols and procedures of the Jehovah's Witness faith. The Church Defendants assert that, even if received today, that confession by Kendrick would be privileged.

Thus, plaintiff has no evidence or legal basis for arguing that Watchtower and/or the North Fremont Congregation had a duty to report the November 1993 allegation of abuse against Kendrick to the authorities.

Plaintiff is trying to create a duty in tort law that did not exist at the time of her alleged abuse and still does not exist. She will attempt to unfairly prejudice the jury by pointing out that Watchtower and the North Fremont Congregation did not notify the authorities of the 1993 allegations. (Ironically, when Plaintiff herself has never notified the authorities of her own allegations of abuse by Kendrick.) She wants to hold Watchtower and Fremont liable for not reporting the allegations by Andrea against Kendrick made in 1993, when they had no duty to do so. This Court should not allow such a claim to succeed.

VI. Watchtower and the North Fremont Congregation cannot be held liable for conduct by a member unrelated to congregation activity and away from the Kingdom Hall

Plaintiff will offer evidence of abuse of her by Kendrick at his home. However, Watchtower and the North Fremont Congregation cannot be held liable to plaintiff for Kendrick's alleged conduct at his own home that was unrelated to congregation or church activity.

In *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, the Court of Appeal examined how the law of premises liability inter-relates with a claim of child molestation. There, Court or Appeal upheld the dismissal of the claim against the landowner because "there was no relationship between the harm and any premises owned by family members on which the harm occurred." (*Id.* at p. 717.) The Court of Appeal further stated that liability was only allowed "when there is something foreseeably dangerous about the nature of the activity conducted on the property or the property itself which fixes on the landowner the duty to take some sort of precaution or the

owner has in some way undertaken, as part of the organized activity on the land, care for the safety of the plaintiff as against criminal acts of third parties." (*Id.* at p. 721.)

In the case at bar, the North Fremont Congregation were conducting church services on its property. This activity is not something "foreseeably dangerous" and no liability can be allowed. Further, the Church Defendants did not undertake any responsibility for the care or safety of Plaintiff at any time and certainly not while she was away from the Kingdom Hall property and not engaged in any congregation activity. No such duty exists, and imposing such a duty would be to change the law as well as place an impossible burden on not only the Church Defendants but on all not-for-profit religious, civic, and political organizations.

CONCLUSION

Based upon the foregoing facts and the law applicable thereto, it is respectfully submitted that the plaintiff does not have and cannot make out a valid and legally cognizable claim against either Watchtower or the North Fremont Congregation.

DATED: May 16, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 18, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 18, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S TRIAL MEMORANDUM** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 18 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

8801263

FILED
ALAMEDA COUNTY
MAY 18 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JOINT PROPOSED WITNESS LIST

Trial Date: 5/21/2012

1. Gary Abrahamson;
2. Janice Afruma M.D.;
3. Monica Applewhite;
4. Sgt. Jeffrey Baldwin;
5. Andrea Becerra;
6. Neftali Beltran;
7. Jennifer Benedik;
8. William Bowen;
9. Michael Lee Clarke;
10. Candace Conti, plaintiff;
11. Dorothy Conti;
12. Kathleen Conti;
13. Neal Conti;

14. Officer J.W. Davila, FPD;

15. Joel David Hood;

16. James Dominguez;

17. Pamela Figuerido;

18. Claudia Francis;

19. Lynn Fraser, L.C.S.W.;

20. Harold Guilliams;

21. Helene Harmatz, Ph. D.;

22. Toi Register Hayes;

23. Linda Hood Kendrick;

24. Manuel Iglesias;

25. Paul Inman;

26. David Jensen;

27. Evelyn Kendrick;

28. Jonathan Kendrick;

29. Lawrence Lamerdin;

30. Marcia Lee, M.F.T.;

31. Carl Lewis;

32. Carolyn Inman Conti Martinez;

33. Bernice Muñoz;

34. Sylvia Muñoz;

35. Cheryl Phillips;

36. Lynn Ponton, M.D.;

37. Mark Questell;

38. Anna Salter;

39. Alen Shuster;

40. Laura Walton, M. D.;

41. Martin Williams, Ph. D.;

42. Cliff Williams.

8801267

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8255 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 18 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S REQUEST FOR JURY INSTRUCTIONS

Trial Date: 5/21/2012

Plaintiff Candace Conti respectfully requests this court to give the following numbered Judical Council of California Jury Instructions, and the additional instructions set forth below, and any further or additional instructions that may be subsequently requested:

SPECIAL 1, SPECIAL 2, CACI 100, CACI 101, CACI 102, CACI 103, CACI 104, CACI 106, CACI 107, CACI 112, CACI 113, CACI 114, CACI 116, CACI 200, CACI 201, CACI 202, CACI 203, CACI 204, CACI 205, CACI 206, CACI 207, CACI 208, CACI 210, CACI 212, CACI 218, CACI 219, CACI 220, CACI 221, CACI 223, CACI 400, CACI 401, CACI 412, CACI 413, CACI 430, CACI 431, CACI 3700, CACI 3701, CACI 3703, CACI 3900, CACI 3902, CACI 3903, CACI 3903A, CACI 3904A, CACI 3904B, CACI 3905, CACI 3905A, CACI 3932, CACI 3941, CACI 3946, CACI 5000, CACI 5002, CACI 5003, CACI 5005, CACI 5006, CACI 5009, CACI 5010, CACI 5011, CACI 5012, CACI 5019, CACI 5020.

///

///

///

Dated: May 7, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

PLAINTIFF'S REQUESTED SPECIAL INSTRUCTION NO. 1

DUTY TO PROTECT

The defendants Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit, had a duty to take reasonable protective measures to protect Candace Conti from the risk of sexual abuse by volunteers, including Jonathan Kendrick, involved in Jehovah's Witness activities. In determining whether or not Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit, took reasonable protective measures, you may consider the following:

1. The presence or absence of any warning;
2. The availability of training and whether or not such training was provided;
3. Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses volunteers for the purpose of childhood sexual abuse prevention; and
4. Such other facts and circumstances contained in the evidence.

(Authority: Juarez v. Boy Scouts of America (2000) 81 Cal.App.4th 377,409-10).

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

PLAINTIFF'S REQUESTED SPECIAL INSTRUCTION NO. 2.

DUTY TO PROTECT

An organization that conducts, sponsors, or supervises activities involving minors and adults together has a duty to exercise reasonable care in the selection and supervision of its volunteers, so as to avoid exposing minors to the risk of harm from sexual abuse by adult volunteers.

Such an organization also has a duty to take reasonable steps and institute reasonable safeguards to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment.

(Authority: Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 828, 843; CCP Section 340.1(b)(2)).

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 100. PRELIMINARY ADMONITIONS

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or Web site, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to the court [attendant/bailiff] as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but you are not required to do so.

During the trial, do not read, listen to, or watch any news reports about this case. [I have no information that there will be news reports concerning this case.] This prohibition extends to the use of the Internet in any way, including reading any blog about the case or about anyone involved with it or using Internet maps or mapping programs or any other program or device to search for or to view any place discussed in the testimony.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. If you do need to view the scene during the trial, you will be taken there as a group under proper supervision.

[If you violate any of these prohibitions on communications and research, including prohibitions on electronic communications and research, you may be held in contempt of court or face other sanctions. That means that you may have to serve time in jail, pay a fine, or face other punishment for that violation.]

You must decide this case based only on the evidence presented in this trial and the instructions of law that I will provide. Nothing that you see, hear, or learn outside this courtroom is evidence unless I specifically tell you it is. If you receive any information about this case from any source outside of the courtroom, promptly report it to the court [attendant/bailiff]. It is important that all jurors see and hear the same evidence at the same time.

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

Do not concern yourselves with the reasons for the rulings.I will make during the course of the trial. Do not guess what I may think your verdict should be from anything I might say or do.

When you begin your deliberations, you may discuss the case only in the jury room and only when all the jurors are present.

You must decide what the facts are in this case. And, I repeat, your verdict must be based only on the evidence that you hear or see in this courtroom. Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 101. OVERVIEW OF TRIAL

To assist you in your tasks as jurors, I will now explain how the trial will proceed. I will begin by identifying the parties to the case. Candace Conti filed this lawsuit. She is called a plaintiff. She seeks damages from Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit, who are called defendants.

Candace Conti claims that she was sexually abused as a child by Jonathan Kendrick, and that the defendants Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit were negligent in their conduct, and that negligence was a contributing cause of her sexual abuse. Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit deny any negligence.

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. Also, because it is often difficult to give you the evidence in the order we would prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence.

Next, the jury will hear the evidence. Candace Conti will present evidence first. When Candace Conti is finished, Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit will have an opportunity to present evidence.

Each witness will first be questioned by the side that asked the witness to testify. This is called direct examination. Then the other side is permitted to question the witness. This is called cross-examination.

Documents or objects referred to during the trial are called exhibits. Exhibits are given a [number/letter] so that they may be clearly identified. Exhibits are not evidence until I admit them into evidence. During your deliberations, you will be able to look at all exhibits admitted into evidence.

There are many rules that govern whether something will be admitted into evidence. As one side presents evidence, the other side has the right to object and to ask me to decide if the evidence is permitted by the rules. Usually, I will decide immediately, but sometimes I may have to hear arguments outside of your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. What the parties say in closing argument is not evidence. The arguments are offered to help you understand the evidence and how the law applies to it.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 102. TAKING NOTES DURING THE TRIAL

You have been given notebooks and may take notes during the trial. Do not take the notebooks out of the courtroom or jury room at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify. Nor should you allow your impression of a witness or other evidence to be influenced by whether or not other jurors are taking notes. Your independent recollection of the evidence should govern your verdict, and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

[The court reporter is making a record of everything that is said. If during deliberations you have a question about what the witness said, you should ask that the court reporter's records be read to you. You must accept the court reporter's record as accurate.]

At the end of the trial, your notes will be [collected and destroyed/collected and retained by the court but not as a part of the case record/ [specify other disposition]].

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 103. MULTIPLE PARTIES

There are 2 defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or her own defenses.

Different aspects of this case involve different parties (defendants). Each instruction will identify the parties to whom it applies. Pay particular attention to the parties named in each instruction.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 104. NONPERSON PARTY

Two corporations (Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit) are parties in this lawsuit. Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit are entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in these instructions to refer to a party, those instructions also apply to Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 106. EVIDENCE

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a "stipulation." No other proof is needed and you must accept those facts as true in this trial.

Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

An attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as though it did not exist.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 107. WITNESSES

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 112. QUESTIONS FROM JURORS

If, during the trial, you have a question that you believe should be asked of a witness, you may write out the question and send it to me through my courtroom staff. I will share your question with the attorneys and decide whether it may be asked.

Do not feel disappointed if your question is not asked. Your question may not be asked for a variety of reasons. For example, the question may call for an answer that is not allowed for legal reasons. Also, you should not try to guess the reason why a question is not asked or speculate about what the answer might have been. Because the decision whether to allow the question is mine alone, do not hold it against any of the attorneys or their clients if your question is not asked.

Remember that you are not an advocate for one side or the other. Each of you is an impartial judge of the facts. Your questions should be posed in as neutral a fashion as possible. Do not discuss any question asked by any juror with any other juror until after deliberations begin.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 113. BIAS

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 114. BENCH CONFERENCES AND CONFERENCES IN CHAMBERS

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess to discuss matters outside of your presence. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Do not be concerned about our discussions or try to guess what is being said.

I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of my view of the evidence.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 116. WHY ELECTRONIC COMMUNICATIONS AND RESEARCH ARE PROHIBITED

I know that many of us are used to communicating and perhaps even learning by electronic communications and research. However, there are good reasons why you must not electronically communicate or do any research on anything having to do with this trial or the parties.

In court, jurors must make important decisions that have consequences for the parties. Those decisions must be based only on the evidence that you hear in this courtroom.

The evidence that is presented in court can be tested; it can be shown to be right or wrong by either side; it can be questioned; and it can be contradicted by other evidence. What you might read or hear on your own could easily be wrong, out of date, or inapplicable to this case.

The parties can receive a fair trial only if the facts and information on which you base your decisions are presented to you as a group, with each juror having the same opportunity to see, hear, and evaluate the evidence.

Also, a trial is a public process that depends on disclosure in the courtroom of facts and evidence. Using information gathered in secret by one or more jurors undermines the public process and violates the rights of the parties.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 200. OBLIGATION TO PROVE--MORE LIKELY TRUE THAN NOT TRUE

A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as "the burden of proof."

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 201. MORE LIKELY TRUE--CLEAR AND CONVINCING PROOF

Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true. I will tell you specifically which facts must be proved by clear and convincing evidence.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 202. DIRECT AND INDIRECT EVIDENCE

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial evidence." In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 203. PARTY HAVING POWER TO PRODUCE BETTER EVIDENCE

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 204. WILLFUL SUPPRESSION OF EVIDENCE

You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 205. FAILURE TO EXPLAIN OR DENY EVIDENCE

You may consider whether a party failed to explain or deny some unfavorable evidence. Failure to explain or to deny unfavorable evidence may suggest that the evidence is true.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 206. EVIDENCE ADMITTED FOR LIMITED PURPOSE

During the trial, I explained to you that certain evidence was admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described, and not for any other purpose.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 207. EVIDENCE APPLICABLE TO ONE PARTY

During the trial, I explained that certain evidence could be considered as to only one party. You may not consider that evidence as to any other party.

ÿÿÿ

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 208. DEPOSITION AS SUBSTANTIVE EVIDENCE

During the trial, you heard testimony read from a deposition. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you in the same way as you consider testimony given in court.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 210. REQUESTS FOR ADMISSIONS

Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true. No further evidence is required to prove them.

[However, these matters must be considered true only as they apply to the party who admitted they were true.]

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 212. STATEMENTS OF A PARTY OPPONENT

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.

2. If you believe that the statement was made, do you believe it was reported accurately?

You should view testimony about an oral statement made by a party outside the courtroom with caution.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 218. STATEMENTS MADE TO PHYSICIAN (PREVIOUSLY EXISTING CONDITION)

Certain healthcare providers have testified that Candace Conti made statements to them about Candace Conti's medical or mental health history. These statements helped the healthcare providers diagnose the patient's condition. You can use these statements to help you examine the basis of the healthcare providers' opinions. You cannot use them for any other purpose.

However, a statement by Candace Conti to any healthcare provider about her current medical or mental health condition may be considered as evidence of that medical condition.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 219. EXPERT WITNESS TESTIMONY

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

a. The expert's training and experience;

b. The facts the expert relied on; and

c. The reasons for the expert's opinion.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 220. EXPERTS--QUESTIONS CONTAINING ASSUMED FACTS

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called "hypothetical questions."

In determining the weight to give to the expert's opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 221. CONFLICTING EXPERT TESTIMONY

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 223. OPINION TESTIMONY OF LAY WITNESS

A witness [who was not testifying as an expert] gave an opinion during the trial. You may, but are not required to, accept that opinion. You may give the opinion whatever weight you think is appropriate.

Consider the extent of the witness's opportunity to perceive the matters on which the opinion is based, the reasons the witness gave for the opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 400. NEGLIGENCE--ESSENTIAL FACTUAL ELEMENTS

Candace Conti claims that she was harmed by Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit's negligence. To establish this claim, Candace Conti must prove all of the following:

1. That Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit was negligent;

2. That Candace Conti was harmed; and

3. That Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit's negligence was a substantial factor in causing Candace Conti's harm.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 401. BASIC STANDARD OF CARE

Negligence is the failure to use reasonable care to prevent harm to oneself or to others.

A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation.

You must decide how a reasonably careful person would have acted in [Candace Conti/Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit]'s situation.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 406. APPORTIONMENT OF RESPONSIBILITY

[Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit claim that the fault of Jonathan Kendrick also contributed to Candace Conti's harm. To succeed on this claim, Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit must prove both of the following:

1. That Jonathan Kendrick was at fault; and

2. That the fault of Jonathan Kendrick was a substantial factor in causing Candace Conti's harm.

If you find that the negligence or fault of more than one person including Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit and Jonathan Kendrick was a substantial factor in causing Candace Conti's harm, you must then decide how much responsibility each has by assigning percentages of responsibility to each person listed on the verdict form. The percentages must total 100 percent.

You will make a separate finding of Candace Conti's total damages, if any. In determining an amount of damages, you should not consider any person's assigned percentage of responsibility.

"Person" can mean an individual or a corporation.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 412. DUTY OF CARE OWED CHILDREN

An adult must anticipate the ordinary behavior of children. An adult must be more careful when dealing with children than with other adults.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 413. CUSTOM OR PRACTICE

You may consider customs or practices in the community in deciding whether [name of plaintiff/defendant] acted reasonably. Customs and practices do not necessarily determine what a reasonable person would have done in [name of plaintiff/defendant]'s situation. They are only factors for you to consider.

Following a custom or practice does not excuse conduct that is unreasonable. You should consider whether the custom or practice itself is reasonable.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 430. CAUSATION: SUBSTANTIAL FACTOR

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

[Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.]

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 431. CAUSATION: MULTIPLE CAUSES

A person's negligence may combine with another factor to cause harm. If you find that [name of defendant]'s negligence was a substantial factor in causing [name of plaintiff]'s harm, then [name of defendant] is responsible for the harm. [Name of defendant] cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing [name of plaintiff]'s harm.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3700. INTRODUCTION

A corporation is responsible for harm caused by the wrongful conduct of its agents while acting within the scope of their authority.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3701. TORT LIABILITY ASSERTED AGAINST PRINCIPAL--ESSENTIAL FACTUAL ELEMENTS

Candace Conti claims that she was harmed by the negligence of Elders Gary Abrahamson, Michael Clarke, and the legal and service departments of the Watchtower Bible and Tract Society of New York, Inc.

Candace Conti also claims that Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit are responsible for the harm because Elders Gary Abrahamson and Michael Clark were acting as its agents when the conduct occurred. Candace Conti further claims that Watchtower Bible and Tract Society of New York, Inc. is responsible for the harm because the legal and service departments were acting as the agents of Watchtower Bible and Tract Society of New York, Inc. at the time of the conduct.

If you find that Elders Gary Abrahamson and Michael Clark's negligence harmed Candace Conti, then you must decide whether Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit are responsible for the harm. Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit are responsible if Candace Conti proves both of the following:

1. That Elders Gary Abrahamson and Michael Clark were Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit's agents; and

2. That Elders Gary Abrahamson and Michael Clark weres acting within the scope of their agency when the conduct that caused Candace Conti harm occurred.

If you find that Watchtower Bible and Tract Society of New York, Inc.'s legal and services departments' negligence harmed Candace Conti, then you must decide whether Watchtower Bible and Tract Society of New York, Inc. is responsible for that harm. Watchtower Bible and Tract Society of New York, Inc. is responsible if Candace Conti proves both of the

following:

1. That the legal department and service department were Watchtower Bible and Tract Society of New York, Inc.'s agents; and

2. That the legal department and service department were acting within the scope of their agency at the time of the conduct that caused Candace Conti harm occurred.

(Authority: CACI 3701, As Modified).

REQUESTED BY:

GIVEN AS REQUESTED	____
GIVEN AS MODIFIED	X
GIVEN ON COURT'S OWN MOTION	____
REFUSED	____
WITHDRAWN	____

CACI 3703. LEGAL RELATIONSHIP NOT DISPUTED

In this case, Elders Gary Abrahamson and Michael Clarke were the agents of Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit.

Additionally, legal and service departments were the agents of Watchtower Bible and Tract Society of New York, Inc.

If you find that Elders Gary Abrahamson and Michael Clarke were acting within the scope of their agency when the conduct at issue occurred, then Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit are responsible for any harm caused by Abrahamson and Clarke's negligence.

If you find that the legal department and service departments of Watchtower Bible and Tract Society of New York, Inc. were acting within the scope of their agency when the conduct at issue occurred, then Watchtower Bible and Tract Society of New York, Inc. is responsible for any harm caused by the legal and service departments' negligence.

(Authority: CACI 3703, As Modified).

REQUESTED BY:

GIVEN AS REQUESTED	____
GIVEN AS MODIFIED	X
GIVEN ON COURT'S OWN MOTION	____
REFUSED	____
WITHDRAWN	____

CACI 3900. INTRODUCTION TO TORT DAMAGES--LIABILITY CONTESTED

If you decide that Candace Conti has proved her claim against Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit, you also must decide how much money will reasonably compensate Candace Conti for the harm. This compensation is called "damages."

The amount of damages must include an award for each item of harm that was caused by Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit's wrongful conduct, even if the particular harm could not have been anticipated.

Candace Conti does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

The following are the specific items of damages claimed by Candace Conti:

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3902. ECONOMIC AND NONECONOMIC DAMAGES

The damages claimed by Candace Conti for the harm caused by Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit fall into two categories called economic damages and noneconomic damages. You will be asked on the verdict form to state the two categories of damages separately.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3903. ITEMS OF ECONOMIC DAMAGE

The following are the specific items of economic damages claimed by Candace Conti:

Future therapy and counseling expenses.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3903A. MEDICAL EXPENSES--PAST AND FUTURE (ECONOMIC DAMAGE)

1. Past medical expenses.

To recover damages for past therapy and counseling expenses, Candace Conti must prove the reasonable cost of reasonably necessary medical care that she has received.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3904A. PRESENT CASH VALUE

If you decide that Candace Conti's harm includes economic damages for future therapy expenses then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future. Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit must prove the amount by which future damages should be reduced to present value.

To find present cash value, you must determine the amount of money that, if reasonably invested today, will provide Candace Conti with the amount of her future damages.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3904B. USE OF PRESENT-VALUE TABLES

Table A:

Use Table A to compute the present value of future therapy and counseling expenses.

1. Determine the amount of Candace Conti's future therapy and counseling expenses each year. Enter this amount into Worksheet A, Step 1.

2. Determine the number of years that this loss will continue. Enter this amount into Worksheet A, Step 2.

3. Select the interest rate that you decide represents the most likely rate of return on money invested today over that period of years. Enter this amount into Worksheet A, Step 3.

4. Select the appropriate Present Value Factor from Table A. To locate this factor, use the Number of Years from Step 2 on the worksheet and the Interest Rate from Step 3 on the worksheet and find the number that is the intersection of the Interest Rate column and Number of Years row. (For example, if the number of years is 15 and the interest rate is 10 percent, the corresponding Present Value Factor is 7.61.) Enter the factor into Worksheet A, Step 4.

5. Multiply the amount of Candace Conti's annual future loss from Step 1 by the factor from Step 4. This is the present value of Candace Conti's total future loss for [e.g., lost income]. Enter this amount into Worksheet A, Step 5.

WORKSHEET A

Step 1: Repeating identical annual dollar amount of future loss: $_____

Step 2: Number of years that this loss will continue: _____

Step 3: Interest rate that represents a reasonable rate of return on money invested today over that period of years: _____%

Step 4: Present Value Factor from Table A: _____

Step 5: Amount from Step 1 times Factor from Step 4: $_____

Enter the amount from Step 5 on your verdict form as Candace Conti's total future economic loss for future therapy and counseling expenses.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED X

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3905. ITEMS OF NONECONOMIC DAMAGE

The following are the specific items of noneconomic damages claimed by Candace Conti:

[Insert applicable instructions on items of noneconomic damage.]

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3905A. PHYSICAL PAIN, MENTAL SUFFERING, AND EMOTIONAL DISTRESS (NONECONOMIC DAMAGE)

1. Past and future physical pain, mental suffering, depression, anxiety, humiliation, and emotional distress.

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future physical pain, mental suffering, depression, anxiety, humiliation, and emotional distress, Candace Conti must prove that she is reasonably certain to suffer that harm.

For future bphysical pain, mental suffering, depression, anxiety, humiliation, and emotional distress, determine the amount in current dollars paid at the time of judgment that will compensate Candace Conti for future physical pain, mental suffering, depression, anxiety, humiliation, and emotional distress. This amount of noneconomic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3932. LIFE EXPECTANCY

If you decide Candace Conti has suffered damages that will continue for the rest of her life, you must determine how long she will probably live. According to National Vital Statistics Report of June 28, 2010, (CACI Table B), a 26-year-old female is expected to live another 56.1 years. This is the average life expectancy. Some people live longer and others die sooner.

This published information is evidence of how long a person is likely to live but is not conclusive. In deciding a person's life expectancy, you should also consider, among other factors, that person's health, habits, activities, lifestyle, and occupation.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3941. PUNITIVE DAMAGES--INDIVIDUAL DEFENDANT--BIFURCATED TRIAL (FIRST PHASE)

If you decide that Watchtower Bible and Tract Society of New York, Inc.'s conduct caused Candace Conti harm, you must decide whether that conduct justifies an award of punitive damages. At this time, you must decide whether Candace Conti has proved by clear and convincing evidence that Watchtower Bible and Tract Society of New York, Inc. engaged in that conduct with malice. The amount of punitive damages, if any, will be decided later.

"Malice" means that Watchtower Bible and Tract Society of New York, Inc. acted with intent to cause injury or that Watchtower Bible and Tract Society of New York, Inc.'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 3946. PUNITIVE DAMAGES--ENTITY DEFENDANT--BIFURCATED TRIAL (FIRST PHASE)

If you decide that Watchtower Bible and Tract Society of New York, Inc.'s conduct caused Candace Conti harm, you must decide whether that conduct justifies an award of punitive damages. The amount, if any, of punitive damages will be an issue decided later.

At this time, you must decide whether Candace Conti has proved that Watchtower Bible and Tract Society of New York, Inc. engaged in that conduct with malice. To do this, Candace Conti must prove one of the following by clear and convincing evidence:

1. That the conduct constituting malice, oppression, or fraud was committed by one or more officers, directors, or managing agents of Watchtower Bible and Tract Society of New York, Inc. who acted on behalf of Watchtower Bible and Tract Society of New York, Inc.; or

2. That the conduct constituting malice was authorized by one or more officers, directors, or managing agents of Watchtower Bible and Tract Society of New York, Inc.; or

3. That one or more officers, directors, or managing agents of Watchtower Bible and Tract Society of New York, Inc. knew of the conduct constituting malice and adopted or approved that conduct after it occurred.

"Malice" means that Watchtower Bible and Tract Society of New York, Inc. acted with intent to cause injury or that Watchtower Bible and Tract Society of New York, Inc.'s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions

ultimately determine corporate policy.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5000. DUTIES OF THE JUDGE AND JURY

Members of the jury, you have now heard all the evidence [and the closing arguments of the attorneys]. [The attorneys will have one last chance to talk to you in closing argument. But before they do, it] [It] is my duty to instruct you on the law that applies to this case. You must follow these instructions [as well as those that I previously gave you]. You will have a copy of my instructions with you when you go to the jury room to deliberate. [I have provided each of you with your own copy of the instructions.] [I will display each instruction on the screen.]

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial.

Do not allow anything that happens outside this courtroom to affect your decision. Do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists. Do not do any research on your own or as a group. Do not use dictionaries or other reference materials.

These prohibitions on communications and research extend to all forms of electronic communications. Do not use any electronic devices or media, such as a cell phone or smart phone, PDA, computer, tablet device, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or website, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. [Do not read, listen to, or watch any news accounts of this trial.] You must not let bias, sympathy, prejudice, or public opinion influence your decision.

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys [have said/say]

anything different about what the law means, you must follow what I say.

In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions, that does not mean that these ideas or rules are more important than the others. In addition, the order in which the instructions are given does not make any difference.

[Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.]

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5002. EVIDENCE

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you have seen or heard during the trial, including any exhibits that I admit into evidence. You may not consider as evidence anything that you saw or heard when court was not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggested that it was true. [However, the attorneys for both sides have agreed that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial.]

Each side had the right to object to evidence offered by the other side. If I sustained an objection to a question, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness already answered, you must ignore the answer.

[During the trial I granted a motion to strike testimony that you heard. You must totally disregard that testimony. You must treat it as though it did not exist.]

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5003. WITNESSES

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status[, or [insert any other impermissible form of bias]].

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5005. MULTIPLE PARTIES

There are 2 defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or her own defenses.

Different aspects of this case involve different parties (defendants). Each instruction will identify the parties to whom it applies. Pay particular attention to the parties named in each instruction.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5006. NONPERSON PARTY

Two corporations (Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit) are parties in this lawsuit. (Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit) are entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in these instructions to refer to a party, those instructions also apply to (Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses, North Unit).

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5009. PREDELIBERATION INSTRUCTIONS

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations or immediately announce how you plan to vote as it may interfere with an open discussion. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense, but do not use or consider any special training or unique personal experience that any of you have in matters involved in this case. Your training or experience is not a part of the evidence received in this case.

Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you [or ask to see any exhibits admitted into evidence that have not already been provided to you]. Also, jurors may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the [clerk/bailiff/court attendant]. I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

[At least nine jurors must agree on a verdict. When you have finished filling out the form, your presiding juror must write the date and sign it at the bottom and then notify the

[bailiff/clerk/court attendant] that you are ready to present your verdict in the courtroom.]

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then, without further deliberations, make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5010. TAKING NOTES DURING THE TRIAL

If you have taken notes during the trial, you may take your notebooks with you into the jury room.

You may use your notes only to help you remember what happened during the trial. Your independent recollection of the evidence should govern your verdict. You should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

At the end of the trial, your notes will be [collected and destroyed/collected and retained by the court but not as a part of the case record/ [specify other disposition]].

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5011. READING BACK OF TRIAL TESTIMONY IN JURY ROOM

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you. You may request that all or a part of a witness's testimony be read.

Your request should be as specific as possible. It will be helpful if you can state:

1. The name of the witness;

2. The subject of the testimony you would like to have read; and

3. The name of the attorney or attorneys asking the questions when the testimony was given.

The court reporter is not permitted to talk with you when she or he is reading the testimony you have requested.

While the court reporter is reading the testimony, you may not deliberate or discuss the case.

You may not ask the court reporter to read testimony that was not specifically mentioned in a written request. If your notes differ from the testimony, you must accept the court reporter's record as accurate.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5012. INTRODUCTION TO SPECIAL VERDICT FORM

I will give you [a] verdict form[s] with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form[s] carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict form[s] in the order they appear. After you answer a question, the form tells you what to do next. All 12 of you must deliberate on and answer each question. At least 9 of you must agree on an answer before all of you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

When you have finished filling out the form[s], your presiding juror must write the date and sign it at the bottom [of the last page] and then notify the [bailiff/clerk/court attendant] that you are ready to present your verdict in the courtroom.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5019. QUESTIONS FROM JURORS

If, during the trial, any of you had a question that you believed should be asked of a witness, you were instructed to write out the question and provide it to me through my courtroom staff. I shared your questions with the attorneys, after which, I decided whether the question could be asked.

If a question was asked and answered, you are to consider the answer as you would any other evidence received in the trial. Do not give the answer any greater or lesser weight because it was initiated by a juror question.

If the question was not asked, do not speculate as to what the answer might have been or why it was not asked. There are many legal reasons why a suggested question cannot be asked of a witness. Give the question no further consideration.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

CACI 5020. DEMONSTRATIVE EVIDENCE

During the trial, materials have been shown to you to [help explain testimony or other evidence in the case/ [specify other purpose]]. [Some of these materials have been admitted into evidence, and you will be able to review them during your deliberations.]

Other materials have also been shown to you during the trial, but they have not been admitted into evidence. You will not be able to review them during your deliberations because they are not themselves evidence or proof of any facts. You may, however, consider the testimony given in connection with those materials.

REQUESTED BY:

GIVEN AS REQUESTED _____

GIVEN AS MODIFIED _____

GIVEN ON COURT'S OWN MOTION _____

REFUSED _____

WITHDRAWN _____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 21, 2012.

Tina Kelly, CSR# 12502

Jane Doe represented by Richard J. Simons and Kelly Kraetsch.

The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Robert J. Schnack and Douglas M. Egbert.

The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.

The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack and Douglas M. Egbert.

Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Robert J. Schnack and Douglas M. Egbert.

Jonathan Kendrick appearing in pro per.

Fremont California Congregation of Jehovah's Witness, North Unt represented by James M. McCabe.

1:25 PM - Court, Plaintiff's counsels and Defendant's counsels are present in open court. Court and counsel discuss motions in limine.

The Court rules on Plaintiff's and Defendant's motions in limine as recited on the record in open court.

2:40 PM - The matter is continued to May 22, 2012 at 8:30 a.m. for Jury Selection/Jury Trial. Court stands adjourned.

Case continued to 08:30 AM on 05/22/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/21/2012
Entered on 05/21/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

RGD

8801227

JACKSON LEWIS LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY

MAY 21 2012

CLERK OF THE SUPERIOR COURT
By Miranda Edgerly-KM
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S LEGAL BRIEFING REGARDING THE EXCLUSION OF ANY EVIDENCE OR TESTIMONY RELATED TO THE CONSENSUAL ADULT SEXUAL ACTIVITY ENGAGED IN BY JONATHAN KENDRICK AND CLAUDIA FRANCIS

TRIAL DATE: May 21, 2012

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") hereby submit this legal briefing requesting the exclusion of any evidence or testimony related to any consensual adult sexual activity engaged in between individual

Defendant Jonathan Kendrick (hereinafter "Kendrick") and non-party Claudia Francis. That evidence should be excluded because allowing such evidence to be presented would be an invasion of Ms. Francis own rights to privacy and, further, such evidence is not relevant to any of the issues presented in this lawsuit. It has no probative value whatsoever.

Last fall, this Court entered an Order compelling the Church Defendants to produce certain documents in discovery, including letters that contained confidential and private information regarding individuals who are not parties to this lawsuit. Specifically, one of the letters that was ordered to be disclosed involved penitential communications of Claudia Francis to elders. Those communications are protected by Evidence Code sections 1032-1034.

In weighing the privacy interests of third parties like Claudia Francis, courts will also consider "the nature of the information sought, its inherent intrusiveness, and any specific showing of a need for privacy, including any specific harm that disclosure of the information might cause." *Schnabel v. Superior Court*, (1993) 5 Cal. 4th 704, 21 Cal. Rptr. 2d 200. For example, the third party may demonstrate that public disclosure of confidential information would embarrass persons not involved in the litigation. (*Id.*)

Here, Plaintiff threatens to make public to the world that Claudia Francis (who at all times relevant to this case was an adult) had engaged in consensual sexual activity with Kendrick. Indeed, what is more "sensitive" than the activities an adult consents to do with another adult in the privacy of their own home. Due to the inherently sensitive and private information Plaintiff wishes to reveal regarding Claudia Francis, Plaintiff must make a substantial showing of the need for the disclosure of this information at trial. (*See Tien v. Superior Court* (2006) 139 Cal.App.4th 528. This Plaintiff cannot do, inasmuch as Ms. Francis' consensual sexual activity with Kendrick is not relevant to Plaintiff's claims, and allowing such evidence to be presented to the jury would be unfairly and unduly prejudicial.

Further, "'[r]elevant evidence' means evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Cal. Evid. Code § 210.) Plaintiff's lawsuit is based on her allegations that she was sexually abused by Kendrick when she was about 9-11 years old. Evidence that Kendrick engaged in

consensual sexual activity with an adult woman will not help prove or disprove whether Kendrick did sexually abuse Plaintiff. Thus, testimony or evidence concerning Kendrick's consensual adult sexual activity with Claudia Francis is not relevant. *See People v. Michael James Stanley* (1992) 6 Cal.App.4th 700, 706 (evidence of prior consensual sexual conduct with a third party is relevant only to buttress other evidence of the defendant's state of mind).

This Court, in its discretion, "may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Cal. Evid. Code § 352.) Again, evidence that Kendrick and Ms. Francis engaged in consensual adult sexual activity is not only more prejudicial then probative of any fact at issue, it would also confuse the issues and mislead the jury.

In addition, when determining whether private information about a third party should be revealed, the Court must take into consideration the purpose of the information sought and the effect that disclosure will have on the parties and on the trial. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652.) Plaintiff asserts that the evidence of Kendrick's sexual activity with the adult Claudia Francis is relevant to show Kendrick's so-called "grooming" activities. Typically, "grooming" evidence shows behaviors that an offender may engage in with a *child* to endear him to a *child*, such as giving the *child* compliments, extra time, attention, and gifts to lower the child's inhibitions, retain access to the child, and make the child feel comfortable with increasingly sexual overtures. Kendrick's consensual sexual relationship with an adult woman is not and cannot be deemed a "grooming" activity. Thus, evidence of Claudia Francis' consensual sexual activity with Kendrick cannot be admitted as "grooming" evidence.

Based on the foregoing, this Court should exclude any and all evidence, testimony, argument or reference to any consensual adult sexual activity engaged in between Jonathan Kendrick and Claudia Francis.

///

///

///

DATED: May 21, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 21, 2012

THE McCABE LAW FIRM, APC

By _____
for James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 21, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S LEGAL BRIEFING REGARDING THE EXCLUSION OF ANY EVIDENCE OR TESTIMONY RELATED TO THE CONSENSUAL ADULT SEXUAL ACTIVITY ENGAGED IN BY JONATHAN KENDRICK AND CLAUDIA FRANCIS** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 21, 2012, at Oakland, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguines@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

PGD

8801223

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S LEGAL BRIEFING REGARDING THE INADEQUACY OF LIMITING INSTRUCTIONS TO THE JURY

TRIAL DATE: May 21, 2012

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") hereby submit this legal briefing regarding the inadequacy of limiting instructions to the jury. This briefing is submitted in support of the Church Defendants' argument that

evidence, testimony, argument or any reference to individual defendant Jonathan Kendrick's 2004 felony conviction or Kathleen Conti's alleged prior abuse by an elder in a congregation of Jehovah's Witnesses should be excluded in their entirety because of the substantial and unfair prejudice to the Church Defendants.

Because of the inherently prejudicial nature of other crimes, courts have recognized that limiting instructions are frequently inadequate. *People v. Gibson* (1976) 56 Cal.App.3d 119, 130 (recognizing that a limiting instruction would have been insufficient, the court of appeal held that the trial court erred by allowing testimony concerning the defendant's prior criminal acts and should have excluded the testimony altogether). The Court of Appeal in *Gibson* stated:

> *It is the essence of sophistry and lack of realism to think that an instruction or admonition to a jury to limit its consideration of highly prejudicial evidence to its limited relevant purpose can have any realistic effect. It is time that we face the realism of jury trials and recognize that jurors are mere mortals. Of what value are the declarations of legal principles with respect to the admissibility of other-crimes evidence . . . if we permit the violation of such principles in their practical application? We live in a dream world if we believe that jurors are capable of hearing such prejudicial evidence but not applying it in an improper manner.*
>
> *In the case at bench, the evidence with respect to the prior criminal acts of defendant, testified to by [two witnesses], had to lead inexorably and inevitably to defendant's prejudice. The jury could not be expected to undertake the Herculean task of not using this evidence to establish that defendant committed the murder . . . or that he should be found guilty anyway because he possessed character traits for violence and theft. The expectation that the jury could limit its use of such evidence as circumstantial evidence of defendant's intent and motive, after applying other evidence in the case to reject defendant's alibi defense in accordance with the court's limiting instructions and admonitions, is indeed an exercise in futility and illusory imagery.*

Id; *see also People v. Guerrero* (1976) 16 Cal.3d 719, 730 (granting a new trial, holding that "[n]o limiting instruction, however thoughtfully phrased or often repeated, could erase from jurors' minds the picture of defendant's role in raping a 17-year-old girl and forcing her to commit oral copulation.")

Indeed, the Church Defendants' research has not uncovered *any* California cases in which a trial court's use of limiting instructions involving prior acts of child sex abuse were upheld.

Based on the foregoing, this Court should exclude any and all evidence, testimony, argument or reference to Kendrick's 2004 felony conviction and Kathleen Conti's alleged prior abuse by a church Elder. In addition, again based on the foregoing, any limiting instruction to the jury on these topics will be ineffective and should be avoided, as thoroughly explained by the *Gibson* court.

DATED: May 20, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 20, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May ___, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S LEGAL BRIEFING REGARDING THE INADEQUACY OF LIMITING INSTRUCTIONS TO THE JURY** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address)es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 30, 2012, at Oakland, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguines@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

8801219

POD

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerley
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

REPLY IN SUPPORT OF MOTION IN LIMINE No. 6

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO ALLEGED CLERGY MALPRACTICE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

Plaintiff erroneously suggests that this is not a case of clergy malpractice because it involves child abuse. While child abuse is a reprehensible evil in our society, just because this case involves child abuse does not alter constitutional limitations and restictions applicable to

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants"). Furthermore, Plaintiff has not sued the Church Defendants for the intentional tort of child abuse, but instead for their alleged negligent way they performed their duties within the church after being informed that individual defendant Jonathan Kendrick (hereinafter "Kendrick") had abused his step-daughter.

Plaintiff seeks to introduce expert testimony to establish an applicable standard of care[1] regarding what reasonable ministers or elders should have done when they learned in November 1993 through penitential communications that Kendrick sexually abused his step-daughter one time in July 1993. Plaintiff also seeks to argue to the jury that the Church Defendants *could* have disfellowshipped Kendrick—which Plaintiff concedes is a decision protected under the First Amendment—but chose not to, thereby acting negligently. While Plaintiff would like to cast these claims in a different light, they are clearly being presented as claims for clergy malpractice.

To determine if the North Fremont Congregation's elders met some appropriate standard of care this Court would need to evaluate whether the "Church Defendants performed within the level of expertise expected of a similar professional, i.e., a reasonably prudent bishop, priest, rabbi, minister, or other cleric." (*Franco v. The Church of Jesus Christ of Latter-day Saints* (Utah 2007) 21 P.3d 198, 205.) The Franco court continued:

> Defining such a duty would necessarily require a court to express the standard of care to be followed by other reasonable clerics in the performance of their ecclesiastical … duties, which, by its very nature, would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs. This is impossible as it is unconstitutional; to do so would foster an excessive government entanglement with religion in violation of the Establishment Clause.

(Id. at p. 206.) Not insignificantly, the *Franco* case involved the issue of child abuse.

[1] As argued previously, ministers cannot be held to a standard of care applicable to police officers or professional counselors or psychologists. Those professions require specialized training that gives rise to a heightened duty of care on their part. Such standards cannot be constitutionally imposed on religious ministers.

Plaintiff claims that the Church Defendants' negligence resulted in her being sexually abused by Kendrick. However, just because Plaintiff claims that the Church Defendants alleged negligence resulted in child abuse does not change the fact that the Church Defendants do not have a special or other relationship with Plaintiff or the fact that Plaintiff's standard of care arguments are nothing more than an impermissible clergy malpractice claim. (*See Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257; *Nally v. Grace Cmty. Church of the Valley* (1988) 47 Cal.3d 278.)

Plaintiff has referenced *Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377 in this action to support her standard of care arguments and the related view that this is not a clergy malpractice claim. However, *Juarez* is inapposite here.

Juarez involved claims that an adult *scoutmaster* abused the plaintiff, a minor boy scout, during officially sanctioned scouting events. In this *Jane Doe* case, on the other hand, Plaintiff claims she was sexually abused by Kendrick at his home. There is no dispute that at the time of Plaintiff's alleged abuse, Kendrick was not a religious leader and did not hold any position of authority within the North Fremont Congregation. He was simply a member of the congregation. Thus, to analogize to *Juarez* is mistaken, because the circumstances here would be similar to one boy scout sexually abusing another boy scout a factual scenario that *Juarez* did not present.

If Plaintiff's negligence claims have any merit, they must be rooted in a generalized duty applicable to all persons.

The fact that Plaintiff's standard of care arguments here are unconstitutional does not mean that religious leaders are always immune from tort liability for their negligent acts. The Church Defendants do not argue that they are immune from religion-neutral laws that are applicable to all members of society. (*See Employment Div., Dept. of Human Resources of the State of Or. v. Smith* (1990) 110 S.Ct. 1595 (religions must comply with "valid and neutral law[s] of general applicability.") The *Smith* decision establishes the boundaries within which religions may be found liable for their negligence. If this Court were to find that all citizens had a valid legal duty to act in a certain manner upon learning of allegations of child abuse, then

such a duty might also apply to the Church Defendants without running afoul of the Constitution.

Thus, the question is whether there is a generalized duty in society to act in a certain way upon learning of child abuse to protect the public at large from the Perpetrator of the abuse, because otherwise the constitutional protections accorded to religions will be violated. There can be no duty that requires elders to act as a "reasonable elder or religious leader" would or should, because that improperly converts this action to one for clergy malpractice. Whether such a legal duty exists is a matter of law that this Court needs to rule on prior to this case being tried, because this ruling will affect the manner in which both sides present their respective cases to the jury.

CONCLUSION

Plaintiff would like to recharacterize her standard of care arguments as something other than what they really are, namely an impermissible and constitutionally prohibited clergy malpractice claim. If Plaintiff's negligence claims have any merit, they must be rooted in a religion-neutral duty of general applicability to all of society.

DATED: May 30, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 30, 2012

THE McCABE LAW FIRM, APC

By _____
for James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 20, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S OPOSITION TO PLAINTIFF'S MOTION IN LIMINE 6** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address)es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 20, 2012, at Oakland, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguiness@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

8801280

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

REPLY IN SUPPORT OF MOTION IN LIMINE No. 3

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE HEARSAY STATEMENTS OF EVELYN KENDRICK AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE May 18, 2012
TIME 8:30 A.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

In opposition to the Church Defendants' motion in limine to preclude the testimony of Evelyn Kendrick, Plaintiff contends that the testimony of Evelyn will not be offered for the truth of the matter asserted, but is offered instead on the issue of notice. Plaintiff adds that the

testimony of Evelyn will be offered to impeach the credibility of Defendant North Fremont Congregation's elders Michael L. Clarke and Gary Abrahamson.

First, it is obvious that the testimony of Evelyn Kendrick will be offered for the truth of the matter asserted and not on the issue of notice. The jury would have to accept the truth of Evelyn's testimony (i.e., that Andrea said these things to the elders) before the issue of notice to the elders could even arise. The jury would have to accept Evelyn's version of what Andrea allegedly told the elders during that meeting. Thus, despite what Plaintiff's counsel states, there is no legitimate reason for Evelyn to testify except for the truth of what she states.

Secondly, notice is not even at issue in this case because it has already been admitted by Michael Clarke during his deposition. (Church Defendants' MIL 3, Ex. F.) The evidence is clear that the elders were given notice of Kendrick's conduct by his confession of an incident of abuse with his 15-year-old step-daughter during that meeting of November 11, 1993. That confession by Kendrick was the basis for the November 15, 1993, letter from the North Fremont Congregation elders to Watchtower. (Church Defendants' MIL 3, Ex. C.)

Plaintiff's counsel merely wants Evelyn to give her hearsay testimony in order to unfairly prejudice the Church Defendants by making the nature or quality of the notice seem more egregious. Plaintiff wants the jury to be prejudiced by the hearsay testimony that Andrea allegedly told the elders that Kendrick drugged her, came into her bedroom and placed his hands under her clothing. The danger of allowing this hearsay testimony is further illustrated by the fact that the records of the police interview of Andrea in February, 1994 do not even corroborate Evelyn's claim that Kendrick drugged Andrea. (Church Defendants' MIL 3, Ex. ___.) Andrea told the police that she had taken a Vicodin for her back problem not that Kendrick had given her Vicodin as Evelyn alleges.

Thirdly, plaintiff's counsel has named Andrea on his witness list for this trial. He can easily avoid presenting doubtful, questionable and unreliable hearsay testimony to this Court and the jury by presenting Andrea for direct and cross-examination. If Plaintiff is not able to obtain the cooperation of Andrea, this still does not justify allowing hearsay evidence to be offered.

Finally, Plaintiff's true purpose in trying to have Evelyn, the disgruntled ex-wife of Kendrick and an inactive Jehovah's Witness, testify is to have the jury hear uncorroborated information that will unfairly and unduly prejudice them against the Church Defendants. It would clearly be more prejudicial than probative of any fact at issue, confuse the issues, and mislead the jury. Therefore, Evidence Code section 352 mandates its exclusion.

The proposed testimony of Evelyn Kendrick is hearsay and would be offered for the truth of the matter asserted. The argument that it would be offered to establish notice to the elders is without merit, because notice has already been established and admitted. Any issue of impeachment of the elders goes only to the extent, quality, and nature of the admitted notice, which is not a legitimate issue. Again, notice has already been established. If Plaintiff wants to present a different version of the November 11, 1993 meeting, she should not be allowed to do so by using hearsay testimony. Plaintiff should be made to present Andrea to testify about what she said to the elders.

DATED: May 20, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 20, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 30, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY IN SUPPORT MOTION IN LIMINE TO EXCLUDE HEARSAY STATEMENTS OF EVELYN KENDRICK AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address)es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 30, 2012, at Sacramento, Oakland, California.

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguiness@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

8801211

pod

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly KM
DEPUTY

JACKSON LEWIS LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S OPOSITION TO PLAINTIFF'S MOTION IN LIMINE 6

DATE	May 21, 2012
TIME	1:30 P.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

Plaintiff has moved to preclude any evidence that the disclosure of Kendrick's confession to the elders and the reason for his removal as a ministerial servant would have violated the minister-communicant privilege.

Plaintiff argues that the confession by Kendrick in front of his wife and step-daughter

does not qualify as a "penitential communication" under California law. However, this overlooks the fact that the California Evidence Code defines "penitential communication" as "a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who ... is authorized ... to hear those communications and ... has a duty to keep those communications secret." (Cal. Evid. Code § 1032.) The elders in this instance spoke with the Kendrick family at their home. That conversation was intended to be confidential and the elders were there as ministers or religious leaders of the local Jehovah's Witnesses congregation under circumstances requiring them to maintain confidentiality. This was clearly a penitential communication within the Jehovah's Witnesses faith. The members of Kendrick's family present were not "unnecessary third persons to the communications." It is necessary for the Court to view "no third person" to mean no unnecessary third person in order to avoid an unconstitutional establishment of religion.

This Court and society in general may be more familiar with confessions of those involving one priest (clergyman) and a penitent. However, this does not allow that to be the standard for "penitential communications" for all religions. The procedures and protocols of the Jehovah's Witnesses faith require at least two elders to speak to a penitent and that conversations with families of the penitent are still considered confidential and must be maintained as such by the elders. This was particularly true in this instance where the two elders were required by the Bible to counsel and reprove Kendrick before all onlookers to his sin (i.e., Evelyn and Andrea). (1 Timothy 5:20.) This Court cannot require one religion's standard to be the standard for all religions. This would result in the Court becoming overly involved in the purely ecclesiastical disciplinary matters of a religion or favoring one religious practice over another.

North Fremont Congregation elders Michael Clarke and Gary Abrahamson went to the Kendrick home at Kendrick's request and heard the confession of Kendrick. The elders viewed it as confidential within the requirements of their faith and in their capacities as congregation elders. The elders' religious beliefs precluded them from revealing that confession. California Evidence Code section 1034 gives them the privilege personally to refuse to disclose the

penitential communication. Indeed, the Law Revision Commission Comments are helpful. "The extent to which a clergyman should keep secret or reveal penitential communication is not an appropriate subject for legislation; the matter is better left to the discretion of the individual clergymen involved and the discipline of the religious body of which he is a member." (7 Cal.Rev.Comm. Reports 1 (1965).)

Plaintiff next argues that the congregation should have been informed of the reason for Kendrick's removal from his position as a ministerial servant. Once again, this would have violated the ecclesiastical disciplinary rules of the Jehovah's Witnesses faith and violated the minister-communicant privilege. (Cal. Evid. Code §§ 1033, 1034.) In addition, it would have violated Kendrick's right of privacy and opened the Church Defendants up to a possible claim for defamation.

Plaintiff would have this Court and even the jury violates the First Amendment rights of the Church Defendants by requiring them to impose ecclesiastical discipline in a way that the Court or the jury might require, or deem reasonable rather than in accordance with the religious beliefs and tenets of their faith. This the Court and jury cannot do. The Church Defendants should therefore have unfettered discretion to claim before the jury that they Kendrick confession was considered confidential by them and under their religious beliefs not to be disclosed to the congregation.

DATED: May 30, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 10, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 20, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO ALLEGED CLERGY MALPRACTICE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address)es) shown on the attached service list.

☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 20, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguines@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

6455196

PED

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly KM
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG115558324

REPLY IN SUPPORT OF MOTION IN LIMINE No. 1

DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY TO PLAINTIFF'S OPPOSITION TO THEIR MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO JONATHAN KENDRICK

DATE May 21, 2012
TIME 1:30 P.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

Defendant Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (hereinafter "North Fremont Congregation") (collectively referred to as the "Church Defendants") hereby submit this reply to Plaintiff Jane Doe's (hereinafter "Plaintiff") opposition

to their motion in limine to exclude evidence relating to Defendant Jonathan Kendrick (hereinafter "Kendrick") (Motion in Limine No. 1).

Plaintiff seeks to introduce irrelevant and highly and unfairly prejudicial evidence of Kendrick's post 1996 or 1997 activities. The Court should exclude this evidence because the facts of Kendrick's alleged misconduct during this time period does **not** demonstrate any common plan, scheme, or design such that it proves any fact at issue in this case. The facts related to Kendrick's 2004 conviction and Plaintiff's allegations here are completely dissimilar, and thus Evidence Code section 1101(b) does not apply. Further, even if the Court were, *arguendo*, to find a common plan, scheme, or design, Kendrick's post 1996/97 activities are still inadmissible under Evidence Code section 352 because such evidence is more prejudicial then probative of any fact at issue, would confuse the issues, and mislead the jury.

As Chief Justice Benjamin Cardozo once said, "[i]n a very real sense a defendant starts his life afresh when he stands before a jury." (*People v. Hovarter* (2008) 44 Cal.4th 983, 1002, quoting *People v. Zackowitz* (1930) 254 N.Y. 192, 197 (rejecting prosecution's argument and reversing conviction where highly prejudicial evidence was improperly used to demonstrate defendant's unsavory disposition).) Similarly, Kendrick and the Church Defendants start their lives afresh before the jury in **this** trial, and evidence of Kendrick's post 1996/97 activities must be excluded.

Evidence of Kendrick's Post 1996/97 Activities is Inadmissible Because They Do Not Demonstrate Any Common Plan, Design, or Scheme.

Pursuant to Evidence Code section 1101(a), character evidence is inadmissible to prove conduct on a specified occasion. Thus, from a starting point, Kendrick's post 1996/97 activities are inadmissible to prove anything in **this** case, including that Kendrick had the disposition to commit the alleged acts against Plaintiff. Evidence Code section 1101(b) permits evidence of such conduct only where the evidence is offered to prove some fact, including a common plan, scheme, or design. Similarity between the prior acts and acts at issue "must be shown in terms of unique and distinctive *features or techniques exhibited by the perpetrator* . . . [i]t is *not sufficient* to show the [acts] were both of the same type, e.g., both were robberies or both were

rapes." (*People v. Weathers* (1969) 274 Cal. App. 232, 238 (emphasis in original); *see also People v. King* (2010) 183 Cal. App. 4th 1281, 1300-1304 (trial court erred in admitting evidence of prior conduct where the conduct was dissimilar to the conduct at issue and highly prejudicial to defendant).)

Plaintiff claims in her opposition that Kendrick's post 1996/97 conduct is admissible to prove intent, absence of accident, and a common plan. However, the conduct Plaintiff would put in evidence, including Kendrick's 2004 conviction, are so dissimilar that the conduct cannot be admitted under Evidence Code 1101(b). **It is telling that Plaintiff's discussion of the 2004 conviction in her opposition does NOT compare that conduct with his alleged conduct at issue in this case—rather, it compares the 2004 conduct to Kendrick's 1993 conduct against his step-daughter.** (*See* Opposition, pg. 4, ln. 17-25.)

In fact, Plaintiff could not have made a comparison between the 2004 conviction and her own allegations, because the two are so dissimilar: The 2004 conviction involved a one-time incident with Kendrick's step-granddaughter. However, Plaintiff claims that Kendrick sexually abused her on hundreds of occasions over a two or three year period. Further, unlike either the 1993 one-time incident with Kendrick's step-daughter or the 2004 conviction for the one-time incident with his step-grandaughter, Plaintiff was not a family member of Kendrick.

Like the facts related to the 2004 conviction, the other conduct Plaintiff seeks to introduce is also completely dissimilar to the facts at issue in this case. For example, Kendrick's alleged adulterous conduct with Claudia Francis involved an alleged consensual affair with an adult woman and has no commonality whatsoever with Plaintiff's allegations regarding her alleged abuse. Kendrick allegedly buying a black bra for a girl also has no relationship to the facts at issue. Buying a black bra on a single shopping trip does not evidence intent, absence of mistake, or common plan or scheme where Plaintiff's allegations are of repeated instances of sexual abuse over a two or three year period.

The cases Plaintiff cites in her opposition to this motion in limine do not help her cause either , because they demonstrate the substantial similarity that *must* exist for a Court to allow evidence of prior conduct under Evidence Code section 1101(b). For example, in *People v.*

Branch (2001) 91 Cal.App.4th 274, the court allowed evidence of other allegedly similar conduct because both the other conduct and the conduct at issue involved the molestation of 12-year-old girls in the defendant's home and, in both instances, the defendant accused the victim of doing something wrong. (*Id.* at p. 277-279, 281.) Thus, that case involved victims of the same age of victims, at the same location, and the defendant making the same statement about both victims.

People v. Escudero (2010) 183 Cal.App.4th 302 is also of no help to Plaintiff. In that case, the court allowed evidence of other conduct under section 1101(b) because the other conduct showed repeated risky sexual pursuits of underage girls with adults nearby and repeated comments about the underage girls' developing bodies. (*Id.* at 314.) Thus, that case involved the same risky pursuit of victims and the same comments about the victims.[1]

Given the great dissimilarities described above between Kendrick's 2004 conviction and Kendrick's alleged abuse of Plaintiff, Kendrick's post 1996/97 conduct must be excluded from evidence at trial because the conduct simply does not tend to prove any fact in this case.

Finally, assuming, *arguendo*, that the Court should find the post 1996/97 evidence sufficiently similar to the conduct at issue here and admissible under Evidence Code 1101(b), the Court should still exclude the evidence pursuant to Evidence Code section 352 because it is unfairly prejudicial, will confuse the issues, will mislead and inflame the jury, and will waste trial time. There is also a heightened danger of undue prejudice where there is evidence of sex acts involving children.

Based on the foregoing, the Church Defendants respectfully request this Court exclude all evidence, testimony, or argument concerning Kendrick's actions after the 1996/97 time

---

[1] In citing *Escudero*, Plaintiff improperly makes the claim that the court found the defendant's sex crimes against adult women probative of defendant's intent to touch a minor victim (presumably to show that a court will admit dissimilar conduct into evidence). (*See* Opposition, p. 3, ln. 6-10.) What Plaintiff fails to mention, however, is that the court admitted the evidence under Evidence Code section 1108, which only applies to criminal cases. The prior conduct against adult women was **not** included in the section 1101(b) analysis. The only conduct admitted under section 1101(b) was the extremely similar and repeated conduct of risky pursuits against underage girls about whom the defendant had commented regarding their developing bodies.

period, including his 2004 conviction.

The Church Defendants Cannot be Held Liable for Conduct Away from Church Property and Not Part of Church Sponsored Activities

The Church Defendants have argued that the jury should not consider against them any abuse of Plaintiff that may have occurred away from the Kingdom Hall property or that was unrelated to any church-sponsored activities. The underlying premise of this motion is as follows:

1) It is undisputed that Kendrick was not an agent of the Church Defendants at the time of the alleged abuse of Plaintiff.

2) The law is clear that the Church Defendants had no special relationship with Plaintiff that created a duty to protect Plaintiff.

3) The Church Defendants had no power of supervision and control over Kendrick, a congregation member, at the time of the alleged abuse of Plaintiff. Thus, they had no control over Kendrick, especially when he was away from the Kingdom Hall and not engaged in church-sponsored activities.

4) If the Church Defendants had any duty, it arguably would have been to make sure that Kendrick did not have unfettered access to children at the Kingdom Hall or during any church-sponsored activities.

In *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, the Court held that, even in cases of child abuse, the property owner has no duty where the harm to the victim is unrelated to the property owned.

In opposition to this motion in limine, plaintiff argues that *Eric J.* is inapplicable to cases involving institutional defendants that sponsor or supervise activities involving children. What Plaintiff fails to understand is that these Church Defendants do not sponsor or supervise activities involving children. The Jehovah's Witnesses do not engage in any activities that separate children from their parents.

There is no evidence in this case that the sexual abuse alleged by Plaintiff took place during any church-sponsored activities. Thus, the Church Defendants cannot be held responsible

for any abuse of plaintiff by Kendrick at his home, or on a train, or anywhere else away from the Kingdom Hall.

The case of *Palsgraf v. Long Island Railroad Co.* (N.Y. 1928) 248 N.Y. 339, raised by the Court is interesting, but in this instance, not instructive. In *Palsgraf*, a passenger running to catch a train that was pulling out of a station was assisted to get on a train by an employee of the railroad. As a result of that assistance, the passenger dropped a package containing fireworks onto the train tracks. The resulting explosion caused injury to the plaintiff, a bystander on the train station platform waiting for a different train. The Court of Appeals (the highest court in the State of New York) found that the duty owed by the defendant railroad if any, was to the passenger who had been assisted in getting on to the train, not to the plaintiff who was standing on the platform. The fact that the defendant railroad had no idea that the package contained fireworks also persuaded the Court of Appeals that the defendant owed no duty to the plaintiff. Although one might argue that *Palsgraf* might be decided differently today, the zone of danger analysis in that case has no application to this case.

DATED: May 20, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 20, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 30, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY TO PLAINTIFF'S OPPOSITION TO THEIR MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO JONATHAN KENDRICK** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address)es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 30, 2012, at Oakland, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguiness@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

8801231

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Miranda Angulo DEPUTY

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S SUPPLEMENTAL EVIDENCE IN RE: MOTIONS IN LIMINE

Trial Date: May 21. 2012

Plaintiff submits the following supplemental evidence in support of or opposition to the pending Motions in Limine as designated below:

Exhibit 1: Excerpts of the deposition of Elder Gary Abrahamson as follows:

a. 35: 11-1836 :13-21; and 38:7-23: submitted in opposition to Defendants' MIL #1 (property issue); and

b. 119:15-121:2: submitted in support of Plaintiff's MIL #1 (inadvertence 119:23-120:2); #6 (120:16-121:2) and in Opposition to Defendants' MIL #1 and #3 (119:23-120:2);

Exhibit 2: Excerpts of the deposition of Elder Michael Clarke as follows:

a. 47:4-16, submitted in Opposition to Defendants' MIL #1; and

b. 35:1-9, submitted in Support of Plaintiff's MIL #s 1 (1101b) and 8;

Exhibit 3: Declaration of Michael Clarke of April 23, 2012, para. 4, submitted in opposition to Defendants' MIL #3;

Exhibit 4: Excerpts of the deposition of PMQ Allen Shuster, 62:3-66:15, submitted in opposition to Defendants' MIL #1 (property issue) and 1st Amendment issues;

Exhibit 5: Excerpts of Defendants' MPA filed April 27, 2012, submitted in opposition to Defendants' MIL #1 (1101(b)) and #3;

Exhibit 6: Excerpts of Deposition of Laura Fraser, L.C.S.W., (video for use at trial) and exhibit thereto jointly submitted in evidence at trial, submitted in opposition to Defendants' MIL # 2.

Plaintiff also submits an offer of proof as to Defendants' MIL #2, that Plaintiff will testify that one of the reasons for her delayed disclosure was because she feared disfellowshipping in the belief that her mother had been disfellowshipped for her report of her own abuse within Jehovah's Witnesses.

Dated: May 20, 2012

FURTADO, JASPOVICE & SIMONS,

Attorneys for Plaintiff,

By _____

Richard Simons

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

-oOo-

CERTIFIED COPY

JANE DOE,

Plaintiff,

-vs-

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

DEPOSITION OF GARY A. ABRAHAMSON

Tuesday, August 23, 2011

Taken Before Karen Scott
Certified Shorthand Reporter
State of California
C.S.R. No. 4027

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ◇ FAX (925) 416-0971

of the meetings on the scheduled -- or I should say in addition to the quarterly meetings.

A And you're asking when the Body of Elders would meet together to discuss something?

Q Yes.

A Might be as frequent as once a month to once every two months.

Q Are there regular gatherings of the entire congregation?

A At our meetings, yes.

Q And how frequently in Fremont North would there be regular gatherings of the entire congregation?

A During that period?

Q Yes, mid-1990s.

A Yes. They would gather for five meetings a week, and generally these would take place on three different days.

Q Would the nature of each of the five meetings a week be the same or would there be a different purpose for some of the meetings than others?

A Yes, different purpose.

Q What would the various purposes be for the meetings?

A Well, we would have a public talk which is designed for new ones, and also the congregation benefits from that as well. Then we would have a discussion of the Watchtower article for the week, which we're encouraged to study beforehand, and we can freely comment; new ones can comment as well.

And then we have what is called the Theocratic Ministry School, where it gives us training in our ministry. And then we have a service meeting which helps us in our field service, to different aspects of that. And then we had a congregation book study and that was usually midweek.

Q In addition to the five meetings a week, are there regular services of some kind in what I will call a religious setting?

A Okay. The only other meetings that we have throughout the week would be meetings for field ministry, where we get together for a few minutes, discuss the presentation, get direction from the brother taking the lead, meaning what territory we would go in.

Q In some religions there is a regular service, if you will, administered or presided over by a pastor or minister or priest depending on the various religious organizations. Is there such a

and we encourage them to attend with their parents.

Q And is it correct that many children or minors will attend these meetings and have throughout your years of service as an elder?

A Depending upon how many are in the area and your definition of "many."

Q Would it be accurate to say that children, some children, regularly attend each of the five meetings?

A Yes.

Q In your experience, do children sometimes attend the meetings without their parents being present?

A Yes, they do, but of course they would have to arrange transportation to get there, and so somebody would take oversight of that individual to get them to the meeting and to return them home.

Q When you say "somebody," can you tell me what kind of somebody you're thinking of?

A The parents would arrange for somebody.

Q A person, another member of the congregation?

A Could -- yeah, undoubtedly.

Q During the years that you have served as an elder, has it come to your attention that there is

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

GARY A. ABRAHAMSON, VOLUME II

PAGES 113 TO 142

Tuesday, October 25, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

(Plaintiff's Exhibit No. 11 marked for identification.) 09:13:38 09:13:38

MR. SIMONS: Q. Have you actually seen this Order before? 09:13:44 09:13:45

A. If I had it would only be through counsel. 09:13:52

Q. Okay. 09:13:54

Do you understand that those questions, that we had some disagreement about and that you were instructed not to answer, are going to come up again today; and that at least for some of those questions, there has been an Order by the Court that they would be answered? 09:13:57 09:13:58 09:14:01 09:14:07 09:14:09 09:14:11

A. Yes. 09:14:12

Q. Okay, fair enough. Thank you. 09:14:13

Let me start with the first question that we dealt with, and that was involving Jonathan Kendrick in his removal as a Ministerial Servant. 09:14:14 09:14:22 09:14:25

Why was Mr. Kendrick removed as a Ministerial Servant? 09:14:28 09:14:31

A. He was removed because of improper conduct. He was no longer irreprehensible or free from accusation. 09:14:32 09:14:34 09:14:38

Q. And what was the conduct that was involved in that removal? 09:14:41 09:14:44

A. It was the conduct of, he admitted to 09:14:47

touching briefly and inadvertently his stepdaughter's breast, which was over the clothing. 09:14:51 09:14:56

Q. Um-hum. 09:14:59

Did he make this admission to you? 09:15:01

A. He did make the admission to myself, myself and another brother. 09:15:04 09:15:08

Q. Okay. Where did that admission occur? 09:15:10

A. It occurred at their house. 09:15:15

Q. Not the conduct but the conversation in which he admitted it. 09:15:18 09:15:21

A. The conversation. Right. Right. 09:15:23

Q. Okay. And when you say "at their house," was that -- 09:15:24 09:15:26

A. The Kendricks' house. 09:15:26

Q. Okay. 09:15:28

At the time that that conversation occurred, was that the house that Evelyn Kendrick, Andrea Kendrick, and Jonathan Kendrick were all residing at? 09:15:30 09:15:33 09:15:36 09:15:40

A. Correct. 09:15:41

Q. Although Andrea, I guess, is not a Kendrick. 09:15:41 09:15:44

A. That would be true. 09:15:45

Q. Yes. Okay. 09:15:46

Who was present during this conversation? 09:15:47

A. The three of them, plus myself and another brother, Michael Clarke. 09:15:50 09:15:53

Q. And how was it that you came to the Kendrick home to have this conversation? 09:15:56 09:16:00

A. It was prearranged. 09:16:03

Q. Was there something that generated the conversation and the arrangements to go and meet with the Kendricks? 09:16:06 09:16:12 09:16:15

A. Yes. 09:16:18

Q. What was that? 09:16:19

A. Well, they, uh -- 09:16:27

I think Jonathan went to Brother Clarke and confessed it. So, as a body we met and decided to form an investigating committee. 09:16:29 09:16:31 09:16:35

Q. All right. And when you say "as a body we met," are you talking about the Elders of the North Congregation? 09:16:36 09:16:39 09:16:41

A. Yes, I am. 09:16:42

Q. Do you know who the original conversation, the very first conversation that occurred involving this touching, was with in terms of someone from the Kendrick family and someone from the Body of Elders? 09:16:46 09:16:49 09:16:52 09:16:56

A. I do not know. Cannot remember if I ever knew. 09:17:00 09:17:03

Q. Okay. How did you first hear about it? 09:17:04

EXHIBIT 2

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

MICHAEL LEE CLARKE

Tuesday, November 8, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

for?

A. Picking up children, hugging children, kissing children, things of that nature.

Q. Was Mr. Kendrick prohibited from going into territories to do preaching and spreading the word?

A. No.

Q. Was he prohibited from going into neighborhoods to spread the word when he was in the company of children?

A. We....

I don't recall how we limited that. I could just say that when he came out or met to go out into the ministry, we did our best to make sure he worked with an adult, and preferably one of us, you know, one of the Elders.

Q. Did you have any concern that Mr. Kendrick would be at risk to molest another girl in a setting outside of the direct activities of the congregation?

A. Please repeat?

I'm sorry.

MR. SCHNACK: I was going to say, I was going to object to it. I don't know what you mean by "direct activities" as opposed to "indirect activities."

Q. Did Mr. Kendrick also tell you that his daughter Andrea was now using the abuse, that she had experienced, as a tool to threaten when she wanted something? 12:10:41 12:10:44 12:10:53 12:10:59

A. Yes. 12:10:59

Q. Mr. Kendrick told you that. 12:11:00

A. Both him and his wife, Evelyn. 12:11:02

Q. Okay. And was that also in the meeting with Andrea present in the Kendrick home? 12:11:05 12:11:07

A. Yes. 12:11:10

Q. And did Mr. Kendrick tell you anything else about why he had chosen November of 1993 to talk to you about this abuse of Andrea, other than "his conscious continued to bother him"? 12:11:13 12:11:15 12:11:17 12:11:19

A. Well, the letter mentions that it had become... it had become known to a friend of the stepdaughter's. 12:11:21 12:11:24 12:11:26

And I believe he indicated, in addition to his conscious, that this would be a reason for us to -- to come over and talk to him about it. 12:11:29 12:11:33 12:11:37

Q. Are you referring to Toi Register? 12:11:38

A. Um... is that her name? Yes. 12:11:39

Q. Okay. 12:11:40

And you discuss that, in the bottom paragraph of the November 16th -- I'm sorry,

There's information here concerning Toi Register having had her chest, quote, "accidentally touched," end quote, by Mr. Kendrick. 12:11:42 12:11:47 12:11:50

Was it Mr. Kendrick that told you that? 12:11:51

A. Boy. This was repeated to us by.... 12:11:53

I don't know where that information -- how we gathered it. It might have been mentioned by the stepdaughter. We -- 12:11:53 12:11:56 12:12:01

We did not talk with Toi Register. 12:12:06

Q. Okay. 12:12:10

Was there any reason that you did not talk to Toi Register to see if the touching of her chest by Brother Kendrick was actually accidental, as opposed to intentional? 12:12:11 12:12:13 12:12:19 12:12:23

A. I don't remember why we did not talk with her. 12:12:24 12:12:26

Q. Were you concerned on November 15th, 1993, that there might be other young girls who Brother Kendrick had been touching in their breasts? 12:12:32 12:12:35 12:12:43

A. Can you please repeat that? 12:12:45

Q. Yeah. 12:12:49

During this meeting of November 11th, you learned that there had been some touching of Toi Register and some touching of Andrea by Mr. Kendrick. 12:12:53 12:12:58 12:13:06 12:13:08

EXHIBIT 3

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,,

Defendants.

Case No.: HG11558324

DECLERATION OF MICHAEL LEE CLARKE

I, Michael Lee Clarke, hereby declare:

1. I am an elder in the North Congregation of Jehovah's Witnesses, Fremont, California, and have been an elder there since 1989.

2. Gary Abrahamson, also an elder at that time, and I visited the home of Jonathan, and Evelyn Kendrick and Evelyn's daughter, Andrea, to investigate an allegation that Jonathan had improperly touched Andrea.

///

///

3. During the conversation that day in my presence and the presence of Andrea, Evelyn, Jonathan and Gary Abrahamson, Jonathan Kendrick admitted touching Andrea's breast over her clothes when he entered the home in the dark and she was sleeping on the living room couch.

4. Andrea and Evelyn never contradicted Jonathan's version of this incident.

5. I have read the Declaration of Evelyn Kendrick dated March 26, 2012.

6. At no time did Andrea say that Jonathan had given her any drugs, that Jonathan watched television with her in her bedroom, that Jonathan had reached inside her bra and touched her breast, or that he had put his hand inside her pants and touched her genitals.

7. If Andrea, or anyone else, had said such things as described in the Declaration of Evelyn Kendrick, a judicial committee would have been formed.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am competent to testify as to the facts said forth herein.

Executed this 23, day of April, 2012, at Fremont, California.

Michael Lee Clarke

EXHIBIT 4

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALMEDA

----------X

JANE DOE, No. HG11558324

Plaintiff,

-v-

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

----------X

VIDEO DEPOSITION

OF

ALLEN SHUSTER

PATTERSON, NEW YORK

FEBRUARY 15, 2012

10:01 A.M.

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

Nancy Anne Flynn, RPR
FILE NO.: A508ED2

Bible.
Q Are the mid week meetings that are held at Kingdom Halls attended customarily by children as well as adults?
A Yes.
Q What does the weekend meeting usually consist of.
A It consists of two meetings, a public talk addressed to the public, and then a consideration of the study edition of the Watchtower. There are articles that are taken each week from that Watchtower and considered during the course of that hour, on a variety of subjects.
Q And are the weekend meetings customarily held at the Kingdom Hall?
A Yes, in this country.
Q Are there other meetings routinely held, in your experience and knowledge, that would be smaller study groups held perhaps in homes of individuals who are congregation members?
A Not a study group. We do have places, homes, private homes, where we gather for a very, very brief period of time, ten to fifteen minutes, to meet prior to engaging in the public ministry.

Q Are the weekend meetings customarily attended by children?
A The public talk and Watchtower study at the congregation, at the Kingdom Hall?
Q Yes.
A Yes.
Q When you say public ministry, is service work and public ministry, are those concepts the same?
A Service work meaning?
Q Does service work as it's customarily used in your vocabulary include the public ministry that you were about to describe for me?
A We don't use the terminology "service work." We do use the word service, it's field service or field ministry, and yes, it's synonymous with the ministry.
Q So it's service, not service work?
A Right.
Q Thank you. My apologies. And how often are congregations involved, say, on a weekly basis in field service?
A Typically we have meetings all during the week in the homes, usually in the mornings,

sometimes in the afternoons, in meeting for field service. So in some cases it's seven days a week, either in the homes or at our places of worship, our Kingdom Halls. In other areas where the congregations are much smaller, they may have arrangements to meet less than that.
Q And by field service or public ministry, does that mean going into the community to preach the gospel and spiritual teachings of Jehovah's Witnesses?
A Yes, the gospel, speaking about the Bible, and yes.
Q And are children allowed to engage in the field service work, I'm sorry, field service, I beg your pardon?
A Yes.
Q What does the term "publisher" mean?
A A publisher can refer to a baptised or unbaptized associate of the congregation.
Q Can a child be a publisher?
A Yes.
Q And can a child be an unbaptized publisher?
A Yes.

Q What is the role of an unbaptized publisher in field service?
A The same as an adult publisher.
Q And what is that?
A Reading the Bible, sharing with others one's faith, one's conviction, teaching them about what the Bible says is the hope for the future. It's all part of the ministry, whether one is an adult or a minor.
Q Does field service work include manning a table or a booth or some kind of a fixed place in a public location where persons can come by and approach and be given Awake or Watchtower or other information?
A That would be part of it. That is one form, one aspect of the public ministry.
Q Does it include going into communities, into residences or neighborhoods, and going door to door as well?
A That's part of it, yes.
Q And that is usually done in smaller groups of perhaps two or three individuals?
A Yes.
Q And children are allowed to do that?

A Yes. 11:57

Q What are the other ways in which field service is accomplished? 11:57

A Well, we have the public ministry which often involves calling on homes, the house to house ministry. I think that's probably what Jehovah's Witnesses are more known for than anything else, their public ministry, waking you up early in the morning is part of it. Another part of it is, as you mentioned, the street witnessing, talking to passer-bys, engaging them in conversation. Part of it is making visits on people who have expressed interest in calling back on them. There are many different types of ministry. 11:57 11:57 11:57 11:57 11:57 11:57 11:57 11:58 11:58 11:58

Q Are any of these types of ministry ones which children are precluded from participating in? 11:58 11:58

A Some of the work that's done in the public, like on the street, maybe in metropolitan areas, there's always concern about children, and we want to protect them and keep them from harm. So there may be some times where we would recommend that children not participate in that aspect of the ministry, such as in the business territories, or on the street. Generally that's up to the parent to 11:58 11:58 11:58 11:58 11:59 11:59 11:59 11:59

EXHIBIT 5

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

ENDORSED
FILED
ALAMEDA COUNTY

APR 27 2012

CLERK OF THE SUPERIOR COURT
By H. Lovett
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO ALLEGE PUNITIVE DAMAGES

DATE May 3, 2012
TIME 3:00 P.M.
JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

BY FAX

must accept her hearsay statement that Andrea said that Kendrick had touched her bare breasts. If that hearsay is not admitted, we are left with what Kendrick confessed to the two elders about the incident.

Kendrick confessed only to having briefly and inadvertently touched his stepdaughter's breast over her clothing. (Watchtower Ex. N, Deposition of Gary Abrahamson, Volume II, October 25, 2011, pp. 119:15-120:2; Watchtower Ex. O, Declaration of Michael Lee Clarke; Watchtower Ex. P, Declaration of Gary A. Abrahamson.) When Kendrick made that confession, his wife Evelyn and stepdaughter Andrea were present, along with elders Gary Abrahamson and Michael Clarke. (Watchtower Ex. N, deposition of Gary Abrahamson, Volume II, October 24, 2011, pp. 120:25-121:2; Watchtower Ex. O, Declaration of Michael Lee Clarke; Watchtower Ex. P, Declaration of Gary A. Abrahamson.) Thus, when the North Fremont Congregation elders spoke with Kendrick in the presence of Andrea and her mother, he did not admit to anything beyond that described above.

Under these circumstances, no so-called judicial committee of elders was formed. However, Kendrick was deleted or removed from his position as a ministerial servant due to the allegation of inadvertent touching of another person's private bodily part (breast). An announcement was made to the entire congregation that he was no longer serving in that capacity, and he never again held any position of responsibility or authority in any congregation of Jehovah's Witnesses.

Thus, Dr. Salter's statement that there was a "confirmed" allegation of child molestation preceding Kendrick's alleged abuse of Plaintiff is false. As a result, her assertion of the Church Defendants' violations of standards among religious and other institutions where there is a "confirmed report" of child abuse, and where the accused is a "confirmed abuser," do not apply in this case.

Dr. Salter refers to what she calls "standards of care" regarding the prevention of child abuse, but provides no sources of those supposed standards, nor does she show how they apply to the Church Defendants and the facts of this case. In her reference to the necessity for training and education in the prevention of child abuse, she completely ignores all of the literature and

EXHIBIT 6

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	Case No. HG11558324

VIDEOTAPED DEPOSITION OF LAURA HARRINGTON FRASER

SAN DIEGO, CALIFORNIA

April 16, 2012

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: LAURA TAYLOR MARTIN, CSR 4158
FILE NO. A6036AC

after we had started treatment, and then wanting Candace to meet the boyfriend and like the boyfriend and that sort of thing.

Q. Okay. And Candace shared with you about her mother being abused. Is that correct? 01:13

A. Yes. I -- to my best of -- the best of my recollection, I think she did, yes.

Q. Yeah. You recorded that on August 12th of '96 --

A. Oh, okay. 01:13

Q. -- and again on September 18th of 1996, that Candace had shared that with you?

A. That Candace said it. Okay.

Q. Correct.

A. Then that's true. 01:13

Q. And also, Candace came to you at one point with a list of 12 items that she had written down to discuss with you.

Do you recall that?

A. What -- 01:13

Q. November 11th of 1996.

A. Yeah, okay.

Q. Do you see that at the top of --

A. Uh-huh.

Q. -- your clinical note on November 11th of 01:14

you'll get a child client who is a writer and they like to do that, and some kids or adults are not.

Q. And in the same July 30th, 1997 note, that's when you talked -- she talked with you about her mother's walking around naked in the house and riding a horse topless and that. 01:36

A. Uh-huh.

Q. And the note suggests that you also talked with Candace about how her mother's sex abuse had manifested itself. 01:36

A. Uh-huh.

Q. And what -- what discussions did you have with Candace at that point?

A. Well, what I said -- I mean, it was 14 years ago, so I don't know exactly how I phrased it beyond that, except for, in my knowledge of it, what I would have described is that when people have been sexually abused they sometimes act out inappropriately, don't have appropriate boundaries, that sort of thing, as one of the ways that sexual abuse can manifest itself. 01:36 01:37

Q. And how did Candace react to that discussion? Do you recall?

A. I -- I don't think that there was a huge reaction, or I probably would have noted it in the -- not that -- I mean, I don't know. I don't -- I don't have 01:37

PERSONAL & CONFIDENTIAL - NOT FOR PATIENT'S MEDICAL CHART

Conti, Candace 094-46-82-4

09/18/96
L. Fraser, L.C.S.W

S: Candace is a little bit brighter in affect today although at times she did become teary in discussions about her mother. She does not know how long her mother will be in LA with mother's current boyfriend but the issue makes Candace very sad. She talked about many different family events where Candace has felt in the middle or has felt responsible for discord in the family. She states that she recognizes now these things aren't her fault but she's easily triangulated and this elicits many feelings. Candace also talked about different events when her mother went "wacko" and became very enraged at Candace, demanding money from Candace, etc., when this was a completely unreasonable request due to Candace's age and lack of funds. Although Candace's mother has talked to her about much of the abuse she suffered, she has never shared with Candace what her diagnosis is. Candace doesn't have a name for her mother's illness but she recognizes that mother does have an emotional disturbance. Candace is trying very hard to be involved in different extracurricular activities but, as a result of strapped funds, Candace is not able to join things or feels that the cost of entering the soccer team and/or band is prohibitive. She was hopping that therapist would talk with her father about this. When Candace and therapist left session to discuss with father ways that the family might set as a goal for Candace to be involved in some structured activities, went into the waiting room to find father and mother sitting there which was of great surprise to therapist and Candace. Mother was very affectionate to Candace and Candace was somewhat standoffish although polite, she seems to be protecting herself and was not willing to pursue mother as wholeheartedly and affectionately as mother was approaching her.

Document #: 1268262
D: 09/18/96
T: 09/19/96 12:12 P/jnw
cc:

PERSONAL & CONFIDENTIAL - NOT FOR PATIENT'S MEDICAL CHART

Conti, Candace 094-46-82-4

07/30/97
L. Fraser, L.C.S.W

S: Candace has not been here in several weeks and states that one thing that's confusing to her is frequently she remembers things she wants to tell me and then forgets them when she's actually here in session and we talked about how common that it, but also some ways she might address the problem and I suggested that she keep a journal and we spent quite a bit of time problem solving how she could keep a journal that her mother wouldn't invade and indeed as usual we spent quite a bit of time talking about ways that Candace's mom tends to invade Candace's boundaries and be inappropriate in ways that Candace continues to declare certain areas off limits and private. Candace talked a lot about her boyfriend Matt and how much she's enjoying that relationship and that she continues to keep having a boyfriend and celebrating peoples birthdays and giving gifts, etc. in a separate "compartment" because it is contrary to what she's taught in the Jehovah's Witnesses and her father would not approve. One of the things that Candace enjoys about her mother is that her mother is willing to allow Candace to celebrate these things and, in fact, mother thinks that they're important. Candace talked about how her mother and mother's boyfriend Steve took Candace and her friends and the boyfriends to Great America and let them have a party, but then Candace states that she was so angry with her mother because her mother went in to the girls' things and took Candace and two of her friends' bras and threw them on the ceiling fan and then called the boys in to see it and Candace was absolutely mortified and felt like it was totally inappropriate of her mother to do this. Candace then stated that one thing that really upsets her about her mother is "she always runs around naked." When therapist asked her to elaborate on this, she states that while they were camping in King's Canyon, Kathy would take off her top, she'd go skinny dipping. She rode a horse in public with her top off and Candace states that at home Kathy will frequently walk around naked. She'll walk around naked in front of Candace's friends and leave doors and windows open and this is very confusing to Candace as she states that she knows about her mother's past of being raped, but it seems so confusing to her that her mother would have such flamboyant behavior with regard to showing her body. We discussed a little bit about how sexual abuse sometimes presents itself in people and once again therapist couched this in the area of "mother has many emotional problems and an emotional illness that she's continuing to work on." Candace states that her mother has switched doctors and therapists and doesn't see Judy French anymore nor is she going to Dr. Waraich because Candace understands that the reason to be "they wouldn't give my mother her medication anymore." In a later conversation with Dr. Waraich, it turns out that Kathy came for a prescription of Xanax. She was prescribed 90 and she consumed them in one week's time. When Dr. Waraich denied her an additional prescription, Kathy showed up at Dr. Waraich's office and was very inappropriate and demanding and then called Dr. Waraich at home. Dr. Waraich was quite surprised that Kathy was able to get her home phone number and Kathy at that time stated that she would no longer be seeing Dr. Waraich; she would see somebody else. Candace also during this session described that her mother's "spacing out" has increased. Her mother used to do this when they were talking on the phone together and now it happens quite a lot when they're in person. At first, therapist assumed that this may be a dissociative process going on, but it sounds more likely that it's due to Kathy's intense abuse of Xanax. Candace states that things with her father are basically going okay, but at one time he got extremely angry and was screaming and yelling because Candace didn't want to go to

8801207

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Nuenta Edgerton DEPUTY

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

REPLY IN SUPPORT OF MOTION IN LIMINE No. 5

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO THE DISCIPLINING OF MEMBERS OF THE RELIGION AND MEMORADUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

Plaintiff argues that the Church Defendants *should* have disfellowshipped Kendrick after he confessed to the abuse of his step-daughter. Plaintiff further contends that once the decision was made not to disfellowship Kendrick, the other ecclesiastical discipline options available to

the Church Defendants should be admissible at trial.

Not insignificantly, Plaintiff *concedes* that the decision of whether to disfellowship Kendrick is protected by the First Amendment and cannot be litigated or passed upon or reviewed by the Court or the jury. However, the very same protections are afforded to the other available forms of ecclesiastical discipline such that the distinctions argued by Plaintiff are truly distinctions without a difference. Such hair-splitting by Plaintiff does not render the ecclesiastical discipline options admissible at trial or allow the Court or jury to decide which options should have been chosen by the Church Defendants.

Any evidence admitted at trial by Plaintiff of church disciplinary proceedings or options will necessitate a thorough airing by the Church Defendants of the reasons why they did not use them. For instance, at the time of Kendrick's self-disclosure in 1993, the intentional momentary touching of sexual parts or caressing of breasts was a sin of "uncleanness." (1 Thessalonians 4:7, 8; 1 Timothy 5:1, 2.) Whether or not to form a judicial committee of congregation elders to inquire into Kendrick's attitude and response to his sin is an ecclesiastical decision which cannot be reviewed by this Court or by the jury.

Then, whether or not Kendrick should have been disfellowshipped by such a judicial committee of elders is an ecclesiastical decision based on a number of other factor and decisions that also must be made by the religious authority. For example, the judicial committee's purpose is to help determine what is needed to assist the repentant wrongdoer and to preserve the spiritual health of all in the congregation. To determine repentance, the elders must consider factors such as the following:

(1) Is there evidence of the person's craving wrongful things or courting trouble? Or did the person momentarily succumb to weakness? (James 4:1.)

(2) Was he aware of the gravity of his sin? (Galatians 6:1.)

(3) Had he been admonished that his course was leading towards danger? (Thessalonians 5:14.)

(4) Was it a single offense or was it committed more than once?

(5) Was his confession voluntary or did he have to be accused by others? (James

5:14, 15.)

(6) Above all, does he show true repentance and manifest a heartfelt desire to avoid repetition of the wrong? (1 John 1:8.)

CONCLUSION

As can easily be seen, the discussion of the propriety of these purely religious activities could turn this tort litigation into a heresy trial. The jury would be forced to decide questions of fact based on their own religious or even non-religious views. Wisely, the founding fathers and the the United States Supreme Court and the California courts have consistently ruled that courts of law cannot entertain such controversies.

Plaintiff's experts should be precluded from commenting on church discipline, and Plaintiff's counsel should be precluded from arguing that it was negligence not to disfellowship Kendrick or use other available ecclesiastical options in this case.

DATED: May 20, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 20, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 30, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO THE DISCIPLINING OF MEMBERS OF THE RELIGION AND MEMORADUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address)es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 30, 2012, at ~~Sacramento~~ Oakland, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguines@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

8801203

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 21 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

REPLY IN SUPPORT OF MOTION IN LIMINE No. 4

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO PAUL INMAN AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

DATE	May 18, 2012
TIME	8:30 A.M.
JUDGE	Robert McGuiness
DEPT.	22

TRIAL DATE: May 21, 2012

At the pre-trial conference Plaintiff argued that certain allegations concerning Paul Inman are relevant to this case to show that Defendant North Congregation of Jehovah's Witnesses, Fremont California (hereinafter "North Fremont Congregation"), i.e., specifically

that the North Fremont Congregation did not adequately investigate the accusations of child abuse made by his then wife during divorce proceedings against Paul Inman. Plaintiff apparently contends that this would support her theory that the North Fremont Congregation elders also did not adequately investigate the allegations of individual defendant Jonathan Kendrick's abuse of his 15-year-old step-daughter. However, this theory is not supported by the facts. In his deposition, Paul Inman said that he was not one of Jehovah's Witnesses when this accusation of child abuse was made against him. (Ex. A, Paul Inman Deposition pp. 23:25-24:3, 26:22-27:10.)

Because Paul Inman was not one of Jehovah's Witness when the accusation was made against him, the North Fremont Congregation elders could not legally have been expected to investigate any such allegations of child abuse against him. As such, the allegations of child abuse against Paul Inman should be excluded from evidence in this case.

DATED: May 30, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 30, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 29, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO PAUL INMAN AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☑ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address)es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 29, 2012, at Sacramento, California

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

The Honorable Robert McGuiness
Judge of the Superior Court, Department 22
rmcguines@alameda.courts.ca.gov

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

****

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al,

Defendants.

_____/

CERTIFIED COPY

NO. HG 11558324

VIDEOCONFERENCE DEPOSITION OF PAUL INMAN

FEBRUARY 21, 2012

TAKEN BEFORE JULIE L. BANTLEY.
CERTIFIED SHORTHAND REPORTER
STATE OF CALIFORNIA
C.S.R. LICENSE NO. 11422

Pizzotti & Jarnagin
Certified Shorthand Reporters
A Professional Corporation
(925) 416-1800 ♦ FAX (925) 416-0971

19c7cdf5-548f-4596-b446-f11c58239954

think. I'm not sure.

Q. Where is Rosanna today?

A. I do not know.

Q. When did you last have contact with her?

A. Many years ago.

Q. What about Jenna? Do you know where she is today?

A. Roughly.

Q. What is your best information on that regard?

A. Southern California.

Q. Do you have any information as to where Carolyn is today?

A. No, I do not.

Q. When was the last time you had any contact with her?

A. She sent me a text message a few months ago asking me to reach out to Rosanna.

Q. Do you have the text message still available to you on any electronic device?

A. No, I do not.

Q. Do you have any cell phone or other contact information for Carolyn?

A. No, I do not. If she -- she apparently has my number. I don't keep her number.

Q. In 1994 Carolyn made an accusation against you

19c7cdf5-548f-4596-b448-f11c58239954

that involved an allegation of sexual misconduct with Jenna. Do you recall that?

A. Yes.

Q. How were you first informed of this accusation?

A. Prior legal counsel advised me to not talk about this.

MR. McCABE: Can we go off the record for just a minute?

MR. SIMONS: Yes.

THE VIDEOGRAPHER: We're off the video record.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the video record.

MR. McCABE: Mr. Simons, could you have the reporter either read back that question or re-ask the question?

MR. SIMONS: Yes. I'll just re-ask it.

Q. Mr. Inman --

MR. McCABE: Thank you.

BY MR. SIMONS:

Q. -- how did you learn of the accusation Carolyn made concerning the alleged sexual abuse of your daughter, Jenna?

MR. McCABE: I'm going to object under the grounds of relevancy in that it's not likely to lead to

19c7cdf5-548f-4598-b446-f11c58239954

Mr. Simons?

MR. SIMONS: Yes.

Q. The reason that you are -- strike that. Let me rephrase it.

Are you advising me that the reason that you have been told to refuse to answer questions concerning the allegation is because of your right against and privilege against self-incrimination under the 5th Amendment?

A. Those are not the thoughts going through my head. I'm merely saying what my attorney told me to do. While I was investigated -- I should say the allegation was investigated, nothing came of it. My attorney said in order to avoid potential civil action, not criminal action, that I should not say anything.

Q. Okay. If I understand your answer correctly, when you say nothing came of it, there were no criminal proceedings filed against you arising out of any accusation involving Jenna; is that correct?

A. That is correct. And I will not go into any more detail.

Q. Did the Jehovah's Witnesses perform any judicial investigation as to that accusation of which you are aware?

A. I was not a Jehovah's Witness.

Q. So your answer would be based on the information and knowledge that you have, there was never any Jehovah's Witnesses investigation of this accusation?

A. I was not a Jehovah's Witness.

Q. So your answer would be, yes, you're not aware of any Jehovah's Witness accusation? I'm sorry. Investigation?

A. I wasn't there. I can't answer to what I wasn't privileged to. I wasn't there.

Q. Let me just ask it perhaps a different way that will allow you to answer. Do you currently understand that there was ever any investigation by any Jehovah's Witnesses committee concerning the accusation Carolyn made of your alleged misconduct with Jenna?

A. I'm unaware of anything like that.

Q. Did you ever discuss the accusation that Carolyn made with Larry Lammerdin?

A. No.

Q. Did you ever discuss it with any of the elders who you had known at the North Fremont Congregation?

A. I do not recall.

Q. Did you ever discuss the allegation that Carolyn made with regard to the alleged misconduct with Jenna? Did you discuss that with Neal Conti?

me give an exact analysis of her personality on an opinion.

Q. No, I'm actually asking what you recall observing in those occasions when you saw her or spoke with her?

A. I recall no specifics.

Q. All right, sir. That's all the questions that I have for you today. Thank you for your time.

MR. McCABE: No questions from me.

THE VIDEOGRAPHER: We are off the record.

(The deposition proceedings were concluded at 11:02 a.m.)

_____

Signature of Witness

19c7cdf5-548f-4596-b446-f11c58239954

C E R T I F I C A T E

I, JULIE L. BANTLEY, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In Witness Whereof, I Have
Hereunto Set My Hand This
6th of March, 2012.

_____

Julie L. Bantley
Certified Shorthand Reporter
State of California
License No. 11422

19c7cdf5-548f-4596-b446-f11c58239954

PIZZOTTI & JARNAGIN CERTIFIED SHORTHAND REPORTERS
5776 Stoneridge Mall Road, Suite 350
Pleasanton, California 94588
(925) 416-1800

PAUL INMAN
c/o JAMES MCCABE, Attorney at Law
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, California 92107

RE: DOE VS. THE WATCHTOWER BIBLE

Dear Mr. Inman:

This is to inform you that your deposition conducted on February 21, 2012 has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to ensure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very Truly Yours,

Julie L. Bantley
CERTIFIED SHORTHAND REPORTER

cc: JAMES MCCABE, Attorney at Law
RICK SIMONS, Attorney at Law

19c7cdf5-548f-4598-b446-f11c58239954

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 22, 2012.

Not Reported.

Jane Doe appearing represented by Richard J. Simons and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.

The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J. and Douglas M. Egbert.

Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J. and Douglas M. Egbert.

Jonathan Kendrick not appearing.

Fremont California Congregation of Jehovah's Witness, North Unt not appearing.

9:30 AM - 75 prospective jurors are present in the jury assembly room to complete questionnaires and hardship requests.

10:05 AM - Court and counsel present in open court with those prospective jurors who are requesting to be excused for hardship. Court and counsel review the hardship requests.

10:20 AM - The Court reads the names of those prospective jurors who have been deferred to serve at another time.

10:32 AM - Recess

11:45 AM - An additional 26 jurors are present in the jury assembly room to complete questionnaires and hardship requests.

11:15 AM - Court and counsel present in open court with those prospective jurors who are requesting to be excused for hardship. Court and counsel review the hardship requests.

11:20 AM - The Court reads the names of those prospective jurors who have been deferred to serve at another time.

11:25 AM - Court and counsel engage in colloquy off the record.

11:30 AM - Forty (40) additional jurors are ordered for May 23, 2012 for further jury selection. Court stands adjourned.

Case continued to 08:30 AM on 05/23/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/22/2012
Entered on 05/22/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 23, 2012.

Not Reported.

Jane Doe represented by Richard J. Simons and Kelly Kraetsch.

The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack and Douglas M. Egbert.

Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Robert J. Schnack and Douglas M. Egbert.

Jonathan Kendrick appearing in pro per.

Fremont California Congregation of Jehovah's Witness, North Unt represented by James M. McCabe.

8:35 AM - 37 prospective jurors are present in the courtroom. The Court reads the statement of the case and introduces the parties.

8:50 AM- Panel A and Panel B are sworn on voir dire. The names of 18 prospective jurors are called from the random list and seated in the jury box. The court commences voir dire of the prospective jurors.

9:02 AM - Plaintiff's counsel commence voir dire of the prospective jurors.

10:18 AM - Recess.

10:20 AM - Court, counsel and clerk are present in Dept. 17 in open court. Court and counsel review the 26 hardship requests from panel C.

10:28 AM - The 26 prospective jurors with hardships are deferred for service at another time.

10:35 AM - All parties are present in Department 22. Defendant's counsel commence voir dire examination.

11:00 AM - Court and counsel voir dire (3) prospective jurors in chambers. Court stands in recess.

11:45 AM - All parties are present in open court. Steven Bailey, Dana Kuhn, Janice Hitchcock, and Vilma Nicolas are excused for cause.

11:50 AM - The names of prospective jurors are called from the random list and are seated in the jury box. Voir dire examination continues.

12:02 PM - Jurors seated in 14 - 18 are ordered to return at 1:15 p.m. Court declares lunch recess.

1:15 PM - Court and counsel confer in chambers.

1:40 PM - All parties are present. The following jurors are excused for cause: Kenneth Wong, Michael Keeley, and Maria Molina.

1:45 PM - Panel C is present. The Court reads the statement of the case and introduces the parties.

1:50 PM - Counsel continues voir dire examination.

2:15 PM - Peremptory challenges are exercised. Voir dire examination continues.

2:45 PM - Court and counsel confer in chambers.

2:50 PM - Clerk swears in Panel C on voir dire.

2:55 PM - All parties are present. Kenneth Bochert is excused for Cause.

3:00 PM - The matter is continued to May 24, 2012 at 9:00 a.m. for further jury selection/ jury trial. Court stands adjourned.

Case continued to 08:30 AM on 05/24/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/23/2012
Entered on 05/24/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

RDD

8801161

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 23 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly KM
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S LEGAL BRIEFING REGARDING EVIDENCE OF REPORTS TO WATCHTOWER CONCERNING CHILD SEX ABUSE

TRIAL DATE: May 21, 2012

The Church Defendants submit pursuant to the Court's request this legal briefing regarding Plaintiff's efforts to admit at trial evidence of statistical data concerning reports to the Watchtower organization from across the United States concerning child sex abuse. Indeed, Plaintiff requests that any such statistical data relating statistics relating to every child sex abuse report made to Watchtower during the last twenty years be deemed admissible. The result of

granting such a request would be a violation of the Church Defendants' due process rights, because they would be forced to defend themselves against claim after claim originating from the different corners of the nation during the past twenty years. Obviously, such a request would turn this case into a six-ring circus. Further, such a result is highly and unfairly prejudicial to the Church Defendants and would waste enormous amounts of trial time in what is already anticipated to be a lengthy trial. For those and each of the other reasons discussed below, the Church Defendants oppose and object to Plaintiff's request and ask the Court to rule that all evidence of reports to Watchtower over the past twenty years from any state in the nation be deemed inadmissible.[1]

A Compilation of Data and Statistical Evidence Concerning Child Sex Abuse Claims Made to Watchtower Does Not Exist and Any Reports Made to Watchtower are Protected by the Attorney-Client Privilege

As an initial matter, the evidence Plaintiff intends to use does not exist. Plaintiff contends Watchtower has a statistical compilation of data that can be used to evidence an increase in reports of child sex abuse throughout the nation over the past twenty years. Plaintiff apparently intends to rely on this alleged evidence in the punitive damages phase of this case in an attempt to demonstrate that Watchtower's sex abuse prevention policies and practices are ineffective and thus evidence deliberate indifference to child sex abuse.

Plaintiff deposed Allen Shuster in this case and questioned him on this issue. Mr. Shuster has served in the U.S. Branch Office of the Jehovah's Witnesses faith since 1976 and is familiar with Defendant Watchtower's policies and practices. During his deposition, and contrary to Plaintiff's contention that such statistical records exist, Mr. Shuster testified that Watchtower does not have a compilation of data or statistics relating to reports received of child sex abuse. (Ex. A, Shuster Deposition, 118:18-21.) Thus, there is no evidence that such data and statistics exist concerning reports of child sex abuse.

[1] While recognizing that the Court asked for a three-page brief, given the high risk of undue and unfair prejudice, the Church Defendants felt it necessary to a bit more fully brief the issues, which resulted in a brief exceeding the three pages requested by the Court. The Church Defendants ask for the Court's indulgence in submitting a longer brief.

Further, any reports made to Watchtower are protected by the attorney-client privilege. (Evid. Code §§ 950, *et seq.*) When elders of a congregation receive information concerning allegations of child sex abuse, they contact Watchtower's legal department to seek legal advice. This information is maintained within Watchtower's legal department. These communications and reports to Watchtower are unquestionably protected by the attorney-client privilege. (*Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 371 ("[T]he privilege applies not only to communications made in the anticipation of litigation, but also to legal advice when no litigation is threatened").) Thus, any reports made to Watchtower concerning child sex abuse are privileged because they were communications to and with Watchtower's legal department made for the purpose of obtaining legal advice. As privileged communications, these reports are not only not subject to discovery, they are inadmissible at trial.

Even if the Compilation of Data and Statistical Evidence Plaintiff Seeks to Admit Existed, Such Evidence is Improper and Irrelevant Because it Cannot be Used to Accurately Measure the Effectiveness of a Child Sex Abuse Prevention Policy

Plaintiff contends that statistical evidence relating to reports of child sex abuse to Watchtower is admissible with respect to the claimed effectiveness or ineffectiveness of child sex abuse prevention policies and practices within the Watchtower organization nationally. Even assuming, *arguendo*, such data and statistical evidence existed, it would not be admissible in evidence because such data and statistics are both irrelevant and cannot otherwise be used to accurately measure the effectiveness or ineffectiveness of Watchtower's child sex abuse prevention policy and practices. (Exhibit B, Declaration of Monica Applewhite, filed concurrently herewith, at ¶¶ 1-3.)

There are many reasons why the data and statistical evidence Plaintiff seeks to admit would not accurately measure the effectiveness of Watchtower's policy and practices. First, statistical evidence does not accurately reflect the effectiveness of an organization's child sex abuse prevention policies because when members of the organization are educated about the warning signs of child sex abuse and provided avenues for reporting such warnings signs, there often is an ***increase*** in the number of reports of child sex abuse. (*Id.* at ¶ 3.) Second, there is no ethical way to conduct a scientific or empirical study of a group of human subjects within an

organization to conclusively determine whether certain organizational policies or practices regarding child sex abuse prevention have efficacy. (*Id.* at ¶ 4.) It would not be ethical to have a control group of children and parents provided education and training with respect to child sex abuse prevention while at the same time having another control group that is not provided the benefits of such education and training. (*Id.*) Third, there are numerous intervening factors in situations involving child sex abuse that cannot be controlled by an organization, such as changes in overall public awareness and the increase in educational programs provided directly to children (*Id.* at ¶ 5.) Fourth, organizations do not exist separately from society at large and, therefore, societal trends can affect reporting within organizations irrespective of the organization's policies. (*Id.*)

For the reasons set forth above, the data and statistical evidence Plaintiff seeks to use, even if it did exist, cannot be used to accurately measure the effectiveness or ineffectiveness of Watchtower's child sex abuse prevention policy and practices. Thus, such evidence would unfairly prejudice defendants, is irrelevant, would confuse the issues, and mislead the jury. The Court should exclude all such evidence at trial.

Plaintiff Seeks to Use Reports to Watchtower to Support Her Claim for Punitive Damages to Effect Change in National Policy but Such Use is Improper per the U.S. Supreme Court and Because their Admission Will Violate the Church Defendants' Due Process Rights

During the hearing on May 21, 2012, Plaintiff's counsel stated that the statistical data concerning reports of child sexual abuse to Watchtower would demonstrate a "deliberate indifference" on the part of Watchtower regarding the effectiveness or ineffectiveness of its policies and practices relating to child sex abuse prevention. This specific reference to "deliberate indifference" indicates Plaintiff intends to use such statistical data to support her claim for punitive damages against Watchtower. (*See* Civil Code § 3294(b) ("With respect to a corporate employer, the advance knowledge and *conscious disregard* . . . of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation" (emphasis added)); CACI 3946 ("A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and *deliberately fails* to avoid those consequences") (emphasis added).)

To the extent Plaintiff wishes to use such statistical data to effect a change in Watchtower's national policy by way of punitive damages, the U.S. Supreme Court has repeatedly held that using punitive damages for this purpose is improper. (*BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 572, 585 ("While each State has ample power to protect its own [citizens], none may use the punitive damages deterrent as a means of imposing its regulatory policies on the entire Nation."); *State Farm Mutual Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 420-421 (award of punitive damages reversed where Plaintiff used case as a platform to expose and punish defendant for perceived deficiencies in its national operations; "as a general rule . . . a State [does not] have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction").)

Further, "the U.S. Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties." *Philip Morris USA v. Williams* (2007) 549 U.S. 346, 353.) Punitive damages cannot be used to punish a defendant for injury that it inflicts upon those who are "strangers to the litigation." (*Id.*) This is because the defendant "has no opportunity to defend against the charge" by showing why one victim's case is different from another's. (*Id.*) Finally, to permit punishment for injuring a nonparty victim "would add a near standardless dimension to the punitive damages equation." (*Id.* at 354.) For example, how many such victims are there? How seriously were they injured? Under what circumstances did the injury occur? "The trial will not likely answer such questions as to nonparty victims [and] [t]he jury will be left to speculate." (*Id.*)

Here, Plaintiff's counsel has openly admitted that he (and Plaintiff) wish to effect a change in Watchtower's *national* policy. Plaintiff's counsel's comments at the May 21, 2012 hearing about "deliberate indifference" suggest Plaintiff intends to accomplish this change by seeking a large award of punitive damages against Watchtower (Plaintiff does not claim punitive damages against Defendant North Fremont Congregaiton). Pursuant to *Gore* and *Campbell*, the U.S. Supreme Court has expressly held that punitive damages cannot be used for this purpose.

Further, the admission of nationwide statistical data concerning reports to Watchtower

from the past twenty years would result in the "standardless dimension to the punitive damages equation" about which the U.S. Supreme Court warned in *Philip Morris*. It is impossible to answer the questions posed above for all the nonparties who are "strangers to [this] litigation," and the Church Defendants' due process rights will be violated if the statistical evidence Plaintiff seeks is admitted.

For each of these same reasons, the statistical evidence of reports is inadmissible pursuant to Evidence Code section 352 because such evidence would unfairly prejudice the Church Defendants and waste an enormous amount of trial time, as well as confuse the issues and mislead jury. Thus, the Court must reject Plaintiff's request to admit in evidence all statistical evidence of reports to Watchtower of child sexual abuse over the past twenty years made throughout the nation.

Based on each of the independent and alternative reasons discussed above, the Church Defendants respectfully request the Court exclude any evidence, testimony, and argument concerning reports and statistics relating to every complaint of child sex abuse made to Watchtower originating from any state in the nation during the last twenty years.

DATED: May 23, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 23, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
Case No. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 23, 2012, I served the following document(s) described as **DEFENDANT WATCHTOWER AND NORTH FREMONT CONGREGATION'S LEGAL BRIEFING REGARDING EVIDENCE OF REPORTS TO WATCHTOWER CONCERNING CHILD SEX ABUSE** on all interested parties to this action as follows:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 23, 2012, at Oakland, California

R. J. Schnack

Robert J. Schnack

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
Case No. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALMEDA

----------X

JANE DOE, No. HG11558324

Plaintiff,

-v-

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

----------X

VIDEO DEPOSITION

OF

ALLEN SHUSTER

PATTERSON, NEW YORK

FEBRUARY 15, 2012

10:01 A.M.

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

Nancy Anne Flynn, RPR
FILE NO.: A508ED2

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALMEDA

----------X

JANE DOE, No. HG11558324

Plaintiff,

-v-

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

----------X

February 15, 2012

100 Watchtower Drive

Patterson, New York

Video Deposition of Allen Shuster, taken on behalf of Plaintiff pursuant to Notice, commencing at 10:01 A.M.

ATTORNEYS FOR PLAINTIFF:

RICHARD J. SIMONS, ESQ.
FURTADO, JASPOVICE & SIMONS,
A Law Corporation
22274 Main Street
Hayward, California 94541
510.582.1080
rick@fjslaw.com

ATTORNEYS FOR DEFENDANT
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.:

ROBERT J. SCHNACK, ESQ.
JACKSON LEWIS, LLP
801 K Street, Suite 2300
Sacramento, California 95814
916.341.0404

ATTORNEYS FOR DEFENDANT
CONGREGATION OF NORTH FREEMONT:

JAMES M. MCCABE, ESQ.
THE MCCABE LAW FIRM
4817 Santa Monica Avenue, Suite B
San Diego, California 92107
619.224.2848

ALSO PRESENT:

FRANCIS MCNAMARA, ESQ.
General Counsel
Watchtower New York

TERRY CARRUTHERS, Videographer

Mr. Shuster to answer the question whether he was aware of any such database prior to 1997, but anything else, we are going to assert various objections including relevant time period, attorney/client privilege, attorney work product, and some others, and instruct him not to answer with respect to a database question. 03:19 03:19 03:20 03:20 03:20 03:20 03:20 03:20

MR. SIMONS: All right. Let proceed then. 03:20 03:20

BY MR. SIMONS: 03:20

Q Mr. Shuster, having just heard our discussion, do you have an answer to that portion of the question as framed by counsel that you are permitted to answer? 03:20 03:20 03:20 03:20

A Can you ask the question again? 03:20

Q Yes. Do you have any knowledge of a compilation of data concerning childhood sexual abusers within Jehovah's Witnesses prior to 1996? 03:20 03:20 03:20

A No. 03:20

Q Does Jehovah's Witnesses maintain a website? 03:20 03:20

A Yes, it's called JW.org. 03:20

Q And is there -- 03:21

record that the witness will be able to review the transcript from the copy that Mr. McCabe purchases.

(Whereupon, at 3:27 p.m., the deposition was concluded.)

STATE OF NEW YORK_____)

COUNTY OF _____)

I, the undersigned, declare under penalty of perjury that I have read the foregoing transcript, and I have made any corrections, additions, or deletions that I was desirous of making; that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this _____DAY OF_____, _____.

_____, _____.

(City) (State)

_____

ALLEN SHUSTER

Subscribed and sworn to before me

This ____ day of _____, _____.

_____

Notary Public

CERTIFICATION

I, NANCY ANNE FLYNN, Registered Professional Reporter and a Notary Public in and for the State of New York, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of February 2012.

_____

NANCY ANNE FLYNN, RPR



JACKSON LEWIS, LLP
Robert J. Schnack, Esq.
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	Case No.: HG115558324 **DECLARATION OF MONICA APPLEWHITE** TRIAL DATE: May 21, 2012

I, Monica Applewhite, declare as follows:

1. I have spent the past 18 years conducting research and root-cause analysis in the area of child sex abuse in organizations in order to assist organizations, including churches, in developing best practice standards. I have worked with more than 300 organizations that serve children and youth, including 28 Roman Catholic dioceses, the U.S. Conference of Catholic Bishops, the Salvation Army Western Territory (Denver to Guam), The United States Episcopal House of Bishops, the United States Presbyterian Church, the Rabbitical Council of America and numerous independent churches and religious organizations.. I am also an expert in standards of care and the dynamics of abuse in educational and religious environments. A true copy of my curriculum vitae is attached hereto as Exhibit "A." I am legally competent in all

respects and make the following statements based on my education, experience and training as described herein.

2. I am advised that Plaintiff Jane Doe in this case seeks to rely on statistical evidence relating to the number of reports of alleged child sex abuse to the Watchtower Society during the last twenty years. Plaintiff contends that such statistical evidence is admissible with respect to the claimed effectiveness or ineffectiveness of child sex abuse prevention policies and practices within the Watchtower organization nationally.

3. However, it is my opinion that any such statistical evidence cannot be used to measure the effectiveness or ineffectiveness of a child sex abuse prevention policy. First, it has been my experience in consulting with church organizations and other non-religious organizations that serve youth that there tends to be an increase in the number of reports of child sex abuse when the members of the organization are educated about what to look for regarding warning signs of possible child sex abuse and provided avenues within the organization to report such warning signs. As a result, it is my opinion that an increase within an organization of reports of child sex abuse does not necessarily correlate to an actual increase of child sex abuse within the organization. Thus, as noted above, any such statistical evidence is not an accurate measure of the effectiveness of a child sex abuse prevention policy.

4. Further, there is no ethical way to conduct a scientific or empirical study of a group of human subjects within a church or other organization to conclusively determine whether certain organizational policies or practices regarding child sex abuse prevention have efficacy. For example, it would not be ethical to have a control group of human subjects who are provided education and other training with respect to child sex abuse prevention while at the same time having another group of human subjects who are not provided such education or training.

5. In addition, there are a large number of intervening variables in situations involving child sex abuse that cannot be controlled by the organization and may reflect either positively or negatively, based on factors such as new criminal justice initiatives, changes in overall public awareness, and the increase in programs that are provided directly to children in

public and private schools. Further, a particular church organization does not exist in a bubble, so to speak, because there are broad societal trends with respect to child sex abuse such that those public trends can also affect reporting within a particular church organization (for example, changes in mandatory reporting laws, highly publicized cases such as Penn State that prompt reporting, and increased accessibility of information due to the proliferation of internet sites describing the dynamics and effects of sexual abuse).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: May 22, 2012

Monica Applewhite

Exhibit A



MONICA APPLEWHITE, PH.D.

Curriculum Vitae

EDUCATIONAL BACKGROUND AND WORK EXPERIENCE

EDUCATION

The University of Texas at Arlington
Arlington, Texas
Ph.D. in Social Work (1995).
Dissertation: "A Logistical Regression Model of the Decision Making Process of Women in Abusive Relationships."
Advisor: Dr. Charles Mindel

The University of Texas at Arlington
Arlington, Texas
Master's of Science in Social Work (1992).

Texas Christian University
Fort Worth, Texas
Bachelor's of Science in Social Work (1990).

WORK EXPERIENCE

Independent consultant
September 2007 to the present
Austin, Texas

- *September 2007 to the Present – Programs for Religious Organizations, Schools and Social Service Agencies*
  - *Developed and delivered educational programs for faith-based organizations, schools, social welfare and university systems throughout the United States, Ireland, The South Pacific Island Region, New Zealand, and throughout Australia.*
  - *Facilitated the review of Accreditation Standards for Men's Religious Institutes in the United States. Reviewed standards for pastoral care of victims, incident investigation and supervision of those who have sexually abused minors.*

- *Conducted workshops for supervisors of sexual offenders. Addressed current monitoring procedures, the use of static and dynamic variables in risk assessment, internal investigations and the use of community support for secondary prevention.*
- *Educational programs for Jesuit Superiors, Congregation for the Mission, Eastern and Mid-West Provinces, and numerous other programs for Religious Men.*
- *Conducted educational program for the Bishops of English-speaking countries entitled, "Monitoring the Accused and Safety Planning: Toward a Holistic Approach."*
- *Conducted educational programs for the USCCB regarding supervision of priests who have sexually offended against minors.*
- *Developed individualized programs of support and accountability for priests and religious who have sexually offended against minors and/or adults in ministry environments.*
- *Presentations for the National Safe Environments Leadership Conference in 2009 and 2010.*
- *Conducted educational programs for public and private elementary, middle schools and high schools.*
- *On-site consultation and education for University Systems and campus ministries.*

- *September 2007 to the Present – Research on Historical and Current Standards of Care*
  - *Reviewed and documented the professional literature regarding the development of standards of care in schools and educational institutions in the United States and internationally.*
  - *Reviewed and documented the professional literature regarding standards of care for children, youths and vulnerable adults in out of home care, including residential treatment facilities, emergency shelters, juvenile detention centers, foster care, day care centers, group homes and respite care.*
  - *Reviewed and documented technical literature regarding the knowledge base surrounding sexual abuse of minors, the treatment of sexual offenders, known prevention methods and institutional response systems from the early 1900's to the present.*
  - *Researched and documented the development of criminal statutes, sexual offender registries, punishments and parole requirements for sexual offenders throughout the history of the United States.*
  - *Reviewed and summarized the professional literature regarding the historic understandings of victims of sexual abuse, the short-term and long-term effects of abuse on children and youth, and the evolution of treatment for victims of abuse.*

Praesidium, Inc.
Partner, President of Religious Services (1998 – 2007)
Arlington, Texas

- *1998 to 2007 Work with Organizations that Serve Children and Youth*
  - *Conducted numerous on-site risk assessments of organizations that serve children and youth.*
  - *Activities included policy review, face to face interviews with staff and participants, review of records and incidents, and observations of programs.*
  - *Conducted investigations of boundary violations, policy violations and other non-criminal behaviors with children, youth and vulnerable adults.*

- *Organizations included resident camps; water parks; dry parks; municipal pools; youth development organizations; public, private and charter schools; child care facilities, foster care organizations, Autism treatment facilities, residential treatment facilities, emergency shelters, juvenile corrections facilities and programs to address the needs of vulnerable adults.*
- *Developed individualized strategies to address risks identified in assessments.*
- *Developed policies and procedures to prevent and respond to physical, sexual and emotional abuse.*
- *Conducted several hundred educational workshops and seminars to address screening and selection, internal feedback systems, policy development, monitoring and supervision, consumer awareness and incident investigation.*

- *2002 to 2007 Programs for the Conference of Major Superiors of Men*
  - Addressed the major superiors of Catholic Religious Institutes in the United States. Program was entitled, "*From Compliance to Commitment: Large Scale Organizational Change to Protect Children and Young People*".
  - *Conducted 12-part Educational Program for Major Superiors entitled, "Instruments of Hope and Healing: Prevention and Response to Sexual Abuse of Minors." Educational program included sessions regarding internal investigations, responding to those who have experienced abuse,*
  - *Worked with a committee of priests, monks and brothers to develop "Accreditation for Religious Institutes," a program of accountability. The Accreditation Standards consisted of 28 requirements for prevention and response to sexual abuse, including standards for the supervision of priests and brothers who have sexually offended children and youths.*
  - *Conducted site visits of more than 400 individual religious communities to ensure adherence to accreditation standards.*
  - *Conducted numerous educational programs (60+) with individual Religious Institutes, combining research findings, investigation experiences and current industry expectations to increase the knowledge and skills for prevention among priests and brothers.*

- *2003 to 2004 Programs for the Episcopal Church*
  - *Addressed the Episcopal House of Bishops in a program entitled, "Policies and Standards for the Protection of Children" which outlined a five-step process for prevention and response to sexual abuse in religious organizations. The five-step process was accepted by the bishops and formalized in a resolution of the 74th General Convention of the Episcopal Church. The resolution adopted the standards for prevention and response to sexual abuse for all Episcopal Churches in the United States.*
  - *Developed National Model Policies for the Episcopal Church in the United States,*
  - *Developed and trained national program of prevention and response: Safeguarding God's Children.*

- *1998 to 2007 Work with Religious Organizations*
  - *Conducted risk assessments of faith-based organizations, including churches, religious schools, religious camps and youth ministry programs. Developed policies, supporting forms for documentation and procedures for managing risks of abuse that are unique to these environments.*
  - *Conducted investigations of sexual misconduct in religious organizations. Investigations of misconduct included Roman Catholic and Episcopal Priests, Religious brothers and*

monks, Jewish rabbis, Baptist Ministers, non-denominational protestant ministers, youth ministers, camp counselors, swimming instructors and school teachers of multiple religious traditions.

- *Developed individualized supervision protocols for members of the clergy and others in positions of trust who have sexually abused minors, violated boundaries with adults and failed to adhere to organizational policies with respect to boundaries and the ethics of ministry.*

- *1998 to 2003 Programs for the United States Catholic Dioceses*
  - *Developed A Time to Protect God's Children and A Plan to Protect God's Children, video-based training designed to teach warning signs of child molestation and strategies for preventing and responding to abuse. Piloted program, trained trainers in 11 states and presented workshop to more than 30,000 Catholic laypeople, religious men and women, and members of the clergy.*
  - *Developed the Control·Access Toolkit, a set of protocols and instruments for use in screening and selecting adults to work and volunteer in positions of trust with minors. The toolkit included interview questions, reference forms and follow-up questions, protocols for criminal background checks and a checklist for decision-making.*
  - *Reviewed 21 Roman Catholic Diocesan Policies and developed model Diocesan Policies for prevention and response to sexual abuse.*
  - *Developed a Self-Audit Toolkit for institutions to review their own policies and procedures to determine whether addition protocols may aid in the prevention and response to warning signs and incidents of abuse.*

Praesidium, Inc.
Partner, Vice-President of Risk Management Technology (1994 – 1998)
Arlington, Texas

- *1994 to 1998 Programs for YMCA's and Youth Development Organizations*
  - *Conducted risk assessment of YMCA programs, including child care, sports, Indian Guides & Princesses, resident camps, day-camps, after-school programs and swim instruction.*
  - *Developed screening protocols for staff and volunteers, screening and selection tools, parent information materials, and incident response protocols.*
  - *Conducted numerous educational programs for YMCA's and Youth Development programs throughout the United States, including Seattle, Detroit, San Francisco and Dallas.*

- *1994 to 1998 Programs for Residential Treatment Facilities and Emergency Shelters*
  - *Conducted risk assessments for residential treatment facilities for children and youth with behavioral and emotional disturbances, including specialized programs for children and youth with chemical dependency, histories of sexual offending, oppositional-defiant disorders, conduct disorders, physical and sexual abuse histories and developmental delays.*
  - *Conducted root cause analysis of cases of adult to child abuse, child to child abuse, and incidents of sexual conduct among program participants.*
  - *Developed policies and educational programs for the Association of Licensed Care Facilities in Texas.*

- *Developed protocols and implementation strategies for managing juvenile sexual offenders in residential treatment facilities.*

- *1994 to 1998 Programs for Foster Care*
  - *Conducted risk assessment foster care organizations and foster homes.*
  - *Developed screening and selection system for foster families, including protocols for home visits, a self-assessment for potential foster parents, behavioral interviews, reference check questions and protocols for decision-making.*
  - *Developed case management protocols for ongoing supervision and monitoring of foster homes. Included standard interviews with children and youth and procedures for direct observations of interactions.*
  - *Conducted training for foster parents, case managers, supervisors and administrators regarding abuse prevention and response in foster care environments.*

Child Safe Environments, Inc. (later became Praesidium, Inc.)
Consulting Firm for Organizations, specializing in prevention and response to sexual abuse.
Co-Founder (1992-1994)
Arlington, Texas

- *In preparation for consulting with organizations serving children and vulnerable adults, the following activities were completed:*
  - *Conducted complete literature review of sexual abuse, with focus on organizational abuse, disclosure, characteristics of targeted victims, prevention methods and standards for response upon disclosure.*
  - *Reviewed all empirical research that was available regarding physical and sexual abuse in organizations. Reviewed and analyzed cases of "institutional physical and sexual abuse."*
  - *Utilized a "root cause analysis" methodology to identify root causes of abuse in organizations that serve children and youth.*
  - *Reviewed legal definitions and child abuse reporting laws to develop educational materials for organizations that serve children.*
  - *Reviewed prosecuted cases and all other publically available cases to identify patterns of abuse, disclosure and investigation in organizational abuse.*
  - *Reviewed current research on sexual offenders and patterns of "extra-familial" abuse.*

PROFESSIONAL AFFILIATIONS

National Association of Social Workers

Association for the Treatment of Sexual Abusers (ATSA)

PUBLICATIONS

Putting Abuse in Context, *America* Magazine, September 25, 2006

Understanding Infatuation and Devotion, *Human Development* Magazine, Winter,2005

DEPOSITIONS

Ames v. The Church of Jesus Christ of Latter-day Saints (Defense) State of New Jersey. No. 06-3441

Roe v. The John Swett Unified School District (Plaintiff) State of California. No. C 08-00422

SPECIFIC CLIENT ORGANIZATIONS

Camps
Camp Grady Spruce
Camp Olympia
Camp Orkila
Pine Cove Christian Camps
Woodmen of the World

Child Care Organizations
La Petite Academy
New Horizon Child Care

Social Service Organizations
All Church Home for Children
Autistic Treatment Centers
Bair Foundation
Baltimore Catholic Charities
Baptist Children's Home
Bridge Emergency Shelter
Cal Farley's Boy's Ranch
Casey Family Services
Clinicare Corporation
Covenant Kids, Inc.
D&S Residential
Eckerd Youth Alternatives
Fort Worth Catholic Charities
Lena Pope Home
Lutheran Social Services of the South
Marywood Child and Family Services
Masonic Homes
Mentor Clinical Care
New York Foundling Hospital
North American Family Institute
Rancho Valmora Treatment Center
Safe Havens of Kornerstone
Seguin Services, Inc.
St. Dominic's Home
Texas Association of Children's and
Family Services (TACFS)
Wisconsin Association of Family and Children
Wisconsin Bureau of Regulation and Licensing
Wyoming Department of Family Services

Parks and Recreation
Ellis and Associates
Illinois Parks and Recreation
Six Flags Hurricane Harbor
World Waterpark Association

Religious Organizations

American Cassinese Congregation
Australian Office of Professional Standards
Australian Conference of Bishops
Catholic Charities of Baltimore
Catholic Charities of Fort Worth
Christ Chapel Bible Church
Church of Jesus Christ of Latter-Day Saints
Conference of Major Superiors of Men
Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
Episcopal Diocese of Atlanta
Episcopal Diocese of Indianapolis
Episcopal Diocese of Texas
Episcopal House of Bishops
International Church of the Foursquare Gospel
Irish Catholic Bishops Conference
Irish Missionary Union
LifeTeen International
McKinney Memorial Bible Church
National Conference of Synagogue Youth
National Religious Vocation Directors Conference
New Jersey Catholic Conference
Park Cities Baptist Church
Presbyterian Church of the USA
Rabbinical Council of America
Roman Catholic Archdiocese of Baltimore
Roman Catholic Archdiocese of Chicago
Roman Catholic Archdiocese of Denver
Roman Catholic Archdiocese of Los Angeles
Roman Catholic Archdiocese of Newark
Roman Catholic Archdiocese of New York
Roman Catholic Archdiocese of Seattle
Roman Catholic Diocese of Anchorage
Roman Catholic Diocese of Austin
Roman Catholic Diocese of Brownsville
Roman Catholic Diocese of Charlotte
Roman Catholic Diocese of Dallas
Roman Catholic Diocese of Fairbanks
Roman Catholic Diocese of Fort Worth
Roman Catholic Diocese of Manchester, NH
Roman Catholic Diocese of Norwich
Roman Catholic Diocese of Phoenix
Roman Catholic Diocese of Portland, ME
Safe Environments Conference of the United States
Texas Catholic Conference
The Salvation Army, United Kingdom with the Republic of Ireland
The Salvation Army USA Western Territory (Denver to Guam)
United States Conference of Catholic Bishops
United States Jesuit Conference

Windsor Village United Methodist Church
Young Life
Youth for Christ

Residential Care Facilities for Clergy and Other Ministers

Recon, Inc.
Shalom Center, Inc.
St. Luke Institute
St. Michael's Community
The Southdown Institute
Vianney Renewal Center

Schools and Educators

Ambassador Programs
Beggs Independent School District
Board of Education, City of Chicago
Brother Rice High School
DeMatha Catholic High School
Edison Schools (Nationwide)
Imani School
Madill School District
National Deaf Academy
Newton Learning Home Field Adventure
St. Joseph's Preparatory School, Philadelphia
Ventura County Schools Self Funding Authority
Wyoming School Board

Youth Development Organizations

Baden-Powell Scout's Association
Boy Scouts of America
Heritage YMCA Group
Junior Achievement, Inc.
Old Colony YMCA
Pacific Science Center
Sierra Club
YMCA of Fort Worth
YMCA of Greater Kansas City
YMCA of Greater New York
YMCA of Greater Seattle
YMCA of Greater St. Paul
YMCA of Metropolitan Dallas
YMCA of Metropolitan Detroit
YMCA of Metropolitan Minneapolis
YMCA of Newport County
YMCA of Pittsburgh
YMCA of San Diego County
YMCA of San Francisco
YMCA of the Treasure Coast
YMCA of the USA

RDP

8801165

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
MAY 23 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG115558324

DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S COMPENDIUM OF FOREIGN CASES IN SUPPORT OF LEGAL BRIEFING REGARDING EVIDENCE OF REPORTS TO WATCHTOWER CONCERNING CHILD SEX ABUSE

JUDGE Robert McGuiness
DEPT. 22

TRIAL DATE: May 21, 2012

FOREIGN CASE **TAB**

BMW of North America, Inc. v. Gore (1996) 517 U.S. 559 1

Philip Morris USA v. Williams (2007) 549 U.S. 346 2

State Farm Mutual Auto. Ins. Co. v. Campbell (2003) 538 U.S. 408 3

///

DATED: May 23, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: May 23, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On May 23, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT COMPENDIUM OF FOREIGN CASES IN SUPPORT OF LEGAL BRIEFING REGARDING EVIDENCE OF REPORTS TO WATCHTOWER CONCERNING CHILD SEX ABUSE** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 23, 2012, at ~~Sacramento, California~~ Oakland

James R. Defibaugh

~~Lori Bauer~~ James R. Defibaugh

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255

1

116 S.Ct. 1589
Supreme Court of the United States

BMW OF NORTH AMERICA, INC., Petitioner,
v.
Ira GORE, Jr.

No. 94–896. | Argued Oct. 11, 1995. | Decided May 20, 1996.

Automobile purchaser brought action against foreign automobile manufacturer, American distributor, and dealer based on distributor's failure to disclose that automobile had been repainted after being damaged prior to delivery. The Alabama Circuit Court, Jefferson County, P. Wayne Thorn, J., entered judgment on jury verdict awarding buyer compensatory damages of $4,000 and punitive damages of $4,000,000. Distributor and manufacturer appealed. After determining that court lacked jurisdiction over manufacturer, the Alabama Supreme Court, 646 So.2d 619, conditionally affirmed punitive damage award after reducing award to $2,000,000. Certiorari was granted, and the Supreme Court, Justice Stevens, held that: (1) lawful conduct by distributor outside state of Alabama could not be considered by Alabama court in making award of punitive damages, and (2) award of $2,000,000 punitive damages was grossly excessive in light of low level of reprehensibility of conduct and 500 to 1 ratio between award and actual harm to purchaser.

Reversed and remanded.

Justice Breyer filed a concurring opinion in which Justices O'Connor and Souter joined.

Justice Scalia filed a dissenting opinion in which Justice Thomas joined.

Justice Ginsburg filed a dissenting opinion in which Chief Justice Rehnquist joined.

West Headnotes (16)

[1] **Constitutional Law**
⚖Penalties, fines, and sanctions in general

Due process clause of Fourteenth Amendment prohibits state from imposing grossly excessive punishment on tort-feasor. U.S.C.A. Const.Amend. 14.

14 Cases that cite this headnote

[2] **Damages**
⚖Nature and Theory of Damages Additional to Compensation

Punitive damages may properly be imposed to further state's legitimate interests in punishing unlawful conduct and deterring its repetition.

53 Cases that cite this headnote

[3] **Constitutional Law**
⚖Punitive damages

In our federal system, states necessarily have considerable flexibility in determining level of punitive damages that they will allow in different classes of cases and in any particular case, and only when award can fairly be categorized as "grossly excessive" in relation to these interests does it enter zone of arbitrariness that violates due process clause of Fourteenth Amendment; for that reason, federal excessiveness inquiry appropriately begins with identification of state interests that punitive award is designed to serve. U.S.C.A. Const.Amend. 14.

233 Cases that cite this headnote

[4] **States**
⚖Relations Among States Under Constitution of United States

State may not impose economic sanctions on violators of its laws with intent of changing tort-feasors' lawful conduct in other states.

10 Cases that cite this headnote

[5] **States**
⚖Operation Within States of Constitution and Laws of United States

State power may be exercised as much by jury's application of state rule of law in a civil lawsuit as by statute, for purposes of determining whether state has exceeded its authority under Federal Constitution.

3 Cases that cite this headnote

[6] **Constitutional Law**
⚖Punitive damages
Fraud
⚖Amount awarded

Lawful conduct of automobile manufacturer outside of state of Alabama could not be considered by Alabama court in determining appropriate level of punitive damages to be assessed against manufacturer, in fraud action brought by purchaser of automobile based on failure of manufacturer to inform him that automobile had been repainted after prior shipment and prior to its initial sale; any penalties imposed on manufacturer by Alabama could only be supported by Alabama's interest in protecting its own consumers and its own economy.

35 Cases that cite this headnote

[7] **Constitutional Law**
⚖Punitive damages
Damages
⚖Nature of act or conduct
Damages
⚖Constitutional limitations on amount in general

While state court in making award of punitive damages may not consider lawful conduct by defendant outside of state, evidence of defendant's out-of-state actions is relevant to the determination of degree of reprehensibility of defendant's conduct, which is factor in analyzing whether award is grossly excessive and in violation of due process clause. U.S.C.A. Const.Amend. 14.

735 Cases that cite this headnote

[8] **Constitutional Law**
⚖Punitive damages
Fraud
⚖Amount awarded

Award of $2 million in punitive damages against automobile manufacturer in purchaser's fraud action, which award was based on manufacturer's policy of repairing automobiles which were damaged prior to delivery, and not advising dealers or purchasers of predelivery repairs costing less than 3% of automobile's suggested retail price, was grossly excessive and violated due process clause; none of the aggravating factors associated with particularly reprehensible conduct was present, 500 to 1 ratio existed between punitive damages award and jury's assessment of actual damages of $4,000, and award was substantially greater than statutory fines available for similar malfeasance under laws of the several states. U.S.C.A. Const.Amend. 14.

520 Cases that cite this headnote

[9] **Constitutional Law**
⚖Penalties, fines, and sanctions in general

Elementary notions of fairness dictate that person receive fair notice not only of conduct that will subject him to punishment but also of severity of penalty that state may impose, and while strict constitutional safeguards afforded to criminal defendants are not applicable to civil cases, basic protection against judgments without notice afforded by due process clause is implicated by civil penalties. U.S.C.A. Const.Amend. 14.

71 Cases that cite this headnote

[10] **Constitutional Law**
⊶Punitive damages
Damages
⊶Nature of act or conduct

Degree of reprehensibility of defendant's conduct is perhaps most important indicium of reasonableness of punitive damages award under due process clause; damages imposed should reflect enormity of defendant's offense, and may not be grossly out of proportion to severity of offense. U.S.C.A. Const.Amend. 14.

285 Cases that cite this headnote

[11] **Courts**
⊶Suits involving validity or construction of state statutes

Only state courts may authoritatively construe state statutes.

7 Cases that cite this headnote

[12] **Constitutional Law**
⊶Punitive damages

That conduct is sufficiently reprehensible to give rise to tort liability, and even modest award of exemplary damages, does not establish high degree of culpability that warrants substantial punitive damages award and will justify such an award under due process clause. U.S.C.A. Const.Amend. 14.

116 Cases that cite this headnote

[13] **Constitutional Law**
⊶Punitive damages
Damages
⊶Constitutional limitations on amount in general

Constitutional line separating permissible awards of punitive damages from those that are excessive is not marked by simple mathematical formula, not even one that compares actual and potential damages to punitive award; low awards of compensatory damages may properly support higher ratio than high compensatory awards, if, for example, particularly egregious act has resulted in only small amount of economic damages, and higher ratio may also be justified in cases in which the injury is hard to detect or monetary value of noneconomic harm might have been difficult to determine. U.S.C.A. Const.Amend. 14.

675 Cases that cite this headnote

[14] **Constitutional Law**
⊶Punitive damages

Comparing punitive damages award and civil or criminal penalties that could be imposed for comparable misconduct provides indicium of excessiveness, in determining whether size of punitive damages award violates due process, and reviewing court engaged in determining whether award is excessive should accord substantial deference to legislative judgments concerning appropriate sanctions for conduct at issue. U.S.C.A. Const.Amend. 14.

530 Cases that cite this headnote

[15] **Constitutional Law**
⊶Punitive damages

Fact that defendant against whom award of punitive damages is imposed is large corporation rather than impecunious individual does not diminish defendant's entitlement under due process clause to fair notice of demands that the several states impose on conduct of its business. U.S.C.A. Const.Amend. 14.

98 Cases that cite this headnote

[16] **Damages**
⊶Nature and Theory of Damages Additional to

Compensation
States
⇨Relations Among States Under Constitution of United States

While each state has ample power to protect its own consumers, none may use deterrent of punitive damages as means of imposing its regulatory policies on entire nation.

8 Cases that cite this headnote

****1591 *559 *Syllabus****

After respondent Gore purchased a new BMW automobile from an authorized Alabama dealer, he discovered that the car had been repainted. He brought this suit for compensatory and punitive damages against petitioner, the American distributor of BMW's, alleging, *inter alia,* that the failure to disclose the repainting constituted fraud under Alabama law. At trial, BMW acknowledged that it followed a nationwide policy of not advising its dealers, and hence their customers, of predelivery damage to new cars when the cost of repair did not exceed 3 percent of the car's suggested retail price. Gore's vehicle fell into that category. The jury returned a verdict finding BMW liable for compensatory damages of $4,000, and assessing $4 million in punitive damages. The trial judge denied BMW's post-trial motion to set aside the punitive damages award, holding, among other things, that the award was not "grossly excessive" and thus did not violate the Due Process Clause of the Fourteenth Amendment. See, *e.g., TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 454, 113 S.Ct. 2711, 2718, 125 L.Ed.2d 366. The Alabama Supreme Court agreed, but reduced the award to $2 million on the ground that, in computing the amount, the jury had improperly multiplied Gore's compensatory damages by the number of similar sales in all States, not just those in Alabama.

Held: The $2 million punitive damages award is grossly excessive and therefore exceeds the constitutional limit. Pp. 1595–1604.

(a) Because such an award violates due process only when it can fairly be categorized as "grossly excessive" in relation to the State's legitimate interests in punishing unlawful conduct and deterring its repetition, cf. *TXO,* 509 U.S., at 456, 113 S.Ct., at 2719–2720, the federal excessiveness inquiry appropriately begins with an identification of the state interests that such an award is designed to serve. Principles of state sovereignty and comity forbid a State to enact policies for the entire Nation, or to impose its own policy choice on neighboring States. See, *e.g., Healy v. Beer Institute,* 491 U.S. 324, 335–336, 109 S.Ct. 2491, 2498–2499, 105 L.Ed.2d 275. Accordingly, the economic penalties that a State inflicts on those who transgress its laws, whether the penalties are legislatively authorized fines or judicially imposed punitive damages, must be supported by the State's interest in protecting its own consumers and economy, rather than those of other States or the entire Nation. Gore's award must therefore be analyzed in the light of conduct that ***560** occurred solely within Alabama, with consideration being given only to the interests of Alabama consumers. Pp. 1595–1598.

(b) Elementary notions of fairness enshrined in this Court's constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment but also of the severity of the penalty that a State may impose. Three guideposts, each of which indicates that BMW did not receive adequate notice of the magnitude of the sanction that Alabama might impose, lead to the conclusion that the $2 million award is grossly excessive. Pp. 1598–1599.

(c) None of the aggravating factors associated with the first (and perhaps most important) indicium of a punitive damages award's excessiveness—the degree of reprehensibility of the defendant's conduct, see, ****1592** *e.g., Day v. Woodworth,* 13 How. 363, 371, 14 L.Ed. 181—is present here. The harm BMW inflicted on Gore was purely economic; the presale repainting had no effect on the car's performance, safety features, or appearance; and BMW's conduct evinced no indifference to or reckless disregard for the health and safety of others. Gore's contention that BMW's nondisclosure was particularly reprehensible because it formed part of a nationwide pattern of tortious conduct is rejected, because a corporate executive could reasonably have interpreted the relevant state statutes as establishing safe harbors for nondisclosure of presumptively minor repairs, and because there is no evidence either that BMW acted in bad faith when it sought to establish the appropriate line between minor damage and damage requiring disclosure to purchasers, or that it persisted in its course of conduct after it had been adjudged unlawful. Finally, there is no evidence that BMW engaged in deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive. Pp. 1599–1601.

(d) The second (and perhaps most commonly cited) indicium of excessiveness—the ratio between the plaintiff's compensatory damages and the amount of the

punitive damages, see, *e.g., TXO,* 509 U.S., at 459, 113 S.Ct., at 2721—also weighs against Gore, because his $2 million award is 500 times the amount of his actual harm as determined by the jury, and there is no suggestion that he or any other BMW purchaser was threatened with any additional potential harm by BMW's nondisclosure policy. Although it is not possible to draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case, see, *e.g., id.,* at 458, 113 S.Ct., at 2720, the ratio here is clearly outside the acceptable range. Pp. 1601–1603.

(e) Gore's punitive damages award is not saved by the third relevant indicium of excessiveness—the difference between it and the civil or criminal sanctions that could be imposed for comparable misconduct, see, *e.g., Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 23, 111 S.Ct. 1032, 1046, 113 L.Ed.2d 1—because ***561** $2million is substantially greater than Alabama's applicable $2,000 fine and the penalties imposed in other States for similar malfeasance, and because none of the pertinent statutes or interpretive decisions would have put an out-of-state distributor on notice that it might be subject to a multimillion dollar sanction. Moreover, in the absence of a BMW history of noncompliance with known statutory requirements, there is no basis for assuming that a more modest sanction would not have been sufficient. Pp. 1602–1603.

(f) Thus, BMW's conduct was not sufficiently egregious to justify the severe punitive sanction imposed against it. Whether the appropriate remedy requires a new trial or merely an independent determination by the Alabama Supreme Court of the award necessary to vindicate Alabama consumers' economic interests is a matter for that court to address in the first instance. Pp. 1603–1604.

646 So.2d 619 (Ala.1994), reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ.,joined. BREYER, J., filed a concurring opinion, in which O'CONNOR and SOUTER, JJ., joined, *post,* p. 1604. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post,* p. 1610. GINSBURG, J., filed a dissenting opinion, in which REHNQUIST, C.J., joined, *post,* p. 1614.

Attorneys and Law Firms

Andrew L. Frey, Washington, DC, for petitioner.

Michael Gottesman, Washington, DC, for respondent.

Opinion

***562** Justice STEVENS delivered the opinion of the Court.

[1] The Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a " 'grossly excessive' " punishment on a tortfeasor. *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 454, 113 S.Ct. 2711, 2718, 125 L.Ed.2d 366 (1993) (and cases cited). The wrongdoing involved in this case was the decision by a national distributor of automobiles not to advise its dealers, and hence their customers, of predelivery ****1593** damage to new cars when the cost of repair amounted to less than 3 percent of the car's suggested retail price. The question presented ***563** is whether a $2 million punitive damages award to the purchaser of one of these cars exceeds the constitutional limit.

I

In January 1990, Dr. Ira Gore, Jr. (respondent), purchased a black BMW sports sedan for $40,750.88 from an authorized BMW dealer in Birmingham, Alabama. After driving the car for approximately nine months, and without noticing any flaws in its appearance, Dr. Gore took the car to "Slick Finish," an independent detailer, to make it look " 'snazzier than it normally would appear.' " 646 So.2d 619, 621 (Ala.1994). Mr. Slick, the proprietor, detected evidence that the car had been repainted.[1] Convinced that he had been cheated, Dr. Gore brought suit against petitioner BMW of North America (BMW), the American distributor of BMW automobiles.[2] Dr. Gore alleged, *inter alia,* that the failure to disclose that the car had been repainted constituted suppression of a material fact.[3] The complaint prayed for $500,000 in compensatory and punitive damages, and costs.

At trial, BMW acknowledged that it had adopted a nationwide policy in 1983 concerning cars that were damaged in the course of manufacture or transportation. If the cost of repairing the damage exceeded 3 percent of the car's suggested retail price, the car was placed in company service for a period of time and then sold as used. If the repair cost did not exceed 3 percent of the suggested ***564** retail price, however, the car was sold as new without advising the dealer that any repairs had been made. Because the $601.37 cost of repainting Dr. Gore's car was only about 1.5 percent of its suggested retail price, BMW did not disclose the damage or repair to the Birmingham dealer.

Dr. Gore asserted that his repainted car was worth less than a car that had not been refinished. To prove his actual damages of $4,000, he relied on the testimony of a former BMW dealer, who estimated that the value of a repainted BMW was approximately 10 percent less than the value of a new car that had not been damaged and repaired.4 To support his claim for punitive damages, Dr. Gore introduced evidence that since 1983 BMW had sold 983 refinished cars as new, including 14 in Alabama, without disclosing that the cars had been repainted before sale at a cost of more than $300 per vehicle.5 Using the actual damage estimate of $4,000 per vehicle, Dr. Gore argued that a punitive award of $4 million would provide an appropriate penalty for selling approximately 1,000 cars for more than they were worth.

In defense of its disclosure policy, BMW argued that it was under no obligation to disclose repairs of minor damage to new cars and that Dr. Gore's car was as good as a car with the original factory finish. It disputed Dr. Gore's assertion that the value of the car was impaired by the repainting and argued that this good-faith belief made a punitive award inappropriate. BMW also maintained that transactions in jurisdictions other than Alabama had no relevance to Dr. Gore's claim.

***565** The jury returned a verdict finding BMW liable for compensatory damages of ****1594** $4,000. In addition, the jury assessed $4 million in punitive damages, based on a determination that the nondisclosure policy constituted "gross, oppressive or malicious" fraud.6 See Ala.Code §§ 6–11–20, 6–11–21 (1993).

BMW filed a post-trial motion to set aside the punitive damages award. The company introduced evidence to establish that its nondisclosure policy was consistent with the laws of roughly 25 States defining the disclosure obligations of automobile manufacturers, distributors, and dealers. The most stringent of these statutes required disclosure of repairs costing more than 3 percent of the suggested retail price; none mandated disclosure of less costly repairs.7 Relying on these statutes, BMW contended that its conduct was lawful in these States and therefore could not provide the basis for an award of punitive damages.

BMW also drew the court's attention to the fact that its nondisclosure policy had never been adjudged unlawful before this action was filed. Just months before Dr. Gore's case went to trial, the jury in a similar lawsuit filed by another Alabama BMW purchaser found that BMW's failure to disclose paint repair constituted fraud. *Yates v. BMW of North America, Inc.*, 642 So.2d 937 (Ala.1993).8 Before the ***566** judgment in this case, BMW changed its policy by taking steps to avoid the sale of any refinished vehicles in Alabama and two other States. When the $4 million verdict was returned in this case, BMW promptly instituted a nationwide policy of full disclosure of all repairs, no matter how minor.

In response to BMW's arguments, Dr. Gore asserted that the policy change demonstrated the efficacy of the punitive damages award. He noted that while no jury had held the policy unlawful, BMW had received a number of customer complaints relating to undisclosed repairs and had settled some lawsuits.9 Finally, he maintained that the disclosure statutes of other States were irrelevant because BMW had failed to offer any evidence that the disclosure statutes supplanted, rather than supplemented, existing causes of action for common-law fraud.

The trial judge denied BMW's post-trial motion, holding, *inter alia,* that the award was not excessive. On appeal, the Alabama Supreme Court also rejected BMW's claim that the award exceeded the constitutionally permissible amount. 646 So.2d 619 (1994). The court's excessiveness inquiry applied the factors articulated in *Green Oil Co. v. Hornsby,* 539 So.2d 218, 223–224 (Ala.1989), and approved in *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 21–22, 111 S.Ct. 1032, 1045–1046, 113 L.Ed.2d 1 (1991). 646 So.2d, at 624–625. Based on its analysis, the court concluded that BMW's conduct was "reprehensible"; the nondisclosure was profitable for the company; the judgment "would not have a substantial impact upon [BMW's] financial position"; the litigation had been expensive; no criminal sanctions had been imposed on BMW for the same conduct; the award of *no* punitive ***567** damages in *Yates* reflected "the inherent uncertainty of the trial process"; and the punitive award bore a "reasonable relationship" to "the harm that ****1595** was likely to occur from [BMW's] conduct as well as ... the harm that actually occurred." 646 So.2d, at 625–627.

The Alabama Supreme Court did, however, rule in BMW's favor on one critical point: The court found that the jury improperly computed the amount of punitive damages by multiplying Dr. Gore's compensatory damages by the number of similar sales in other jurisdictions. *Id.,* at 627. Having found the verdict tainted, the court held that "a constitutionally reasonable punitive damages award in this case is $2,000,000," *id.,* at 629, and therefore ordered a remittitur in that amount.10 The court's discussion of the amount of its remitted award expressly disclaimed any reliance on "acts that occurred in other jurisdictions"; instead, the court explained that it had used a "comparative analysis" that considered Alabama cases, "along with cases from other jurisdictions, involving the sale of an automobile where the seller misrepresented the condition of the vehicle and the jury awarded punitive damages to the purchaser."11 *Id.,* at 628.

*568 Because we believed that a review of this case would help to illuminate "the character of the standard that will identify unconstitutionally excessive awards" of punitive damages, see *Honda Motor Co. v. Oberg,* 512 U.S. 415, 420, 114 S.Ct. 2331, 2335, 129 L.Ed.2d 336 (1994), we granted certiorari, 513 U.S. 1125, 115 S.Ct. 932, 130 L.Ed.2d 879 (1995).

II

[2] [3] Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition. *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 350, 94 S.Ct. 2997, 3012, 41 L.Ed.2d 789 (1974); *Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 266–267, 101 S.Ct. 2748, 2759–2760, 69 L.Ed.2d 616 (1981); *Haslip,* 499 U.S., at 22, 111 S.Ct., at 1045–1046. In our federal system, States necessarily have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases and in any particular case. Most States that authorize exemplary damages afford the jury similar latitude, requiring only that the damages awarded be reasonably necessary to vindicate the State's legitimate interests in punishment and deterrence. See *TXO,* 509 U.S., at 456, 113 S.Ct., at 2719; *Haslip,* 499 U.S., at 21, 22, 111 S.Ct., at 1045, 1045–1046. Only when an award can fairly be categorized as "grossly excessive" in relation to these interests does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment. Cf. *TXO,* 509 U.S., at 456, 113 S.Ct., at 2719. For that reason, the federal excessiveness inquiry appropriately begins with an identification of the state interests that a punitive award is designed to serve. We therefore focus our attention first on the scope of Alabama's legitimate interests in punishing BMW and deterring it from future misconduct.

No one doubts that a State may protect its citizens by prohibiting deceptive trade practices and by requiring automobile *569 distributors to disclose presale repairs that affect the **1596 value of a new car. But the States need not, and in fact do not, provide such protection in a uniform manner. Some States rely on the judicial process to formulate and enforce an appropriate disclosure requirement by applying principles of contract and tort law.12 Other States have enacted various forms of legislation that define the disclosure obligations of automobile manufacturers, distributors, and dealers.13 *570 The result is a patchwork of rules representing the diverse policy judgments of lawmakers in 50 States.
That diversity demonstrates that reasonable people may disagree about the value of a full disclosure requirement. Some legislatures may conclude that affirmative disclosure requirements are unnecessary because the self-interest of those involved in the automobile trade in developing and maintaining the goodwill of their customers will motivate them to make voluntary disclosures or to refrain from selling cars that do not comply with self-imposed standards. Those legislatures that do adopt affirmative disclosure obligations may take into account the cost of government regulation, choosing to draw a line exempting minor repairs from such a requirement. In formulating a disclosure standard, States may also consider other goals, such as providing a "safe harbor" for automobile manufacturers, distributors, and dealers against lawsuits over minor repairs.14

We may assume, *arguendo,* that it would be wise for every State to adopt Dr. Gore's preferred rule, requiring full disclosure of every presale repair to a car, no matter how trivial and regardless of its actual impact on the value of the car. *571 But while we do not doubt that Congress has ample authority to enact such a policy for the entire Nation,15 it **1597 is clear that no single State could do so, or even impose its own policy choice on neighboring States. See *Bonaparte v. Tax Court,* 104 U.S. 592, 594, 26 L.Ed. 845 (1881) ("No State can legislate except with reference to its own jurisdiction.... Each State is independent of all the others in this particular").16 Similarly, one State's power to impose burdens on the interstate market for automobiles is not only subordinate to the federal power over interstate commerce, *Gibbons v. Ogden,* 9 Wheat. 1, 194–196, 6 L.Ed. 23 (1824), but is also constrained by the need to respect the interests of other States, see, *e.g., Healy v. Beer Institute,* 491 U.S. 324, 335–336, 109 S.Ct. 2491, 2498–2499, 105 L.Ed.2d 275 (1989) (the Constitution has a "special concern both with the maintenance of a national economic union unfettered by state-imposed limitations on *572 interstate commerce and with the autonomy of the individual States within their respective spheres" (footnote omitted)); *Edgar v. MITE Corp.,* 457 U.S. 624, 643, 102 S.Ct. 2629, 2641, 73 L.Ed.2d 269 (1982).

[4] [5] [6] We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States.17 Before this Court Dr. Gore argued that the large punitive damages award was necessary to induce BMW to change the nationwide policy that it adopted in 1983.18 But by attempting to alter BMW's nationwide policy, Alabama would be infringing on the policy choices of other States. To avoid such encroachment, the economic penalties that a State such as Alabama inflicts on those who transgress its laws, whether the penalties take the

form of legislatively authorized fines or judicially imposed punitive damages, must be supported by the State's interest in protecting its own consumers and its own economy. Alabama may insist that BMW adhere to a particular disclosure policy in that State. Alabama does not ***573** have the power, however, to punish BMW for conduct that was lawful where it occurred and that had no impact on Alabama or its residents.19 ****1598** Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions.

[7] In this case, we accept the Alabama Supreme Court's interpretation of the jury verdict as reflecting a computation of the amount of punitive damages "based in large part on conduct that happened in other jurisdictions." 646 So.2d, at 627. As the Alabama Supreme Court noted, neither the jury nor the trial court was presented with evidence that any of BMW's out-of-state conduct was unlawful. "The only testimony touching the issue showed that approximately 60% of the vehicles that were refinished were sold in states where failure to disclose the repair was not an unfair trade practice." *Id.,* at 627, n. 6.20 The Alabama Supreme Court therefore properly eschewed reliance on BMW's out-of-state conduct, *id.,* at 628, and based its remitted award solely on ***574** conduct that occurred within Alabama.21 The award must be analyzed in the light of the same conduct, with consideration given only to the interests of Alabama consumers, rather than those of the entire Nation. When the scope of the interest in punishment and deterrence that an Alabama court may appropriately consider is properly limited, it is apparent—for reasons that we shall now address—that this award is grossly excessive.

III

[8] [9] Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.22 Three guideposts, each of which indicates that BMW did not receive adequate notice of the magnitude of the sanction that Alabama might impose for adhering to the nondisclosure policy adopted in 1983, lead us to the conclusion that ***575** the $2 million award against BMW is grossly excessive: the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered by Dr. Gore and his punitive damages award; and the difference between this remedy and the civil penalties authorized ****1599** or imposed in comparable cases. We discuss these considerations in turn.

Degree of Reprehensibility

[10] Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.23 As the Court stated nearly 150 years ago, exemplary damages imposed on a defendant should reflect "the enormity of his offense." *Day v. Woodworth,* 13 How. 363, 371, 14 L.Ed. 181 (1852). See also *St. Louis, I.M. & S.R. Co. v. Williams,* 251 U.S. 63, 66–67, 40 S.Ct. 71, 73, 64 L.Ed. 139 (1919) (punitive award may not be "wholly disproportioned to the offense"); *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 301, 109 S.Ct. 2909, 2934, 106 L.Ed.2d 219 (1989) (O'CONNOR, J., concurring in part and dissenting in part) (reviewing court "should examine the gravity of the defendant's conduct and the harshness of the award of punitive damages").24 This principle reflects the accepted view that some wrongs are more blameworthy than others. Thus, we have said that ***576** "nonviolent crimes are less serious than crimes marked by violence or the threat of violence." *Solem v. Helm,* 463 U.S. 277, 292–293, 103 S.Ct. 3001, 3011, 77 L.Ed.2d 637 (1983). Similarly, "trickery and deceit," *TXO,* 509 U.S., at 462, 113 S.Ct., at 2722, are more reprehensible than negligence. In *TXO,* both the West Virginia Supreme Court and the Justices of this Court placed special emphasis on the principle that punitive damages may not be "grossly out of proportion to the severity of the offense."25 *Id.,* at 453, 482, 113 S.Ct., at 2718, 2733. Indeed, for Justice KENNEDY, the defendant's intentional malice was the decisive element in a "close and difficult" case. *Id.,* at 468, 113 S.Ct., at 2725.26

In this case, none of the aggravating factors associated with particularly reprehensible conduct is present. The harm BMW inflicted on Dr. Gore was purely economic in nature. The presale refinishing of the car had no effect on its performance or safety features, or even its appearance for at least nine months after his purchase. BMW's conduct evinced no indifference to or reckless disregard for the health and safety of others. To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct, *id.,* at 453, 113 S.Ct., at 2717–2718, or when the target is financially vulnerable, can warrant a substantial penalty. But this observation does not convert all acts that cause economic harm into torts that are sufficiently reprehensible to justify a significant sanction in addition to compensatory damages.

Dr. Gore contends that BMW's conduct was particularly reprehensible because nondisclosure of the repairs to his

car formed part of a nationwide pattern of tortious conduct. Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument *577 that strong medicine is required to cure the defendant's disrespect for the law. See *id.,* at 462, n. 28, 113 S.Ct., at 2722, n. 28. Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more **1600 reprehensible than an individual instance of malfeasance. See *Gryger v. Burke,* 334 U.S. 728, 732, 68 S.Ct. 1256, 1258–1259, 92 L.Ed. 1683 (1948).

In support of his thesis, Dr. Gore advances two arguments. First, he asserts that the state disclosure statutes supplement, rather than supplant, existing remedies for breach of contract and common-law fraud. Thus, according to Dr. Gore, the statutes may not properly be viewed as immunizing from liability the nondisclosure of repairs costing less than the applicable statutory threshold. Brief for Respondent 18–19. Second, Dr. Gore maintains that BMW should have anticipated that its failure to disclose similar repair work could expose it to liability for fraud. *Id.,* at 4–5.

[11] We recognize, of course, that only state courts may authoritatively construe state statutes. As far as we are aware, at the time this action was commenced no state court had explicitly addressed whether its State's disclosure statute provides a safe harbor for nondisclosure of presumptively minor repairs or should be construed instead as supplementing common-law duties.27 A review of the text of the statutes, *578 however, persuades us that in the absence of a state-court determination to the contrary, a corporate executive could reasonably interpret the disclosure requirements as establishing safe harbors. In California, for example, the disclosure statute defines "material" damage to a motor vehicle as damage requiring repairs costing in excess of 3 percent of the suggested retail price or $500, whichever is greater. Cal. Veh.Code Ann. § 9990 (West Supp.1996). The Illinois statute states that in cases in which disclosure is not required, "nondisclosure does not constitute a misrepresentation or omission of fact." Ill. Comp. Stat., ch. 815, § 710/5 (1994).28 Perhaps the statutes may also be interpreted in another way. We simply emphasize that the record contains no evidence that BMW's decision to follow a disclosure policy that coincided with the strictest extant state statute was sufficiently reprehensible to justify a $2 million award of punitive damages.

*579 Dr. Gore's second argument for treating BMW as a recidivist is that the company should have anticipated that its actions would be considered fraudulent in some, if not all, jurisdictions. This contention overlooks the fact that actionable fraud requires a *material* **1601 misrepresentation or omission.29 This qualifier invites line-drawing of just the sort engaged in by States with disclosure statutes and by BMW. We do not think it can be disputed that there may exist minor imperfections in the finish of a new car that can be repaired (or indeed, left unrepaired) without materially affecting the car's value.30 There is no evidence that BMW acted in bad faith when it sought to establish the appropriate line between presumptively minor damage and damage requiring disclosure to purchasers. For this purpose, BMW could reasonably rely on state disclosure statutes for guidance. In this regard, it is also significant that there is no evidence that BMW persisted in a course of conduct after it had been adjudged unlawful on even one occasion, let alone repeated occasions.31

Finally, the record in this case discloses no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as were present in *Haslip* and *TXO. Haslip,* 499 U.S., at 5, 111 S.Ct., at 1036; *TXO,* 509 U.S., at 453, 113 S.Ct., at 2717–2718. We accept, of course, the jury's finding that BMW suppressed *580 a material fact which Alabama law obligated it to communicate to prospective purchasers of repainted cars in that State. But the omission of a material fact may be less reprehensible than a deliberate false statement, particularly when there is a good-faith basis for believing that no duty to disclose exists.

[12] That conduct is sufficiently reprehensible to give rise to tort liability, and even a modest award of exemplary damages does not establish the high degree of culpability that warrants a substantial punitive damages award. Because this case exhibits none of the circumstances ordinarily associated with egregiously improper conduct, we are persuaded that BMW's conduct was not sufficiently reprehensible to warrant imposition of a $2 million exemplary damages award.

Ratio

The second and perhaps most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff. See *TXO,* 509 U.S., at 459, 113 S.Ct., at 2721; *Haslip,* 499 U.S., at 23, 111 S.Ct., at 1046. The principle that exemplary damages must bear a "reasonable relationship" to compensatory damages has a long pedigree.32 Scholars have identified a number of early English statutes authorizing the *581 award of multiple damages for particular wrongs. Some 65 different enactments during the period between 1275 and 1753 provided for double, treble, or quadruple damages.33 Our **1602 decisions in both *Haslip* and *TXO* endorsed the proposition that a

comparison between the compensatory award and the punitive award is significant.

In *Haslip* we concluded that even though a punitive damages award of "more than 4 times the amount of compensatory damages" might be "close to the line," it did not "cross the line into the area of constitutional impropriety." 499 U.S., at 23–24, 111 S.Ct., at 1046. *TXO,* following dicta in *Haslip,* refined this analysis by confirming that the proper inquiry is " 'whether there is a reasonable relationship between the punitive damages award and *the harm likely to result* from the defendant's conduct as well as the harm that actually has occurred.' " *TXO,* 509 U.S., at 460, 113 S.Ct., at 2721 (emphasis in original), quoting *Haslip,* 499 U.S., at 21, 111 S.Ct., at 1045. Thus, in upholding the $10 million award in *TXO,* we relied on the difference between that figure and the harm to the victim that would have ensued if the tortious plan had succeeded. That difference suggested that the relevant ratio was not more than 10 to 1.[34]

***582** The $2 million in punitive damages awarded to Dr. Gore by the Alabama Supreme Court is 500 times the amount of his actual harm as determined by the jury.[35] Moreover, there is no suggestion that Dr. Gore or any other BMW purchaser was threatened with any additional potential harm by BMW's nondisclosure policy. The disparity in this case is thus dramatically greater than those considered in *Haslip* and *TXO.*[36]

[13] Of course, we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award. *TXO,* 509 U.S., at 458, 113 S.Ct., at 2720.[37] Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. It is appropriate, therefore, to reiterate our rejection of a categorical approach. Once again, "we return to what we said ... in *Haslip:* 'We need not, and ***583** indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concer[n] of reasonableness ... properly enter[s] into the constitutional calculus.' " *Id.,* at 458, 113 S.Ct., at 2720 (quoting ****1603** *Haslip,* 499 U.S., at 18, 111 S.Ct., at 1043). In most cases, the ratio will be within a constitutionally acceptable range, and remittitur will not be justified on this basis. When the ratio is a breathtaking 500 to 1, however, the award must surely "raise a suspicious judicial eyebrow." *TXO,* 509 U.S., at 481, 113 S.Ct., at 2732 (O'CONNOR, J., dissenting).

Sanctions for Comparable Misconduct

[14] Comparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct provides a third indicium of excessiveness. As Justice O'CONNOR has correctly observed, a reviewing court engaged in determining whether an award of punitive damages is excessive should "accord 'substantial deference' to legislative judgments concerning appropriate sanctions for the conduct at issue." *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S., at 301, 109 S.Ct., at 2934 (opinion concurring in part and dissenting in part). In *Haslip,* 499 U.S., at 23, 111 S.Ct., at 1046, the Court noted that although the exemplary award was "much in excess of the fine that could be imposed," imprisonment was also authorized in the criminal context.[38] In this ***584** case the $2 million economic sanction imposed on BMW is substantially greater than the statutory fines available in Alabama and elsewhere for similar malfeasance.

The maximum civil penalty authorized by the Alabama Legislature for a violation of its Deceptive Trade Practices Act is $2,000;[39] other States authorize more severe sanctions, with the maxima ranging from $5,000 to $10,000.[40] Significantly, some statutes draw a distinction between first offenders and recidivists; thus, in New York the penalty is $50 for a first offense and $250 for subsequent offenses. None of these statutes would provide an out-of-state distributor with fair notice that the first violation—or, indeed the first 14 violations—of its provisions might subject an offender to a multimillion dollar penalty. Moreover, at the time BMW's policy was first challenged, there does not appear to have been any judicial decision in Alabama or elsewhere indicating that application of that policy might give rise to such severe punishment.

The sanction imposed in this case cannot be justified on the ground that it was necessary to deter future misconduct without considering whether less drastic remedies could be expected to achieve that goal. The fact that a multimillion dollar penalty prompted a change in policy sheds no light on the question whether a lesser deterrent would have adequately protected the interests of Alabama consumers. In ***585** the absence of a history of noncompliance with known statutory requirements, there is no basis for assuming that a more modest sanction would not have been sufficient to motivate full compliance with the disclosure requirement imposed ****1604** by the Alabama Supreme Court in this case.

IV

We assume, as the juries in this case and in the *Yates* case found, that the undisclosed damage to the new BMW's affected their actual value. Notwithstanding the evidence adduced by BMW in an effort to prove that the repainted cars conformed to the same quality standards as its other cars, we also assume that it knew, or should have known, that as time passed the repainted cars would lose their attractive appearance more rapidly than other BMW's. Moreover, we of course accept the Alabama courts' view that the state interest in protecting its citizens from deceptive trade practices justifies a sanction in addition to the recovery of compensatory damages. We cannot, however, accept the conclusion of the Alabama Supreme Court that BMW's conduct was sufficiently egregious to justify a punitive sanction that is tantamount to a severe criminal penalty.

[15] [16] The fact that BMW is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business. Indeed, its status as an active participant in the national economy implicates the federal interest in preventing individual States from imposing undue burdens on interstate commerce. While each State has ample power to protect its own consumers, none may use the punitive damages deterrent as a means of imposing its regulatory policies on the entire Nation.

As in *Haslip,* we are not prepared to draw a bright line marking the limits of a constitutionally acceptable punitive damages award. Unlike that case, however, we are fully convinced that the grossly excessive award imposed in this ***586** case transcends the constitutional limit.[41] Whether the appropriate remedy requires a new trial or merely an independent determination by the Alabama Supreme Court of the award necessary to vindicate the economic interests of Alabama consumers is a matter that should be addressed by the state court in the first instance.

The judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice BREYER, with whom Justice O'CONNOR and Justice SOUTER join, concurring.

The Alabama state courts have assessed the defendant $2 million in "punitive damages" for having knowingly failed to tell a BMW automobile buyer that, at a cost of $600, it had repainted portions of his new $40,000 car, thereby lowering its potential resale value by about 10%. The Court's opinion, which I join, explains why we have concluded that this award, in this case, was "grossly excessive" in relation to legitimate punitive damages objectives, and hence an arbitrary deprivation of life, liberty, or property in violation of the Due Process Clause. See *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 453, 454, 113 S.Ct. 2711, 2718, 125 L.Ed.2d 366 (1993) (A "grossly excessive" punitive award amounts to an "arbitrary deprivation of property without due process of law") (plurality opinion). Members of this Court have generally thought, however, that if "fair procedures were followed, a judgment that is a product of that process is entitled to a strong presumption ***587** of validity." *Id.,* at 457, 113 S.Ct., at 2720. See also *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 40–42, 111 S.Ct. 1032, 1054–1056, 113 L.Ed.2d 1 (1991) (KENNEDY, J., concurring in judgment). And the Court also has found that punitive damages procedures very similar to those followed here were not, by themselves, fundamentally unfair. *Id.,* at 15–24, 111 S.Ct., at 1041–1047. Thus, I believe it important to explain why this presumption of validity is overcome in this instance.

****1605** The reason flows from the Court's emphasis in *Haslip* upon the constitutional importance of legal standards that provide "reasonable constraints" within which "discretion is exercised," that assure "meaningful and adequate review by the trial court whenever a jury has fixed the punitive damages," and permit "appellate review [that] makes certain that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition." *Id.,* at 20–21, 111 S.Ct., at 1045. See also *id.,* at 18, 111 S.Ct., at 1043 ("[U]nlimited jury discretion—or unlimited judicial discretion for that matter—in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities").

This constitutional concern, itself harkening back to the Magna Carta, arises out of the basic unfairness of depriving citizens of life, liberty, or property, through the application, not of law and legal processes, but of arbitrary coercion. *Daniels v. Williams,* 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986); *Dent v. West Virginia,* 129 U.S. 114, 123, 9 S.Ct. 231, 233–234, 32 L.Ed. 623 (1889). Requiring the application of law, rather than a decisionmaker's caprice, does more than simply provide citizens notice of what actions may subject them to punishment; it also helps to assure the uniform general treatment of similarly situated persons that is the essence of law itself. See *Railway Express Agency, Inc. v. New York,* 336 U.S. 106, 112, 69 S.Ct.

463, 466–467, 93 L.Ed. 533 (1949) (Jackson, J., concurring) ("[T]here is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally").

***588** Legal standards need not be precise in order to satisfy this constitutional concern. See *Haslip, supra,* at 20, 111 S.Ct., at 1044 (comparing punitive damages standards to such legal standards as "reasonable care," "due diligence," and "best interests of the child") (internal quotation marks omitted). But they must offer some kind of constraint upon a jury or court's discretion, and thus protection against purely arbitrary behavior. The standards the Alabama courts applied here are vague and open ended to the point where they risk arbitrary results. In my view, although the vagueness of those standards does not, by itself, violate due process, see *Haslip, supra,* it does invite the kind of scrutiny the Court has given the particular verdict before us. See *id.,* at 18, 111 S.Ct., at 1043 ("[C]oncerns of ... adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus"); *TXO, supra,* at 475, 113 S.Ct., at 2729 ("[I]t cannot be denied that the lack of clear guidance heightens the risk that arbitrariness, passion, or bias will replace dispassionate deliberation as the basis for the jury's verdict") (O'CONNOR, J., dissenting). This is because the standards, as the Alabama Supreme Court authoritatively interpreted them here, provided no significant constraints or protection against arbitrary results.

First, the Alabama statute that permits punitive damages does not itself contain a standard that readily distinguishes between conduct warranting very small, and conduct warranting very large, punitive damages awards. That statute permits punitive damages in cases of "oppression, fraud, wantonness, or malice." Ala.Code § 6–11–20(a) (1993). But the statute goes on to define those terms broadly, to encompass far more than the egregious conduct that those terms, at first reading, might seem to imply. An intentional misrepresentation, made through a statement or silence, can easily amount to "fraud" sufficient to warrant punitive damages. See § 6–11–20(b)(1) ("Fraud" includes "intentional ... concealment of a material fact the concealing party had a ***589** duty to disclose, which was gross, *oppressive, or malicious* and committed with the intention ... of thereby depriving a person or entity of property") (emphasis added); § 6–11–20(b)(2) ("Malice" includes *any "wrongful act without* just cause or *excuse ... [w]ith an intent to injure* the ... *property* of another") (emphasis added); § 6–11–20(b)(5) ("Oppression" includes "[s]ubjecting a person to ... unjust hardship in conscious disregard of that person's rights"). The statute thereby authorizes punitive damages for the most ****1606** serious kinds of misrepresentations, say, tricking the elderly out of their life savings, for much less serious conduct, such as the failure to disclose repainting a car, at issue here, and for a vast range of conduct in between.

Second, the Alabama courts, in this case, have applied the "factors" intended to constrain punitive damages awards in a way that belies that purpose. *Green Oil Co. v. Hornsby,* 539 So.2d 218 (Ala.1989), sets forth seven factors that appellate courts use to determine whether or not a jury award was "grossly excessive" and which, in principle, might make up for the lack of significant constraint in the statute. But, as the Alabama courts have authoritatively interpreted them, and as their application in this case illustrates, they impose little actual constraint.

(a) *Green Oil* requires that a punitive damages award "bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred." *Id.,* at 223. But this standard does little to guide a determination of what counts as a "reasonable" relationship, as this case illustrates. The record evidence of past, present, or likely future harm consists of (a) $4,000 of harm to Dr. Gore's BMW; (b) 13 other similar Alabama instances; and (c) references to about 1,000 similar instances in other States. The Alabama Supreme Court, disregarding BMW's failure to make relevant objection to the out-of-state instances at trial (as was the court's right), held that the last mentioned, out-of-state instances did *not* ***590** count as relevant harm. It went on to find "a reasonable relationship" between the harm and the $2 million punitive damages award *without* "*consider[ing] those acts that occurred in other jurisdictions.* " 646 So.2d 619, 628 (1994) (emphasis added). For reasons explored by the majority in greater depth, see *ante,* at 1598–1604, the relationship between this award and the underlying conduct seems well beyond the bounds of the "reasonable." To find a "reasonable relationship" between purely economic harm totaling $56,000, without significant evidence of future repetition, and a punitive award of $2 million is to empty the "reasonable relationship" test of meaningful content. As thus construed, it does not set forth a legal standard that could have significantly constrained the discretion of Alabama factfinders.

(b) *Green Oil* 's second factor is the "degree of reprehensibility" of the defendant's conduct. *Green Oil, supra,* at 223. Like the "reasonable relationship" test, this factor provides little guidance on how to relate culpability to the size of an award. The Alabama court, in considering this factor, found "reprehensible" that BMW

followed a conscious policy of not disclosing repairs to new cars when the cost of repairs amounted to less than 3% of the car's value. Of course, *any* conscious policy of not disclosing a repair—where one knows the nondisclosure might cost the customer resale value—is "reprehensible" to *some* degree. But, for the reasons discussed by the majority, *ante,* at 1599–1601, I do not see how the Alabama courts could find conduct that (they assumed) caused $56,000 of relevant economic harm *especially* or *unusually* reprehensible enough to warrant $2 million in punitive damages, or a significant portion of that award. To find to the contrary, as the Alabama courts did, is not simply unreasonable; it is to make "reprehensibility" a concept without constraining force, *i.e.,* to deprive the concept of its constraining power to protect against serious and capricious deprivations.

***591** c) *Green Oil* 's third factor requires "punitive damages" to "remove the profit" of the illegal activity and "be in excess of the profit, so that the defendant recognizes a loss." *Green Oil,* 539 So.2d, at 223. This factor has the ability to limit awards to a fixed, rational amount. But as applied, that concept's potential was not realized, for the court did not limit the award to anywhere near the $56,000 in profits evidenced in the record. Given the record's description of the conduct and its prevalence, this factor could not justify much of the $2 million award.

(d) *Green Oil* 's fourth factor is the "financial position" of the defendant. *Ibid.* Since a fixed dollar award will punish a poor person more than a wealthy one, one can understand the relevance of this factor to the State's ****1607** interest in retribution (though not necessarily to its interest in deterrence, given the more distant relation between a defendant's wealth and its responses to economic incentives). See *TXO,* 509 U.S., at 462, and n. 28, 113 S.Ct., at 2722, and n. 28 (plurality opinion); *id.,* at 469, 113 S.Ct., at 2726 (KENNEDY, J., concurring in part and concurring in judgment); *Haslip,* 499 U.S., at 21–22, 111 S.Ct., at 1045; *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 300, 109 S.Ct. 2909, 2933, 106 L.Ed.2d 219 (1989) (O'CONNOR, J., concurring in part and dissenting in part). This factor, however, is not necessarily intended to act as a significant *constraint* on punitive awards. Rather, it provides an open-ended basis for inflating awards when the defendant is wealthy, as this case may illustrate. That does not make its use unlawful or inappropriate; it simply means that this factor cannot make up for the failure of other factors, such as "reprehensibility," to constrain significantly an award that purports to punish a defendant's conduct.

(e) *Green Oil* 's fifth factor is the "costs of litigation" and the State's desire "to encourage plaintiffs to bring wrongdoers to trial." 539 So.2d, at 223. This standard provides meaningful constraint to the extent that the enhancement it authorized is linked to a fixed, ascertainable amount approximating actual costs, even when defined generously to reflect ***592** the contingent nature of plaintiffs' victories. But as this case shows, the factor cannot operate as a constraint when an award much in excess of costs is approved for other reasons. An additional aspect of the standard—the need to "encourage plaintiffs to bring wrongdoers to trial"—is a factor that does not constrain, but enhances, discretionary power—especially when unsupported by evidence of a *special* need to encourage litigation (which the Alabama courts here did not mention).

(f) *Green Oil* 's sixth factor is whether or not "criminal sanctions have been imposed on the defendant for his conduct." *Ibid.* This factor did not apply here.

(g) *Green Oil* 's seventh factor requires that "other civil actions" filed "against the same defendant, based on the same conduct," be considered in mitigation. *Id.,* at 224. That factor did not apply here.

Thus, the first, second, and third *Green Oil* factors, in principle, might sometimes act as constraints on arbitrary behavior. But *as the Alabama courts interpreted those standards in this case,* even taking those three factors together, they could not have significantly constrained the court system's ability to impose "grossly excessive" awards.

Third, the state courts neither referred to, nor made any effort to find, nor enunciated any other standard that either directly, or indirectly as background, might have supplied the constraining legal force that the statute and *Green Oil* standards (as interpreted here) lack. Dr. Gore did argue to the jury an economic theory based on the need to offset the totality of the harm that the defendant's conduct caused. Some theory of that general kind might have provided a significant constraint on arbitrary awards (at least where confined to the relevant harm-causing conduct, see *ante,* at 1596–1598). Some economists, for example, have argued for a standard that would deter illegal activity causing solely economic harm through the use of punitive damages awards that, as a whole, would take from a wrongdoer the total cost of the ***593** harm caused. See, *e.g.,* S. Shavell, Economic Analysis of Accident Law 162 (1987) ("If liability equals losses caused multiplied by ... the inverse of the probability of suit, injurers will act optimally under liability rules despite the chance that they will escape suit"); Cooter, Punitive Damages for Deterrence: When and How Much, 40 Ala. L.Rev. 1143, 1146–1148 (1989). My understanding of the intuitive essence of some of those theories, which I put in crude form (leaving out various

qualifications), is that they could permit juries to calculate punitive damages by making a rough estimate of global harm, dividing that estimate by a similarly rough estimate of the number of successful lawsuits that would likely be brought, and adding generous attorney's fees and other costs. Smaller damages would not sufficiently discourage firms from engaging in the harmful conduct, while larger damages would "over-deter" by leading potential defendants **1608 to spend more to prevent the activity that causes the economic harm, say, through employee training, than the cost of the harm itself. See Galligan, Augmented Awards: The Efficient Evolution of Punitive Damages, 51 La. L.Rev. 3, 17–20, 28–30 (1990). Larger damages might also "double count" by including in the punitive damages award some of the compensatory, or punitive, damages that subsequent plaintiffs would also recover.

The record before us, however, contains nothing suggesting that the Alabama Supreme Court, when determining the allowable award, applied *any* "economic" theory that might explain the $2 million recovery. Cf. *Browning–Ferris, supra,* at 300, 109 S.Ct., at 2933 (noting that the Constitution "does not incorporate the views of the Law and Economics School," nor does it " 'require the States to subscribe to any particular economic theory' ") (O'CONNOR, J., concurring in part and dissenting in part) (quoting *CTS Corp. v. Dynamics Corp. of America,* 481 U.S. 69, 92, 107 S.Ct. 1637, 1651, 95 L.Ed.2d 67 (1987)). And courts properly tend to judge the rationality of judicial actions in terms of the reasons that were given, and the facts that were before the court, cf. *594 *TXO,* 509 U.S., at 468, 113 S.Ct., at 2725 (KENNEDY, J., concurring in part and concurring in judgment), not those that might have been given on the basis of some conceivable set of facts (unlike the rationality of economic statutes enacted by legislatures subject to the public's control through the ballot box, see, *e.g., FCC v. Beach Communications, Inc.,* 508 U.S. 307, 315, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211 (1993)). Therefore, reference to a constraining "economic" theory, which might have counseled more deferential review by this Court, is lacking in this case.

Fourth, I cannot find any community understanding or historic practice that this award might exemplify and which, therefore, would provide background standards constraining arbitrary behavior and excessive awards. A punitive damages award of $2 million for intentional misrepresentation causing $56,000 of harm is extraordinary by historical standards, and, as far as I am aware, finds no analogue until relatively recent times. *Amici* for Dr. Gore attempt to show that this is not true, pointing to various historical cases which, according to their calculations, represented roughly equivalent punitive awards for similarly culpable conduct. See Brief for James D.A. Boyle et al. as *Amici Curiae* 4–5 (hereinafter Legal Historians' Brief). Among others, they cite *Wilkes v. Wood,* Lofft 1, 98 Eng. Rep. 489 (C.P. 1763) (£ 1,000 said to be equivalent of $1.5 million, for warrantless search of papers); *Huckle v. Money,* 2 Wills. 205, 95 Eng. Rep. 768 (K.B.1763) (£>>> 300, said to be $450,000, for 6–hour false imprisonment); *Hewlett* v. *Cruchley,* 5 Taunt. 277, 128 Eng. Rep. 696 (C.P. 1813) (£2,000, said to be $680,000, for malicious prosecution); *Merest v. Harvey,* 5 Taunt. 442, 128 Eng. Rep. 761 (C.P. 1814) (£500, said to be $165,000, for poaching). But *amici* apparently base their conversions on a mathematical assumption, namely, that inflation has progressed at a constant 3% rate of inflation. See Legal Historians' Brief 4. In fact, consistent, cumulative inflation is a modern phenomenon. See McCusker, How Much Is That in Real Money? A Historical Price Index for Use as a Deflator *595 of Money Values in the Economy of the United States, 101 Proceedings of American Antiquarian Society 297, 310, 323–332 (1992). Estimates based on historical rates of valuation, while highly approximate, suggest that the ancient extraordinary awards are small compared to the $2 million here at issue, or other modern punitive damages figures. See Appendix to this opinion, *infra,* at 1609–1610, suggesting that the modern equivalent of the awards in the above cases is something like $150,000, $45,000, $100,000, and $25,000, respectively). And, as the majority opinion makes clear, the record contains nothing to suggest that the extraordinary size of the award in this case is explained by the extraordinary wrongfulness of the defendant's behavior, measured by historical or community standards, rather than arbitrariness or caprice.

Fifth, there are no other legislative enactments here that classify awards and impose quantitative limits that would significantly cabin the fairly unbounded discretion created by the absence of constraining legal standards. Cf., *e.g.,* **1609 Tex. Civ. Prac. & Rem.Code Ann. § 41.008 (Supp.1996) (punitive damages generally limited to greater of double damages, or $200,000, except cap does not apply to suits arising from certain serious criminal acts enumerated in the statute); Conn. Gen.Stat. § 52–240b (1995) (punitive damages may not exceed double compensatory damages in product liability cases); Fla. Stat. § 768.73(1) (Supp.1993) (punitive damages in certain actions limited to treble compensatory damages); Ga.Code Ann. § 51–12–5.1(g) (Supp.1995) ($250,000 cap in certain actions).

The upshot is that the rules that purport to channel discretion in this kind of case, here did not do so in fact. That means that the award in this case was both (a) the product of a system of standards that did not significantly

constrain a court's, and hence a jury's, discretion in making that award; and (b) grossly excessive in light of the State's legitimate punitive damages objectives.

***596** The first of these reasons has special importance where courts review a jury-determined punitive damages award. That is because one cannot expect to direct jurors like legislators through the ballot box; nor can one expect those jurors to interpret law like judges, who work within a discipline and hierarchical organization that normally promotes roughly uniform interpretation and application of the law. Yet here Alabama expects jurors to act, at least a little, like legislators or judges, for it permits them, to a certain extent, to create public policy and to apply that policy, not to compensate a victim, but to achieve a policy-related objective outside the confines of the particular case.

To the extent that neither clear legal principles nor fairly obvious historical or community-based standards (defining, say, especially egregious behavior) significantly constrain punitive damages awards, is there not a substantial risk of outcomes so arbitrary that they become difficult to square with the Constitution's assurance, to every citizen, of the law's protection? The standards here, as authoritatively interpreted, in my view, make this threat real and not theoretical. And, in these unusual circumstances, where legal standards offer virtually no constraint, I believe that this lack of constraining standards warrants this Court's detailed examination of the award.

The second reason—the severe disproportionality between the award and the legitimate punitive damages objectives—reflects a judgment about a matter of degree. I recognize that it is often difficult to determine just when a punitive award exceeds an amount reasonably related to a State's legitimate interests, or when that excess is so great as to amount to a matter of constitutional concern. Yet whatever the difficulties of drawing a precise line, once we examine the award in this case, it is not difficult to say that this award lies on the line's far side. The severe lack of proportionality between the size of the award and the underlying punitive damages objectives shows that the award falls into the category ***597** of "gross excessiveness" set forth in this Court's prior cases.

These two reasons *taken together* overcome what would otherwise amount to a "strong presumption of validity." *TXO,* 509 U.S., at 457, 113 S.Ct., at 2720. And, for those two reasons, I conclude that the award in this unusual case violates the basic guarantee of nonarbitrary governmental behavior that the Due Process Clause provides.

APPENDIX TO OPINION OF BREYER, J.

Although I recognize that all estimates of historic rates of inflation are subject to dispute, including, I assume, the sources below, those sources suggest that the value of the 18th and 19th century judgments cited by *amici* is much less than the figures *amici* arrived at under their presumption of a constant 3% rate of inflation.

In 1763, £1 (Eng.) was worth £1.73 Pennsylvania currency. See U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Series Z–585, p. 1198 (Bicentennial ed.1975). For the period 1766–1772, £1 (Penn.) was worth $45.99 (U.S.1991). See McCusker, How Much Is That in Real Money? A Historical Price Index for Use as a Deflator of Money Values in the Economy of the United States, 101 American Antiquarian Society 297, 333 ****1610** (1992). Thus, £>1 (Eng.1763) is worth about $79.56 (U.S.1991). Accounting for the 12% inflation of the U.S. dollar between 1991 and 1995 (when *amici* filed their brief), see Economic Indicators, 104th Cong., 2d Sess., p. 23 (Feb.1996), £1 (Eng.1763) is worth about $89.11 (U.S.1995).

Calculated another way, £1 (Eng.1763) is worth about £>>>>72.84 (Eng.1991). See McCusker, *supra,* at 312, 342, 350. And £1 (Eng.1991) is worth $1.77 (U.S.1991). See 78 Fed. Reserve Bulletin A68 (Feb.1992). Thus, £1 (Eng.1763) amounts to about $128.93 (U.S.1991). Again, accounting for inflation between 1991 and 1995, this amounts to about $144.40 (U.S.1995).

Thus, the above sources suggest that the £1,000 award in *Wilkes* in 1763 roughly amounts to between $89,110 and $144,440 today, not $1.5 million. And the £300 award in *Huckle* that same year would seem to be worth between $26,733 and $43,320 today, not $450,000.

For the period of the *Hewlett* and *Merest* decisions, £1 (Eng.1813) is worth about £25.3 (Eng.1991). See McCusker, *supra,* at 344, 350. Using the 1991 exchange rate, £1 (Eng.1813) is worth about $44.78 (U.S.1991). Accounting for inflation between 1991 and 1995, this amounts to about $50.16 (U.S.1995).

***598** Thus, the £2,000 and £500 awards in *Hewlett* and *Merest* would seem to be closer to $100,320 and $25,080, respectively, than to *amici's* estimates of $680,000 and $165,000.

Justice SCALIA, with whom Justice THOMAS joins, dissenting.

Today we see the latest manifestation of this Court's recent and increasingly insistent "concern about punitive damages that 'run wild.' " *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 18, 111 S.Ct. 1032, 1043, 113 L.Ed.2d 1 (1991). Since the Constitution does not make that concern any of our business, the Court's activities in this area are an unjustified incursion into the province of state governments.

In earlier cases that were the prelude to this decision, I set forth my view that a state trial procedure that commits the decision whether to impose punitive damages, and the amount, to the discretion of the jury, subject to some judicial review for "reasonableness," furnishes a defendant with all the process that is "due." See *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 470, 113 S.Ct. 2711, 2726, 125 L.Ed.2d 366 (1993) (SCALIA, J., concurring in judgment); *Haslip, supra,* at 25–28, 111 S.Ct., at 1046–1049 (SCALIA, J., concurring in judgment); cf. *Honda Motor Co. v. Oberg,* 512 U.S. 415, 435–436, 114 S.Ct. 2331, 2342, 129 L.Ed.2d 336 (1994) (SCALIA, J., concurring). I do not regard the Fourteenth Amendment's Due Process Clause as a secret repository of substantive guarantees against ***599** "unfairness"—neither the unfairness of an excessive civil compensatory award, nor the unfairness of an "unreasonable" punitive award. What the Fourteenth Amendment's procedural guarantee assures is an opportunity to contest the reasonableness of a damages judgment in state court; but there is no federal guarantee a damages award actually *be* reasonable. See *TXO, supra,* at 471, 113 S.Ct., at 2727 (SCALIA, J., concurring in judgment).

This view, which adheres to the text of the Due *Process* Clause, has not prevailed in our punitive damages cases. See *TPXO,* 509 U.S., at 453–462, 113 S.Ct., at 2718–2723 (plurality opinion); *id.,* at 478–481, 113 S.Ct., at 2730–2732 (O'CONNOR, J., dissenting); *Haslip, supra,* at 18, 111 S.Ct., at 1043. When, however, a constitutional doctrine adopted by the Court is not only mistaken but also insusceptible of principled application, I do not feel bound to give it *stare decisis* effect—indeed, I do not feel justified in doing so. See, *e.g., Witte v. United States,* 515 U.S. 389, 406, 115 S.Ct. 2199, 2209, 132 L.Ed.2d 351 (1995) (SCALIA, J., concurring in judgment); *Walton v. Arizona,* 497 U.S. 639, 673, 110 S.Ct. 3047, 3067–3068, 111 L.Ed.2d 511 (1990) (SCALIA, J., concurring in judgment in part and dissenting in part). Our punitive damages jurisprudence compels such a response. The Constitution provides no warrant for federalizing yet another aspect of our Nation's legal culture (no matter ****1611** how much in need of correction it may be), and the application of the Court's new rule of constitutional law is constrained by no principle other than the Justices' subjective assessment of the "reasonableness" of the award in relation to the conduct for which it was assessed.

Because today's judgment represents the first instance of this Court's invalidation of a state-court punitive assessment as simply unreasonably large, I think it a proper occasion to discuss these points at some length.

I

The most significant aspects of today's decision—the identification of a "substantive due process" right against a "grossly excessive" award, and the concomitant assumption ***600** of ultimate authority to decide anew a matter of "reasonableness" resolved in lower court proceedings—are of course not new. *Haslip* and *TXO* revived the notion, moribund since its appearance in the first years of this century, that the measure of civil punishment poses a question of constitutional dimension to be answered by this Court. Neither of those cases, however, nor any of the precedents upon which they relied, actually took the step of declaring a punitive award unconstitutional simply because it was "too big."

At the time of adoption of the Fourteenth Amendment, it was well understood that punitive damages represent the assessment by the jury, as the voice of the community, of the measure of punishment the defendant deserved. See, *e.g., Barry v. Edmunds,* 116 U.S. 550, 565, 6 S.Ct. 501, 509, 29 L.Ed. 729 (1886); *Missouri Pacific R. Co. v. Humes,* 115 U.S. 512, 521, 6 S.Ct. 110, 113, 29 L.Ed. 463 (1885); *Day v. Woodworth,* 13 How. 363, 371, 14 L.Ed. 181 (1852). See generally *Haslip, supra,* at 25–27, 111 S.Ct., at 1047–1048 (SCALIA, J., concurring in judgment). Today's decision, though dressed up as a legal opinion, is really no more than a disagreement with the community's sense of indignation or outrage expressed in the punitive award of the Alabama jury, as reduced by the State Supreme Court. It reflects not merely, as the concurrence candidly acknowledges, "a judgment about a matter of degree," *ante,* at 1609; but a judgment about the appropriate degree of indignation or outrage, which is hardly an analytical determination.

There is no precedential warrant for giving our judgment priority over the judgment of state courts and juries on this matter. The only support for the Court's position is to be found in a handful of errant federal cases, bunched within a few years of one other, which invented the notion that an unfairly severe civil sanction amounts to a violation of constitutional liberties. These were the

decisions upon which the *TXO* plurality relied in pronouncing that the Due Process Clause "imposes substantive limits 'beyond which penalties may not go,' " 509 U.S., at 454, 113 S.Ct., at 2718 (quoting *Seaboard Air Line R. Co. v. Seegers,* 207 U.S. 73, 78, 28 S.Ct. 28, 30, 52 L.Ed. 108 (1907)); see also ***601** 509 U.S., at 478–481, 113 S.Ct., at 2730–2732 (O'CONNOR, J., dissenting); *Haslip, supra,* 499 U.S., at 18, 111 S.Ct., at 1043. Although they are our precedents, they are themselves too shallowly rooted to justify the Court's recent undertaking. The only case relied upon in which the Court actually invalidated a civil sanction does not even support constitutional review for excessiveness, since it really concerned the validity, as a matter of *procedural* due process, of state legislation that imposed a significant penalty on a common carrier which lacked the means of determining the legality of its actions before the penalty was imposed. See *Southwestern Telegraph & Telephone Co. v. Danaher,* 238 U.S. 482, 489–491, 35 S.Ct. 886, 887–888, 59 L.Ed. 1419 (1915). The *amount* of the penalty was not a subject of independent scrutiny. As for the remaining cases, while the opinions do consider arguments that statutory penalties can, by reason of their excessiveness, violate due process, not a single one of these judgments invalidates a damages award. See *Seaboard, supra,* at 78–79, 28 S.Ct., at 30; *Waters–Pierce Oil Co. v. Texas (No. 1),* 212 U.S. 86, 111–112, 29 S.Ct. 220, 227, 53 L.Ed. 417 (1909); *Standard Oil Co. of Ind. v. Missouri,* 224 U.S. 270, 286, 290, 32 S.Ct. 406, 411, 412, 56 L.Ed. 760 (1912); ****1612** *St. Louis, I.M. & S.R. Co. v. Williams,* 251 U.S. 63, 66–67, 40 S.Ct. 71, 73, 64 L.Ed. 139 (1919).

More importantly, this latter group of cases—which again are the *sole* precedential foundation put forward for the rule of constitutional law espoused by today's Court—simply fabricated the "substantive due process" right at issue. *Seaboard* assigned no precedent to its bald assertion that the Constitution imposes "limits beyond which penalties may not go," 207 U.S., at 78, 28 S.Ct., at 30. *Waters–Pierce* cited only *Coffey v. County of Harlan,* 204 U.S. 659, 27 S.Ct. 305, 51 L.Ed. 666 (1907), a case which inquired into the constitutionality of state *procedure, id.,* at 662–663, 27 S.Ct., at 305–306. *Standard Oil* simply cited *Waters–Pierce,* and *St. Louis, I.M. & S. R. Co.* offered in addition to these cases only *Collins v. Johnston,* 237 U.S. 502, 35 S.Ct. 649, 59 L.Ed. 1071 (1915), which said nothing to support the notion of a "substantive due process" right against excessive civil penalties, but to the contrary asserted that the prescribing and imposing of criminal punishment were "functions peculiarly belonging to the several States," ***602** *id.,* at 509–510, 35 S.Ct., at 652–653. Thus, the only authority for the Court's position is simply not authoritative. These cases fall far short of what is needed to supplant this country's longstanding practice regarding exemplary awards, see, *e.g., Haslip,* 499 U.S., at 15–18, 111 S.Ct., at 1041–1043; *id.,* at 25–28, 111 S.Ct., at 1047–1048 (SCALIA, J., concurring in judgment).

II

One might understand the Court's eagerness to enter this field, rather than leave it with the state legislatures, if it had something useful to say. In fact, however, its opinion provides virtually no guidance to legislatures, and to state and federal courts, as to what a "constitutionally proper" level of punitive damages might be.

We are instructed at the outset of Part II of the Court's opinion—the beginniwr of its substantive analysis—that "the federal excessiveness inquiry ... begins with an identification of the state interests that a punitive award is designed to serve." *Ante,* at 1595. On first reading this, one is faced with the prospect that federal punitive damages law (the new field created by today's decision) will be beset by the sort of "interest analysis" that has laid waste the formerly comprehensible field of conflict of laws. The thought that each assessment of punitive damages, as to each offense, must be examined to determine the precise "state interests" pursued, is most unsettling. Moreover, if those "interests" are the most fundamental determinant of an award, one would think that due process would require the assessing jury to be *instructed* about them.

It appears, however (and I certainly hope), that all this is a false alarm. As Part II of the Court's opinion unfolds,it turns out to be directed, not to the question "How much punishment is too much?" but rather to the question "Which acts can be punished?" "Alabama does not have the power," the Court says, "to punish BMW for conduct that was lawful where it occurred and that had no impact on Alabama or its residents." *Ante,* at 1597. That may be true, though ***603** only in the narrow sense that a person cannot be *held liable to be punished* on the basis of a lawful act. But if a person has been held subject to punishment because he committed an *un*lawful act, the *degree* of his punishment assuredly *can* be increased on the basis of any other conduct of his that displays his wickedness, unlawful or not. Criminal sentences can be computed, we have said, on the basis of "information concerning every aspect of a defendant's life," *Williams v. New York,* 337 U.S. 241, 250–252, 69 S.Ct. 1079, 1085, 93 L.Ed. 1337 (1949). The Court at one point seems to acknowledge this, observing that, although a sentencing court "[cannot] properly *punish* lawful conduct," it may in

assessing the penalty "consider ... lawful conduct that bears on the defendant's character." *Ante,* at 1598, n. 19. That concession is quite incompatible, however, with the later assertion that, since "neither the jury nor the trial court was presented with evidence that any of BMW's out-of-state conduct was unlawful," the Alabama Supreme Court "therefore properly eschewed reliance on BMW's out-of-state conduct, ... and based its remitted award solely on conduct that occurred within Alabama." *Ante,* at 1598. Why could the Supreme Court of Alabama not consider lawful (but disreputable) conduct, both inside ****1613** and outside Alabama, for the purpose of assessing just how bad an actor BMW was?

The Court follows up its statement that "Alabama does not have the power ... to punish BMW for conduct that was lawful where it occurred" with the statement: "Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions." *Ante,* at 1597–1598. The Court provides us no citation of authority to support this proposition—other than the barely analogous cases cited earlier in the opinion, see *ante,* at 1596–1597——and I know of none.

These significant issues pronounced upon by the Court are not remotely presented for resolution in the present case. There is no basis for believing that Alabama has sought to control conduct elsewhere. The statutes at issue merely ***604** permit civil juries to treat conduct such as petitioner's as fraud, and authorize an award of appropriate punitive damages in the event the fraud is found to be "gross, oppressive, or malicious," Ala.Code § 6–11–20(b)(1) (1993). To be sure, respondent did invite the jury to consider out-of-state conduct in its calculation of damages, but any increase in the jury's initial award based on that consideration is not a component of the remitted judgment before us. As the Court several times recognizes, in computing the amount of the remitted award the Alabama Supreme Court—whether it was constitutionally required to or not—"expressly disclaimed any reliance on acts that occurred in other jurisdictions." *Ante,* at 1595 (internal quotation marks omitted); see also *ante,* at 1598.* Thus, the only question presented by this case is whether that award, limited to petitioner's Alabama conduct and viewed in light of the factors identified as properly informing the inquiry, is excessive. The Court's sweeping (and largely unsupported) statements regarding the relationship of punitive awards to lawful or unlawful out-of-state conduct are the purest dicta.

III

In Part III of its opinion, the Court identifies "[t]hree guideposts" that lead it to the conclusion that the award in this case is excessive: degree of reprehensibility, ratio between punitive award and plaintiff's actual harm, and legislative ***605** sanctions provided for comparable misconduct. *Ante,* at 1598–1604. The legal significance of these "guideposts" is nowhere explored, but their necessary effect is to establish federal standards governing the hitherto exclusively state law of damages. Apparently (though it is by no means clear) all three federal "guideposts" can be overridden if "necessary to deter future misconduct," *ante,* at 1603–1604—a loophole that will encourage state reviewing courts to uphold awards as necessary for the "adequat[e] protect[ion]" of state consumers, *ibid.* By effectively requiring state reviewing courts to concoct rationalizations—whether within the "guideposts" or through the loophole—to justify the intuitive punitive reactions of state juries, the Court accords neither category of institution the respect it deserves.

Of course it will not be easy for the States to comply with this new federal law of damages, no matter how willing they are to do so. In truth, the "guideposts" mark a road to nowhere; they provide no real guidance at all. As to "degree of reprehensibility" of the defendant's conduct, we learn that " 'nonviolent crimes are less serious than crimes marked by violence or the threat of violence,' " *ante,* at 1599 (quoting *Solem v. Helm,* 463 U.S. 277, 292–293, 103 S.Ct. 3001, 3011, 77 L.Ed.2d 637 (1983)), and that " 'trickery and deceit' " are "more reprehensible than negligence," *ante,* at 1599. As to the ratio of punitive to compensatory damages, we are told that a " 'general concer[n] of reasonableness ... enter[s] into the constitutional ****1614** calculus,' " *ante,* at 1602 (quoting *TXO,* 509 U.S., at 458, 113 S.Ct., at 2720)—though even "a breathtaking 500 to 1" will not necessarily do anything more than " 'raise a suspicious judicial eyebrow,' " *ante,* at 1603 (quoting *TXO, supra,* at 481, 113 S.Ct., at 2732 (O'CONNOR, J., dissenting), an opinion which, when confronted with that "breathtaking" ratio, approved it). And as to legislative sanctions provided for comparable misconduct, they should be accorded " 'substantial deference,' " *ante,* at 1603 (quoting *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 301, 109 S.Ct. 2909, 2934, 106 L.Ed.2d 219 (1989) (O'CONNOR, J., concurring in part and dissenting ***606** in part)). One expects the Court to conclude: "To thine own self be true."

These crisscrossing platitudes yield no real answers in no real cases. And it must be noted that the Court nowhere says that these three "guideposts" are the *only* guideposts; indeed, it makes very clear that they are not—explaining away the earlier opinions that do not really follow these

"guideposts" on the basis of *additional* factors, thereby "reiterat[ing] our rejection of a categorical approach." *Ante,* at 1602. In other words, even these utter platitudes, if they should ever happen to produce an answer, may be overridden by other unnamed considerations. The Court has constructed a framework that does not genuinely constrain, that does not inform state legislatures and lower courts—that does nothing at all except confer an artificial air of doctrinal analysis upon its essentially ad hoc determination that this particular award of punitive damages was not "fair."

The Court distinguishes today's result from *Haslip* and *TXO* partly on the ground that "the record in this case discloses no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as were present in *Haslip* and *TXO.*" *Ante,* at 1601. This seemingly rejects the findings necessarily made by the jury—that petitioner had committed a fraud that was "gross, oppressive, or malicious," Ala.Code § 6–11–20(b)(1) (1993). Perhaps that rejection is intentional; the Court does not say.

The relationship between judicial application of the new "guideposts" and jury findings poses a real problem for the Court, since as a matter of logic there is no more justification for ignoring the jury's determination as to *how* reprehensible petitioner's conduct was (*i.e.,* how much it deserves to be punished), than there is for ignoring its determination that it was reprehensible *at all* (*i.e.,* that the wrong was willful and punitive damages are therefore recoverable). That the issue has been framed in terms of a constitutional right against unreasonably *excessive* awards should not obscure ***607** the fact that the logical and necessary consequence of the Court's approach is the recognition of a constitutional right against unreasonably *imposed* awards as well. The elevation of "fairness" in punishment to a principle of "substantive due process" means that every punitive award unreasonably imposed is unconstitutional; such an award is by definition excessive, since it attaches a penalty to conduct undeserving of punishment. Indeed, if the Court is correct, it must be that every claim that a state jury's award of *compensatory* damages is "unreasonable" (because not supported by the evidence) amounts to an assertion of constitutional injury. See *TXO, supra,* at 471, 113 S.Ct., at 2727 (SCALIA, J. concurring in judgment). And the same would be true for determinations of liability. By today's logic, *every* dispute as to evidentiary sufficiency in a state civil suit poses a question of constitutional moment, subject to review in this Court. That is a stupefying proposition.

For the foregoing reasons, I respectfully dissent.

Justice GINSBURG, with whom THE CHIEF JUSTICE joins, dissenting.

The Court, I am convinced, unnecessarily and unwisely ventures into territory traditionally within the States' domain, and does so in the face of reform measures recently adopted or currently under consideration in legislative arenas. The Alabama Supreme Court, in this case, endeavored to follow this Court's prior instructions; and, more recently, Alabama's highest court has installed further ****1615** controls on awards of punitive damages (see *infra,* at 1617–1618, n. 6). I would therefore leave the state court's judgment undisturbed, and resist unnecessary intrusion into an area dominantly of state concern.

I

The respect due the Alabama Supreme Court requires that we strip from this case a false issue: No impermissible "extraterritoriality" infects the judgment before us; the excessiveness ***608** of the award is the sole issue genuinely presented. The Court ultimately so recognizes, see *ante,* at 1597–1598, but further clarification is in order.

Dr. Gore's experience was not unprecedented among customers who bought BMW vehicles sold as flawless and brand-new. In addition to his own encounter, Gore showed, through paint repair orders introduced at trial, that on 983 other occasions since 1983, BMW had shipped new vehicles to dealers without disclosing paint repairs costing at least $300, Tr. 585–586; at least 14 of the repainted vehicles, the evidence also showed, were sold as new and undamaged to consumers in Alabama. 646 So.2d 619, 623 (Ala.1994). Sales nationwide, Alabama's Supreme Court said, were admissible "as to the issue of a 'pattern and practice' of such acts." *Id.,* at 627. There was "no error," the court reiterated, "in the admission of the evidence that showed how pervasive the nondisclosure policy was and the intent behind BMW NA's adoption of it." *Id.,* at 628. That determination comports with this Court's expositions. See *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 462, and n. 28, 113 S.Ct. 2711, 2722, and n. 28, 125 L.Ed.2d 366 (1993) (characterizing as "well-settled" the admissibility of "evidence of [defendant's] alleged wrongdoing in other parts of the country" and of defendant's "wealth"); see also Brief for Petitioner 22 (recognizing that similar acts, out-of-state, traditionally have been considered relevant "for the limited purpose of determining that the conduct before the [c]ourt was

reprehensible because it was part of a pattern rather than an isolated incident").

Alabama's highest court next declared that the

> "jury could not use the number of similar acts that a defendant has committed in other jurisdictions as a multiplier when determining the *dollar amount* of a punitive damages award. Such evidence may not be considered in setting the size of the civil penalty, because neither the jury nor the trial court had evidence before it showing in which states the conduct was wrongful." ***609** 646 So.2d, at 627 (emphasis in original) (footnote omitted).

Because the Alabama Supreme Court provided this clear statement of the State's law, the multiplier problem encountered in Gore's case is not likely to occur again. Now, as a matter of Alabama law, it is plainly impermissible to assess punitive damages by multiplication based on out-of-state events not shown to be unlawful. See, *e.g., Independent Life and Accident Ins. Co. v. Harrington,* 658 So.2d 892, 902–903 (Ala.1994) (under *BMW v. Gore,* trial court erred in relying on defendant insurance company's out-of-state insurance policies in determining harm caused by defendant's unlawful actions).

No Alabama authority, it bears emphasis—no statute, judicial decision, or trial judge instruction—ever countenanced the jury's multiplication of the $4,000 diminution in value estimated for each refinished car by the number of such cars (approximately 1,000) shown to have been sold nationwide. The sole prompt to the jury to use nationwide sales as a multiplier came from Gore's lawyer during summation. App. 31, Tr. 812–813. Notably, counsel for BMW failed to object to Gore's multiplication suggestion, even though BMW's counsel interrupted to make unrelated objections four other times during Gore's closing statement. Tr. 810–811, 854–855, 858, 870–871. Nor did BMW's counsel request a charge instructing the jury not to consider out-of-state sales in calculating the punitive damages award. See Record 513–529 (listing all charges requested by counsel).

Following the verdict, BMW's counsel challenged the *admission* of the paint repair orders, but not, alternately, the jury's apparent use of the orders in a multiplication exercise. Curiously, during postverdict argument, BMW's counsel urged that if the ****1616** repair orders were indeed admissible, then Gore would have a "full right" to suggest a multiplier-based disgorgement. Tr. 932.

***610** In brief, Gore's case is idiosyncratic. The jury's improper multiplication, tardily featured by petitioner, is unlikely to recur in Alabama and does not call for error correction by this Court.

Because the jury apparently (and erroneously) had used acts in other States as a multiplier to arrive at a $4 million sum for punitive damages, the Alabama Supreme Court itself determined " 'the maximum amount that a properly functioning jury could have awarded.' " 646 So.2d, at 630 (Houston, J., concurring specially) (quoting *Big B, Inc. v. Cottingham,* 634 So.2d 999, 1006 (Ala.1993)). The *per curiam* opinion emphasized that in arriving at $2 million as "the *amount of punitive damages* to be awarded in this case, [the court did] not consider those acts that occurred in other jurisdictions." 646 So.2d, at 628 (emphasis in original). As this Court recognizes, the Alabama high court "properly eschewed reliance on BMW's out-of-state conduct and based its remitted award solely on conduct that occurred within Alabama." *Ante,* at 1598 (citation omitted). In sum, the Alabama Supreme Court left standing the jury's decision that the facts warranted *an award* of punitive damages—a determination not contested in this Court—and the state court concluded that, considering only acts in Alabama, $2 million was "a constitutionally reasonable punitive damages award." 646 So.2d, at 629.

II

A

Alabama's Supreme Court reports that it "thoroughly and painstakingly" reviewed the jury's award, *ibid.,* according to principles set out in its own pathmarking decisions and in this Court's opinions in *TXO* and *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 21, 111 S.Ct. 1032, 1045, 113 L.Ed.2d 1 (1991). 646 So.2d, at 621. The Alabama court said it gave weight to several factors, including BMW's deliberate ("reprehensible") presentation of refinished cars as new and undamaged, without disclosing that the value of those cars had been reduced by an estimated ***611** 10%,[1] the financial position of the defendant, and the costs of litigation. *Id.,* at 625–626. These standards, we previously held, "impos[e] a sufficiently definite and meaningful constraint on the discretion of Alabama factfinders in awarding punitive damages." *Haslip,* 499 U.S., at 22, 111 S.Ct., at 1045; see also *TXO,* 509 U.S., at 462, n. 28, 113 S.Ct., at 2722, n. 28. Alabama's highest court could have displayed its labor pains more visibly,[2] but its judgment is nonetheless entitled to a presumption of legitimacy. See *Rowan v. Runnels,* 5 How. 134, 139, 12 L.Ed. 85 (1847) ("[T]his court will always feel itself

bound to respect the decisions of the State courts, and from the time they are made will regard them as conclusive in all cases upon the construction of their own constitution and laws.").

We accept, of course, that Alabama's Supreme Court applied the State's own law correctly. Under that law, the State's objectives—"punishment and deterrence"—guide punitive damages awards. See *Birmingham v. Benson,* 631 So.2d 902, 904 (Ala.1993). Nor should we be quick to find a constitutional infirmity when the highest state court endeavored a corrective for one counsel's slip and the other's oversight—counsel for plaintiff's excess in summation, unobjected to by counsel for defendant, see *supra,* at 1615—and when the state court did so intending to follow the process approved in our *Haslip* and *TXO* decisions.

B

The Court finds Alabama's $2 million award not simply excessive, but grossly so, and therefore unconstitutional. ***612** The decision ****1617** leads us further into territory traditionally within the States' domain,[3] and commits the Court, now and again, to correct "misapplication of a properly stated rule of law." But cf. this Court's Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").[4] The Court is not well equipped ***613** for this mission. Tellingly, the Court repeats that it brings to the task no "mathematical formula," *ante,* at 1602, no "categorical approach," *ibid.,* no "bright line," *ante,* at 1604. It has only a vague concept of substantive due process, a "raised eyebrow" test, see *ante,* at 1603, as its ultimate guide.[5]

In contrast to habeas corpus review under 28 U.S.C. § 2254, the Court will work at this business alone. It will not be aided by the federal district courts and courts of appeals. It will be the *only* federal court policing the area. The Court's readiness to superintend state-court punitive damages awards is all the more puzzling in view of the Court's longstanding reluctance to countenance review, even by courts of appeals, of the size of verdicts returned by juries in federal district court proceedings. See generally 11 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2820 (2d ed.1995). And the reexamination prominent in state courts[6] and in legislative arenas, see Appendix, ****1618** ***614** *infra,* this page serves to underscore why the Court's enterprise is undue.

For the reasons stated, I dissent from this Court's disturbance of the judgment the Alabama Supreme Court has made.

APPENDIX TO DISSENTING OPINION OF GINSBURG, J.

STATE LEGISLATIVE ACTIVITY REGARDING PUNITIVE DAMAGES

State legislatures have in the hopper or have enacted a variety of measures to curtail awards of punitive damages. At least one state legislature has prohibited punitive damages altogether, unless explicitly provided by statute. See N.H.Rev.Stat. Ann. § 507:16 (1994). We set out in this appendix some of the several controls enacted or under consideration in the States. The measures surveyed are: (1) caps on awards; (2) provisions for payment of sums to state agencies rather than to plaintiffs; and (3) mandatory bifurcated trials with separate proceedings for punitive damages determinations.

*615 I. CAPS ON PUNITIVE DAMAGES AWARDS

· *Colorado*—Colo. Rev. Stat. §§ 13–21–102(1)(a) and (3) (1987) (as a main rule, caps punitive damages at amount of actual damages).

· *Connecticut*—Conn. Gen. Stat. § 52–240b (1995) (caps punitive damages at twice compensatory damages in products liability cases).

· *Delaware*—H. R. 237, 138th Gen. Ass. (introduced May 17, 1995) (would cap punitive damages at greater of three times compensatory damages, or $250,000).

· *Florida*—Fla. Stat. §§ 768.73(1)(a) and (b) (Supp.1992) (in general, caps punitive damages at three times compensatory damages).

· *Georgia*—Ga. Code Ann. § 51–12–5.1 (Supp.1995) (caps punitive damages at $250,000 in some tort actions; prohibits multiple awards stemming from the same predicate conduct in products liability actions).

· *Illinois*—H. 20, 89th Gen. Ass.1995–1996 Reg. Sess. (enacted Mar. 9, 1995) (caps punitive damages at three times economic damages).

· *Indiana*—H. 1741, 109th Reg. Sess. (enacted Apr. 26, 1995) (caps punitive damages at greater of three times compensatory damages, or $50,000).

· *Kansas*—Kan.Stat.Ann. §§ 60–3701(e) and (f) (1994) (in general, caps punitive damages at lesser of defendant's annual gross income, or $5 million).

· *Maryland*—S. 187, 1995 Leg. Sess. (introduced Jan. 27, 1995) (in general, would cap punitive damages at four times compensatory damages).

· *Minnesota*—S. 489, 79th Leg. Sess., 1995 Reg. Sess. (introduced Feb. 16, 1995) (would require reasonable relationship between compensatory and punitive damages).

· *Nevada*—Nev.Rev.Stat. § 42.005(1) (1993) (caps punitive damages at three times compensatory damages if compensatory damages equal $100,000 or more, and at $300,000 if the compensatory damages are less than $100,000).

***616** · *New Jersey*—S. 1496, 206th Leg., 2d Ann. Sess. (1995) (caps punitive damages at greater of five times compensatory damages, or $350,000, in certain tort cases).

· *North Dakota*—N. D. Cent. Code § 32–03.2–11(4) (Supp.1995) (caps punitive damages ****1619** at greater of two times compensatory damages, or $250,000).

· *Oklahoma*—Okla. Stat., Tit. 23, §§ 9.1(B)-(D) (Supp.1996) (caps punitive damages at greater of $100,000, or actual damages, if jury finds defendant guilty of reckless disregard; and at greatest of $500,000, twice actual damages, or the benefit accruing to defendant from the injury-causing conduct, if jury finds that defendant has acted intentionally and maliciously).

· *Texas*—S. 25, 74th Reg. Sess. (enacted Apr. 20, 1995) (caps punitive damages at twice economic damages, plus up to $750,000 additional noneconomic damages).

· *Virginia*—Va. Code Ann. § 8.01–38.1 (1992) (caps punitive damages at $350,000).

II. ALLOCATION OF PUNITIVE DAMAGES TO STATE AGENCIES

· *Arizona*—H. R. 2279, 42d Leg., 1st Reg. Sess. (introduced Jan. 12, 1995) (would allocate punitive damages to a victims' assistance fund, in specified circumstances).

· *Florida*—Fla. Stat. §§ 768.73(2)(a)-(b) (Supp.1992) (allocates 35% of punitive damages to General Revenue Fund or Public Medical Assistance Trust Fund); see *Gordon v. State,* 585 So.2d 1033, 1035–1038 (Fla.App.1991), aff'd, 608 So.2d 800 (Fla.1992) (upholding provision against due process challenge).

· *Georgia*—Ga. Code Ann. § 51–12–5.1(e)(2) (Supp.1995) (allocates 75% of punitive damages, less a proportionate part of litigation costs, including counsel fees, to state treasury); see *Mack Trucks, Inc. v. Conkle,* 263 Ga. 539, 540–543, 436 S.E.2d 635, 637–639 (Ga.1993) (upholding provision against constitutional challenge).

***617** · *Illinois*—Ill. Comp. Stat., ch., 735, § 5/2–1207 (1994) (permits court to apportion punitive damages among plaintiff, plaintiff's attorney, and Illinois Department of Rehabilitation Services).

· *Indiana*—H. 1741, 109th Reg. Sess. (enacted Apr. 26, 1995) (subject to statutory exceptions, allocates 75% of punitive damages to a compensation fund for violent crime victims).

· *Iowa*—Iowa Code § 668A.1(2)(b) (1987) (in described circumstances, allocates 75% of punitive damages, after payment of costs and counsel fees, to a civil reparations trust fund); see *Shepherd Components, Inc. v. Brice Petrides–Donohue & Assoc., Inc.,* 473 N.W.2d 612, 619 (Iowa 1991) (upholding provision against constitutional challenge).

· *Kansas*—Kan.Stat.Ann. § 60–3402(e) (1994) (allocates 50% of punitive damages in medical malpractice cases to state treasury).

· *Missouri*—Mo. Rev. Stat. § 537.675 (1994) (allocates 50% of punitive damages, after payment of expenses and counsel fees, to Tort Victims' Compensation Fund).

· *Montana*—H. 71, 54th Leg. Sess. (introduced Jan. 2, 1995) (would allocate 48% of punitive damages to state university system and 12% to school for the deaf and blind).

· *New Jersey*—S. 291, 206th Leg., 1994–1995 1st Reg. Sess. (introduced Jan. 18, 1994); A. 148, 206th Leg., 1994–1995 1st Reg. Sess. (introduced Jan. 11, 1994) (would allocate 75% of punitive damages to New Jersey Health Care Trust Fund).

· *New Mexico*—H. 1017, 42d Leg., 1st Sess. (introduced Feb. 16, 1995) (would allocate punitive damages to Low–Income Attorney Services Fund).

· *Oregon*—S. 482, 68th Leg. Ass. (enacted July 19, 1995) (amending Ore.Rev.Stat. §§ 18.540 and 30.925, and

repealing Ore.Rev.Stat. § 41.315) (allocates 60% of punitive damages to Criminal Injuries Compensation Account).

*618 · *Utah*—Utah Code Ann. § 78–18–1(3) (1992) (allocates 50% of punitive damages in excess of $20,000 to state treasury).

III. MANDATORY BIFURCATION OF LIABILITY AND PUNITIVE DAMAGES DETERMINATIONS

· *California*—Cal. Civ. Code Ann. § 3295(d) (West Supp.1995) (requires bifurcation, on application of defendant, of liability and damages phases of trials in which punitive damages are requested).

· *Delaware*—H. R. 237, 138th Gen. Ass. (introduced May 17, 1995) (would require, at **1620 request of any party, a separate proceeding for determination of punitive damages).

· *Georgia*—Ga. Code Ann. § 51–12–5.1(d) (Supp.1995) (in all cases in which punitive damages are claimed, liability for punitive damages is tried first, then amount of punitive damages).

· *Illinois*—H. 20, 89th Gen. Ass., 1995–1996 Reg. Sess. (enacted Mar. 9, 1995) (mandates, upon defendant's request, separate proceeding for determination of punitive damages).

· *Kansas*—Kan.Stat.Ann. §§ 60–3701(a) and (b) (1994) (trier of fact determines defendant's liability for punitive damages, then court determines amount of such damages).

· *Missouri*—Mo. Rev. Stat. §§ 510.263(1) and (3) (1994) (mandates bifurcated proceedings, on request of any party, for jury to determine first whether defendant is liable for punitive damages, then amount of punitive damages).

· *Montana*—Mont. Code Ann. § 27–1–221(7) (1995) (upon finding defendant liable for punitive damages, jury determines the amount in separate proceeding).

· *Nevada*—Nev.Rev.Stat. § 42.005(3) (1993) (if jury determines that punitive damages will be awarded, jury then determines amount in separate proceeding).

· *New Jersey*—N. J. Stat. Ann. §§ 2A:58C–5(b) and (d) (West 1987) (mandates separate proceedings for determination of compensatory and punitive damages).

*619 · *North Dakota*—N. D. Cent. Code § 32-03.2–11(2) (Supp.1995) (upon request of either party, trier of fact determines whether compensatory damages will be awarded before determining punitive damages liability and amount).

· *Oklahoma*—Okla. Stat., Tit. 23, §§ 9.1(B)-(D) (Supp.1995–1996) (requires separate jury proceedings for punitive damages); S. 443, 45th Leg., 1st Reg. Sess. (introduced Jan. 31, 1995) (would require courts to strike requests for punitive damages before trial, unless plaintiff presents *prima facie* evidence at least 30 days before trial to sustain such damages; provide for bifurcated jury trial on request of defendant; and permit punitive damages only if compensatory damages are awarded).

· *Virginia*—H. 1070, 1994–1995 Reg. Sess. (introduced Jan. 25, 1994) (would require separate proceedings in which court determines that punitive damages are appropriate and trier of fact determines amount of punitive damages).

Parallel Citations

116 S.Ct. 1589, 134 L.Ed.2d 809, 64 BNA USLW 4335, 96 Cal. Daily Op. Serv. 3490, 96 Daily Journal D.A.R. 5747

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 The top, hood, trunk, and quarter panels of Dr. Gore's car were repainted at BMW's vehicle preparation center in Brunswick, Georgia. The parties presumed that the damage was caused by exposure to acid rain during transit between the manufacturing plant in Germany and the preparation center.

2 Dr. Gore also named the German manufacturer and the Birmingham dealership as defendants.

3 Alabama codified its common-law cause of action for fraud in a 1907 statute that is still in effect. *Hackmeyer v. Hackmeyer*, 268 Ala. 329, 333, 106 So.2d 245, 249 (1958). The statute provides: "Suppression of a material fact which the party is under an

obligation to communicate constitutes fraud. The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case." Ala.Code § 6–5–102 (1993); see Ala.Code § 4299 (1907).

4 The dealer who testified to the reduction in value is the former owner of the Birmingham dealership sued in this action. He sold the dealership approximately one year before the trial.

5 Dr. Gore did not explain the significance of the $300 cutoff.

6 The jury also found the Birmingham dealership liable for Dr. Gore's compensatory damages and the German manufacturer liable for both the compensatory and punitive damages. The dealership did not appeal the judgment against it. The Alabama Supreme Court held that the trial court did not have jurisdiction over the German manufacturer and therefore reversed the judgment against that defendant.

7 BMW acknowledged that a Georgia statute enacted *after* Dr. Gore purchased his car would require disclosure of similar repairs to a car before it was sold in Georgia. Ga.Code Ann. §§ 40–1–5(b)–(e) (1994).

8 While awarding a comparable amount of compensatory damages, the *Yates* jury awarded no punitive damages at all. In *Yates,* the plaintiff also relied on the 1983 nondisclosure policy, but instead of offering evidence of 983 repairs costing more than $300 each, he introduced a bulk exhibit containing 5,856 repair bills to show that petitioner had sold over 5,800 new BMW vehicles without disclosing that they had been repaired.

9 Prior to the lawsuits filed by Dr. Yates and Dr. Gore, BMW and various BMW dealers had been sued 14 times concerning presale paint or damage repair. According to the testimony of BMW's in-house counsel at the postjudgment hearing on damages, only one of the suits concerned a car repainted by BMW.

10 The Alabama Supreme Court did not indicate whether the $2 million figure represented the court's independent assessment of the appropriate level of punitive damages, or its determination of the maximum amount that the jury could have awarded consistent with the Due Process Clause.

11 Other than *Yates v. BMW of North America, Inc.,* 642 So.2d 937 (Ala.1993), in which no punitive damages were awarded, the Alabama Supreme Court cited no such cases. In another portion of its opinion, 646 So.2d, at 629, the court did cite five Alabama cases, none of which involved either a dispute arising out of the purchase of an automobile or an award of punitive damages. *G.M. Mosley Contractors, Inc. v. Phillips,* 487 So.2d 876, 879 (1986); *Hollis v. Wyrosdick,* 508 So.2d 704 (1987); *Campbell v. Burns,* 512 So.2d 1341, 1343 (1987); *Ashbee v. Brock,* 510 So.2d 214 (1987); and *Jawad v. Granade,* 497 So.2d 471 (1986). All of these cases support the proposition that appellate courts in Alabama presume that jury verdicts are correct. In light of the Alabama Supreme Court's conclusion that (1) the jury had computed its award by multiplying $4,000 by the number of refinished vehicles sold in the United States and (2) that the award should have been based on Alabama conduct, respect for the error-free portion of the jury verdict would seem to produce an award of $56,000 ($4,000 multiplied by 14, the number of repainted vehicles sold in Alabama).

12 See, *e.g., Rivers v. BMW of North America, Inc.,* 214 Ga.App. 880, 449 S.E.2d 337 (1994) (nondisclosure of presale paint repairs that occurred before state disclosure statute enacted); *Wedmore v. Jordan Motors, Inc.,* 589 N.E.2d 1180 (Ind.App.1992) (same).

13 Four States require disclosure of vehicle repairs costing more than 3 percent of suggested retail price. Ariz.Rev.Stat. Ann. § 28–1304.03 (1989); N.C. Gen.Stat. § 20–305.1(d)(5a) (1995); S.C.Code § 56–32–20 (Supp.1995); Va.Code Ann. § 46.2–1571(D) (Supp.1995). An additional three States mandate disclosure when the cost of repairs exceeds 3 percent or $500, whichever is greater. Ala.Code § 8–19–5(22)(c) (1993); Cal. Veh.Code Ann. §§ 9990–9991 (West Supp.1996); Okla. Stat., Tit. 47, § 1112.1 (1991). Indiana imposes a 4 percent disclosure threshold. Ind.Code §§ 9–23–4–4, 9–23–4–5 (1993). Minnesota requires disclosure of repairs costing more than 4 percent of suggested retail price or $500, whichever is greater. Minn.Stat. § 325F.664 (1994). New York requires disclosure when the cost of repairs exceeds 5 percent of suggested retail price. N.Y. Gen. Bus. Law §§ 396–p(5)(a), (d) (McKinney Supp.1996). Vermont imposes a 5 percent disclosure threshold for the first $10,000 in repair costs and 2 percent thereafter. Vt. Stat. Ann., Tit. 9, § 4087(d) (1993). Eleven States mandate disclosure only of damage costing more than 6 percent of retail value to repair. Ark.Code Ann. § 23–112–705 (1992); Idaho Code § 49–1624 (1994); Ill. Comp. Stat., ch. 815, § 710/5 (1994); Ky.Rev.Stat. Ann. § 190.0491(5) (Baldwin 1988); La.Rev.Stat. Ann. § 32:1260 (West Supp.1995); Miss. Motor Vehicle Comm'n, Regulation No. 1 (1992); N.H.Rev.Stat. Ann. § 357–C:5(III)(d) (1995); Ohio Rev.Code Ann. § 4517.61 (1994); R.I. Gen. Laws §§ 31–5.1–18(d), (f) (1995); Wis. Stat. § 218.01(2d)(a) (1994); Wyo. Stat. § 31–16–115 (1994). Two States require disclosure of repairs costing $3,000 or more. See Iowa Code Ann. § 321.69 (Supp.1996); N.D. Admin. Code § 37–09–01–01 (1992). Georgia mandates disclosure of paint damage that costs more than $500 to repair. Ga.Code Ann. §§ 40–1–5(b)–(e) (1994) (enacted after respondent purchased his car). Florida requires dealers to disclose paint repair costing more than $100 of which they have actual knowledge. Fla. Stat. § 320.27(9)(n) (1992). Oregon requires manufacturers to disclose all "postmanufacturing" damage and repairs. It is unclear whether this mandate would apply to repairs such as those at issue here. Ore.Rev.Stat. § 650.155

(1991).

Many, but not all, of the statutes exclude from the computation of repair cost the value of certain components—typically items such as glass, tires, wheels and bumpers—when they are replaced with identical manufacturer's original equipment. *E.g.,* Cal. Veh.Code Ann. §§ 9990–9991 (West Supp.1996); Ga.Code Ann. §§ 40–1–5(b)–(e) (1994); Ill. Comp. Stat., ch. 815, § 710/5 (1994); Ky.Rev.Stat. Ann. § 190.0491(5) (Baldwin 1988); Okla. Stat., Tit. 47, § 1112.1 (1991); Va.Code Ann. § 46.2–1571(D) (Supp.1995); Vt. Stat. Ann., Tit. 9, § 4087(d) (1993).

14 Also, a state legislature might plausibly conclude that the administrative costs associated with full disclosure would have the effect of raising car prices to the State's residents.

15 Federal disclosure requirements are, of course, a familiar part of our law. See, *e.g.,* the Federal Food, Drug, and Cosmetic Act, as added by the Nutrition Labeling and Education Act of 1990, 104 Stat. 2353, 21 U.S.C. § 343; the Truth In Lending Act, 82 Stat. 148, as amended, 15 U.S.C. § 1604; the Securities & Exchange Act of 1934, 48 Stat. 892, 894, as amended, 15 U.S.C. §§ 78l–78m; Federal Cigarette Labeling and Advertising Act, 79 Stat. 283, as amended, 15 U.S.C. § 1333; Alcoholic Beverage Labeling Act of 1988, 102 Stat. 4519, 27 U.S.C. § 215.

16 See also *Bigelow v. Virginia,* 421 U.S. 809, 824, 95 S.Ct. 2222, 2234, 44 L.Ed.2d 600 (1975) ("A State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State"); *New York Life Ins. Co. v. Head,* 234 U.S. 149, 161, 34 S.Ct. 879, 882, 58 L.Ed. 1259 (1914) ("[I]t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State ... without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called in question and hence authorities directly dealing with it do not abound"); *Huntington v. Attrill,* 146 U.S. 657, 669, 13 S.Ct. 224, 228, 36 L.Ed. 1123 (1892) ("Laws have no force of themselves beyond the jurisdiction of the State which enacts them, and can have extra-territorial effect only by the comity of other States").

17 State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute. See *New York Times Co. v. Sullivan,* 376 U.S. 254, 265, 84 S.Ct. 710, 718, 11 L.Ed.2d 686 (1964) ("The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised"); *San Diego Building Trades Council v. Garmon,* 359 U.S. 236, 247, 79 S.Ct. 773, 780, 3 L.Ed.2d 775 (1959) ("[R]egulation can be as effectively exerted through an award of damages as through some form of preventive relief").

18 Brief for Respondent 11–12, 23, 27–28; Tr. of Oral Arg. 50–54. Dr. Gore's interest in altering the nationwide policy stems from his concern that BMW would not (or could not) discontinue the policy in Alabama alone. Brief for Respondent at 11. "If Alabama were limited to imposing punitive damages based only on BMW's gain from fraudulent sales in Alabama, the resulting award would have no prospect of protecting Alabama consumers from fraud, as it would provide no incentive for BMW to alter the unitary, national policy of nondisclosure which yielded BMW millions of dollars in profits." *Id.,* at 23. The record discloses no basis for Dr. Gore's contention that BMW could not comply with Alabama's law without changing its nationwide policy.

19 See *Bordenkircher v. Hayes,* 434 U.S. 357, 363, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978) ("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort"). Our cases concerning recidivist statutes are not to the contrary. Habitual offender statutes permit the sentencing court to enhance a defendant's punishment for a crime in light of prior convictions, including convictions in foreign jurisdictions. See *e.g.,* Ala.Code § 13A–5–9 (1994); Cal.Penal Code Ann. §§ 667.5(f), 668 (West Supp.1996); Ill. Comp. Stat., ch. 720, § 5/33B–1 (1994); N.Y. Penal Law §§ 70.04, 70.06, 70.08, 70.10 (McKinney 1987 and Supp.1996); Tex. Penal Code Ann. § 12.42 (1994 and Supp.1995–1996). A sentencing judge may even consider past criminal behavior which did not result in a conviction and lawful conduct that bears on the defendant's character and prospects for rehabilitation. *Williams v. New York,* 337 U.S. 241, 69 S.Ct. 1079, 93 L.Ed. 1337 (1949). But we have never held that a sentencing court could properly *punish* lawful conduct. This distinction is precisely the one we draw here. See n. 21, *infra.*

20 Given that the verdict was based in part on out-of-state conduct that was lawful where it occurred, we need not consider whether one State may properly attempt to change a tortfeasor's *unlawful* conduct in another State.

21 Of course, the fact that the Alabama Supreme Court correctly concluded that it was error for the jury to use the number of sales in other States as a multiplier in computing the amount of its punitive sanction does not mean that evidence describing out-of-state transactions is irrelevant in a case of this kind. To the contrary, as we stated in *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 462, n. 28, 113 S.Ct. 2711, 2722, n. 28, 125 L.Ed.2d 366 (1993), such evidence may be relevant to the determination of the degree of reprehensibility of the defendant's conduct.

22 See *Miller v. Florida,* 482 U.S. 423, 107 S.Ct. 2446, 96 L.Ed.2d 351 (1987) (*Ex Post Facto* Clause violated by retroactive imposition of revised sentencing guidelines that provided longer sentence for defendant's crime); *Bouie v. City of Columbia,* 378

U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894 (1964) (retroactive application of new construction of statute violated due process); *id.*, at 350–355, 84 S.Ct., at 1701–1703 (citing cases); *Lankford v. Idaho,* 500 U.S. 110, 111 S.Ct. 1723, 114 L.Ed.2d 173 (1991) (due process violated because defendant and his counsel did not have adequate notice that judge might impose death sentence). The strict constitutional safeguards afforded to criminal defendants are not applicable to civil cases, but the basic protection against "judgments without notice" afforded by the Due Process Clause, *Shaffer v. Heitner,* 433 U.S. 186, 217, 97 S.Ct. 2569, 2587, 53 L.Ed.2d 683 (1977) (STEVENS, J., concurring in judgment), is implicated by civil *penalties.*

23 "The flagrancy of the misconduct is thought to be the primary consideration in determining the amount of punitive damages." Owen, A Punitive Damages Overview: Functions, Problems and Reform, 39 Vill. L.Rev. 363, 387 (1994).

24 The principle that punishment should fit the crime "is deeply rooted and frequently repeated in common-law jurisprudence." *Solem v. Helm,* 463 U.S. 277, 284, 103 S.Ct. 3001, 3006, 77 L.Ed.2d 637 (1983). See *Burkett v. Lanata,* 15 La. Ann. 337, 339 (1860) (punitive damages should be "commensurate to the nature of the offence"); *Blanchard v. Morris,* 15 Ill. 35, 36 (1853) ("[W]e cannot say [the exemplary damages] are excessive under the circumstances; for the proofs show that threats, violence, and imprisonment, were accompanied by mental fear, torture, and agony of mind"); *Louisville & Northern R. Co. v. Brown,* 127 Ky. 732, 749, 106 S.W. 795, 799 (1908) ("We are not aware of any case in which the court has sustained a verdict as large as this one unless the injuries were permanent").

25 *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 22, 111 S.Ct. 1032, 1045, 113 L.Ed.2d 1 (1991).

26 The dissenters also recognized that "TXO's conduct was clearly wrongful, calculated, and improper...." *TXO,* 509 U.S., at 482, 113 S.Ct., at 2733 (opinion of O'CONNOR, J.).

27 In *Jeter v. M & M Dodge, Inc.,* 634 So.2d 1383 (La.App.1994), a Louisiana Court of Appeals suggested that the Louisiana disclosure statute functions as a safe harbor. Finding that the cost of repairing presale damage to the plaintiff's car exceeded the statutory disclosure threshold, the court held that the disclosure statute did not provide a defense to the action. *Id.,* at 1384.

During the pendency of this litigation, Alabama enacted a disclosure statute which defines "material" damage to a new car as damage requiring repairs costing in excess of 3 percent of suggested retail price or $500, whichever is greater. Ala.Code § 8–19–5(22) (1993). After its decision in this case, the Alabama Supreme Court stated in dicta that the remedies available under this section of its Deceptive Trade Practices Act did not displace or alter pre-existing remedies available under either the common law or other statutes. *Hines v. Riverside Chevrolet–Olds, Inc.,* 655 So.2d 909, 917, n. 2 (1994). It refused, however, to "recognize, or impose on automobile manufacturers, a general duty to disclose every repair of damage, however slight, incurred during the manufacturing process." *Id.,* at 921. Instead, it held that whether a defendant has a duty to disclose is a question of fact "for the jury to determine." *Id.,* at 918. In reaching that conclusion it overruled two earlier decisions that seemed to indicate that as a matter of law there was no disclosure obligation in cases comparable to this one. *Id.,* at 920 (overruling *Century 21–Reeves Realty, Inc. v. McConnell Cadillac, Inc.,* 626 So.2d 1273 (1993), and *Cobb v. Southeast Toyota Distributors, Inc.,* 569 So.2d 395 (1990)).

28 See also Ariz.Rev.Stat. Ann. § 28–1304.03 (1989) ("[I]f disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale"); Ind.Code § 9–23–4–5 (1993) (providing that "[r]epaired damage to a customer-ordered new motor vehicle not exceeding four percent (4%) of the manufacturer's suggested retail price does not need to be disclosed at the time of sale"); N.C. Gen.Stat. § 20–305.1(e) (1993) (requiring disclosure of repairs costing more than 5 percent of suggested retail price and prohibiting revocation or rescission of sales contract on the basis of less costly repairs); Okla. Stat., Tit. 47, § 1112.1 (1991) (defining "material" damage to a car as damage requiring repairs costing in excess of 3 percent of suggested retail price or $500, whichever is greater).

29 Restatement (Second) of Torts § 538 (1977); W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 108 (5th ed.1984).

30 The Alabama Supreme Court has held that a car may be considered "new" as a matter of law even if its finish contains minor cosmetic flaws. *Wilburn v. Larry Savage Chevrolet, Inc.,* 477 So.2d 384 (1985). We note also that at trial respondent only introduced evidence of undisclosed paint damage to new cars repaired at a cost of $300 or more. This decision suggests that respondent believed that the jury might consider some repairs too *de minimis* to warrant disclosure.

31 Before the verdict in this case, BMW had changed its policy with respect to Alabama and two other States. Five days after the jury award, BMW altered its nationwide policy to one of full disclosure.

32 See, *e.g., Grant v. McDonogh,* 7 La. Ann. 447, 448 (1852) ("[E]xemplary damages allowed should bear some proportion to the real damage sustained"); *Saunders v. Mullen,* 66 Iowa 728, 729, 24 N.W. 529 (1885) ("When the actual damages are so small, the amount allowed as exemplary damages should not be so large"); *Flannery v. Baltimore & Ohio R. Co.,* 15 D.C. 111, 125 (1885) (when punitive damages award "is out of all proportion to the injuries received, we feel it our duty to interfere"); *Houston & Texas*

Central R. Co. v. Nichols, 9 Am. & Eng. R.R. Cas. 361, 365 (Tex.1882) ("Exemplary damages, when allowed, should bear proportion to the actual damages sustained"); *McCarthy v. Niskern,* 22 Minn. 90, 91–92 (1875) (punitive damages "enormously in excess of what may justly be regarded as compensation" for the injury must be set aside "to prevent injustice").

33 Owen, *supra* n. 23, at 368, and n. 23. One English statute, for example, provides that officers arresting persons out of their jurisdiction shall pay double damages. 3 Edw., I., ch. 35. Another directs that in an action for forcible entry or detainer, the plaintiff shall recover treble damages. 8 Hen. VI, ch. 9, § 6.

Present-day federal law allows or mandates imposition of multiple damages for a wide assortment of offenses, including violations of the antitrust laws, see § 4 of the Clayton Act, 38 Stat. 731, as amended, 15 U.S.C. § 15, and the Racketeer Influenced and Corrupt Organizations Act, see 18 U.S.C. § 1964, and certain breaches of the trademark laws, see § 35 of the Trademark Act of 1946, 60 Stat. 439, as amended, 15 U.S.C. § 1117, and the patent laws, see 66 Stat. 813, 35 U.S.C. § 284.

34 "While petitioner stresses the shocking disparity between the punitive award and the compensatory award, that shock dissipates when one considers the potential loss to respondents, in terms of reduced or eliminated royalties payments, had petitioner succeeded in its illicit scheme. Thus, even if the actual value of the 'potential harm' to respondents is not between $5 million and $8.3 million, but is closer to $4 million, or $2 million, or even $1 million, the disparity between the punitive award and the potential harm does not, in our view, 'jar one's constitutional sensibilities.' " *TXO,* 509 U.S., at 462, 113 S.Ct., at 2722, quoting *Haslip,* 499 U.S., at 18, 111 S.Ct., at 1043.

35 Even assuming each repainted BMW suffers a diminution in value of approximately $4,000, the award is 35 times greater than the total damages of all 14 Alabama consumers who purchased repainted BMW's.

36 The ratio here is also dramatically greater than any award that would be permissible under the statutes and proposed statutes summarized in the appendix to Justice GINSBURG's dissenting opinion. *Post,* at 1618–1620.

37 Conceivably the Alabama Supreme Court's selection of a 500-to-1 ratio was an application of Justice SCALIA's identification of one possible reading of the plurality opinion in *TXO:* Any future due process challenge to a punitive damages award could be disposed of with the simple observation that "this is no worse than *TXO.*" 509 U.S., at 472, 113 S.Ct., at 2727 (SCALIA, J., concurring in judgment). As we explain in the text, this award is significantly worse than the award in *TXO.*

38 Although the Court did not address the size of the punitive damages award in *Silkwood v. Kerr–McGee Corp.,* 464 U.S. 238, 104 S.Ct. 615, 78 L.Ed.2d 443 (1984), the dissenters commented on its excessive character, noting that the "$10 million [punitive damages award] that the jury imposed is 100 times greater than the maximum fine that may be imposed ... for a single violation of federal standards" and "more than 10 times greater than the largest single fine that the Commission has ever imposed." *Id.,* at 263, 104 S.Ct., at 629 (BLACKMUN, J., dissenting). In *New York Times Co. v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), the Court observed that the punitive award for libel was "one thousand times greater than the maximum fine provided by the Alabama criminal statute," and concluded that the "fear of damage awards under a rule such as that invoked by the Alabama courts here may be markedly more inhibiting than the fear of prosecution under a criminal statute." *Id.,* at 277, 84 S.Ct., at 724.

39 Ala.Code § 8–19–11(b) (1993).

40 See, *e.g.,* Ark.Code Ann. § 23–112–309(b) (1992) (up to $5,000 for violation of state Motor Vehicle Commission Act that would allow suspension of dealer's license; up to $10,000 for violation of Act that would allow revocation of dealer's license); Fla. Stat. § 320.27(12) (1992) (up to $1,000); Ga.Code Ann. §§ 40–1–5(g), 10–1–397(a) (1994 and Supp.1996) (up to $2,000 administratively; up to $5,000 in superior court); Ind.Code § 9–23–6–4 (1993) ($50 to $1,000); N.H.Rev.Stat. Ann. §§ 357–C:15, 651:2 (1995 and Supp.1995) (corporate fine of up to $20,000); N.Y. Gen. Bus. Law § 396–p(6) (McKinney Supp.1995) ($50 for first offense; $250 for subsequent offenses).

41 Justice GINSBURG expresses concern that we are "the *only* federal court policing" this limit. *Post,* at 1617. The small number of punitive damages questions that we have reviewed in recent years, together with the fact that this is the first case in decades in which we have found that a punitive damages award exceeds the constitutional limit, indicates that this concern is at best premature. In any event, this consideration surely does not justify an abdication of our responsibility to enforce constitutional protections in an extraordinary case such as this one.

* The Alabama Supreme Court said:

"[W]e must conclude that the award of punitive damages was based in large part on conduct that happened in other jurisdictions.... Although evidence of similar acts in other jurisdictions is admissible as to the issue of 'pattern and practice' of such acts, ... this jury could not use the number of similar acts that a defendant has committed in other jurisdictions as a multiplier when determining the *dollar amount* of a punitive damages award. Such evidence may not be considered in setting the size of the civil penalty, because neither the jury nor the trial court had evidence before it showing in which states the conduct was wrongful." 646 So.2d 619, 627 (1994).

1 According to trial testimony, in late May 1992, BMW began redirecting refinished cars out of Alabama and two other States. Tr. 964. The jury returned its verdict in favor of Gore on June 12, 1992. Five days later, BMW changed its national policy to one of full disclosure. *Id.*, at 1026.

2 See, *e.g.*, Brief for Law and Economics Scholars et al. as *Amici Curiae* 6–28 (economic analysis demonstrates that Alabama Supreme Court's judgment was not unreasonable); W. Landes & R. Posner, Economic Structure of Tort Law 160–163 (1987) (economic model for assessing propriety of punitive damages in certain tort cases).

3 See *ante*, at 1595 ("In our federal system, States necessarily have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases and in any particular case."); *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 278, 109 S.Ct. 2909, 2921–2922, 106 L.Ed.2d 219 (1989) (In any "lawsuit where state law provides the basis of decision, the propriety of an award of punitive damages for the conduct in question, and the factors the jury may consider in determining their amount, are questions of state law."); *Silkwood v. Kerr–McGee Corp.*, 464 U.S. 238, 255, 104 S.Ct. 615, 625, 78 L.Ed.2d 443 (1984) ("Punitive damages have long been a part of traditional state tort law.").

4 Petitioner invites the Court to address the question of multiple punitive damages awards stemming from the same alleged misconduct. The Court does not take up the invitation, and rightly so, in my judgment, for this case does not present the issue. For three reasons, the question of multiple awards is hypothetical, not real, in Gore's case. First, the punitive damages award in favor of Gore is the only such award yet entered against BMW on account of its nondisclosure policy.

Second, BMW did not raise the issue of multiple punitives below. Indeed, in its reply brief before the Alabama Supreme Court, BMW stated: "Gore confuses our point about fairness among plaintiffs. He treats this point as a premature 'multiple punitive damages' argument. But, contrary to Gore's contention, we are not asking this Court to hold, as a matter of law, that a 'constitutional violation occurs when a defendant is subjected to punitive damages in two separate cases.' " Reply Brief for Appellant in Nos. 1920324, 1920325 (Ala.Sup.Ct.), p. 48 (internal citations omitted).

Third, if BMW had already suffered a punitive damages judgment in connection with its nondisclosure policy, Alabama's highest court presumably would have taken that fact into consideration. In reviewing punitive damages awards attacked as excessive, the Alabama Supreme Court considers whether "there have been other civil actions against the same defendant, based on the same conduct." 646 So.2d 619, 624 (1994) (quoting *Green Oil Co. v. Hornsby*, 539 So.2d 218, 224 (Ala.1989)). If so, "this should be taken into account in mitigation of the punitive damages award." 646 So.2d, at 624. The Alabama court accordingly observed that Gore's counsel had filed 24 other actions against BMW in Alabama and Georgia, but that no other punitive damages award had so far resulted. *Id.*, at 626.

5 Justice BREYER's concurring opinion offers nothing more solid. Under *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991), he acknowledges, Alabama's standards for punitive damages, standing alone, do not violate due process. *Ante*, at 1605. But they "invit[e] the kind of scrutiny the Court has given the particular verdict before us." *Ibid.* Pursuing that invitation, Justice BREYER concludes that, matching the particular facts of this case to Alabama's "legitimate punitive damages objectives," *ante*, at 1609, the award was " 'gross[ly] excessiv[e],' " *ibid.* The exercise is engaging, but ultimately tells us only this: too big will be judged unfair. What is the Court's measure of too big? Not a cap of the kind a legislature could order, or a mathematical test this Court can divine and impose. Too big is, in the end, the amount at which five Members of the Court bridle.

6 See, *e.g.*, *Distinctive Printing and Packaging Co. v. Cox*, 232 Neb. 846, 857, 443 N.W.2d 566, 574 (1989) (*per curiam*) ("[P]unitive, vindictive, or exemplary damages contravene Neb. Const. art. VII, § 5, and thus are not allowed in this jurisdiction."); *Santana v. Registrars of Voters of Worcester*, 398 Mass. 862, 502 N.E.2d 132 (1986) (punitive damages are not permitted, unless expressly authorized by statute); *Fisher Properties, Inc. v. Arden–Mayfair, Inc.*, 106 Wash.2d 826, 852, 726 P.2d 8, 23 (1986) (en banc) (same).

In *Life Ins. Co. of Georgia v. Johnson*, No. 1940357 (Nov. 17, 1995), the Alabama Supreme Court revised the State's regime for assessments of punitive damages. Henceforth, trials will be bifurcated. Initially, juries will be instructed to determine liability and the amount of compensatory damages, if any; also, the jury is to return a special verdict on the question whether a punitive damages award is warranted. If the jury answers yes to the punitive damages question, the trial will be resumed for the presentation of evidence and instructions relevant to the amount appropriate to award as punitive damages.

After postverdict trial court review and subsequent appellate review, the amount of the final punitive damages judgment will be paid into the trial court. The trial court will then order payment of litigation expenses, including the plaintiff's attorney's fees, and instruct the clerk to divide the remainder equally between the plaintiff and the State General Fund. The provision for payment to the State General Fund is applicable to all judgments not yet satisfied, and therefore would apply to the judgment in Gore's case.

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

2

127 S.Ct. 1057
Supreme Court of the United States

PHILIP MORRIS USA, Petitioner,
v.
Mayola WILLIAMS, Personal Representative of Estate of Jesse D. Williams, Deceased.

No. 05–1256. | Argued Oct. 31, 2006. | Decided Feb. 20, 2007.

Synopsis

Background: Heavy cigarette smoker's widow brought state lawsuit against cigarette manufacturer for negligence and deceit and seeking compensatory and punitive damages for smoking-related lung cancer death of her husband. After jury found in widow's favor, the Circuit Court, Multnomah County, Anna J. Brown, J., reduced punitive damages award from $79.5 million to $32 million, and award of noneconomic damages from $800,000 to $500,000. Widow appealed, and manufacturer cross-appealed. The Court of Appeals of Oregon reinstated jury's verdict and affirmed on cross-appeal, 182 Or.App. 44, 48 P.3d 824, and adhered to its ruling on reconsideration, 183 Or.App. 192, 51 P.3d 670, but the United States Supreme Court granted certiorari, vacated Court of Appeals decision, and remanded for reconsideration in light of intervening opinion, 540 U.S. 801, 124 S.Ct. 56, 157 L.Ed.2d 12. On remand, the Court of Appeals reversed and remanded and affirmed on cross-appeal, 193 Or.App. 527, 92 P.3d 126, and after allowing review the Supreme Court of Oregon, W. Michael Gillette, J., 340 Or. 35, 127 P.3d 1165, affirmed. Certiorari was granted in part.

Holdings: The Supreme Court, Justice Breyer, held that:
[1] punitive damages award based in part on jury's desire to punish defendant for harming nonparties amounted to a taking of property from defendant without due process, and
[2] because Oregon Supreme Court's application of the correct legal standard might lead to new trial or change in level of punitive damages award, United States Supreme Court would not consider question of whether the existing award was constitutionally "grossly excessive."

Vacated and remanded.

Justice Stevens filed dissenting opinion.

Justice Thomas filed dissenting opinion.

Justice Ginsburg filed dissenting opinion in which Justices Scalia and Thomas joined.

West Headnotes (10)

[1] **Constitutional Law**
⚿Punitive damages

Punitive damages award based in part on jury's desire to punish defendant for harming nonparties amounts to a taking of property from defendant without due process. U.S.C.A. Const.Amend. 14.

85 Cases that cite this headnote

[2] **Damages**
⚿Nature and Theory of Damages Additional to Compensation

Punitive damages may properly be imposed to further State's legitimate interests in punishing unlawful conduct and deterring its repetition.

10 Cases that cite this headnote

[3] **Damages**
⚿Measure and Amount of Exemplary Damages

Unless State insists upon proper standards that will cabin jury's discretionary authority, its punitive damages system may deprive defendant of fair notice of severity of penalty that State may impose, may threaten arbitrary punishments, and, where amounts are sufficiently large, may impose one State's or one jury's policy choice upon neighboring States with different public policies.

2 Cases that cite this headnote

[4] **Damages**
⚯Measure and Amount of Exemplary Damages

Constitution imposes certain limits, in respect both to procedures for awarding punitive damages and to amounts forbidden as grossly excessive.

6 Cases that cite this headnote

[5] **Constitutional Law**
⚯Punitive damages

Due Process Clause forbids state's use of punitive damages award to punish defendant for injury that it inflicts upon nonparties or those whom they directly represent, i.e., injury that it inflicts upon those who are essentially strangers to the litigation; defendant threatened with punishment for injuring a nonparty victim has no opportunity to defend against the charge, and permitting punishment for injuring nonparty victim would add near standardless dimension to the punitive damages equation and magnify fundamental due process concerns of arbitrariness, uncertainty and lack of notice. U.S.C.A. Const.Amend. 14.

62 Cases that cite this headnote

[6] **Damages**
⚯Nature and Theory of Damages Additional to Compensation

Punitive damages awards may not be used for the purpose of punishing a defendant for harming others.

4 Cases that cite this headnote

[7] **Damages**
⚯Nature of act or conduct
Damages
⚯Actual damage or compensatory damages; relationship and ratio

While evidence of actual harm to nonparties can help to show that conduct that harmed plaintiff also posed a substantial risk of harm to general public and so was particularly reprehensible, jury may not go further and use punitive damages verdict to punish defendant directly on account of harms it is alleged to have visited on nonparties.

82 Cases that cite this headnote

[8] **Damages**
⚯Measure and Amount of Exemplary Damages

Given risks of unfairness, it is constitutionally important for court to provide assurance that jury awarding punitive damages will ask the right question, and given the risks of arbitrariness, concern for adequate notice, and risk that punitive damages awards can in practice impose one State's or one jury's policies upon other States, it is particularly important that States avoid procedure that unnecessarily deprives juries of proper legal guidance.

4 Cases that cite this headnote

[9] **Damages**
⚯Nature of act or conduct
Damages
⚯Actual damage or compensatory damages; relationship and ratio

State courts cannot authorize procedures that create an unreasonable and unnecessary risk of confusion which leads jury, in awarding punitive damages, to impermissibly punish defendant for harm caused others rather than permissibly taking that conduct into account in determining reprehensibility.

38 Cases that cite this headnote

[10] **Federal Courts**
⊶Scope and Extent of Review

Because Oregon Supreme Court's application of correct legal standard in state negligence and deceit lawsuit might lead to new trial or change in level of punitive damages award, United States Supreme Court would not consider question of whether the existing award was constitutionally "grossly excessive."

4 Cases that cite this headnote

****1058 *346 *Syllabus**

In this state negligence and deceit lawsuit, a jury found that Jesse Williams' death was caused by smoking and that petitioner Philip Morris, which manufactured the cigarettes he favored, knowingly and falsely led him to believe that smoking was safe. In respect to deceit, it awarded $821,000 in compensatory damages and $79.5 million in punitive damages to respondent, the personal representative of Williams' estate. The trial court reduced the latter award, but it was restored by the Oregon Court of Appeals. The State Supreme Court rejected Philip Morris' arguments that the trial court should have instructed the jury that it could not punish Philip Morris for injury to persons not before the court, and that the roughly 100–to–1 ratio the $79.5 million award bore to ****1059** the compensatory damages amount indicated a "grossly excessive" punitive award.

Held:

1. A punitive damages award based in part on a jury's desire to punish a defendant for harming nonparties amounts to a taking of property from the defendant without due process. Pp. 1060–1065.

(a) While "[p]unitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition," *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 568, 116 S.Ct. 1589, 134 L.Ed.2d 809, unless a State insists upon proper standards to cabin the jury's discretionary authority, its punitive damages system may deprive a defendant of "fair notice ... of the severity of the penalty that a State may impose," *id.,* at 574, 116 S.Ct. 1589; may threaten "arbitrary punishments," *State Farm Mut. Automobile Ins. Co. v. Campbell,* 538 U.S. 408, 416, 123 S.Ct. 1513, 155 L.Ed.2d 585; and, where the amounts are sufficiently large, may impose one State's (or one jury's) "policy choice" upon "neighboring States" with different public policies, *BMW, supra,* at 571–572, 116 S.Ct. 1589. Thus, the Constitution imposes limits on both the procedures for awarding punitive damages and amounts forbidden as "grossly excessive." See *Honda Motor Co. v. Oberg,* 512 U.S. 415, 432, 114 S.Ct. 2331, 129 L.Ed.2d 336. The Constitution's procedural limitations are considered here. Pp. 1062–1063.

(b) The Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury inflicted on strangers to the litigation. For one thing, a defendant threatened with punishment for ***347** such injury has no opportunity to defend against the charge. See *Lindsey v. Normet,* 405 U.S. 56, 66, 92 S.Ct. 862, 31 L.Ed.2d 36. For another, permitting such punishment would add a near standardless dimension to the punitive damages equation and magnify the fundamental due process concerns of this Court's pertinent cases—arbitrariness, uncertainty, and lack of notice. Finally, the Court finds no authority to support using punitive damages awards to punish a defendant for harming others. *BMW, supra,* at 568, n. 11, 116 S.Ct. 1589, distinguished. Respondent argues that showing harm to others is relevant to a different part of the punitive damages constitutional equation, namely, reprehensibility. While evidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk to the general public, and so was particularly reprehensible, a jury may not go further and use a punitive damages verdict to punish a defendant directly for harms to those nonparties. Given the risks of unfairness, it is constitutionally important for a court to provide assurance that a jury is asking the right question; and given the risks of arbitrariness, inadequate notice, and imposing one State's policies on other States, it is particularly important that States avoid procedure that unnecessarily deprives juries of proper legal guidance. Pp. 1062–1064.

(c) The Oregon Supreme Court's opinion focused on more than reprehensibility. In rejecting Philip Morris' claim that the Constitution prohibits using punitive damages to punish a defendant for harm to nonparties, it made three statements. The first—that this Court held in *State Farm* only that a jury could not base an award on dissimilar acts of a defendant—was correct, but this Court now explicitly holds that a jury may not punish for harm to others. This Court disagrees with the second statement—that if a jury cannot punish for the conduct, there is no reason to consider it—since the Due Process Clause prohibits a State's inflicting ****1060** punishment for harm to nonparties, but permits a jury to consider such harm in determining reprehensibility. The third statement—that it is unclear how a jury could consider

harm to nonparties and then withhold that consideration from the punishment calculus—raises the practical problem of how to know whether a jury punished the defendant for causing injury to others rather than just took such injury into account under the rubric of reprehensibility. The answer is that state courts cannot authorize procedures that create an unreasonable and unnecessary risk of any such confusion occurring. Although States have some flexibility in determining what kind of procedures to implement to protect against that risk, federal constitutional law obligates them to provide some form of protection where the risk of misunderstanding is a significant one. Pp. 1064–1065.

***348** 2. Because the Oregon Supreme Court's application of the correct standard may lead to a new trial, or a change in the level of the punitive damages award, this Court will not consider the question whether the award is constitutionally "grossly excessive." P. 1065.

340 Or. 35, 127 P.3d 1165, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C.J., and KENNEDY, SOUTER, and ALITO, JJ., joined. STEVENS, J., *post*, p. 1065, and THOMAS, J., *post*, p. 1067, filed dissenting opinions. GINSBURG, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined, *post*, p. 1068.

Attorneys and Law Firms

Andrew L. Frey, New York, NY, for Petitioner.

Robert S. Peck, Washington, DC, for Respondent.

Kenneth S. Geller, Evan M. Tager, Nickolai G. Levin, Mayer, Brown, Rowe & Maw LLP, Washington, DC, William F. Gary, Sharon A. Rudnick, Harrang Long Gary Rudnick P.C., Eugene, OR, Andrew L. Frey, Andrew H. Schapiro, Lauren R. Goldman, Daniel B. Kirschner, Mayer, Brown, Rowe & Maw LLP, New York, NY, Murray R. Garnick, Arnold & Porter LLP, Washington, DC, for Petitioner.

James S. Coon, Raymond F. Thomas, Swanson Thomas & Coon, Portland, OR, William A. Gaylord, Gaylord Eyerman Bradley, P.C., Portland, OR, Robert S. Peck, Ned Miltenberg Center for Constitutional Litigation, P.C., Washington, DC, Charles S. Tauman, Charles S. Tauman, P.C., Portland, OR, Maureen Leonard, Portland, OR, Kathryn H. Clarke, Portland, OR, for Respondent.

Opinion

Justice BREYER delivered the opinion of the Court.

[1] ***349** The question we address today concerns a large state-court punitive damages award. We are asked whether the Constitution's Due Process Clause permits a jury to base that award in part upon its desire to *punish* the defendant for harming persons who are not before the court (*e.g.*, victims whom the parties do not represent). We hold that such an award would amount to a taking of "property" from the defendant without due process.

I

This lawsuit arises out of the death of Jesse Williams, a heavy cigarette smoker. Respondent, Williams' widow, represents his estate in this state lawsuit for negligence and deceit against Philip Morris, the manufacturer of Marlboro, the brand that Williams favored. A jury found that ****1061** Williams' death was caused by smoking; that Williams smoked in significant part because he thought it was safe to do so; ***350** and that Philip Morris knowingly and falsely led him to believe that this was so. The jury ultimately found that Philip Morris was negligent (as was Williams) and that Philip Morris had engaged in deceit. In respect to deceit, the claim at issue here, it awarded compensatory damages of about $821,000 (about $21,000 economic and $800,000 noneconomic) along with $79.5 million in punitive damages.

The trial judge subsequently found the $79.5 million punitive damages award "excessive," see, *e.g.*, *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), and reduced it to $32 million. Both sides appealed. The Oregon Court of Appeals rejected Philip Morris' arguments and restored the $79.5 million jury award. Subsequently, Philip Morris sought review in the Oregon Supreme Court (which denied review) and then here. We remanded the case in light of *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003). 540 U.S. 801, 124 S.Ct. 56, 157 L.Ed.2d 12 (2003). The Oregon Court of Appeals adhered to its original views. And Philip Morris sought, and this time obtained, review in the Oregon Supreme Court.

Philip Morris then made two arguments relevant here. First, it said that the trial court should have accepted, but did not accept, a proposed "punitive damages" instruction that specified the jury could not seek to punish Philip Morris for injury to other persons not before the court. In particular, Philip Morris pointed out that the plaintiff's attorney had told the jury to "think about how many other

Jesse Williams in the last 40 years in the State of Oregon there have been. ... In Oregon, how many people do we see outside, driving home ... smoking cigarettes? ... [C]igarettes ... are going to kill ten [of every hundred]. [And] the market share of Marlboros [*i.e.,* Philip Morris] is one-third [*i.e.,* one of every three killed]." App. 197a, 199a. In light of this argument, Philip Morris asked the trial court to tell the jury that "you may consider the extent of harm suffered by others in determining what [the] reasonable relationship is" between ***351** any punitive award and "the harm caused to Jesse Williams" by Philip Morris' misconduct, "[but] you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own in which other juries can resolve their claims ...." *Id.,* at 280a. The judge rejected this proposal and instead told the jury that "[p]unitive damages are awarded against a defendant to punish misconduct and to deter misconduct," and "are not intended to compensate the plaintiff or anyone else for damages caused by the defendant's conduct." *Id.,* at 283a. In Philip Morris' view, the result was a significant likelihood that a portion of the $79.5 million award represented punishment for its having harmed others, a punishment that the Due Process Clause would here forbid.

Second, Philip Morris pointed to the roughly 100–to–1 ratio the $79.5 million punitive damages award bears to $821,000 in compensatory damages. Philip Morris noted that this Court in *BMW* emphasized the constitutional need for punitive damages awards to reflect (1) the "reprehensibility" of the defendant's conduct, (2) a "reasonable relationship" to the harm the plaintiff (or related victim) suffered, and (3) the presence (or absence) of "sanctions," *e.g.,* criminal penalties, that state law provided for comparable conduct, 517 U.S., at 575–585, 116 S.Ct. 1589. And in *State Farm,* this Court said that the longstanding historical practice of setting punitive damages at two, three, or four times ****1062** the size of compensatory damages, while "not binding," is "instructive," and that "[s]ingle-digit multipliers are more likely to comport with due process." 538 U.S., at 425, 123 S.Ct. 1513. Philip Morris claimed that, in light of this case law, the punitive award was "grossly excessive." See *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 458, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993) (plurality opinion); *BMW, supra,* at 574–575, 116 S.Ct. 1589; *State Farm, supra,* at 416–417, 123 S.Ct. 1513.

The Oregon Supreme Court rejected these and other Philip Morris arguments. In particular, it rejected Philip Morris' claim that the Constitution prohibits a state jury ***352** "from using punitive damages to punish a defendant for harm to nonparties." 340 Or. 35, 51–52, 127 P.3d 1165, 1175 (2006). And in light of Philip Morris' reprehensible conduct, it found that the $79.5 million award was not "grossly excessive." *Id.,* at 63–64, 127 P.3d, at 1181–1182.

Philip Morris then sought certiorari. It asked us to consider, among other things, (1) its claim that Oregon had unconstitutionally permitted it to be punished for harming nonparty victims; and (2) whether Oregon had in effect disregarded "the constitutional requirement that punitive damages be reasonably related to the plaintiff's harm." Pet. for Cert. (I). We granted certiorari limited to these two questions.

For reasons we shall set forth, we consider only the first of these questions. We vacate the Oregon Supreme Court's judgment, and we remand the case for further proceedings.

II

[2] **[3]** This Court has long made clear that "[p]unitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition." *BMW, supra,* at 568, 116 S.Ct. 1589. See also *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 350, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974); *Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 266–267, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981); *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 22, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991). At the same time, we have emphasized the need to avoid an arbitrary determination of an award's amount. Unless a State insists upon proper standards that will cabin the jury's discretionary authority, its punitive damages system may deprive a defendant of "fair notice ... of the severity of the penalty that a State may impose," *BMW, supra,* at 574, 116 S.Ct. 1589; it may threaten "arbitrary punishments," *i.e.,* punishments that reflect not an "application of law" but "a decisionmaker's caprice," *State Farm, supra,* at 416, 418, 123 S.Ct. 1513 (internal quotation marks omitted); and, where the amounts are sufficiently large, it may impose one State's (or one jury's) "policy choice," say, as to the conditions ***353** under which (or even whether) certain products can be sold, upon "neighboring States" with different public policies, *BMW, supra,* at 571–572, 116 S.Ct. 1589.

[4] For these and similar reasons, this Court has found that the Constitution imposes certain limits, in respect both to procedures for awarding punitive damages and to amounts forbidden as "grossly excessive." See *Honda Motor Co. v. Oberg,* 512 U.S. 415, 432, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994) (requiring judicial review of the size of punitive awards); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 443, 121

S.Ct. 1678, 149 L.Ed.2d 674 (2001) (review must be *de novo*); *BMW, supra,* at 574–585, 116 S.Ct. 1589 (excessiveness decision depends upon the reprehensibility of the defendant's **1063 conduct, whether the award bears a reasonable relationship to the actual and potential harm caused by the defendant to the plaintiff, and the difference between the award and sanctions "authorized or imposed in comparable cases"); *State Farm, supra,* at 425, 123 S.Ct. 1513 (excessiveness more likely where ratio exceeds single digits). Because we shall not decide whether the award here at issue is "grossly excessive," we need now only consider the Constitution's procedural limitations.

III

[5] In our view, the Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, *i.e.,* injury that it inflicts upon those who are, essentially, strangers to the litigation. For one thing, the Due Process Clause prohibits a State from punishing an individual without first providing that individual with "an opportunity to present every available defense." *Lindsey v. Normet,* 405 U.S. 56, 66, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972) (internal quotation marks omitted). Yet a defendant threatened with punishment for injuring a nonparty victim has no opportunity to defend against the charge, by showing, for example in a case such as this, that the other victim was not entitled to damages *354 because he or she knew that smoking was dangerous or did not rely upon the defendant's statements to the contrary.

For another, to permit punishment for injuring a nonparty victim would add a near standardless dimension to the punitive damages equation. How many such victims are there? How seriously were they injured? Under what circumstances did injury occur? The trial will not likely answer such questions as to nonparty victims. The jury will be left to speculate. And the fundamental due process concerns to which our punitive damages cases refer—risks of arbitrariness, uncertainty, and lack of notice—will be magnified. *State Farm,* 538 U.S., at 416, 418, 123 S.Ct. 1513; *BMW,* 517 U.S., at 574, 116 S.Ct. 1589.

[6] Finally, we can find no authority supporting the use of punitive damages awards for the purpose of punishing a defendant for harming others. We have said that it may be appropriate to consider the reasonableness of a punitive damages award in light of the *potential* harm the defendant's conduct could have caused. But we have made clear that the potential harm at issue was harm potentially caused *the plaintiff.* See *State Farm, supra,* at 424, 123 S.Ct. 1513 ("[W]e have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, *to the plaintiff* and the punitive damages award" (emphasis added)). See also *TXO,* 509 U.S., at 460–462, 113 S.Ct. 2711 (plurality opinion) (using same kind of comparison as basis for finding a punitive award not unconstitutionally excessive). We did use the term "error-free" (in *BMW*) to describe a lower court punitive damages calculation that likely included harm to others in the equation. 517 U.S., at 568, n. 11, 116 S.Ct. 1589. But context makes clear that the term "error-free" in the *BMW* footnote referred to errors relevant to the case at hand. Although elsewhere in *BMW* we noted that there was no suggestion that the plaintiff "or any other BMW purchaser was threatened with any additional potential harm" by the defendant's conduct, we did not purport to decide the question of harm to others. *Id.,* at 582, 116 S.Ct. 1589. Rather, the opinion appears to have left the question open.

[7] *355 Respondent argues that she is free to show harm to other victims because it is relevant to a different part of the **1064 punitive damages constitutional equation, namely, reprehensibility. That is to say, harm to others shows more reprehensible conduct. Philip Morris, in turn, does not deny that a plaintiff may show harm to others in order to demonstrate reprehensibility. Nor do we. Evidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk of harm to the general public, and so was particularly reprehensible—although counsel may argue in a particular case that conduct resulting in no harm to others nonetheless posed a grave risk to the public, or the converse. Yet for the reasons given above, a jury may not go further than this and use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties.

[8] Given the risks of unfairness that we have mentioned, it is constitutionally important for a court to provide assurance that the jury will ask the right question, not the wrong one. And given the risks of arbitrariness, the concern for adequate notice, and the risk that punitive damages awards can, in practice, impose one State's (or one jury's) policies (*e.g.,* banning cigarettes) upon other States—all of which accompany awards that, today, may be many times the size of such awards in the 18th and 19th centuries, see *id.,* at 594–595, 116 S.Ct. 1589 (BREYER, J., concurring)—it is particularly important that States avoid procedure that unnecessarily deprives juries of proper legal guidance. We therefore conclude that the Due Process Clause requires States to provide

assurance that juries are not asking the wrong question, *i.e.*, seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers.

IV

Respondent suggests as well that the Oregon Supreme Court, in essence, agreed with us, that it did not authorize punitive damages awards based upon punishment for harm caused to nonparties. We concede that one might read some ***356** portions of the Oregon Supreme Court's opinion as focusing only upon reprehensibility. See, *e.g.*, 340 Ore., at 51, 127 P.3d, at 1175 ("[T]he jury could consider whether Williams and his misfortune were merely exemplars of the harm that Philip Morris was prepared to inflict on the smoking public at large"). But the Oregon court's opinion elsewhere makes clear that that court held more than these few phrases might suggest.

The instruction that Philip Morris said the trial court should have given distinguishes between using harm to others as part of the "reasonable relationship" equation (which it would allow) and using it directly as a basis for punishment. The instruction asked the trial court to tell the jury that "you *may* consider the extent of harm suffered by others *in determining what [the] reasonable relationship is*" between Philip Morris' punishable misconduct and harm caused to Jesse Williams, "*[but] you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own* in which other juries can resolve their claims ...." App. 280a (emphasis added). And as the Oregon Supreme Court explicitly recognized, Philip Morris argued that the Constitution "prohibits the state, acting through a civil jury, from using punitive damages to punish a defendant for harm to nonparties." 340 Ore., at 51–52, 127 P.3d, at 1175.

The court rejected that claim. In doing so, it pointed out (1) that this Court in *State Farm* had held only that a jury could not base its award upon "dissimilar" acts of a defendant. 340 Ore., at 52–53, 127 P.3d, at 1175–1176. It added (2) that "[i]f ****1065** a jury cannot punish for the conduct, then it is difficult to see why it may consider it at all." *Id.*, at 52, n. 3, 127 P.3d, at 1175, n. 3. And it stated (3) that "[i]t is unclear to us how a jury could 'consider' harm to others, yet withhold that consideration from the punishment calculus." *Ibid.*

The Oregon court's first statement is correct. We did not previously hold explicitly that a jury may not punish for the ***357** harm caused others. But we do so hold now. We do not agree with the Oregon court's second statement. We have explained why we believe the Due Process Clause prohibits a State's inflicting punishment for harm caused strangers to the litigation. At the same time we recognize that conduct that risks harm to many is likely more reprehensible than conduct that risks harm to only a few. And a jury consequently may take this fact into account in determining reprehensibility. Cf., *e.g.*, *Witte v. United States*, 515 U.S. 389, 400, 115 S.Ct. 2199, 132 L.Ed.2d 351 (1995) (recidivism statutes taking into account a criminal defendant's other misconduct do not impose an " 'additional penalty for the earlier crimes,' but instead ... 'a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one' " (quoting *Gryger v. Burke*, 334 U.S. 728, 732, 68 S.Ct. 1256, 92 L.Ed. 1683 (1948))).

[9] The Oregon court's third statement raises a practical problem. How can we know whether a jury, in taking account of harm caused others under the rubric of reprehensibility, also seeks to *punish* the defendant for having caused injury to others? Our answer is that state courts cannot authorize procedures that create an unreasonable and unnecessary risk of any such confusion occurring. In particular, we believe that where the risk of that misunderstanding is a significant one—because, for instance, of the sort of evidence that was introduced at trial or the kinds of argument the plaintiff made to the jury—a court, upon request, must protect against that risk. Although the States have some flexibility to determine what *kind* of procedures they will implement, federal constitutional law obligates them to provide *some* form of protection in appropriate cases.

V

[10] As the preceding discussion makes clear, we believe that the Oregon Supreme Court applied the wrong constitutional standard when considering Philip Morris' appeal. We remand this case so that the Oregon Supreme Court can apply ***358** the standard we have set forth. Because the application of this standard may lead to the need for a new trial, or a change in the level of the punitive damages award, we shall not consider whether the award is constitutionally "grossly excessive." We vacate the Oregon Supreme Court's judgment and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice STEVENS, dissenting.

The Due Process Clause of the Fourteenth Amendment imposes both substantive and procedural constraints on the power of the States to impose punitive damages on tortfeasors. See *State Farm Mut. Automobile Ins. Co. v. Campbell,* 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001); *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996); *Honda Motor Co. v. Oberg,* 512 U.S. 415, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994); ****1066** *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993). I remain firmly convinced that the cases announcing those constraints were correctly decided. In my view the Oregon Supreme Court faithfully applied the reasoning in those opinions to the egregious facts disclosed by this record. I agree with Justice GINSBURG's explanation of why no procedural error even arguably justifying reversal occurred at the trial in this case. See *post,* p. 1068–1069 (dissenting opinion).

Of greater importance to me, however, is the Court's imposition of a novel limit on the State's power to impose punishment in civil litigation. Unlike the Court, I see no reason why an interest in punishing a wrongdoer "for harming persons who are not before the court," *ante,* at 1060, should not be taken into consideration when assessing the appropriate sanction for reprehensible conduct.

Whereas compensatory damages are measured by the harm the defendant has caused the plaintiff, punitive damages are a sanction for the public harm the defendant's conduct ***359** has caused or threatened. There is little difference between the justification for a criminal sanction, such as a fine or a term of imprisonment, and an award of punitive damages. See *Cooper Industries,* 532 U.S., at 432, 121 S.Ct. 1678. In our early history either type of sanction might have been imposed in litigation prosecuted by a private citizen. See *Steel Co. v. Citizens for Better Environment,* 523 U.S. 83, 127–128, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (STEVENS, J., concurring in judgment). And while in neither context would the sanction typically include a pecuniary award measured by the harm that the conduct had caused to any third parties, in both contexts the harm to third parties would surely be a relevant factor to consider in evaluating the reprehensibility of the defendant's wrongdoing. We have never held otherwise.

In the case before us, evidence attesting to the possible harm the defendant's extensive deceitful conduct caused other Oregonians was properly presented to the jury. No evidence was offered to establish an appropriate measure of damages to compensate such third parties for their injuries, and no one argued that the punitive damages award would serve any such purpose. To award compensatory damages to remedy such third-party harm might well constitute a taking of property from the defendant without due process, cf. *ante,* at 1060. But a punitive damages award, instead of serving a compensatory purpose, serves the entirely different purposes of retribution and deterrence that underlie every criminal sanction. *State Farm,* 538 U.S., at 416, 123 S.Ct. 1513. This justification for punitive damages has even greater salience when, as in this case, see Ore.Rev.Stat. § 31.735(1) (2003), the award is payable in whole or in part to the State rather than to the private litigant.1

***360** While apparently recognizing the novelty of its holding, *ante,* at 1065, the majority relies on a distinction between taking ****1067** third-party harm into account in order to assess the reprehensibility of the defendant's conduct—which is permitted—and doing so in order to punish the defendant "directly"—which is forbidden. *Ante,* at 1064. This nuance eludes me. When a jury increases a punitive damages award because injuries to third parties enhanced the reprehensibility of the defendant's conduct, the jury is by definition punishing the defendant—directly—for third-party harm.2 A murderer who kills his victim by throwing a bomb that injures dozens of bystanders should be punished more severely than one who harms no one other than his intended victim. Similarly, there is no reason why the measure of the appropriate punishment for engaging in a campaign of deceit in distributing a poisonous and addictive substance to thousands of cigarette smokers statewide should not include consideration of the harm to those "bystanders" as well as the harm to the individual plaintiff. The Court endorses a contrary conclusion without providing us with any reasoned justification.

It is far too late in the day to argue that the Due Process Clause merely guarantees fair procedure and imposes no ***361** substantive limits on a State's lawmaking power. See, *e.g., Moore v. East Cleveland,* 431 U.S. 494, 544, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (White, J., dissenting); *Poe v. Ullman,* 367 U.S. 497, 540–541, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961) (Harlan, J., dissenting); *Whitney v. California,* 274 U.S. 357, 373, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring). It remains true, however, that the Court should be "reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins v. Harker Heights,* 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992). Judicial restraint counsels us to "exercise the utmost care whenever we are asked to break new ground in this field." *Ibid.* Today the majority ignores that sound advice when

it announces its new rule of substantive law.

Essentially for the reasons stated in the opinion of the Supreme Court of Oregon, I would affirm its judgment.

Justice THOMAS, dissenting.

I join Justice GINSBURG's dissent in full. I write separately to reiterate my view that " 'the Constitution does not constrain the size of punitive damages awards.' " *State Farm Mut. Automobile Ins. Co. v. Campbell,* 538 U.S. 408, 429–430, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) (THOMAS, J., dissenting) (quoting *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 443, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) (THOMAS, J., concurring)). It matters not that the Court styles today's holding as "procedural" because the "procedural" rule is simply a confusing implementation of the substantive due process regime this Court has created for punitive damages. See *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 26–27, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991) (SCALIA, J., concurring in judgment) ("In 1868 ... punitive damages were undoubtedly an established part of the American common law of torts. It is ... clear that ****1068** no particular procedures were deemed necessary to circumscribe a jury's discretion regarding the award of such damages, or their amount"). Today's opinion proves once again that this Court's punitive damages jurisprudence is "insusceptible of principled application." *BMW of North* ***362** *America, Inc. v. Gore,* 517 U.S. 559, 599, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996) (SCALIA, J., joined by THOMAS, J., dissenting).

Justice GINSBURG, with whom Justice SCALIA and Justice THOMAS join, dissenting.

The purpose of punitive damages, it can hardly be denied, is not to compensate, but to punish. Punish for what? Not for harm actually caused "strangers to the litigation," *ante,* at 1063, the Court states, but for the *reprehensibility* of defendant's conduct, *ante,* at 1063–1064. "[C]onduct that risks harm to many," the Court observes, "is likely more reprehensible than conduct that risks harm to only a few." *Ante,* at 1065. The Court thus conveys that, when punitive damages are at issue, a jury is properly instructed to consider the extent of harm suffered by others as a measure of reprehensibility, but not to mete out punishment for injuries in fact sustained by nonparties. *Ante,* at 1063–1065. The Oregon courts did not rule otherwise. They have endeavored to follow our decisions, most recently in *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), and *State Farm Mut. Automobile Ins. Co. v. Campbell,* 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and have "deprive[d] [no jury] of proper legal guidance," *ante,* at 1064. Vacation of the Oregon Supreme Court's judgment, I am convinced, is unwarranted.

The right question regarding reprehensibility, the Court acknowledges, *ante,* at 1064, would train on "the harm that Philip Morris was prepared to inflict on the smoking public at large." *Ibid.* (quoting 340 Or. 35, 51, 127 P.3d 1165, 1175 (2006)). See also *id.*, at 55, 127 P.3d, at 1177 ("[T]he jury, *in assessing the reprehensibility of Philip Morris's actions,* could consider evidence of similar harm to other Oregonians caused (or threatened) by the same conduct." (emphasis added)). The Court identifies no evidence introduced and no charge delivered inconsistent with that inquiry.

The Court's order vacating the Oregon Supreme Court's judgment is all the more inexplicable considering that Philip ***363** Morris did not preserve any objection to the charges in fact delivered to the jury, to the evidence introduced at trial, or to opposing counsel's argument. The sole objection Philip Morris preserved was to the trial court's refusal to give defendant's requested charge number 34. See *id.,* at 54, 127 P.3d, at 1176. The proposed instruction read in pertinent part:

> "If you determine that some amount of punitive damages should be imposed on the defendant, it will then be your task to set an amount that is appropriate. This should be such amount as you believe is necessary to achieve the objectives of deterrence and punishment. While there is no set formula to be applied in reaching an appropriate amount, I will now advise you of some of the factors that you may wish to consider in this connection.
>
> "(1) The size of any punishment should bear a reasonable relationship to the harm caused to Jesse Williams by the defendant's punishable misconduct. Although you may consider the extent of harm suffered by others in determining what that reasonable relationship is, you are not to punish the defendant for the impact of its alleged misconduct on other ****1069** persons, who may bring lawsuits of their own in which other juries can resolve their claims and award punitive damages for those harms, as such other juries see fit.
>
> .....
>
> "(2) The size of the punishment may appropriately reflect the degree of reprehensibility of the defendant's conduct—that is, how far the defendant has departed

from accepted societal norms of conduct." App. 280a.

Under that charge, just what use could the jury properly make of "the extent of harm suffered by others"? The answer slips from my grasp. A judge seeking to enlighten rather than confuse surely would resist delivering the requested charge.

***364** The Court ventures no opinion on the propriety of the charge proposed by Philip Morris, though Philip Morris preserved no other objection to the trial proceedings. Rather than addressing the one objection Philip Morris properly preserved, the Court reaches outside the bounds of the case as postured when the trial court entered its judgment. I would accord more respectful treatment to the proceedings and dispositions of state courts that sought diligently to adhere to our changing, less than crystalline precedent.

* * *

For the reasons stated, and in light of the abundant evidence of "the potential harm [Philip Morris'] conduct could have caused," *ante,* at 1063 (emphasis deleted), I would affirm the decision of the Oregon Supreme Court.

Parallel Citations

127 S.Ct. 1057, 166 L.Ed.2d 940, 75 BNA USLW 4101, Prod.Liab.Rep. (CCH) P 17,676, 07 Cal. Daily Op. Serv. 1754, 20 Fla. L. Weekly Fed. S 80

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 The Court's holding in *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989), distinguished, for the purposes of appellate review under the Excessive Fines Clause of the Eighth Amendment, between criminal sanctions and civil fines awarded entirely to the plaintiff. The fact that part of the award in this case is payable to the State lends further support to my conclusion that it should be treated as the functional equivalent of a criminal sanction. See *id.,* at 263–264, 109 S.Ct. 2909. I continue to agree with Justice O'Connor and those scholars who have concluded that the Excessive Fines Clause is applicable to punitive damages awards regardless of who receives the ultimate payout. See *id.,* at 286–299, 109 S.Ct. 2909 (opinion concurring in part and dissenting in part).

2 It is no answer to refer, as the majority does, to recidivism statutes. *Ante,* at 1065. In that context, we have distinguished between taking prior crimes into account as an aggravating factor in penalizing the conduct before the court versus doing so to punish for the earlier crimes. *Ibid.* But if enhancing a penalty for a present crime because of prior conduct that has already been punished is permissible, it is certainly proper to enhance a penalty because the conduct before the court, which has never been punished, injured multiple victims.

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

3

123 S.Ct. 1513
Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Petitioner,
v.
Inez Preece CAMPBELL and Matthew C. Barneck, special administrator and personal representative of the Estate of Curtis B. Campbell.

No. 01-1289. | Argued Dec. 11, 2002. | Decided April 7, 2003.

Insureds brought action against automobile liability insurer to recover for bad-faith failure to settle within the policy limits, fraud, and intentional infliction of emotional distress. Following remand from the Court of Appeals of Utah, 840 P.2d 130, the Third District Court, Salt Lake County, William B. Bohling, J., entered judgment on jury verdict in favor of insureds, but remitted punitive and compensatory damages. Appeal and cross-appeal were taken. The Supreme Court of Utah, 65 P.3d 1134, Durham, J., reinstated jury's punitive damage award. Certiorari was granted. The United States Supreme Court, Justice Kennedy, held that award of $145 million in punitive damages on $1 million compensatory judgment violated due process.

Reversed and remanded.

Justice Scalia, Justice Thomas, and Justice Ginsburg filed dissenting opinions.

West Headnotes (20)

[1] **Damages**
⚿Nature and theory of compensation

Compensatory damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. Restatement (Second) of Torts § 903.

17 Cases that cite this headnote

[2] **Damages**
⚿Nature and Theory of Damages Additional to Compensation

Punitive damages are aimed at deterrence and retribution.

28 Cases that cite this headnote

[3] **Damages**
⚿Injuries for Which Exemplary Damages May Be Awarded
Damages
⚿Constitutional limitations on amount in general

While States possess discretion over the imposition of punitive damages, there are procedural and substantive constitutional limitations on these awards.

9 Cases that cite this headnote

[4] **Constitutional Law**
⚿Penalties, fines, and sanctions in general

The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor; the reason is that elementary notions of fairness enshrined in constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a state may impose. U.S.C.A. Const.Amend. 14.

67 Cases that cite this headnote

[5] **Damages**
⚿Constitutional limitations on amount in general

To the extent an award of punitive damages is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation

of property.

39 Cases that cite this headnote

[6] **Federal Courts**
⊶Nature of Decisions or Questions Involved

Exacting appellate review ensures that an award of punitive damages is based upon an application of law, rather than a decisionmaker's caprice.

34 Cases that cite this headnote

[7] **Constitutional Law**
⊶Punitive damages
Insurance
⊶Punitive damages

A jury's punitive damage award of $145 million for an automobile liability insurer's bad-faith failure to settle for the policy limits, where the compensatory damages were $1 million, was neither reasonable nor proportionate to the wrong committed and, therefore, violated the due process clause; harm was economic rather than physical, jury was allowed to award punitive damages to punish and deter conduct that occurred out-of-state and bore no relation to the insureds' harm, and punitive damages, to extent that they were for distress caused by outrage and humiliation, were duplicative of compensatory damages. U.S.C.A. Const.Amend. 14.

735 Cases that cite this headnote

[8] **Damages**
⊶Nature of act or conduct

The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.

198 Cases that cite this headnote

[9] **Damages**
⊶Grounds for Exemplary Damages

It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.

157 Cases that cite this headnote

[10] **States**
⊶Relations Among States Under Constitution of United States

A State cannot punish a defendant for conduct that may have been lawful where it occurred.

13 Cases that cite this headnote

[11] **Damages**
⊶Acts punishable as crimes

As a general rule, a State does not have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction.

19 Cases that cite this headnote

[12] **Damages**
⊶Intent, malice, or motive of defendant

Lawful out-of-state conduct may be probative in a civil action when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious, but that conduct must have a nexus to the specific harm suffered by the plaintiff.

64 Cases that cite this headnote

[13] **Damages**
⚷Exemplary Damages

A jury in a civil tort action must be instructed that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred.

20 Cases that cite this headnote

[14] **States**
⚷Relations Among States Under Constitution of United States

A basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction.

10 Cases that cite this headnote

[15] **Damages**
⚷Grounds for Exemplary Damages

A defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages.

10 Cases that cite this headnote

[16] **Damages**
⚷Grounds for Exemplary Damages

Although a recidivist may be punished more severely than a first offender, in the context of civil actions, courts must ensure that the conduct in question replicates the prior transgressions.

4 Cases that cite this headnote

[17] **Constitutional Law**
⚷Punitive damages

For purposes of determining whether an award of punitive damages is excessive, an award that exceeds a single-digit ratio between punitive and compensatory damages may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages. U.S.C.A. Const.Amend. 14.

829 Cases that cite this headnote

[18] **Damages**
⚷Measure and Amount of Exemplary Damages
Damages
⚷Actual damage or compensatory damages; relationship and ratio

In awarding punitive damages, courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered.

352 Cases that cite this headnote

[19] **Damages**
⚷Wealth of defendant
Damages
⚷Constitutional limitations on amount in general

The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award.

28 Cases that cite this headnote

[20] **Damages**
⚷Acts punishable as crimes

Punitive damages are not a substitute for the criminal process, and the remote possibility of a criminal sanction does not automatically sustain a punitive damages award.

5 Cases that cite this headnote

1514 *Syllabus

Although investigators and witnesses concluded that Curtis Campbell caused an **1515 accident in which one person was killed and another permanently disabled, his insurer, petitioner State Farm Mutual Automobile Insurance Company (State Farm), contested liability, declined to settle the ensuing claims for the $50,000 policy limit, ignored its own investigators' advice, and took the case to trial, assuring Campbell and his wife that they had no liability for the accident, that State Farm would represent their interests, and that they did not need separate counsel. In fact, a Utah jury returned a judgment for over three times the policy limit, and State Farm refused to appeal. The Utah Supreme Court denied Campbell's own appeal, and State Farm paid the entire judgment. The Campbells then sued State Farm for bad faith, fraud, and intentional infliction of emotional distress. The trial court's initial ruling granting State Farm summary judgment was reversed on appeal. On remand, the court denied State Farm's motion to exclude evidence of dissimilar out-of-state conduct. In the first phase of a bifurcated trial, the jury found unreasonable State Farm's decision not to settle. Before the second phase, this Court refused, in *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809, to sustain a $2 million punitive damages award which accompanied a $4,000 compensatory damages award. The trial court denied State Farm's renewed motion to exclude dissimilar out-of-state conduct evidence. In the second phase, which addressed, *inter alia,* compensatory and punitive damages, evidence was introduced that pertained to State Farm's business practices in numerous States but bore no relation to the type of claims underlying the Campbells' complaint. The jury awarded the Campbells $2.6 million in compensatory damages and $145 million in punitive damages, which the trial court reduced to $1 million and $25 million respectively. Applying *Gore,* the Utah Supreme Court reinstated the $145 million punitive damages award.

Held: A punitive damages award of $145 million, where full compensatory damages are $1 million, is excessive and violates the Due Process Clause of the Fourteenth Amendment. Pp. 1519-1526.

(a) Compensatory damages are intended to redress a plaintiff's concrete loss, while punitive damages are aimed at the different purposes *409 of deterrence and retribution. The Due Process Clause prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor. *E.g., Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 433, 121 S.Ct. 1678, 149 L.Ed.2d 674. Punitive damages awards serve the same purpose as criminal penalties. However, because civil defendants are not accorded the protections afforded criminal defendants, punitive damages pose an acute danger of arbitrary deprivation of property, which is heightened when the decisionmaker is presented with evidence having little bearing on the amount that should be awarded. Thus, this Court has instructed courts reviewing punitive damages to consider (1) the degree of reprehensibility of the defendant's misconduct, (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Gore, supra,* at 575, 116 S.Ct. 1589. A trial court's application of these guideposts is subject to *de novo* review. *Cooper Industries, supra,* at 424, 121 S.Ct. 1678. Pp. 1519-1521.

(b) Under *Gore's* guideposts, this case is neither close nor difficult. Pp. 1521-1526.

(1) To determine a defendant's reprehensibility-the most important indicium of a punitive damages award's reasonableness-a court must consider whether: the harm was physical rather than economic; **1516 the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the conduct involved repeated actions or was an isolated incident; and the harm resulted from intentional malice, trickery, or deceit, or mere accident. *Gore,* 517 U.S., at 576-577, 116 S.Ct. 1589. It should be presumed that a plaintiff has been made whole by compensatory damages, so punitive damages should be awarded only if the defendant's culpability is so reprehensible to warrant the imposition of further sanctions to achieve punishment or deterrence. *Id.,* at 575, 116 S.Ct. 1589. In this case, State Farm's handling of the claims against the Campbells merits no praise, but a more modest punishment could have satisfied the State's legitimate objectives. Instead, this case was used as a platform to expose, and punish, the perceived deficiencies of State Farm's operations throughout the country. However, a State cannot punish a defendant for conduct that may have been lawful where it occurred, *id.,* at 572, 116 S.Ct. 1589. Nor does the State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of its jurisdiction. The Campbells argue that such evidence was

used merely to demonstrate, generally, State Farm's motives against its insured. Lawful out-of-state conduct may be probative when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious, but that conduct must have a nexus to ***410** the specific harm suffered by the plaintiff. More fundamentally, in relying on such evidence, the Utah courts awarded punitive damages to punish and deter conduct that bore no relation to the Campbells' harm. Due process does not permit courts to adjudicate the merits of other parties' hypothetical claims under the guise of the reprehensibility analysis. Punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct, for nonparties are not normally bound by another plaintiff's judgment. For the same reasons, the Utah Supreme Court's decision cannot be justified on the grounds that State Farm was a recidivist. To justify punishment based upon recidivism, courts must ensure the conduct in question replicates the prior transgressions. There is scant evidence of repeated misconduct of the sort that injured the Campbells, and a review of the decisions below does not convince this Court that State Farm was only punished for its actions toward the Campbells. Because the Campbells have shown no conduct similar to that which harmed them, the only relevant conduct to the reprehensibility analysis is that which harmed them. Pp. 1521-1524.

(2) With regard to the second *Gore* guidepost, the Court has been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award; but, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process. See, *e.g.,* 517 U.S., at 581, 116 S.Ct. 1589. Single-digit multipliers are more likely to comport with due process, while still achieving the State's deterrence and retribution goals, than are awards with 145-to-1 ratios, as in this case. Because there are no rigid benchmarks, ratios greater than those that this Court has previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages, *id.,* at 582, 116 S.Ct. 1589, but when compensatory damages are substantial, then an even lesser ratio can reach the outermost limit of the due process guarantee. Here, there is a presumption against an award with a 145-to-1 ratio; the $1 million compensatory award for a year and a half of emotional distress was substantial; and the distress caused by outrage and humiliation the Campbells suffered is likely a component of both the compensatory and punitive damages awards. The Utah Supreme Court sought to justify the massive award based on premises bearing no relation to ****1517** the award's reasonableness or proportionality to the harm. Pp. 1524-1526.

(3) The Court need not dwell on the third guidepost. The most relevant civil sanction under Utah state law for the wrong done to the Campbells appears to be a $10,000 fine for an act of grand fraud, which ***411** is dwarfed by the $145 million punitive damages award. The Utah Supreme Court's references to a broad fraudulent scheme drawn from out-of-state and dissimilar conduct evidence were insufficient to justify this amount. P. 1526.

(c) Applying *Gore's* guideposts to the facts here, especially in light of the substantial compensatory damages award, likely would justify a punitive damages award at or near the compensatory damages amount. The Utah courts should resolve in the first instance the proper punitive damages calculation under the principles discussed here. P. 1526.

65 P.3d 1134, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined. SCALIA, J., *post,* p. 1526, THOMAS, J., *post,* p. 1526, and GINSBURG, J., *post,* p. 1527, filed dissenting opinions.

Attorneys and Law Firms

Shelia L. Birnbaum, New York City, for petitioner.

Laurence H. Tribe, Cambridge, MA, for respondents.

Sheila L. Birnbaum, Barbara Wrubel, Douglas W. Dunham, Ellen P. Quackenbos, Skadden, Arps, Slate, Meagher & Flom, LLP, New York City, for Petitioner.

L. Rich Humpherys, Roger P. Christensen, Karra J. Porter, Christensen & Jensen, Salt Lake City, UT, Laurence H. Tribe, Kenneth Chesebro, Cambridge, MA, Jonathan S. Massey, Jonathan S. Massey, P.C., Washington, D.C., for Respondents

Opinion

***412** Justice KENNEDY delivered the opinion of the Court.

We address once again the measure of punishment, by means of punitive damages, a State may impose upon a defendant in a civil case. The question is whether, in the circumstances we shall recount, an award of $145 million in punitive damages, where full compensatory damages are $1 million, is excessive and in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

I

In 1981, Curtis Campbell (Campbell) was driving with his wife, Inez Preece Campbell, in Cache County, Utah. He decided to pass six vans traveling ahead of them on a two-lane highway. Todd Ospital was driving a small car approaching from the opposite direction. To avoid a head-on collision with Campbell, who by then was driving on the wrong side of the highway and toward oncoming traffic, Ospital swerved onto the shoulder, lost control of his automobile, and collided *413 with a vehicle driven by Robert G. Slusher. Ospital was killed, and Slusher was rendered permanently disabled. The Campbells escaped unscathed.

In the ensuing wrongful death and tort action, Campbell insisted he was not at fault. Early investigations did support differing conclusions as to who caused the accident, but "a consensus was reached early on by the investigators and witnesses that Mr. Campbell's unsafe pass had indeed caused the crash." **1518 65 P.3d 1134, 1141 (Utah 2001). Campbell's insurance company, petitioner State Farm Mutual Automobile Insurance Company (State Farm), nonetheless decided to contest liability and declined offers by Slusher and Ospital's estate (Ospital) to settle the claims for the policy limit of $50,000 ($25,000 per claimant). State Farm also ignored the advice of one of its own investigators and took the case to trial, assuring the Campbells that "their assets were safe, that they had no liability for the accident, that [State Farm] would represent their interests, and that they did not need to procure separate counsel." *Id.,* at 1142. To the contrary, a jury determined that Campbell was 100 percent at fault, and a judgment was returned for $185,849, far more than the amount offered in settlement.

At first State Farm refused to cover the $135,849 in excess liability. Its counsel made this clear to the Campbells: " 'You may want to put for sale signs on your property to get things moving.' " *Ibid.* Nor was State Farm willing to post a supersedeas bond to allow Campbell to appeal the judgment against him. Campbell obtained his own counsel to appeal the verdict. During the pendency of the appeal, in late 1984, Slusher, Ospital, and the Campbells reached an agreement whereby Slusher and Ospital agreed not to seek satisfaction of their claims against the Campbells. In exchange the Campbells agreed to pursue a bad faith action against State Farm and to be represented by Slusher's and Ospital's attorneys. The Campbells also agreed that Slusher and Ospital would have a right to play a part in all major decisions concerning *414 the bad-faith action. No settlement could be concluded without Slusher's and Ospital's approval, and Slusher and Ospital would receive 90 percent of any verdict against State Farm.

In 1989, the Utah Supreme Court denied Campbell's appeal in the wrongful-death and tort actions. *Slusher v. Ospital,* 777 P.2d 437 (Utah 1989). State Farm then paid the entire judgment, including the amounts in excess of the policy limits. The Campbells nonetheless filed a complaint against State Farm alleging bad faith, fraud, and intentional infliction of emotional distress. The trial court initially granted State Farm's motion for summary judgment because State Farm had paid the excess verdict, but that ruling was reversed on appeal. 840 P.2d 130 (Utah App.1992). On remand State Farm moved *in limine* to exclude evidence of alleged conduct that occurred in unrelated cases outside of Utah, but the trial court denied the motion. At State Farm's request the trial court bifurcated the trial into two phases conducted before different juries. In the first phase the jury determined that State Farm's decision not to settle was unreasonable because there was a substantial likelihood of an excess verdict.

Before the second phase of the action against State Farm we decided *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), and refused to sustain a $2 million punitive damages award which accompanied a verdict of only $4,000 in compensatory damages. Based on that decision, State Farm again moved for the exclusion of evidence of dissimilar out-of-state conduct. App. to Pet. for Cert. 168a-172a. The trial court denied State Farm's motion. *Id.,* at 189a.

The second phase addressed State Farm's liability for fraud and intentional infliction of emotional distress, as well as compensatory and punitive damages. The Utah Supreme Court aptly characterized this phase of the trial:

> "State Farm argued during phase II that its decision to take the case to trial was an 'honest mistake' that did *415 not warrant punitive damages. In contrast, the Campbells introduced evidence that State Farm's decision to take the case to trial was a result of a national scheme to meet corporate fiscal goals by capping payouts on claims company wide. This **1519 scheme was referred to as State Farm's 'Performance, Planning and Review,' or PP & R, policy. To prove the existence of this scheme, the trial court allowed the Campbells to introduce extensive expert testimony regarding fraudulent practices by State Farm in its nation-wide operations. Although State Farm moved prior to phase II of the trial for the exclusion of such

evidence and continued to object to it at trial, the trial court ruled that such evidence was admissible to determine whether State Farm's conduct in the Campbell case was indeed intentional and sufficiently egregious to warrant punitive damages." 65 P.3d, at 1143.

Evidence pertaining to the PP & R policy concerned State Farm's business practices for over 20 years in numerous States. Most of these practices bore no relation to third-party automobile insurance claims, the type of claim underlying the Campbells' complaint against the company. The jury awarded the Campbells $2.6 million in compensatory damages and $145 million in punitive damages, which the trial court reduced to $1 million and $25 million respectively. Both parties appealed.

The Utah Supreme Court sought to apply the three guideposts we identified in *Gore, supra,* at 574-575, 116 S.Ct. 1589, and it reinstated the $145 million punitive damages award. Relying in large part on the extensive evidence concerning the PP & R policy, the court concluded State Farm's conduct was reprehensible. The court also relied upon State Farm's "massive wealth" and on testimony indicating that "State Farm's actions, because of their clandestine nature, will be punished at most in one out of every 50,000 cases as a matter of statistical probability," 65 P.3d, at 1153, and concluded that the ratio ***416** between punitive and compensatory damages was not unwarranted. Finally, the court noted that the punitive damages award was not excessive when compared to various civil and criminal penalties State Farm could have faced, including $10,000 for each act of fraud, the suspension of its license to conduct business in Utah, the disgorgement of profits, and imprisonment. *Id.,* at 1154-1155. We granted certiorari. 535 U.S. 1111, 122 S.Ct. 2326, 153 L.Ed.2d 158 (2002).

II

[1] [2] We recognized in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001), that in our judicial system compensatory and punitive damages, although usually awarded at the same time by the same decisionmaker, serve different purposes. *Id.,* at 432, 121 S.Ct. 1678. Compensatory damages "are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." *Ibid.* (citing Restatement (Second) of Torts § 903, pp. 453-454 (1979)). By contrast, punitive damages serve a broader function; they are aimed at deterrence and retribution. *Cooper Industries, supra,* at 432, 121 S.Ct. 1678; see also *Gore, supra,* at 568, 116 S.Ct. 1589 ("Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition"); *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 19, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991) ("[P]unitive damages are imposed for purposes of retribution and deterrence").

[3] [4] [5] While States possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards. *Cooper Industries, supra; Gore, supra,* at 559, 116 S.Ct. 1589; *Honda Motor Co. v. Oberg,* 512 U.S. 415, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994); *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993); *Haslip, supra.* The Due Process Clause of the Fourteenth Amendment prohibits the imposition of ****1520** grossly excessive or arbitrary punishments on a tortfeasor. *Cooper Industries, supra,* at 433, 121 S.Ct. 1678; *Gore,* 517 U.S., at 562, 116 S.Ct. 1589; see also *id.,* at 587, 116 S.Ct. 1589 (BREYER, J., concurring) ("This constitutional concern, itself ***417** harkening back to the Magna Carta, arises out of the basic unfairness of depriving citizens of life, liberty, or property, through the application, not of law and legal processes, but of arbitrary coercion"). The reason is that "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *Id.,* at 574, 116 S.Ct. 1589; *Cooper Industries, supra,* at 433, 121 S.Ct. 1678 ("Despite the broad discretion that States possess with respect to the imposition of criminal penalties and punitive damages, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution imposes substantive limits on that discretion"). To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property. *Haslip, supra,* at 42, 111 S.Ct. 1032 (O'CONNOR, J., dissenting) ("Punitive damages are a powerful weapon. Imposed wisely and with restraint, they have the potential to advance legitimate state interests. Imposed indiscriminately, however, they have a devastating potential for harm. Regrettably, common-law procedures for awarding punitive damages fall into the latter category").

Although these awards serve the same purposes as criminal penalties, defendants subjected to punitive damages in civil cases have not been accorded the protections applicable in a criminal proceeding. This increases our concerns over the imprecise manner in which punitive damages systems are administered. We

have admonished that "[p]unitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences." *Honda Motor, supra,* at 432, 114 S.Ct. 2331; see also *Haslip, supra,* at 59, 111 S.Ct. 1032 (O'CONNOR, J., dissenting) ("[T]he Due Process Clause ***418** does not permit a State to classify arbitrariness as a virtue. Indeed, the point of due process-of the law in general-is to allow citizens to order their behavior. A State can have no legitimate interest in deliberately making the law so arbitrary that citizens will be unable to avoid punishment based solely upon bias or whim"). Our concerns are heightened when the decisionmaker is presented, as we shall discuss, with evidence that has little bearing as to the amount of punitive damages that should be awarded. Vague instructions, or those that merely inform the jury to avoid "passion or prejudice," App. to Pet. for Cert. 108a-109a, do little to aid the decisionmaker in its task of assigning appropriate weight to evidence that is relevant and evidence that is tangential or only inflammatory.

[6] In light of these concerns, in *Gore, supra,* we instructed courts reviewing punitive damages to consider three guideposts: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Id.,* at 575, 116 S.Ct. 1589. We reiterated the importance of these three guideposts in *Cooper Industries* and mandated appellate courts to conduct *de novo* review of a trial court's application of them to the jury's award. 532 U.S. 424, 121 S.Ct. 1678. Exacting appellate review ensures that an award of punitive damages is based upon an " 'application of law, rather than a decisionmaker's ****1521** caprice.' " *Id.,* at 436, 121 S.Ct. 1678 (quoting *Gore, supra,* at 587, 116 S.Ct. 1589 (BREYER, J., concurring)).

III

[7] Under the principles outlined in *BMW of North America, Inc. v. Gore,* this case is neither close nor difficult. It was error to reinstate the jury's $145 million punitive damages award. We address each guidepost of *Gore* in some detail.

***419 A**

[8] **[9]** "[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Gore,* 517 U.S., at 575, 116 S.Ct. 1589. We have instructed courts to determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident. *Id.,* at 576-577, 116 S.Ct. 1589. The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect. It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *Id.,* at 575, 116 S.Ct. 1589.

Applying these factors in the instant case, we must acknowledge that State Farm's handling of the claims against the Campbells merits no praise. The trial court found that State Farm's employees altered the company's records to make Campbell appear less culpable. State Farm disregarded the overwhelming likelihood of liability and the near-certain probability that, by taking the case to trial, a judgment in excess of the policy limits would be awarded. State Farm amplified the harm by at first assuring the Campbells their assets would be safe from any verdict and by later telling them, postjudgment, to put a for-sale sign on their house. While we do not suggest there was error in awarding punitive damages based upon State Farm's conduct toward the Campbells, a more modest punishment for this ***420** reprehensible conduct could have satisfied the State's legitimate objectives, and the Utah courts should have gone no further.

This case, instead, was used as a platform to expose, and punish, the perceived deficiencies of State Farm's operations throughout the country. The Utah Supreme Court's opinion makes explicit that State Farm was being condemned for its nationwide policies rather than for the conduct directed toward the Campbells. 65 P.3d, at 1143 ("[T]he Campbells introduced evidence that State Farm's decision to take the case to trial was a result of a national scheme to meet corporate fiscal goals by capping payouts on claims company wide"). This was, as well, an explicit rationale of the trial court's decision in approving the

award, though reduced from $145 million to $25 million. App. to Pet. for Cert. 120a ("[T]he Campbells demonstrated, through the testimony of State Farm employees who had worked outside of Utah, and through expert testimony, that this pattern of claims adjustment under the PP & R program was not a local anomaly, but was a consistent, nationwide feature of State Farm's business operations, orchestrated from the highest levels of corporate management").

The Campbells contend that State Farm has only itself to blame for the reliance upon dissimilar and out-of-state conduct evidence. The record does not support **1522 this contention. From their opening statements onward the Campbells framed this case as a chance to rebuke State Farm for its nationwide activities. App. 208 ("You're going to hear evidence that even the insurance commission in Utah and around the country are unwilling or inept at protecting people against abuses"); *id.*, at 242 ("[T]his is a very important case.... [I]t transcends the Campbell file. It involves a nationwide practice. And you, here, are going to be evaluating and assessing, and hopefully requiring State Farm to stand accountable for what it's doing across the country, which is the purpose of punitive damages"). This was a position *421 maintained throughout the litigation. In opposing State Farm's motion to exclude such evidence under *Gore,* the Campbells' counsel convinced the trial court that there was no limitation on the scope of evidence that could be considered under our precedents. App. to Pet. for Cert. 172a ("As I read the case *[Gore],* I was struck with the fact that a clear message in the case ... seems to be that courts in punitive damages cases should receive more evidence, not less. And that the court seems to be inviting an even broader area of evidence than the current rulings of the court would indicate"); *id.*, at 189a (trial court ruling).

[10] **[11]** A State cannot punish a defendant for conduct that may have been lawful where it occurred. *Gore, supra,* at 572, 116 S.Ct. 1589; *Bigelow v. Virginia,* 421 U.S. 809, 824, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975) ("A State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State"); *New York Life Ins. Co. v. Head,* 234 U.S. 149, 161, 34 S.Ct. 879, 58 L.Ed. 1259 (1914) ("[I]t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State ... without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called in question and hence authorities directly dealing with it do not abound"); *Huntington v. Attrill,* 146 U.S. 657, 669, 13 S.Ct. 224, 36 L.Ed. 1123 (1892) ("Laws have no force of themselves beyond the jurisdiction of the State which enacts them, and can have extra-territorial effect only by the comity of other States"). Nor, as a general rule, does a State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction. Any proper adjudication of conduct that occurred outside Utah to other persons would require their inclusion, and, to those parties, the Utah courts, in the usual case, would need *422 to apply the laws of their relevant jurisdiction. *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 821-822, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985).

[12] **[13]** **[14]** Here, the Campbells do not dispute that much of the out-of-state conduct was lawful where it occurred. They argue, however, that such evidence was not the primary basis for the punitive damages award and was relevant to the extent it demonstrated, in a general sense, State Farm's motive against its insured. Brief for Respondents 46-47 ("[E]ven if the practices described by State Farm were not malum in se or malum prohibitum, they became relevant to punitive damages to the extent they were used as tools to implement State Farm's wrongful PP & R policy"). This argument misses the mark. Lawful out-of-state conduct may be probative when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious, but that conduct must have a nexus to the specific harm suffered by the plaintiff. A jury must be instructed, furthermore, that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction **1523 where it occurred. *Gore,* 517 U.S., at 572-573, 116 S.Ct. 1589 (noting that a State "does not have the power ... to punish [a defendant] for conduct that was lawful where it occurred and that had no impact on [the State] or its residents"). A basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction. *Id.*, at 569, 116 S.Ct. 1589 ("[T]he States need not, and in fact do not, provide such protection in a uniform manner").

[15] For a more fundamental reason, however, the Utah courts erred in relying upon this and other evidence: The courts awarded punitive damages to punish and deter conduct that bore no relation to the Campbells' harm. A defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages. *423 A defendant should be punished for the conduct that harmed the plaintiff, not for

being an unsavory individual or business. Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis, but we have no doubt the Utah Supreme Court did that here. 65 P.3d, at 1149 ("Even if the harm to the Campbells can be appropriately characterized as minimal, the trial court's assessment of the situation is on target: 'The harm is minor to the individual but massive in the aggregate' "). Punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains. *Gore, supra,* at 593, 116 S.Ct. 1589 (BREYER, J., concurring) ("Larger damages might also 'double count' by including in the punitive damages award some of the compensatory, or punitive, damages that subsequent plaintiffs would also recover").

[16] The same reasons lead us to conclude the Utah Supreme Court's decision cannot be justified on the grounds that State Farm was a recidivist. Although "[o]ur holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance," *Gore, supra,* at 577, 116 S.Ct. 1589, in the context of civil actions courts must ensure the conduct in question replicates the prior transgressions. *TXO,* 509 U.S., at 462, n. 28, 113 S.Ct. 2711 (noting that courts should look to " 'the existence and frequency of similar past conduct' " (quoting *Haslip,* 499 U.S., at 21-22, 111 S.Ct. 1032)).

The Campbells have identified scant evidence of repeated misconduct of the sort that injured them. Nor does our review of the Utah courts' decisions convince us that State Farm was only punished for its actions toward the Campbells. Although evidence of other acts need not be identical to have relevance in the calculation of punitive damages, the Utah court erred here because evidence pertaining to claims ***424** that had nothing to do with a third-party lawsuit was introduced at length. Other evidence concerning reprehensibility was even more tangential. For example, the Utah Supreme Court criticized State Farm's investigation into the personal life of one of its employees and, in a broader approach, the manner in which State Farm's policies corrupted its employees. 65 P.3d, at 1148, 1150 The Campbells attempt to justify the courts' reliance upon this unrelated testimony on the theory that each dollar of profit made by underpaying a third-party claimant is the same as a dollar made by underpaying a first-party one. Brief for Respondents 45; see also 65 P.3d at 1150 ("State Farm's continuing illicit practice created market disadvantages for other honest insurance companies ****1524** because these practices increased profits. As plaintiffs' expert witnesses established, such wrongfully obtained competitive advantages have the potential to pressure other companies to adopt similar fraudulent tactics, or to force them out of business. Thus, such actions cause distortions throughout the insurance market and ultimately hurt all consumers"). For the reasons already stated, this argument is unconvincing. The reprehensibility guidepost does not permit courts to expand the scope of the case so that a defendant may be punished for any malfeasance, which in this case extended for a 20-year period. In this case, because the Campbells have shown no conduct by State Farm similar to that which harmed them, the conduct that harmed them is the only conduct relevant to the reprehensibility analysis.

B

Turning to the second *Gore* guidepost, we have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award. 517 U.S., at 582, 116 S.Ct. 1589 ("[W]e have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive ***425** award"); *TXO, supra,* at 458, 113 S.Ct. 2711. We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In *Haslip,* in upholding a punitive damages award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. 499 U.S., at 23-24, 111 S.Ct. 1032. We cited that 4-to-1 ratio again in *Gore.* 517 U.S., at 581, 116 S.Ct. 1589. The Court further referenced a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish. *Id.,* at 581, and n. 33, 116 S.Ct. 1589. While these ratios are not binding, they are instructive. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1, *id.,* at 582, 116 S.Ct. 1589, or, in this case, of 145 to 1.

[17] Nonetheless, because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld may

comport with due process where "a particularly egregious act has resulted in only a small amount of economic damages." *Ibid.;* see also *ibid.* (positing that a higher ratio *might* be necessary where "the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine"). The converse is also true, however. When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee. The precise award in any case, of course, must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff.

[18] ***426** In sum, courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered. In the context of this case, we have no doubt that there is a presumption against an award that has a 145-to-1 ratio. The compensatory award in this case was substantial; the Campbells were awarded $1 million for a year and a half of emotional distress. This was complete compensation. The harm arose from a transaction in the economic ****1525** realm, not from some physical assault or trauma; there were no physical injuries; and State Farm paid the excess verdict before the complaint was filed, so the Campbells suffered only minor economic injuries for the 18-month period in which State Farm refused to resolve the claim against them. The compensatory damages for the injury suffered here, moreover, likely were based on a component which was duplicated in the punitive award. Much of the distress was caused by the outrage and humiliation the Campbells suffered at the actions of their insurer; and it is a major role of punitive damages to condemn such conduct. Compensatory damages, however, already contain this punitive element. See Restatement (Second) of Torts § 908, Comment *c,* p. 466 (1977) ("In many cases in which compensatory damages include an amount for emotional distress, such as humiliation or indignation aroused by the defendant's act, there is no clear line of demarcation between punishment and compensation and a verdict for a specified amount frequently includes elements of both").

The Utah Supreme Court sought to justify the massive award by pointing to State Farm's purported failure to report a prior $100 million punitive damages award in Texas to its corporate headquarters; the fact that State Farm's policies have affected numerous Utah consumers; the fact that State Farm will only be punished in one out of every 50,000 cases as a matter of statistical probability; and State Farm's enormous wealth. 65 P.3d, at 1153. Since the Supreme ***427** Court of Utah discussed the Texas award when applying the ratio guidepost, we discuss it here. The Texas award, however, should have been analyzed in the context of the reprehensibility guidepost only. The failure of the company to report the Texas award is out-of-state conduct that, if the conduct were similar, might have had some bearing on the degree of reprehensibility, subject to the limitations we have described. Here, it was dissimilar, and of such marginal relevance that it should have been accorded little or no weight. The award was rendered in a first-party lawsuit; no judgment was entered in the case; and it was later settled for a fraction of the verdict. With respect to the Utah Supreme Court's second justification, the Campbells' inability to direct us to testimony demonstrating harm to the people of Utah (other than those directly involved in this case) indicates that the adverse effect on the State's general population was in fact minor.

[19] The remaining premises for the Utah Supreme Court's decision bear no relation to the award's reasonableness or proportionality to the harm. They are, rather, arguments that seek to defend a departure from well-established constraints on punitive damages. While States enjoy considerable discretion in deducing when punitive damages are warranted, each award must comport with the principles set forth in *Gore.* Here the argument that State Farm will be punished in only the rare case, coupled with reference to its assets (which, of course, are what other insured parties in Utah and other States must rely upon for payment of claims) had little to do with the actual harm sustained by the Campbells. The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award. *Gore,* 517 U.S., at 585, 116 S.Ct. 1589 ("The fact that BMW is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business"); see also *id.,* at 591, 116 S.Ct. 1589 (BREYER, J., concurring) ("[Wealth] provides an open-ended basis for ***428** inflating awards when the defendant is wealthy .... That does not make its use unlawful or inappropriate; it simply means that this factor cannot make up for the failure of other factors, such as 'reprehensibility,' to constrain significantly an award that purports to punish a defendant's conduct"). The principles set forth in *Gore* ****1526** must be implemented with care, to ensure both reasonableness and proportionality.

C

[20] The third guidepost in *Gore* is the disparity between the punitive damages award and the "civil penalties authorized or imposed in comparable cases." *Id.,* at 575, 116 S.Ct. 1589. We note that, in the past, we have also

looked to criminal penalties that could be imposed. *Id.,* at 583, 116 S.Ct. 1589; *Haslip,* 499 U.S., at 23, 111 S.Ct. 1032. The existence of a criminal penalty does have bearing on the seriousness with which a State views the wrongful action. When used to determine the dollar amount of the award, however, the criminal penalty has less utility. Great care must be taken to avoid use of the civil process to assess criminal penalties that can be imposed only after the heightened protections of a criminal trial have been observed, including, of course, its higher standards of proof. Punitive damages are not a substitute for the criminal process, and the remote possibility of a criminal sanction does not automatically sustain a punitive damages award.

Here, we need not dwell long on this guidepost. The most relevant civil sanction under Utah state law for the wrong done to the Campbells appears to be a $10,000 fine for an act of fraud, 65 P.3d, at 1154, an amount dwarfed by the $145 million punitive damages award. The Supreme Court of Utah speculated about the loss of State Farm's business license, the disgorgement of profits, and possible imprisonment, but here again its references were to the broad fraudulent scheme drawn from evidence of out-of-state and dissimilar conduct. This analysis was insufficient to justify the award.

***429 IV**

An application of the *Gore* guideposts to the facts of this case, especially in light of the substantial compensatory damages awarded (a portion of which contained a punitive element), likely would justify a punitive damages award at or near the amount of compensatory damages. The punitive award of $145 million, therefore, was neither reasonable nor proportionate to the wrong committed, and it was an irrational and arbitrary deprivation of the property of the defendant. The proper calculation of punitive damages under the principles we have discussed should be resolved, in the first instance, by the Utah courts.

The judgment of the Utah Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice SCALIA, dissenting.

I adhere to the view expressed in my dissenting opinion in *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 598-99, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), that the Due Process Clause provides no substantive protections against "excessive" or " 'unreasonable' " awards of punitive damages. I am also of the view that the punitive damages jurisprudence which has sprung forth from *BMW v. Gore* is insusceptible of principled application; accordingly, I do not feel justified in giving the case *stare decisis* effect. See *id.,* at 599, 116 S.Ct. 1589. I would affirm the judgment of the Utah Supreme Court.

Justice THOMAS, dissenting.

I would affirm the judgment below because "I continue to believe that the Constitution does not constrain the size of punitive damages awards." *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 443, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) (THOMAS, J., concurring) (citing *BMW of North America,* ***430** *Inc. v. Gore,* 517 U.S. 559, 599, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996) (SCALIA, J., joined by THOMAS, J., dissenting)). Accordingly, I respectfully dissent.

****1527** Justice GINSBURG, dissenting.

Not long ago, this Court was hesitant to impose a federal check on state-court judgments awarding punitive damages. In *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989), the Court held that neither the Excessive Fines Clause of the Eighth Amendment nor federal common law circumscribed awards of punitive damages in civil cases between private parties. *Id.,* at 262-276, 277-280, 109 S.Ct. 2909. Two years later, in *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991), the Court observed that "unlimited jury [or judicial] discretion ... in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities," *id.,* at 18, 111 S.Ct. 1032; the Due Process Clause, the Court suggested, would attend to those sensibilities and guard against unreasonable awards, *id.,* at 17-24, 111 S.Ct. 1032. Nevertheless, the Court upheld a punitive damages award in *Haslip* "more than 4 times the amount of compensatory damages, ... more than 200 times [the plaintiff's] out-of-pocket expenses," and "much in excess of the fine that could be imposed." *Id.,* at 23, 111 S.Ct. 1032. And in *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993), the Court affirmed a state-court award "526 times greater than the actual damages awarded by the jury." *Id.,* at 453, 113 S.Ct. 2711;1 cf.

Browning-Ferris, 492 U.S., at 262, 109 S.Ct. 2909 (ratio of punitive to compensatory damages over 100 to 1).

It was not until 1996, in *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809, that the Court, for the first time, invalidated a state-court punitive damages assessment as unreasonablylarge. ***431** See *id.,* at 599, 116 S.Ct. 1589 (SCALIA, J., dissenting). If our activity in this domain is now "well established," see *ante,* at 1519, 1525, it takes place on ground not long held.

In *Gore,* I stated why I resisted the Court's foray into punitive damages "territory traditionally within the States' domain." 517 U.S., at 612, 116 S.Ct. 1589 (dissenting opinion). I adhere to those views, and note again that, unlike federal habeas corpus review of state-court convictions under 28 U.S.C. § 2254, the Court "work[s] at this business [of checking state courts] alone," unaided by the participation of federal district courts and courts of appeals. 517 U.S., at 613, 116 S.Ct. 1589. It was once recognized that "the laws of the particular State must suffice [to superintend punitive damages awards] until judges or legislators authorized to do so initiate system-wide change." *Haslip,* 499 U.S., at 42, 111 S.Ct. 1032 (KENNEDY, J., concurring in judgment). I would adhere to that traditional view.

I

The large size of the award upheld by the Utah Supreme Court in this case indicates why damages-capping legislation may be altogether fitting and proper. Neither the amount of the award nor the trial record, however, justifies this Court's substitution of its judgment for that of Utah's competent decisionmakers. In this regard, I count it significant that, on the key criterion "reprehensibility," there is a good deal more to the story than the Court's abbreviated account tells.

Ample evidence allowed the jury to find that State Farm's treatment of the Campbells typified its "Performance, Planning and Review" (PP & R) program; implemented by top management in 1979, the program had "the explicit objective of using the claims-adjustment process as a ****1528** profit center." App. to Pet. for Cert. 116a. "[T]he Campbells presented considerable evidence," the trial court noted, documenting "that the PP & R program ... has functioned, and continues to function, as an unlawful scheme ... to deny benefits owed consumers by paying out less than fair value in order to meet ***432** preset, arbitrary payout targets designed to enhance corporate profits." *Id.,* at 118a-119a. That policy, the trial court observed, was encompassing in scope; it "applied equally to the handling of both third-party and first-party claims." *Id.,* at 119a. But cf. *ante,* at 1523-1524, 1525 (suggesting that State Farm's handling of first-party claims has "nothing to do with a third-party lawsuit").

Evidence the jury could credit demonstrated that the PP & R program regularly and adversely affected Utah residents. Ray Summers, "the adjuster who handled the Campbell case and who was a State Farm employee in Utah for almost twenty years," described several methods used by State Farm to deny claimants fair benefits, for example, "falsifying or withholding of evidence in claim files." App. to Pet. for Cert. 121a. A common tactic, Summers recounted, was to "unjustly attac[k] the character, reputation and credibility of a claimant and mak[e] notations to that effect in the claim file to create prejudice in the event the claim ever came before a jury." *Id.,* at 130a (internal quotation marks omitted). State Farm manager Bob Noxon, Summers testified, resorted to a tactic of this order in the Campbell case when he "instruct[ed] Summers to write in the file that Todd Ospital (who was killed in the accident) was speeding because he was on his way to see a pregnant girlfriend." *Ibid.* In truth, "[t]here was no pregnant girlfriend." *Ibid.* Expert testimony noted by the trial court described these tactics as "completely improper." *Ibid.*

The trial court also noted the testimony of two Utah State Farm employees, Felix Jensen and Samantha Bird, both of whom recalled "intolerable" and "recurrent" pressure to reduce payouts below fair value. *Id.,* at 119a (internal quotation marks omitted). When Jensen complained to top managers, he was told to "get out of the kitchen" if he could not take the heat; Bird was told she should be "more of a team player." *Ibid.* (internal quotation marks omitted). At times, Bird said, she "was forced to commit dishonest acts ***433** and to knowingly underpay claims." *Id.,* at 120a. Eventually, Bird quit. *Ibid.* Utah managers superior to Bird, the evidence indicated, were improperly influenced by the PP & R program to encourage insurance underpayments. For example, several documents evaluating the performance of managers Noxon and Brown "contained explicit preset average payout goals." *Ibid.*

Regarding liability for verdicts in excess of policy limits, the trial court referred to a State Farm document titled the "Excess Liability Handbook"; written before the Campbell accident, the handbook instructed adjusters to pad files with "self-serving" documents, and to leave critical items out of files, for example, evaluations of the insured's exposure. *Id.,* at 127a-128a (internal quotation marks omitted). Divisional superintendent Bill Brown

used the handbook to train Utah employees. *Id.*, at 134a. While overseeing the Campbell case, Brown ordered adjuster Summers to change the portions of his report indicating that Mr. Campbell was likely at fault and that the settlement cost was correspondingly high. *Id.*, at 3a. The Campbells' case, according to expert testimony the trial court recited, "was a classic example of State Farm's application of the improper practices taught in the Excess Liability Handbook." *Id.*, at 128a.

The trial court further determined that the jury could find State Farm's policy "deliberately crafted" to prey on consumers who would be unlikely to defend themselves. *Id.*, at 122a. In this regard, the trial court noted the testimony of several former State Farm employees affirming that they were trained to target "the **1529 weakest of the herd"-"the elderly, the poor, and other consumers who are least knowledgeable about their rights and thus most vulnerable to trickery or deceit, or who have little money and hence have no real alternative but to accept an inadequate offer to settle a claim at much less than fair value." *Ibid.* (internal quotation marks omitted).

*434 The Campbells themselves could be placed within the "weakest of the herd" category. The couple appeared economically vulnerable and emotionally fragile. App. 3360a-3361a (Order Denying State Farm's Motion for Judgment NOV and New Trial Regarding Intentional Infliction of Emotional Distress). At the time of State Farm's wrongful conduct, "Mr. Campbell had residuary effects from a stroke and Parkinson's disease." *Id.*, at 3360a.

To further insulate itself from liability, trial evidence indicated, State Farm made "systematic" efforts to destroy internal company documents that might reveal its scheme, App. to Pet. for Cert. 123a, efforts that directly affected the Campbells, *id.*, at 124a. For example, State Farm had "a special historical department that contained a copy of all past manuals on claim-handling practices and the dates on which each section of each manual was changed." *Ibid.* Yet in discovery proceedings, State Farm failed to produce any claim-handling practice manuals for the years relevant to the Campbells' bad-faith case. *Id.*, at 124a-125a.

State Farm's inability to produce the manuals, it appeared from the evidence, was not accidental. Documents retained by former State Farm employee Samantha Bird, as well as Bird's testimony, showed that while the Campbells' case was pending, Janet Cammack, "an in-house attorney sent by top State Farm management, conducted a meeting ... in Utah during which she instructed Utah claims management to search their offices and destroy a wide range of material of the sort that had proved damaging in bad-faith litigation in the past-in particular, old claim-handling manuals, memos, claim school notes, procedure guides and other similar documents." *Id.*, at 125a. "These orders were followed even though at least one meeting participant, Paul Short, was personally aware that these kinds of materials had been requested by the Campbells in this very case." *Ibid.*

Consistent with Bird's testimony, State Farm admitted that it destroyed every single copy of claim-handling manuals *435 on file in its historical department as of 1988, even though these documents could have been preserved at minimal expense. *Ibid.* Fortuitously, the Campbells obtained a copy of the 1979 PP & R manual by subpoena from a former employee. *Id.*, at 132a. Although that manual has been requested in other cases, State Farm has never itself produced the document. *Ibid.*

"As a final, related tactic," the trial court stated, the jury could reasonably find that "in recent years State Farm has gone to extraordinary lengths to stop damaging documents from being created in the first place." *Id.*, at 126a. State Farm kept no records at all on excess verdicts in third-party cases, or on bad-faith claims or attendant verdicts. *Ibid.* State Farm alleged "that it has no record of its punitive damage payments, even though such payments must be reported to the [Internal Revenue Service] and in some states may not be used to justify rate increases." *Ibid.* Regional Vice President Buck Moskalski testified that "he would not report a punitive damage verdict in [the Campbells'] case to higher management, as such reporting was not set out as part of State Farm's management practices." *Ibid.*

State Farm's "wrongful profit and evasion schemes," the trial court underscored, were directly relevant to the Campbells' case, *id.*, at 132a:

> "The record fully supports the conclusion that the bad-faith claim handling that exposed the Campbells to an excess verdict in 1983, and resulted in severe **1530 damages to them, was a product of the unlawful profit scheme that had been put in place by top management at State Farm years earlier. The Campbells presented substantial evidence showing how State Farm's improper insistence on claims-handling employees' reducing their claim payouts ... regardless of the merits of each claim, manifested itself ... in the Utah claims operations during the period when the decisions were made not to offer to settle the Campbell case for the $50,000 policy limits- *436 indeed, not to make any offer to settle at a lower amount. This evidence established that high-level manager Bill Brown was under heavy pressure from the PP & R scheme to control indemnity payouts during the time

> period in question. In particular, when Brown declined to pay the excess verdict against Curtis Campbell, or even post a bond, he had a special need to keep his year-end numbers down, since the State Farm incentive scheme meant that keeping those numbers down was important to helping Brown get a much-desired transfer to Colorado.... There was ample evidence that the concepts taught in the Excess Liability Handbook, including the dishonest alteration and manipulation of claim files and the policy against posting any supersedeas bond for the full amount of an excess verdict, were dutifully carried out in this case.... There was ample basis for the jury to find that everything that had happened to the Campbells-when State Farm repeatedly refused in bad-faith to settle for the $50,000 policy limits and went to trial, and then failed to pay the 'excess' verdict, or at least post a bond, after trial-was a direct application of State Farm's overall profit scheme, operating through Brown and others." *Id.*, at 133a-134a.

State Farm's "policies and practices," the trial evidence thus bore out, were "responsible for the injuries suffered by the Campbells," and the means used to implement those policies could be found "callous, clandestine, fraudulent, and dishonest." *Id.*, at 136a; see *id.*, at 113a (finding "ample evidence" that State Farm's reprehensible corporate policies were responsible for injuring "many other Utah consumers during the past two decades"). The Utah Supreme Court, relying on the trial court's record-based recitations, understandably characterized State Farm's behavior as "egregious and malicious." *Id.*, at 18a.

*437 II

The Court dismisses the evidence describing and documenting State Farm's PP & R policy and practices as essentially irrelevant, bearing "no relation to the Campbells' harm." *Ante,* at 1523; see *ante,* at 1524 ("conduct that harmed [the Campbells] is the only conduct relevant to the reprehensibility analysis"). It is hardly apparent why that should be so. What is infirm about the Campbells' theory that their experience with State Farm exemplifies and reflects an overarching underpayment scheme, one that caused "repeated misconduct of the sort that injured them," *ante,* at 1523? The Court's silence on that score is revealing: Once one recognizes that the Campbells did show "conduct by State Farm similar to that which harmed them," *ante,* at 1524, it becomes impossible to shrink the reprehensibility analysis to this sole case, or to maintain, at odds with the determination of the trial court, see App. to Pet. for Cert. 113a, that "the adverse effect on the State's general population was in fact minor," *ante,* at 1525.

Evidence of out-of-state conduct, the Court acknowledges, may be "probative [even if the conduct is lawful in the State where it occurred] when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious...." *Ante,* at 1522; cf. *ante,* at 1521 (reiterating this Court's instruction that trial courts assess whether "the harm was the result of intentional malice, trickery, **1531 or deceit, or mere accident"). "Other acts" evidence concerning practices both in and out of State was introduced in this case to show just such "deliberateness" and "culpability." The evidence was admissible, the trial court ruled: (1) to document State Farm's "reprehensible" PP & R program; and (2) to "rebut [State Farm's] assertion that [its] actions toward the Campbells were inadvertent errors or mistakes in judgment." App. 3329a (Order Denying Various Motions of State Farm to Exclude Plaintiffs' Evidence). Viewed in this light, there surely was "a nexus" between much of the "other *438 acts" evidence and "the specific harm suffered by [the Campbells]." *Ante,* at 1522.

III

When the Court first ventured to override state-court punitive damages awards, it did so moderately. The Court recalled that "[i]n our federal system, States necessarily have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases and in any particular case." *Gore,* 517 U.S., at 568, 116 S.Ct. 1589. Today's decision exhibits no such respect and restraint. No longer content to accord state-court judgments "a strong presumption of validity," *TXO,* 509 U.S., at 457, 113 S.Ct. 2711, the Court announces that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Ante,* at 1524.2 Moreover, the Court adds, when compensatory damages are substantial, doubling those damages "can reach the outermost limit of the due process guarantee." *Ibid.;* see *ante,* at 1526 ("facts of this case ... likely would justify a punitive damages award at or near the amount of compensatory damages"). In a legislative scheme or a state high court's design to cap punitive damages, the handiwork in setting single-digit and 1-to-1 benchmarks could hardly be questioned; in a judicial decree imposed on the States by this Court under the banner of substantive due process, the numerical controls today's decision installs seem to me boldly out of order.

Supreme Court undisturbed.

* * *

I remain of the view that this Court has no warrant to reform state law governing awards of punitive damages. *439 *Gore,* 517 U.S., at 607, 116 S.Ct. 1589 (GINSBURG, J., dissenting). Even if I were prepared to accept the flexible guides prescribed in *Gore,* I would not join the Court's swift conversion of those guides into instructions that begin to resemble marching orders. For the reasons stated, I would leave the judgment of the Utah

Parallel Citations

123 S.Ct. 1513, 155 L.Ed.2d 585, 71 USLW 4282, 60 Fed. R. Evid. Serv. 1349, Prod.Liab.Rep. (CCH) P 16,805, 03 Cal. Daily Op. Serv. 2948, 2003 Daily Journal D.A.R. 3783, 16 Fla. L. Weekly Fed. S 216, 1 A.L.R. Fed. 2d 739

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 By switching the focus from the ratio of punitive to compensatory damages to the potential loss to the plaintiffs had the defendant succeeded in its illicit scheme, the Court could describe the relevant ratio in *TXO* as 10 to 1. See *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 581, and n. 34, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996).

2 *TXO Production Corp. v. Alliance Resources Corp.,* 509 U.S. 443, 462, n. 8, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993), noted that "[u]nder well-settled law," a defendant's "wrongdoing in other parts of the country" and its "impressive net worth" are factors "typically considered in assessing punitive damages." It remains to be seen whether, or the extent to which, today's decision will unsettle that law.

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

8801185

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
MAY 23 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly Jenn
DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE RE CLAUDIA FRANCIS

Trial Date: 5/21/2012

ARGUMENT

Claudia Francis was the wife of Roderick Francis, an Elder in the North Fremont Congregation. She met Jonathan Kendrick in 1991 through Jehovah's Witnesses, and her husband and Kendrick became good friends. Soon Kendrick began "to hang out at our house." (Depo. Ms. Francis, Ex. 1, 24:22.) Over the years she observed Kendrick engage in conduct with Candace that she thought was "weird" at the time. Kendrick rollerbladed over to the Francis house one day with Candace when she was about 9 or 10 - the period of her abuse - which caused her to "raise an eyebrow." (Francis Depo., Ex. 1, 35:36:3.) Kendrick would tell her Candace "is my number one," which Ms. Francis thought was "strange." (Francis Depo., Ex. 1, 36:4-9.) She saw "snippets" over time, but didn't get the whole picture - because she did not know Kendrick had molested Andrea. (Francis Depo., Ex. 1, 37:2-10.)

Claudia Francis also observed other conduct and heard other statements by Kendrick that she felt were not right. She knew he bought a black bra for another girl in the Congregation, Brianna, when Brianna was about 10 - which would have made Candace 9 or 10 as well. (Francis Depo., Ex. 1,

19:1-4; 33:13-34:25.) Ms. Francis thought that was "weird." Kendrick bragged obsessively about having sex with all kinds of women, including a paraplegic and a woman his mother's age. (Francis Depo., Ex. 1, 31:9-33:1.)

Claudia Francis was in a position to report Kendrick's suspicious behavior and stop his sexual predatory conduct toward Candace and other girls. However, she did not, solely because Claudia was missing the one piece of information that would have put everything together for her - that Kendrick had sexually abused Andrea already and was likely grooming and molesting other girls. (Francis Depo., Ex. 1, 37:7-10.) Although Defendants intend to introduce evidence from loyal Congregation members that the Removal of Kendrick from his post as Ministerial Servant was itself a sign that he was wicked, that was not Claudia Francis' interpretation. (Francis Depo., Ex. 1, 28:21-25.) If Defendants seek to introduce testimony from anyone that Removal indicates to Congregation members the disciplined individual is to be avoided or watched carefully, that testimony is subject to contradiction.

The Court has excluded evidence of Kendrick's conduct after 1997. However, Claudia Francis saw a photograph of Kendrick taken when he was "way younger," posing with children while all were in their underwear. (Francis Depo., Ex. 1, 41:6-42:8.) This evidence is relevant to Kendrick's common motivation of his relationships with Candace and other girls, as viewing them as objects for his sexual gratification. In a case where both Kendrick, through his pleading, and the Church Defendants, through their expert, deny that Kendrick abused Candace, this evidence is relevant and probative.

Claudia Francis was taken in by Kendrick as well, and the one brief question and answer (Francis Depo., Ex. 1, 22:8-12) about the extent of their relationship is relevant to her bias and her state of mind in not reporting Kendrick's "weird" behavior with Candace. There is no privacy interest in this admission, as Ms. Francis no longer seeks privacy and has willingly told her story. It is not time consuming or prejudicial to Defendants, as it does not involve them at all. Instead, it is relevant and probative evidence about Kendrick, and his relationship with a key witness.

Dated: May 22, 2012 FURTADO, JASPOVICE & SIMONS

A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

---oOo---

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	)	No. HG11558324

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF

CLAUDIA NANCY FRANCIS

Monday, October 24, 2011

Taken Before CHARLOTTE C. ROCHE, C.S.R.

Certified Shorthand Reporter License No. 4486

County of Alameda, State of California

A. Yes. 10:10:38

Q. And is he currently employed outside the home? 10:10:39 10:10:43

A. My husband? 10:10:43

Q. Yes. 10:10:44

A. ... owns a modest family-owned pest-control business that my son operates. My husband is very ill. 10:10:45 10:10:49 10:10:52

Q. Sorry to hear that. 10:10:54

Do you recall Candace Conti? 10:10:56

A. Yes. 10:10:59

Q. And did you know her as a child? 10:11:00

A. Yes. 10:11:02

Q. How old was she approximately when you first met her? 10:11:03 10:11:05

A. About 5. 10:11:06

Q. And did you then see her on a regular basis through her early teen years? 10:11:09 10:11:13

A. It was -- No. Sketchy during her teen years. I saw her now and then. 10:11:18 10:11:21

She was in the same elementary school as my younger son. And her family lived in our neighborhood. My husband and her father were friends. Her mother was, I would describe, mentally off balance. Not completely figuratively have her mental 10:11:24 10:11:26 10:11:31 10:11:39 10:11:46

cute to see him and her, his little girl, together. 10:16:57

I always felt bad because Mom wasn't in 10:17:00

the picture. So, he cared deeply for Candace. 10:17:03

So, I never suspected any... um, deficient 10:17:09

protection on his part or ability to -- any lack of 10:17:15

love or anything like that. 10:17:20

Q. Now, are you acquainted with a girl 10:17:22

Brianna Decker -- 10:17:29

A. Ah. 10:17:31

Q. -- or were you acquainted? 10:17:32

A. Brianna "Becker." Yes. 10:17:33

Q. Becker. Okay. 10:17:35

Do you remember her? 10:17:37

A. Yes, I do. 10:17:37

Q. And was she part of the Jehovah's 10:17:38

Witnesses community? 10:17:41

A. She was a -- 10:17:42

She grew up in a very dysfunctional 10:17:46

family. They were Witnesses by name only. They 10:17:49

attended meetings. 10:17:56

But he turned out to be a playboy. He 10:17:57

fractured that family nearly to -- without being able 10:18:01

to heal. And he -- 10:18:04

If there's one way to butcher your child, 10:18:08

he did it to Brianna. 10:18:10

Q. What was Brianna's age in relation to Candace; older, younger, or about the same? 10:18:12 10:18:14

A. Honestly I can't remember. I'm going to guess that she was a little bit older than Candace. 10:18:29 10:18:31

Q. Do you know where Brianna is today? 10:18:34

A. No, I don't. 10:18:38

Q. When's the last time you heard from anyone in her family or knew of them? 10:18:39 10:18:40

A. Years. Years. Last time I saw Brianna, she was.... Oh, I can tell you when. 10:18:42 10:18:46

It was at a wedding, and she was goth, something you never want to see your child. And she was very bad. You know. For a young person to be where she was at. 10:18:49 10:18:56 10:19:00 10:19:04

Q. Whose wedding? 10:19:05

A. A friend of ours. 10:19:08

Q. Do you remember the name? 10:19:10

A. Rita. Rita and Bill. I can't remember their last name. 10:19:13 10:19:16

Q. How about Toi Register, did you know a Toi Register when she was a child? 10:19:22 10:19:25

A. No. 10:19:25

Q. Did you know an Andrea Kendrick? 10:19:27

A. Yes. 10:19:30

Q. And how did you know Andrea? 10:19:31

A. That's correct. 10:21:59

Q. All right. 10:22:00

And in this letter it states that 10:22:01

"Miss Francis admitted to committing adultry with 10:22:05

Jonathan Kendrick in 1998." Is that true? 10:22:09

A. I did not have sexual intercourse with 10:22:15

Jonathan Kendrick. 10:22:17

Q. Was there some form of personal 10:22:20

relationship that had a physical, sexual component that 10:22:23

you had with Mr. Kendrick? 10:22:27

A. There was a romantic interlude that did 10:22:29

take place, and there was kissing and fondling. 10:22:31

Q. How was it that you first met 10:22:37

Mr. Kendrick? 10:22:38

A. I met him in like 1991. He was brand new 10:22:40

in the congregation. He had studied. And he got 10:22:45

baptized. And so, it was like a "new member" 10:22:49

(indicating), if you will, even though that's not an 10:22:52

appropriate term. 10:22:55

And my husband became friends with him, he 10:22:58

became very good friends with him. 10:23:00

Q. Was Mr. Kendrick married to 10:23:03

Evelyn Kendrick at the time that you and 10:23:04

Jonathan Kendrick first met? 10:23:06

A. They were newlyweds. 10:23:08

Q. And was Evelyn Kendrick active in the Jehovah's Witnesses community? 10:23:09 10:23:12

A. For about a year. 10:23:14

Q. Did you ever speak with Evelyn Kendrick during that year as to any social or personal issues at all? 10:23:18 10:23:21 10:23:25

A. Never. 10:23:26

Q. Were you friends with her? 10:23:27

A. No. She was -- I -- She -- 10:23:30

No. She was a little different. I mean: What does that mean, Claudia? It -- 10:23:35 10:23:39

She was distant. She did not want to cultivate a friendship with me. I tried on several occasions, and she was not drawn to me. She did not -- had no desire to be a friend of mine. 10:23:42 10:23:43 10:23:46 10:23:49

Q. Okay. Mr. Kendrick did, however, form a friendship with your husband initially. 10:23:52 10:23:56

A. Yes. 10:23:58

Q. And was the origin of that friendship that they met in the community of the Jehovah's Witnesses or was it from some outside relationship? 10:23:59 10:24:05 10:24:10

A. No. 10:24:12

They met at the Kingdom Hall. 10:24:12

Q. And what kinds of things would your husband and Mr. Kendrick do together? 10:24:14 10:24:17

A. They had breakfast together a lot. They talked about sports. I believe that they went in the ministry a number of times, but not regularly, together. He was -- 10:24:19 10:24:22 10:24:27 10:24:34

Jonathan's a very colorful personality; and my husband, I guess, got kind of a kick out of his personality. 10:24:36 10:24:40 10:24:43

My husband loves sports and every... he's a big sports fan. Yeah. So, he and Jon would talk about football and 49er's and the Green Bay Packers. And he's a Packer fan and, you know, the Brewers. 10:24:44 10:24:50 10:24:54 10:24:58

And they'd argue, you know, in a nice-guy type of way. It was that kind of a friendship. 10:25:01 10:25:06

Jonathan was very, very opinionated. He's an extrovert. So, he would like to -- He used to stop over at the house all the time. 10:25:08 10:25:11 10:25:16

And his marriage was beginning to deteriorate, and there was friction in the home. 10:25:17 10:25:19

And so, you know, he'd, like, hang out with Rod. And they'd meet for coffee, and they'd have breakfast together. 10:25:22 10:25:27 10:25:31

And so, he would start to hang out at our house. 10:25:33 10:25:38

Q. Did you observe whether or not Mr. Kendrick had a, what I'll call, a short temper? 10:25:40 10:25:41

a moment? 10:30:35

A. Let's continue. 10:30:36

Q. Okay. If you need a break at any time, just, we're all -- 10:30:37 10:30:39

A. Thank you. 10:30:40

Q. -- perfectly patient and understand this is some very personal and, to a certain degree, unpleasant information. 10:30:41 10:30:42 10:30:48

So, again, I apologize for going through it with you. 10:30:49 10:30:50

When Mr. Kendrick gave you this remark that you've just described and then slammed the door and left, was that the first time that you had heard from any source of a possible molestation of Andrea? 10:30:52 10:30:59 10:31:02 10:31:05

A. Yes. I had no... um-um (shakes head). 10:31:10

Q. Okay. 10:31:14

A. Things like that are handled in a congregation, in a confidential style. Very confidential. A person's dignity is kept intact. And it's not for publication. 10:31:14 10:31:16 10:31:20 10:31:25

Q. What, if anything, did you understand was the reason that Mr. Kendrick was removed as a Ministerial Servant at the time that the announcement of that removal was made? 10:31:29 10:31:32 10:31:36 10:31:39

A. I had no idea. 10:31:40

matter. 10:34:18

Prior to that, if someone had knowledge, 10:34:19

they definitely would have spoken up. Absolutely. 10:34:22

That would not have been, "Ooh, you know what I heard?" 10:34:26

and this; and then it would have kept quiet? No. 10:34:29

Q. Okay. 10:34:32

A. So... 10:34:33

Q. Thank you for the clarification. 10:34:34

Let me go back to whether or not, in 10:34:35

his... the years that you knew him, whether 10:34:39

Mr. Kendrick evidenced a interest that he expressed to 10:34:45

you in sexual matters involving women. 10:34:51

A. Yes. 10:34:54

I knew pretty early on that he had a 10:34:56

sexual past. He used to call it -- 10:35:01

Now, see, when we -- he was a Witness now. 10:35:04

He had changed his life. Okay? So, to speak. And at 10:35:09

that point he did. And he was married. 10:35:13

But he would talk about his past. And he 10:35:14

would use the terminology that he "did" women, how many 10:35:17

women he "did." 10:35:21

And he told me he thought he did, you 10:35:23

know, way -- "did" well over 150 women. 10:35:27

One time he told me he "did" a paraplegic. 10:35:30

One time he told me he "did" someone his mother's age, 10:35:35

and that is the one time that made him sick. 10:35:37

He bragged about it. And I -- 10:35:40

See, what I just said wasn't in one 10:35:50

conversation. You get bits and pieces, snippets, you 10:35:52

know, here and there over the years. 10:35:55

But that was your old life. You don't do 10:35:57

those things anymore. 10:36:00

So, when a person is changed and is 10:36:02

living, you're clean and sober, you don't, you know, 10:36:11

haul them off to jail for something that he did, you 10:36:14

know, 20 years ago if they were drunk and what have 10:36:17

you. 10:36:20

So, in that respect there was nothing to 10:36:21

go against him then. 10:36:25

But he would talk about his past. And 10:36:27

gradually then, over the years, you, a person, begins 10:36:33

to realize, the longer they're with him, you know, this 10:36:37

guy is really into sex. This is.... Yeah. 10:36:40

Q. Was there -- 10:36:46

A. Really. 10:36:47

Q. Was there a time when you felt that his 10:36:48

sexual interest as he expressed it to you was 10:36:50

obsessive? Is that a word that would fit? 10:36:52

A. With him? 10:36:54

Q. Yes. 10:36:55

A. Yes; I believe. Yes. 10:36:55

And now I believe he's a sex addict. And 10:36:58
a predator. 10:37:01

And he would complain that Evelyn -- 10:37:09
Evelyn moved out of the bedroom, so, he -- they didn't 10:37:10
sleep together for seven years. Something like that. 10:37:13

And so, it really fried him when Andrea 10:37:17
was bringing her boyfriend home, having sex with him, 10:37:20
he was in the house. 10:37:24

It's like: She's getting it and he isn't. 10:37:25
I know that would be his way of looking at it, thinking 10:37:28
it. So... 10:37:30

Q. In the information that I have received, 10:37:35
there's a reference to Jonathan Kendrick purchasing a 10:37:37
black bra for a -- for a girl. 10:37:45

A. Oh, yeah. 10:37:48

Q. And do you recall that occasion? 10:37:49

A. Yes, I do. 10:37:50

Q. What do you recall? 10:37:51

A. He lived with us for about six months, 10:37:55
when he and Evelyn broke up and they lost the home. 10:37:57
So, he stayed with us. 10:38:01

And he had gotten his tax check back. And 10:38:03
he wanted to spend some money on the kids. So, he took 10:38:08
my son and... and Brianna Becker to Sears. And he 10:38:13

bought each kid something. 10:38:23

And he brought -- bought David, I think it's, a Skil saw that makes those curvy (indicating). 10:38:25 10:38:28

Because I like home projects and working with wood ,and I'd always said "Oh, I wish I had a saw like that; I would just" to -- you know, "love to be able to make this and that." 10:38:32 10:38:35 10:38:38 10:38:40

And he bought David one. Why did he buy one of those Skil saws? What do you call those things that they make the -- the blades go around and they make curves. 10:38:42 10:38:44 10:38:46 10:38:50

Well, he must have bought that for me. Why would you buy a, you know, a 10-year-old kid a Skil saw? 10:38:50 10:38:52 10:38:55

But he brought Brianna Becker a black bra. And I thought: That is weird. 10:38:55 10:38:59

He goes "Well," every -- "every girl needs," you know, "a black bra." 10:39:02 10:39:04

But I never reported it. I never acted on it. I just thought: That's weird. 10:39:09 10:39:12

Q. How did you learn about this purchase? 10:39:15

A. He told me. 10:39:17

Q. Was there a receipt that you actually saw? 10:39:19

A. I had the receipt. I threw it out. Not after this (indicating). 10:39:21 10:39:24

But I was going through stuff and... in the closet or to find a picture or something. And I'm thinking: Claudia, why don't you -- hang it, just get rid of this. 10:39:25 10:39:29 10:39:33 10:39:36

So, unfortunately I do not have that; otherwise I would have presented it to you. 10:39:37 10:39:38

Q. Did you ever see Candace with Jonathan Kendrick? 10:39:51 10:39:52

A. Yes. 10:39:54

Q. Can you recall some of the occasions when you may have seen them together? 10:39:56 10:39:58

A. Well, when he -- I believe it was when he was living with us. 10:39:59 10:40:03

He bought her a pair of rollerblades. And so, one day he came rollerblading over to our house with her in tow. 10:40:03 10:40:07 10:40:15

And I thought: That is very strange; why are you, you know, a 42-year-old guy ,rollerblading with a 9-year-old girl or 10-year-old or whatever. 10:40:15 10:40:17 10:40:21

But, you know, they rollerbladed over to the house. And they were kind of wobbling and "Oh, look what I got Candace"; and "We're," you know, "just trying it out." 10:40:24 10:40:27 10:40:30 10:40:34

And I thought that was strange but it's not my place. 10:40:37 10:40:39

I never thought anything further other than, you know, you raise an eyebrow or you frown about that. What? 10:40:42 10:40:44 10:40:48

Q. Did you hear Jonathan Kendrick ever make comments or remarks about his feelings towards Candace? 10:40:49 10:40:55

A. He'd say "She's my absolute favorite. She's my number one." Something like that. 10:41:00 10:41:02

And I'd think: You know, that's awful strange. 10:41:06 10:41:09

But he was a flamboyant personality. He was outspoken. He was opinionated. He would make flamboyant remarks. I don't mean in a gay flamboyancy way. I mean just outrageous sometimes. 10:41:10 10:41:14 10:41:18 10:41:23

But he was an outrageous personality. And so, when "She's my number one," I mean, I could say that about someone else's 9-year-old boy, "Oh, I just love that kid, I could just eat him up." 10:41:27 10:41:31 10:41:35 10:41:39

You know what I mean? I... I.... 10:41:42

When you are an affectionate, outgoing type of personality, it can be borderline. How do you take something like that as a friend? Do you assume the worst? Or do you just take it with a grain of salt because they're an outrageous personality? 10:41:46 10:41:50 10:41:53 10:41:57 10:42:02

So, but, you have to remember, these are snippets that happened over years of progress, which 10:42:04 10:42:07

changes things a little bit. 10:42:13

If you put a little drop of blue ink in a 10:42:15
tall glass of water, it's not really blue right away. 10:42:19
If you put the whole thing in at once, you get an 10:42:22
obvious picture. 10:42:25

So, these things were gradual. 10:42:27

Q. And based on what you told me, the blue 10:42:32
ink that you're missing is, you didn't know that he had 10:42:35
molested Andrea? 10:42:37

A. No. Um-um. 10:42:39

Q. Okay. When was the last time that you had 10:42:40
any contact with Mr. Kendrick, including telephone or 10:42:45
e-mail, any kind of contact at all? 10:42:50

A. The last contact, including e-mail? 10:42:55

Q. Yes, any kind. 10:42:58

A. The last contact I had -- him -- was -- 10:43:00
with him was an e-mail. I don't remember -- 10:43:05

Well, I can't remember what year he got 10:43:11
married. But he remarried. And he had continued 10:43:15
contact with me. 10:43:19

And he would call and want to talk to me. 10:43:23
Or -- And then he called and wanted -- wanted my 10:43:26
e-mail address. I gave him my e-mail address. 10:43:29

And then he would start to write, 10:43:32
intermittently, e-mails to me. 10:43:34

And uh... yeah. 10:47:40

I can't come up with a list of specifics. 10:47:46

I'd have to think about that in order to provide you 10:47:48

with bullet points. 10:47:50

But, yes, the answer is yes. 10:47:52

Q. Let me ask you just one more question 10:47:54

about Mr. Kendrick. Did you ever see a photograph of 10:47:56

him in his underwear -- 10:47:59

A. Yes. 10:48:01

Q. -- with some children in it? 10:48:02

A. Yes. 10:48:03

Q. How did you see that photograph? 10:48:03

A. Well, this, I believe this was after he 10:48:05

told me that Evelyn -- but he said Evelyn "accused" him 10:48:09

of molesting Andrea; not that he did. He was -- 10:48:13

I was with him in a storage unit when he 10:48:16

was moving stuff out. He was moving up to Oakley. And 10:48:20

so, I was -- 10:48:26

The boys were with me. We were in a 10:48:27

storage unit. And I opened up a desk drawer. There 10:48:29

was all sorts of pictures there. 10:48:33

I kind of picked up a picture, and it was 10:48:34

Jonathan, way younger, laying on the floor, kind of 10:48:36

like this (indicating) on the floor, with his legs out 10:48:40

on the side, in his underwear. 10:48:42

And there were two young children in front of him, on the floor, in their underwear. Like 3 and 4 years old. 10:48:44 10:48:46 10:48:52

And I picked that up. I said "Jonathan, what is this?" 10:48:52 10:48:55

He goes "Oh, those are just friends of mine" (indicating). And he puts it back in the desk drawer. And that bothered me. 10:48:56 10:48:58 10:49:01

I mean, I know he lived a rough life style back then, you know. I mean, we all knew he was very, very, very, very, very, very regularly immoral. 10:49:07 10:49:10 10:49:13

So, who he hung around with and what his exploits were, I mean, I did not know. 10:49:16 10:49:19

I just know that that, "that," bothered me. Who lays down, posing on the floor, with two young children in their underwear? 10:49:22 10:49:26 10:49:30

Yeah. I thought (indicating). 10:49:33

Q. Did you learn at some point that Mr. Kendrick was sent to prison? 10:49:37 10:49:38

A. I did after the fact. 10:49:42

Q. How did you learn that? 10:49:43

A. They had friends that we knew up in Oakley. This is a bizarre story but it's the truth. We hadn't been, never were, friends with their friends. But I knew them. 10:49:49 10:49:54 10:49:58 10:50:03

RED

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

8801189

FILED
ALAMEDA COUNTY
MAY 23 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerton DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S SUPPLEMENTAL BRIEF IN PARTIAL OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 10 AND IN SUPPORT OF ADMISSIBILITY OF STATISTICAL EVIDENCE OF INCIDENCE OF CHILD SEX ABUSE

Trial Date: 5/21/2012

ARGUMENT

There are certain undisputed facts that will be in evidence in this case, which make statistical evidence - or the absence of any statistical evidence - of the frequency and number of reports of sexual abuse of children within Jehovah's Witnesses Congregations nationwide admissible and relevant. There is no dispute that the actual decisions made by Fremont Elders concerning Jonathan Kendrick were all based upon Watchtower New York's written policies, specifically including the Bodies Of Elders letter of instructions issued in 1989 and still in effect today.

It is admitted that the Elders were acting as Watchtower's agents in their dealings with Kendrick. On March 14, 1997, Watchtower issued a written Bodies of Elders letter instructing all Congregation Elders to supply a report concerning anyone who currently or formerly was found guilty of child abuse while serving in an appointed position, including the number of incidents known. On June 19, 1998, Watchtower wrote to the Elders in Fremont advising that a review of their files showed

that the report on Jonathan Kendrick had not been submitted as instructed. On September 2, 1998, Watchtower again wrote Fremont advising that the report still was not received and to submit it immediately. The Fremont Elders did submit their written report soon thereafter. This evidence establishes that Watchtower has for many years been gathering data on the frequency of child abuse in its ranks, and has kept records of abusers including Kendrick.

Defense expert Monica Applewhite, Ph.D., testified last week in her video deposition for use at trial that, in her opinion, the Jehovah's Witnesses had an "exceptional" child sexual abuse prevention program for many years before 1993 that continues today. However, she testified she had no empirical data or statistical evidence that the program worked or had reduced or prevented child sexual abuse. In discovery by video deposition, Defendants' PMQ Mr. Shuster denied that Watchtower kept any statistics or database at all concerning sexual abusers or reports of sexual abuse within Jehovah's Witnesses. The Jehovah's Witnesses media relations department released a press release on November 21, 2007, claiming that the incidence of child sexual abuse in Jehovah's Witnesses was "rare," and it advised those who read the press release that only a minimal number of such reports had ever been received.

All of this evidence permits a number of inferences by the trier of fact. First, Dr. Applewhite's opinions as to the exceptional nature of the programs of abuse prevention by Jehovah's Witnesses are without any foundation. Second, Jehovah's Witnesses has the data it has collected, but is falsely denying the data exists - suggesting the number of abusers reported is much higher than admitted by their official website. Third, it permits a jury to conclude that the managing agents of Watchtower are consciously hiding that their 1989 written policy ordering Elders to keep secret from the Congregation and all others the existence of known child molesters, including Kendrick, from their Congregations, for reasons that include protecting themselves against lawsuits by victims - a prime and repeatedly stressed basis for the policy of secrecy set forth in the 1989 Bodies of Elders letter and continuing to the present day. This is relevant and probative information not only on negligence by Watchtower as to Kendrick, but on the issue of whether these policies are made and enforced with deliberate

indifference to the safety of children exposed to these known child molesters while engaged in Jehovah's Witnesses activities.

Statistical evidence has long been recognized to be admissible to demonstrate the intent, denied by a Defendant, to disadvantage a known class of victims. (*Harris v. Capital Growth Industries XIV* (1991) 52 Cal.3d 1142, 1175 [statistical evidence probative of intent to discriminate]; *Everett v. Superior Court* (2002) 104 Cal.App.4th 388, 393 [civil rights violations]; *Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 760-61 [manufacturer's knowledge of other incidents sufficient to show conscious disregard of safety in not changing product label].) In this case, the evidence that Defendants have gathered statistics about the extent and frequency of child sexual abuse within its ranks, but refuses to disclose it, permits multiple inferences including both their insistence on keeping the existing "product label" policy of secrecy in conscious disregard of the persistency of the negative effects on children in the Congregations, and the total failure of the so called "exceptional" child sex abuse prevention programs.

Dated: May 23, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

RCD

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

8801177

FILED
ALAMEDA COUNTY

MAY 23 2012

CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S SUPPLEMENTALMEMORANDUM OF POINTS AND AUTHORITIES IN RECONSIDERATION OF THE COURT'S RULING ON DEFENDANTS' MOTION IN LIMINE NO. 2 IN RE KATHLEEN CONTI

Trial Date: 5/21/2012

The Court has ruled that Defendants' Motion in Limine Two, which sought only to exclude the religious affiliation of Kathleen Conti's childhood sexual abuser, should also include any and all references to Ms. Conti's own abuse. That ruling exceeds the scope of the Motion, which repeatedly stated "the Church Defendants do not object to Kathleen Conti testifying that she was a victim of childhood sexual abuse..." (MIL 2 MPA 2:7-9; 3:17-21; 7:7-8) Defendants' agree that the mother's history of abuse is relevant to her increased vigilance concerning her daughter (Def. MPA 3:12-16). Plaintiff submits it is also relevant as to why Plaintiff did not disclose her own abuse to her mother, a key point of attack on her credibility by Defendants' Psychologist expert Dr. Williams. Plaintiff's own therapist from 1996-8, Laura Fraser, testified, and Plaintiff will testify, that one of the reasons Candace found no safety in disclosing her own abuse was that she was afraid of her mother's response, which would be rooted in Kathleen's own abuse.

Because Defendants did not seek exclusion of this evidence, and concede its relevance both for their own case and Plaintiff's, it is requested that the Court limit its ruling to the extent of relief that was the subject of Motion in Limine 2.

Dated: May 22, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

pes

8801181

FILED
ALAMEDA COUNTY
MAY 23 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgel DEPUTY

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

Trial Date: 5/21/2012

Plaintiff requests that this Court take judicial notice, pursuant to Evidence Code §§ 450 and 452, of the following:

1. That the text of California Penal Code Sections 11165.7(a), and 11166, in effect on January 1, 1993, read in applicable part as follows:

> "11165.7(a): As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a headstart teacher; a licensing worker or licensing evaluator; a public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; * * * any person who is an administrator or

presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to section 317 of the welfare and institutions code to represent a minor; or a peace officer, as defined in chapter 4.5 (commencing with section 830) of title 3 of part 2 of this code, who is not otherwise described in this section.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse. "

And

11166: (a) [A]ny child care custodian, health practitioner, employee of a child protective agency, or child visitation monitor who has knowledge of or observes a child in his or her who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

Dated: May 22, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 24, 2012.

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by , Robert J. Schnack.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by , Robert J. Schnack.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unt appearing represented by James McCabe.

8:55 AM - Court and counsel confer in chambers.

9:00 AM - Court, respective counsel, plaintiff, and prospective jurors are present in open court. Li Liang is excused by stipulation for medical reasons. Plaintiff's counsel resumes voir dire examination.

9:14 AM - Peremptory challenges are exercised. Voir dire examination continues.

9:45 AM - The Court declares a brief recess.

10:15 AM - All parties are present. Andrew Wolfsmith and Nellie Montes are excused for cause. Voir dire examination continues.

10:20 AM - Both sides exercise their peremptory challenges.

10:24 AM - Both sides now being satisfied, the following jurors and alternates are sworn to try the cause:
1. Leslie Hawkins-Brown, 2. Richard Ng, 3. Nancy Lynn, 4. David Gonzales,
5. Kathleen Shipp, 6. Carrie Wolfenberger, 7. Nigel Pan, 8. Tracy Matsuoka,
9. Hugh Hui, 10. Geoffrey Brown, 11. Gary Donelan, and 12. Tawni DeNijs.

Alternates: 13. Russell Crisologo, 14. Vera Ferris, and 15. Kenny Man.

The remaining jurors are thanked and excused from further service in this action.

10:34 AM - The jury and alternates are ordered to return May 29, 2012 at 8:30 a.m. for Further Jury Trial.

Carrie Hewerdine, RDR (CSR 4579)
10:40 AM - Outside the presence of the jury, Court and counsel discuss motions in limine and jury instructions on the record. The Court rules on the motion in limine as recited on the record in open court.

11:10 AM - Court stands adjourned.

Case continued to 08:30 AM on 05/29/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/24/2012
Entered on 05/24/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 29, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unt represented by James M. McCabe.

8:35 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:45 AM - The jury is now present in open court. The Court pre-instructs the jury on the applicable law herein.

9:10 AM - Plaintiff's counsel Rick Simons presents his opening statements.

9:38 AM - James M. McCabe presents his opening statements on behalf of Fremont California Congregation.

10:05 AM - The Court declares recess.

10:24 AM - All parties are present. Robert J. Schnack presents his opening statements on behalf of The Watchtower Bible and Tract Society of New York.

10:45 AM - GARY ABRAHAMSON is sworn and examined on behalf of the petitioner under Evidence Code 776.

Plaintiff's Exhibit 9 (Deft. 98) - Letter from North Congregation Body of Elders to Watchtower dated November 15, 1993, In Evidence.
Plaintiff's Exhibit 17 (Deft. 59) - Awake!, January 22, 1985 Child Molesting article, In Evidence
Plaintiff's Exhibit 37 (Deft. 64) - Awake! October 8, 1993Your Child is in Danger! article, In Evidence.

11:44 AM - Cross-examination of the witness by Mr. McCabe.

12:10 PM - The jury is admonished and the Court declares lunch recess.

1:17 PM - Outside the presence of the jury, Court and counsel confer on the record. Defendant's exhibit 99 (Plaintiff's 10) -Letter from Watchtower to North Congregation Body of Elders dated December 3, 1993 is redacted as recited on the record.

1:32 PM - All parties are present. The witness resumes the stand for redirect examination.

1:35 PM - The witness is excused. Three (3) Requests for Admissions are recited on the record.

1:38 PM - MICHAEL CLARKE is sworn and examined on behalf of the plaintiff under Evidence Code 776.

Plaintiff's Exhibit 1 (Deft. 026) -Letter to all Bodies of Elders dated July 1, 1989, In Evidence.

2:55 PM - The jury is admonished and ordered to return May 30, 2012 at 8:30 a.m. in Department 22 for Further Jury Trial. Court stands adjourned.

Case continued to 08:30 AM on 05/30/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/29/2012
Entered on 05/29/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 30, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.
8:44 AM - Court, respective counsel, plaintiff, and jury are present. MICHAEL CLARKE previously sworn resumes the stand for cross-examination by Mr. McCabe.

Plaintiff's Exhibit 27 (Deft. 032) -Letter to all Bodies of Elders dated March 23, 1992, In Evidence

8:50 AM - Cross-examination of the witness by Mr. Schnack.
8:53 AM - Redirect examination of the witness by Mr. Simons.

Plaintiff's Exhibit 18 (Deft. 106) - Letter from North Congregation Body of Elders to Oakley Congregation Body of Elders dated December 20, 2009, In Evidence

9:07 AM - The witness is excused. EVELYN RUTH KENDRICK is sworn under direct examination on behalf of the plaintiff.
9:20 AM - Cross-examination of the witness by Mr. Schnack.

Plaintiff's Exhibit 5 (Deft. 94) - Fremont Police Report 940218027, Identification only

9:35 AM - Cross-examination of the witness by Mr. McCabe.
9:38 AM - Redirect examination of the witness.
9:39 AM - Recross examination of the witness.
9:40 AM - The witness is excused.
9:43 AM - CLAUDIA FRANCIS is sworn under direct examination on behalf of the plaintiff.
10:05 AM - The witness is excused. The Court declares recess. Outside the present of the jury, Court and counsel confer on the record.
10:10 AM - Recess.
10:28 AM - All parties are present. The witness resumes the stand for cross-examination by Mr. McCabe.
10:38 AM - Cross-examination of the witness by Mr. Schnack.
10:39 AM - Redirect examination of the witness by Mr. Simons,

10:40 AM - The witness is excused. ANDREA SYLVIA is sworn under direct examination on behalf of the plaintiff.
10:50 AM - Cross-examination of the witness by Mr. Schnack.
10:52 AM - The witness is excused. KATHLEEN CONTI is sworn under direct examination on behalf of the plaintiff.
11:23 AM - Cross-examination of the witness by Mr. Schnack.
11:33 AM - The witness is excused. DOROTHY CONTI is sworn under direct examination on behalf of the plaintiff.

Plaintiff's Exhibit 2 - Photo of Candace Conti with a horse, In Evidence
Plaintiff's Exhibit 3 - Graduation photo of Candice Conti, In Evidence

11:48 AM - Cross-examination of the witness by Mr. Schnack.
11:49 AM - The witness is excused. The jury is admonished and excused for lunch recess. Outside the presence of the jury, Court and counsel confer on the record.
11:55 AM - Recess.
1:17 PM - All parties are present. CLIFFORD WILLIAMS is sworn and examined on behalf of the plaintiff under Evidence Code 776.

Plaintiff's Exhibit 19 - Letter from Downey Congregation to M. Iglesias, Oakley Congregation , January 14, 2010, In Evidence

1:30 PM - The Court declares a brief recess. Outside the presence of the jury, Court and counsel confer on the record.
1:35 PM - All parties are present. The witness resumes the stand for direct examination.
1:40 PM - The witness is excused. The jury is admonished and the Court declares recess.
1:51 PM - All parties are present. LAWRENCE LAMBERDIN is sworn under direct examination on behalf of the plaintiff.

Plaintiff's Exhibit 4 - DOJ Photo of Jonathan Kendrick, In Evidence.
Plaintiff's Exhibit 14 (Deft. 101) - Letter from North Congregation Body of Elders to Watchtower dated August 31, 1998 (redacted version), In Evidence.

2:20 PM - Cross-examination of the witness by Mr. McCabe.

Defendant's Exhibit 132 - Photographs (interior and exterior) of Kingdom Hall and surroundings, In Evidence

2:49 PM - Redirect examination by Mr. Simons.
3:05 PM - Cross-examination of the witness by Mr. McCabe.
3:06 PM - The witness is excused. The jury is admonished and ordered to return May 31, 2012 at 8:30 a.m. for further jury trial. Outside the presence of the jury, Court and counsel confer on the record.
3:08 PM - Court stands adjourned.

Case continued to 08:30 AM on 05/31/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/30/2012
Entered on 05/30/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 31, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:33 AM - Court, respective counsel, plaintiff, and jury are present. CARL LEWIS is sworn under direct examination on behalf of the plaintiff. The Court finds the Carl Lewis an expert in Child and Sexual Abuse Accommodation Syndrome.

9:12 AM - Cross-examination of the witness by Mr. Schnack.

9:15 AM - Redirect examination of the witness.

9:17 AM - Recross examination of the witness

9:18 AM - The witness is excused. NEAL CONTI is sworn under direct examination on behalf of the plaintiff.

9:24 AM - Cross-examination of the witness by Mr. McCabe.

10:12 AM - Recess.

10:31 AM - All parties are present. The witness resumes the stand for further redirect examination.

10:40 AM - The witness is excused. Video deposition of Allen Shuster dated 2/15/12 is played to the jury in open court.

11:18 AM - Recess.

11:27 AM - All parties are present. Video deposition resumes.

11:52 AM - Video deposition of Helene Harmatz, PhD. dated 4/30/12 is played to the jury in open court.

12:19 PM - The jury is admonished and the Court declares lunch recess.

1:30 PM - All parties are present. Video deposition of Laura Walton, M.D. is played to the jury.

1:50 PM - Video deposition of Laura Fraser, LMFT is played to the jury.

3:03 PM - The jury is admonished and ordered to return June 4, 2012 at 8:30 am Department 22 for Further Jury Trial.

Case continued to 08:30 AM on 06/04/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/31/2012
Entered on 06/03/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 04, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:32 AM - The Court finds there is a duty.

8:37 AM - Court, respective counsel, plaintiff, and jury are present. The Court updates the jury on the trial schedule.

8:40 AM - OFFICER ROBERT DAVILA, FREMONT POLICE DEPARTMENT is sworn under direct examination on behalf of the plaintiff..

8:44 AM - Cross-examination of the witness by Mr. Schnack.

8:48 AM - Cross-examination of the witness by Mr. McCabe.

8:50 AM - Redirect examination of the witness.

8:51 AM - The Court discusses limiting instructions to the jury.

8:52 AM - The witness is excused. CAROLYN MARTINEZ is sworn under direct examination on behalf of the plaintiff.

Plaintiff's Exhibit 30 - Arial view of Kingdom Hall, Fremont, CA, In Evidence

9:05 AM - Cross-examination of the witness by Mr. McCabe.

9:08 AM - Redirect examination of the witness.

9:09 AM - Re-cross examination of the witness.

9:10 AM - The witness is excused. ANNA SALTER, PHD. is sworn under direct examination behalf of

the plaintiff .

9:23 AM - The Court finds the witness may testify as an expert in Child Sexual Abuse and Prevention.

9:32 AM - The Court declares a brief recess.

9:45 AM - All parties are present. The witness resumes the stand for further direct examination.

Plaintiff's Exhibit 55 - Bay Valley Medical Group Records: August 2002, In Evidence.

10:05 AM - Cross-examination of the witness by Mr. Schnack.

10:24 AM - Cross-examination of the witness by Mr. McCabe.

10:28 AM - The witness is excused. The Court declare a brief recess.

10:45 AM - All parties are present. CANDICE CONTI is sworn under direct examination.

11:22 AM - The Court declares a brief recess.

11:33 AM - All parties are present. The witness resumes the stand for cross-examination by Mr. McCabe.

11:45 AM - Cross-examination of the witness by Mr. Schnack.

11:58 PM - The Court declares lunch recess. Outside the presence of the jury, Court and counsel discuss legal issues on the record.

12:12 PM - Recess.

1:25 PM - Outside the presence of the jury, Court and counsel confer on the record.

Defendant's Exhibit 135 is Admitted Into Evidence

1:35 PM - All parties are now present. The witness resumes the stand for further cross-examination by Mr. Schnack.

1:38 PM - Redirect examination of the witness.

1:45 PM Re-cross examination of the witness by Mr. Schnack.

1:50 PM - The witness is excused. Plaintiff rests except for one witness Tuesday morning.

1:55 PM - The jury is admonished and ordered to return for further jury trial.

1:57 PM - Outside the presence of the jury, Court and counsel discuss legal issues on the record.

2:10 PM - Court stands adjourned.

Case continued to 08:30 AM on 06/05/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/04/2012
Entered on 06/04/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 05, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:40 AM - Court, respective counsel, plaintiff, and jury are present in open court.
LYNN ELISABETH PONTON, M.D. is sworn under direct examination on behalf of the plaintiff. The Court finds the witness qualified as an expert in Psychiatry and Child and Adolescent Psychiatry.

9:20 AM - Cross-examination of the witness by Mr. Schnack.

9:23 AM - Redirect examination of the witness.

9:24 AM - The witness is excused. Plaintiff Rests.

9:28 AM - Mr. Schnack's oral motion for a Directed Verdict as to the Punitive Damages Count is reserved.

9:29 AM - The Court declares a brief recess.

9:48 AM - All parties are present in open court. BERNICE MUNOZ is sworn and examined on behalf of the defendant by Mr. McCabe.

9:59 AM - The witness is excused. SYLVIA MUNOZ is sworn and examined on behalf of the defendant by Mr. McCabe.

10:10 AM - Cross-examination of the witness.

10:12 AM - The witness is excused. PAMELA MUNOZ is sworn and examined on behalf of the defendant by Mr. McCabe.

10:23 AM - Cross-examination of the witness.

10:28 AM - The witness is excused. MONICA APPLEWHITE video deposition dated May 18, 2012 is played to the jury.

11:40 AM - The Court addresses the jury regarding updated trial schedule. The jury is excused for lunch recess.

1:02 PM - Outside the presence of the jury, Court and counsel confer on the record.

1:07 PM - All parties are present. ALEN SHUSTER previously sworn resumes the stand for on behalf of the defendant on direct examination by Mr. McCabe.

Defendant Exhibit 131- Graphics of Jehovah's Witnesses' Theocratic Structure, Identification Only

Plaintiff's Exhibit 60 (Deft. 29) - Awake! October 8, 1991 p. 3 "The Innocent Victims of Child Abuse", In Evidence.
Plaintiff's Exhibit 29 - (Deft. 44) - Letter to all Bodies of Elders dated August 1, 1995, In Evidence
Plaintiff's Exhibit 12 - (Deft. 50) - Letters to all Bodies of Elders dated March 14, 1997, In Evidence
Plaintiff's Exhibit 65 (Deft. 49) - The Watchtower, January 1, 1997, pp. 26-29 "Let us Abhor What is Wicked", In Evidence

1:46 PM - Cross-examination of the witness. Excerpts of CANDICE CONTI deposition transcript is shown and read to the jury by Mr. Schnack.

2:02 PM - Defendant's Rest.

2:05 PM - The jury is admonished and ordered to return June 11, 2012 at 8:30 a.m. in Department 22. Counsel are ordered to return June 6, 2012 at 9:00 a.m. to prepare jury instruction and for Motion to Strike Testimony of Carl Lewis and Motion for Directed Verdict.
2:08 PM - Court stands adjourned.

Case continued to 08:30 AM on 06/06/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/05/2012
Entered on 06/06/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 06, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

10:25 AM - Court and counsel confer off the record regarding jury instructions.

10:55 AM - Court and respective counsel present on the record. Respective counsel present their requested jury instructions to the court.

11:02 AM - Argument regarding defendant's Motion for Directed Verdict.

11:10 AM - Defendant's Motion for Directed Verdict as to the Punitive Damages is denied.

11:15 AM - Court and counsel resumes legal discussions on the record.

12:30 PM - Court stands adjourned.

Case continued to 08:30 AM on 06/11/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/06/2012
Entered on 06/11/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 11, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

7:40 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:45 AM - Court and counsel confer on the record regarding jury instructions.

9:30 AM - Court, respective counsel, plaintiff and jury are now present in open court. The Court instructs the jury on the applicable law herein.

10:18 AM - Mr. Simons for the plaintiff, presents his closing arguments to the jury.

11:12 AM - The Court declares recess.

11:30 AM - All parties are present. The Court addresses the jury regarding the lunch schedule for today. Mr. McCabe for Fremont Congregation, presents his closing arguments to the jury.

12:30 PM - Mr. Schnack for Watchtower presents his closing arguments to the jury,

1:12 PM - The Court calls a brief recess.

1:25 PM - All parties are present. Mr. Simons for the plaintiff presents his rebuttal argument to the jury.

1:40 PM - Court attendant Hill Martin is sworn to take charge of the jury. The alternate jurors are released on phone standby.

1:45 PM - The Court declares lunch recess.

2:40 PM - Jury retires to commence their deliberations. Court stands in recess during deliberations.

4:15 PM - The jury will return June 12, 2012 at 8:30 a.m. in Department 22 for further deliberations. Court stands adjourned.

Case continued to 08:30 AM on 06/12/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/11/2012
Entered on 06/12/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 12, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:30 AM - Outside the presence of the jury, Court and counsel confer on the record regarding Request by Jury.

9:15 AM - The Court orders the court reporter may read testimony of Michael Clarke and Gary Abramson.

9:20 AM - The Court stands in recess.

10:00 AM - The court reporter reads back the relevant testimony of Michael Clarke and Gary Abramson to the jury in the jury room.

12:20 PM - The jury is taken to lunch with sworn Court Attendants Hill Martin and Mario Vela.

2:00 PM - Jury retires to commence their deliberations. Court stands in recess during deliberations.

2:15 PM - The court reporter reads back testimony of Lynn Elisabeth Ponton, M.D. to the jury in the jury room.

2:50 PM - Jury resumes their deliberations. Court stands in recess during deliberations.

3:30 PM - Outside the presence of the jury, Court and counsel confer on the record regarding Request from the Jury.

3:38 PM - Court stands in recess during deliberations.

4:30 PM - The jury will return June 13, 2012 at 8:30 a.m. in Department 22 for further deliberations. Court stands adjourned.

Case continued to 08:30 AM on 06/13/2012 in Department 22, Civil Jury Trial, Administration Building,

1221 Oak Street, Oakland.

Minutes of 06/12/2012
Entered on 06/12/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 13, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:45 AM - All jurors are present and the jury resumes deliberations. The court stands in recess during deliberations.

12:30 PM - The jury is in recess for lunch in the jury room.

1:00 PM- The jury resumes deliberations and the court stands in recess.

2:47 AM - Court, counsel, parties and jury are present; the jury renders a Special Verdict. At the direction of the Court the clerk reads the verdict. The jury is polled and the verdict is affirmed as recited on the record. Court directs the clerk of the court to record the Verdict.
See Special Verdict Filed June 13, 2012.

3:05 PM - The jury is ordered to return June 14, 2012 at 10:00 a.m. for Phase Two of the trial.

3:20 PM - Outside the presence of the jury, Court and counsel confer on the record. Defendant Watchtower's oral Motion to Set Aside Punitive Damages is DENIED.

3:22 PM - The matter is continued to June 14, 2012 at 10:00 a.m. in Department 22 for Phase Two. Court stands adjourned.

Note: The matter will be heard at 10:00 a.m.

Case continued to 09:00 AM on 06/14/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Document Registered: Jury Verdict (Special)

Minutes of 06/13/2012
Entered on 06/13/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly

Deputy Clerk

HG11-558324

SPECIAL VERDICT FORM

8096319

FILED
ALAMEDA COUNTY
JUN 13 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

We answer the questions submitted to us as follows:

1. Did Jonathan Kendrick sexually batter Candace Conti?

   ✓ YES ____ NO

   If you answer YES to question 1, then answer question 2. If you answer NO to question 1, then please sign and return your verdict to the Court.

2. Was the sexual battery by Jonathan Kendrick a cause of harm to Candace Conti?

   ✓ YES ____ NO

   If you answer YES to question 2, please answer question 3. If you answer NO to question 2, then please sign and return your verdict to the Court.

3. Was Gary Abrahamson, as an agent of Watchtower and the North Fremont Congregation, negligent?

   ✓ YES ____ NO

   Was Michael Clarke, as an agent of Watchtower and the North Fremont Congregation, negligent?

   ✓ YES ____ NO

   Were the elders in the Service Department, as agents of Defendant Watchtower, negligent?

   ✓ YES ____ NO

   If you answered YES in any part of question 3, then answer question 4. If you answered NO to all parts of question 3, then skip question 4 and answer question 5.

4. For each person or persons who received a YES answer in question 3, answer the following:

   Was Gary Abrahamson's negligence, as an agent of Watchtower and the North Fremont Congregation, a substantial factor in causing harm to Plaintiff Candace Conti?

   ✓ YES ____ NO

   Was Michael Clarke's negligence, as an agent of Watchtower and the North Fremont Congregation, a substantial factor in causing harm to Plaintiff Candace Conti?

   ✓ YES ____ NO

Were the elders in the Service Department's negligence, as agents of Watchtower, a substantial factor in causing harm to Plaintiff Can Candace Conti?

✓ YES _____ NO

If you answered YES to questions 2 or any part of question 4, then answer question 5. If you answered NO to all parts of question 4, then answer only question 5 and do not answer question 6.

5. What are Plaintiff Candace Conti's total damages?

   a. Future counseling and therapy. $ 130,000

   b. Non-economic damages. $ 6,870,000

   TOTAL of a and b: $ 7,000,000

6. What percentage of responsibility for Plaintiff Candace Conti's harm do you assign to the following? Insert a percentage only for those who received YES answers to questions 2 and 4.

   Jonathan Kendrick 60 %

   Watchtower Bible and Tract Society of New York, Inc. 27 %

   North Congregation of Jehovah's Witnesses, Fremont, California 13 %

   TOTAL: 100%

7. Do you find by clear and convincing evidence that any of the negligent conduct of Watchtower that was a substantial factor in causing harm to Plaintiff Candace Conti was engaged in with malice by a managing agent of Defendant Watchtower?

   ✓ YES _____ NO

Signed: _____
Presiding Juror Hugh Hui

Dated: 6-13-12

After the verdict form has been signed, notify the court attendant that you are ready to present your verdict to the courtroom.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 14, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J., Kelly Kraetsch, and Martin Jaspovice.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

10:20 AM - Outside the presence of the jury, Court and counsel confer on the record regarding legal issues as to Phase Two of the trial.

10:25 AM - DeAndre Watson is sworn to take charge of the jury.

10:28 AM - Court stands in recess waiting for two jurors to arrive.

10:38 AM - Court, respective counsel, parties and jury are present. The Court instructs the jury on the applicable law herein as to Phase Two. The Court reads the Stipulation Regarding Watchtower's Assets to the jury.

10:45 AM - Plaintiff's counsel presents his argument to the jury regarding Phase Two.

10:52 AM - Mr. Schnack for the defendant Watchtower presents his argument to the jury regarding Phase Two.

10:58 AM - Rebuttal argument from plaintiff's counsel Mr. Simons.

11:00 AM - The jury retires to the jury room to commence deliberations on Phase Two. The Court stands in recess during deliberations.

12:25 PM - The jury is in recess for lunch.

1:05 PM - The jury resumes deliberations. The Court stands in recess during deliberations.

4:10 PM - All parties and jury are present; the jury renders a Special Verdict- Phase Two. At the direction of the Court the clerk reads the verdict.
We, the jury in the above entilted action, answer the questions submitted to us as follows:
Question No. 1:
Do you award punitive damages against the Watchtower Bible and Tract Society of New York, Inc.?

Answer: Yes
If your answer is to No. 1 is "yes", what amount of punitive damages do you award?
Answer: $21,000,001
The jury is polled and the verdict is affirmed. At the direction of the court verdict is recorded. (See Special Verdict-Phase Two Signed and Filed this date)

4:25 PM - The jury is released from the admonition, thanked for their service and discharged. Court stands adjourned.

Document Registered: Jury Verdict (Special) - Phase Two
Document Registered: Exhibit Lists
Document Registered: Miscellaneous Stipulation Regarding Watchtower's Assets

Minutes of 06/14/2012
Entered on 06/15/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk



(202-276A - 10/97)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

EXHIBIT RECORD

FILED
ALAMEDA COUNTY
JUN 14 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

Dept. No. **22**

Action No. **HG11-558324**

Judge **Robert D. McGuiness**

Clerk **Miranda Edgerly**

Jane Doe, Plaintiff

vs.

The Watchtower Bible and Tract Society of New York, Inc., et al , Defendant

The following exhibits were marked for identification and/or introduced in above action:

Plaintiff or Defendant	Number or Letter	DESCRIPTION OF EXHIBITS	Date Marked for Identification	Date Admitted into Evidence
Plaintiff's	1 (Deft. 26)	Letter to all Bodies of Elders dated July 1, 1989	5-29-12	5-29-12
Plaintiff's	2	Photo of Candace Conti with a horse	5-30-12	5-30-12
Plaintiff's	3	Graduation photo of Candice Conti	5-30-12	5-30-12
Plaintiff's	4	DOJ Photo of Jonathan Kendrick	5-30-12	5-30-12
Plaintiff's	5 (Deft. 94)	Fremont Police Report 940218027	5-30-2	----------
Plaintiff's	9 (Deft. 98)	Letter from North Congregation Body of Elders to Watchtower dated November 15, 1993	5-29-12	5-29-12
Plaintiff's	12 (Deft. 50)	Letters to all Bodies of Elders dated March 14, 1997	6-5-12	6-5-12
Plaintiff's	14 (Deft. 101)	Letter from North Congregation Body of Elders to Watchtower dated August 31, 1998 (redacted version)	5-30-12	5-30-12
Plaintiff's	18 (Deft. 106)	Letter from North Congregation Body of Elders to Oakley Congregation dated December 20, 2009	5-30-12	5-30-12
Plaintiff's	19	Letter from Downey Congregation to M. Iglesias, Oakley Congregation , January 14, 2010	5-30-12	5-30-12
Plaintiff's	27 (Deft. 32)	Letter to all Bodies of Elders dated March 23, 1992	5-30-12	5-30-2
Plaintiff's	29 (Deft 44)	Letter to all Bodies of Elders dated August 1, 1995	6-5-12	6-5-12
Plaintiff's	30	Ariel view of Kingdom Hall, Fremont CA	6-4-12	6-4-12
Plaintiff's	55	Bay Valley Medical Group Records: August 2002	6-4-12	6-4-12
Plaintiff's	59 (Deft. 17)	Awake!, January 22, 1985pp. 3-4 "Child Molesting-Every Mother's Nightmare"	5-29-12	5-29-12
Plaintiff's	60 (Deft. 29)	Awake! October 8, 1991 p. 3 "The Innocent Victims of Child Abuse"	6-5-12	6-5-12
Plaintiff's	64 (Deft. 37)	Awake! October 8, 1993 Your Child is in Danger! article	5-29-12	5-29-12

Plaintiff's	65 (Deft. 49)	The Watchtower, January 1, 1997, pp. 26-29 "Let us Abhor What is Wicked"	6-5-12	6-5-12
Deft.	131	Graphics of Jehovah's Witnesses' Theocratic Structure	6-5-12	----------
Deft.	132	Photographs (interior and exterior) of Kingdom Hall and surroundings	5-30-12	5-30-12
Deft.	135	Redacted version of Agreement Plaintiff made with Jonathan Kendrick	6-4-12	6-4-12

8096275

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a Corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

SPECIAL VERDICT – PHASE TWO

Trial Date: 5/21/2012

FILED
ALAMEDA COUNTY
JUN 14 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

We, the jury in the above-entitled action, answer the questions submitted to us as follows:

Question No. 1:

Do you award punitive damages against the Watchtower Bible and Tract Society of New York, Inc.?

Yes ✓ No ____

If your answer to No 1 is "no", please sign and return this verdict form to the courtroom.

If your answer to No. 1 is "yes", what amount of punitive damages do you award?

$ 21,000,001

Dated: 6/14/12

PRESIDING JUROR
Hugh Hui

After this verdict form has been signed, notify the court attendant that you are ready to present your verdict in the courtroom.

8096271

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorneys for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
JUN 14 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG115558324

STIPULATION REGARGING WATCHTOWER'S ASSETS

TRIAL DATE: May 21, 2012

It is hereby stipulated between Defendant Watchtower Bible and Tract Society of New York, Inc. and Plaintiff that Watchtower has current assets of $30 million in cash and real property estimated to be valued at approximately $1 billion.

It is so stipulated.

DATED: June 14, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: June 14, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
Richard J. Simons

Attorneys for Plaintiff

UL=RCD

10246055

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY
JUN 19 2012
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, Inc., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF JANE DOE'S LIMITED OPPOSITION TO DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF JUDGMENT

Date: 6/19/12
Time: 10:00 a.m.
Dept: 22
Trial Date: 5/21/2012

INTRODUCTION

The Jehovah's Witnesses defendants have applied to the Court for an Ex Parte Application for an Order Temporarily Staying Enforcement of any judgment and extinguishing any existing liens, levies, or attachments. Plaintiff has not yet filed a Judgment, and has no objection to an Order preventing the creation of any new liens, levies, or attachments, provided she is protected from a distribution of assets in avoidance of the judgment.

There are no existing liens, levies, or attachments to extinguish, as a result of which, that part of the Ex Parte request is moot. However, Plaintiff's willingness to agree to a stay of execution of the judgment to be filed shortly is conditional. To avoid a massive transfer of real estate assets worth, at present, approximately $1 Billion, from Watchtower to another corporate entity of Jehovah's

Witnesses, which would leave Plaintiff with no enforcement right for the Judgment, Plaintiff requests that any stay be subject to the condition that defendant Watchtower Bible and Tract Society of New York, Inc. not transfer, convey, or change title to any of its real property prior to the filing of a bond or undertaking required as a condition of appeal. (C.C.P. §917.1) That condition will maintain the status quo and protect Plaintiff from loss of her right to enforce her judgment by fraudulent transfers of assets, or other transfers without notice which would leave the defendant without resources when the appeals are completed- a fate that has befallen other judgment creditors. (*Bulmash v. Davis* (1979) 24 Cal.3d 691, 698-99)

The power of the Court to stay enforcement of a judgment or order until such time as a Notice of Appeal may be filed is discretionary, and not mandatory. (C.C.P. §918(a)) In the absence of some formal and enforceable protection against a wholesale transfer of title to its real properties by Watchtower Bible and Tract Society of New York, Inc. to other Jehovah's Witnesses entities or to other persons or entities, Plaintiff requests that the Court reject the proposed stay. Defendants can obtain relief from enforcement of any judgment by filing a timely undertaking or bond at the time of filing of their Notice of Appeal, and thus will be adequately protected during their appeal from collection efforts on the judgment.

Although Defendants' Ex Parte moving papers include a Declaration from Mr. Schnack, counsel for Watchtower Bible and Tract Society of New York, Inc., detailing the exchange of emails between counsel concerning this issue, the emails identified as Exhibit A were not attached. (Dec. R. Schnack, ¶4, 2:21-25.) Plaintiff attaches a courtesy copy of this email as Exhibit 1 to this Limited Opposition for the Court's convenience. The concern of fraudulent transfers of assets is highlighted in the attached copy of the email response. With the conditional protection to Plaintiff, Plaintiff has no objection to the stay requested.

Dated: June 18, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff

Rick Simons

From: Rick Simons
Sent: Saturday, June 16, 2012 11:21 AM
To: Schnack, Robert J. (Sacramento)
Cc: jmccabe@jw.org; jim@mccabelaw.net; JDefibau@jw.org; Kelly Kraetsch
Subject: RE: Jane Doe v. Watchtower, et al - case no. HG11558324

I have no intention of executing on this or any judgment until it is final, as long as Watchtower does not engage in fraudulent transfers of assets that requires my intervention. Provided the language is not unreasonable, we can reach a stipulation I assume and save you the ex parte trip. I'll be in the office shortly if you want to call, although I get the impression no one from the defense is talking to me anymore. That's what happens when you leave court early.

From: Schnack, Robert J. (Sacramento) [mailto:SchnackR@jacksonlewis.com]
Sent: Saturday, June 16, 2012 11:10 AM
To: Rick Simons; Kelly Kraetsch
Cc: McCabe James; rmcguiness@alameda.courts.ca.gov
Subject: Jane Doe v. Watchtower, et al - case no. HG11558324

Rick and Kelly:

I write as a courtesy to advise you that Defendants Watchtower and North Fremont Congregation (the "Church Defendants") will file an Ex Parte Application to Stay Enforcement of Judgment in this matter on Tuesday, June 19, 2012, after 10:00 a.m. In that application, the Church Defendants will seek a temporary stay of enforcement of the forthcoming judgment that I anticipate will be entered on the jury's special verdicts of June 13 and 14, 2012. The temporary stay is necessary during the parties' post-trial litigation, which might eliminate, reduce, or otherwise affect the forthcoming judgment. Also, the temporary stay is necessary to allow the Church Defendants to secure the requisite bond for any appeal in this matter.

As noted above, the Church Defendants intend to file their application on June 19, 2012, after 10:00 a.m. Pursuant to the rules of Department 22, applications are considered only on the moving papers and any written opposition. Department 22 rules state that Plaintiff's opposition be filed within 24 hours of the Church Defendants' filing of their application.

I expect to email you copies of the application, my supporting declaration, and proposed form of order later today, but in any event no later than 10 a.m. on Monday, June 18, 2012, as required by the Court's rules.

Finally, I ask that you please notify Mr. McCabe and me whether Plaintiff will stipulate to the requested stay of execution of the forthcoming judgment or whether, instead, Plaintiff intends to oppose the application. Thank you. – Bob Schnack

Robert J. Schnack
Attorney at Law
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814

(916) 341-0404 - Main
(916) 341-0141 - Fax

schnackr@jacksonlewis.com

www.jacksonlewis.com

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On June 18, 2012, I served the within **PLAINTIFF JANE DOE'S LIMITED OPPOSITION TO DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF JUDGMENT** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below:

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[X] By Email By transmitting a true copy thereof to the email address(es) shown below:

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
jim@mccabelaw.net
Attorneys for Defendants
CHURCH DEFENDANTS

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
SchnackR@jacksonlewis.com
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

Jonathan Kendrick, In Pro Per
200 Honey Lane
Oakley, CA 94561
925/679-0411 Telephone

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 18, 2012, at Hayward, California.



ELAINE T. LANDRO

u RAD

10325433

FAXED

ORIGINAL

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
JUN 19 2012
CLERK OF THE SUPERIOR COURT
By Esther Cal
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

TRIAL DATE: May 21, 2012

I. APPLICATION

PLEASE TAKE NOTICE that on June 19, 2012, Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") and North Congregation of Jehovah's Witnesses, Fremont, California ("North Fremont Congregation") (collectively the "Church Defendants") will file this ex parte application for an Order: (1) temporarily staying enforcement of any judgment that

may in the future be entered in this matter on the verdicts returned by the jury on June 13 and 14, 2012, until ten (10) days after the last day on which a notice of appeal may be filed, and (2) extinguishing any existing liens, levies or attachments and preventing the creation of any new liens, levies or attachments during the pendency of the temporary stay. Pursuant to Department 22 and the Honorable Robert D. McGuiness' standing order, applications are considered only on the moving papers and any written opposition and Plaintiff Jane Doe's ("Plaintiff") opposition is to be filed within 24 hours of the Church Defendants' filing this application.

As discussed in the memorandum of points and authorities below, an order temporarily staying enforcement of the judgment that will be entered in this matter is necessary because: (1) the Church Defendants intend to file post-trial motions and, therefore, the final judgment may be eliminated, reduced, modified, or otherwise affected; (2) the Church Defendants presently intend to file an appeal should their post-trial motions be denied in whole or in part and, therefore, they will need time to obtain the requisite bond; and (3) a temporary stay of enforcement of the judgment will not prejudice Plaintiff, especially where the Church Defendants will be required to post a bond should they each exercise their appellate rights. This application is made pursuant to California Code of Civil Procedure sections 128(a)(3), 697.040 and 918, and California Rules of Court, Rules 3.1200 through 3.1207.

Plaintiff is represented in this action by Richard J. Simons (SBN 72676) and Kelly Kraetsch (SBN 281688) of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541, (510) 582-1080. (Schnack Decl., ¶ 2.) The Church Defendants complied with Rules 3.1203 and 3.1204 of the California Rules of Court by giving notice of this application to Mr. Simons and Ms. Kraetsch on June 16, 2012, by e-mail communication. (*Id.* at ¶¶ 3-4.) Plaintiff's counsel has stated he will not oppose this application subject to certain conditions. (*Id.* at ¶ 4.)

This ex parte application is based on this application, the memorandum of points and authorities in support thereof, the declaration of Robert J. Schnack filed concurrently herewith, and all pleadings and papers on file in this action.

II. MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

Pursuant to Code of Civil Procedure Section 918, the Church Defendants request an Order temporarily staying enforcement of any judgment that may in the future be entered in this matter on the verdicts returned by the jury on June 13 and 14, 2012, until ten (10) days after the last day on which a notice of appeal may be filed. Further, pursuant to Code of Civil Procedure Section 697.040(b), the Church Defendants each request the Order extinguish any existing liens, levies or attachments and prevent the creation of any new liens, levies or attachments during the temporary stay.

The jury verdicts returned in this matter on June 13 and 14, 2012 awarded a total of $28,000,001 to Plaintiff. A substantial amount of the anticipated judgment ($21,000,001) will be based on the jury's special verdict on Plaintiff's punitive damages claims against Defendant Watchtower, and the judgment will also likely allocate against each of the Church Defendants a certain percentage of the $6,870,000 awarded in non-economic damages to Plaintiff. The Church Defendants will file post-trial motions to challenge the judgment that will be entered. Specifically, the Church Defendants will file motions for judgment notwithstanding the verdict ("JNOV") and for a new trial, as well as for remittitur. The Church Defendants will also file an appeal, should their post-trial motions be denied in whole or in part. If the Church Defendants proceed with an appeal, they will need reasonable time to secure a bond during pendency of the appeal. A stay of enforcement of any judgment entered on the jury verdicts in this matter facilitates such arrangements. Thus, due to the uncertainty of the judgment to be entered that will be caused by the Church Defendants' post-trial motions and the potential appeal, it is in all parties' interest that this Court grant a temporary stay of enforcement of any judgment to be entered on the referenced jury verdicts.

B. Legal Argument

Code of Civil Procedure section 918 gives this Court the power to grant a temporary stay of enforcement of the judgment:

> (a) Subject to subdivision (b), the trial court may stay the enforcement of any judgment or order.
>
> (b) If the enforcement of the judgment or order would be stayed on appeal only by the giving of an undertaking, a trial court shall not have the power, without the consent of the adverse party, to stay the enforcement thereof pursuant to this section for a period which extends for more than ten days beyond the last date on which a notice of appeal could be filed.
>
> (c) This section applies whether or not an appeal will be taken from the judgment or order and whether or not a notice of appeal has been filed.

The Court may stay enforcement of a judgment without a bond. *Drum v. Bleau, Fox & Assoc.* (2003) 107 Cal.App.4th 1009, 1014 at fn. 2. Further, the Court may order that the temporary stay will act to extinguish existing liens and prevent the creation of any new liens. Code Civ. Proc. §697.040(b). The temporary stay may remains in effect until ten (10) days after the last day on which a notice of appeal may be filed. Code Civ. Proc. §918(b).

The Church Defendants' application should be granted for each of the independent reasons set forth below.

1. This Court Should Grant A Temporary Stay Of Enforcement Of The Forthcoming Judgment Because the Church Defendants Intend To File Post-Trial Motions And, Therefore, Any Final Judgment Herein May Be Eliminated, Reduced, Modified, Or Otherwise Affected.

The Church Defendants will file a motion for JNOV, or in the alternative, a motion for new trial. (Schnack Decl., ¶ 5.) The outcome of these motions may greatly affect the final judgment, if any, in this matter. Currently, it is anticipated that judgment will be entered against the Church Defendants for a gross sum of approximately $23,800,000. (*Id.* at ¶ 6.) The judgment will be based on the jury's special verdicts on Plaintiff's claims against the Church Defendants for negligence and against Defendant Watchtower for an alleged act of malice. (*Id.*) The outcome of the JNOV or any other post-trial motions may eliminate, reduce, modify, or otherwise affect that judgment. For example, if the Church Defendants obtain JNOV on all claims, then the judgment will be eliminated completely. Or, for example, if the Church Defendants obtain only a partial JNOV, that judgment may be reduced to a sum yet to be

determined. Because of this uncertainty, stay of the enforcement of any forthcoming judgment is proper.

2. This Court Should Grant A Temporary Stay Of Enforcement Of The Forthcoming Judgment Because the Church Defendants May Appeal The Judgment And Will Require Time To Obtain The Requisite Undertaking.

Depending on the outcome of the post-trial motions, the Church Defendants will appeal the judgment. (Schnack Decl., ¶ 5.) This Court's jurisdiction to rule on the post-trial motions expires 60 days after notice of entry of judgment. Code of Civ. Proc. §660. The last day to file a notice of appeal from any resulting judgment will be 30 days after the notice of entry of an order denying the post-trial motions or after the motions are denied by operation of law, whichever occurs first. Cal. Rules of Court, Rule 8.108. The Church Defendants' potential appeal, like its post-trial motions, creates uncertainty as to the amount of the judgment, if any, Plaintiff may ultimately recover. Thus, this Court should exercise its power to stay enforcement of any judgment entered in this case because of this uncertainty.

Further, should the Church Defendants appeal the judgment, they will need time to obtain the requisite undertaking (i.e., bond) necessary for appeal. Appeal bond premiums are a recoverable cost on appeal should the Church Defendants prevail. Cal. Rules of Court, Rule 8.278(d)(1)(F); Code of Civ. Proc. §995.250. Accordingly, to protect themselves against enforcement of any judgment in this matter pending appeal and to protect Plaintiff's interests pending an appeal, the Church Defendants must obtain and file an appeal bond. *Leung v. Verdugo Hills Hosp.* (2008) 168 Cal.App.4th 205, 211-12.

Until there is a ruling on post-trial motions, the Church Defendants cannot know what amount should be bonded pending appeal because the post-trial motions and potential appeal create uncertainty as to how much, if any, Plaintiff may ultimately recover. For this reason alone, this Court should grant a stay of enforcement of the judgment pursuant to Code of Civil Procedure section 918, which contemplates such a stay *precisely* to accommodate the ongoing post-trial proceedings and to give the Church Defendants a chance to evaluate the merits of an appeal, and to procure a bond if and when the decision to appeal is made.

3. A Temporary Stay Of Enforcement Of The Forthcoming Judgment Will Not Prejudice Plaintiff.

The judgment that likely will be entered in this action will require the Church Defendants to pay, collectively, approximately $23,800,000, plus the statutory rate of interest. (Schnack Decl., ¶ 6.) Therefore, Plaintiff will suffer no prejudice because, if the judgment that will be entered in this matter ultimately proves to be valid, she will "continue[] to earn [a generous rate of] interest on [a] collectible judgment." *Airfloor Co. of Cal., Inc. v. Regents of the Univ. of Cal.* (1979) 97 Cal.App.3d 739, 743. Further, there is no evidence that the Church Defendants are more able to satisfy the judgment today then they will be after the post-trial litigation and any appeal. In fact, it is the Church Defendants that will be prejudiced should this application be denied. (Schnack Decl., ¶ 7.) Without a temporary stay, the Church Defendants will have no protection against efforts that Plaintiff and her counsel may take to enforce any judgment entered in this matter and, therefore, the Church Defendants request the Court grant this application and provide the protection afforded by Code of Civil Procedure section 918.

4. The Temporary Stay Should Include An Order Extinguishing Any Existing Liens And Prevent The Creation Of Any New Liens.

The Court has the power to order that the temporary stay will act to extinguish existing liens and prevent the creation of any new liens. Code Civ. Proc. §697.040(b). Indeed, should the Church Defendants file an appeal and post the requisite bond, any liens existing at that time will be extinguished and no new liens may be created during the stay invoked by the appeal. Code Civ. Proc. §697.040(a). Thus, the Church Defendants request this Court act now under subsection (b) for the same result and immediately order that any existing liens, levies or attachments be extinguished and no new liens created during the temporary stay.

5. Good Cause Exists To Grant A Section 918 Temporary Stay.

For each of the foregoing reasons, good cause exists to grant a temporary stay. The Church Defendants would each be harmed and prejudiced and be in immediate danger without the protection of a temporary stay. The general practice to temporarily stay enforcement of judgment is to file an ex parte application. *See* California Practice Guide: Civil Appeals and

Writs (Eisenberg, Horvitz and Wiener, 2010), §7:64 ("A §918 stay can be obtained . . . by *written application* to the court.") (Emphasis in original.) Should the Court determine additional notice is required for hearing the issues raised by this application, the Church Defendants request the Court order a briefing schedule and hearing date to so address these issues.

C. Conclusion

For each of the foregoing reasons, the Church Defendants each request this Court issue an Order: (1) temporarily staying enforcement of any judgment that may in the future be entered in this matter on the verdicts returned by the jury on June 13 and 14, 2012, until ten (10) days after the last day on which a notice of appeal may be filed; and (2) extinguishing any existing liens, levies or attachments, and preventing the creation of any new liens, levies or attachments during the pendency of the temporary stay.

DATED: June 16, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: June 16, 2012

THE McCABE LAW FIRM, APC

By _____
for James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On June 16, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 16, 2012, at Sacramento, California.

Robert J. Schnack

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On June 18, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY NORCO OVERNIGHT DELIVERY:** I caused the above-referenced document(s) to be delivered to Counsel for Plaintiff for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 18, 2012, at Sacramento, California.

Noreen Witt

Noreen Witt

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

10325425

FAXED

ORIGINAL

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

[PROPOSED] ORDER GRANTING DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT

TRIAL DATE: May 21, 2012

On June 19, 2012, Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") and North Congregation of Jehovah's Witnesses, Fremont, California (collectively, the "Church Defendants") filed their Ex Parte Application to Stay Enforcement of the Judgment.

After considering the submitted papers, including any response or opposition filed on behalf of Plaintiff, this Court grants the Church Defendants' application as follows:

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT:

(1) Enforcement of the judgment to be entered on the jury's special verdicts of June 13 and 14, 2012 shall be temporarily and completely stayed until ten (10) days after the last day on which a notice of appeal may be filed on said judgment; and,

(2) Any existing liens, levies or attachments pertaining to the forthcoming judgment referenced in (1) above are hereby extinguished and no new liens, levies or attachments may be created during the pendency of this stay.

IT IS SO ORDERED.

DATED: _____, 2012

_____
HON. ROBERT D. MCGUINNES
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.

Case No. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On June 16, 2012, I served the following document(s) described as **[PROPOSED] ORDER GRANTING DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 16, 2012, at ~~Oakland,~~ Sacramento California.

Robert J. Schnack

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.

Case No. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On June 18, 2012, I served the following document(s) described as **[PROPOSED] ORDER GRANTING DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY NORCO OVERNIGHT DELIVERY:** I caused the above-referenced document(s) to be delivered to Counsel for Plaintiff for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 18, 2012, at Sacramento, California.

Noreen Witt

Noreen Witt

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.

Case No. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

FAXED

ORIGINAL

10325429

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

FILED
ALAMEDA COUNTY
JUN 19 2012
CLERK OF THE SUPERIOR COURT
By Zathen Co
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT

TRIAL DATE: May 21, 2012

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in the State of California and a partner with the law firm of Jackson Lewis LLP (the "Firm"), attorneys of record in the above-captioned action for Defendant Watchtower Bible and Tract Society of New York, Inc. I have also been authorized by James M. McCabe, attorney of record for Defendant North

Congregation of Jehovah's Witnesses, Fremont, California, to make this declaration on the North Congregation's behalf. I make this declaration based on my personal knowledge and, if called upon, I could and would testify competently to the matters set forth herein.

2. Jane Doe ("Plaintiff") is represented in this action by Richard J. Simons (SBN 72676) and Kelly Kraetsch (SBN 281688) of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward, California 94541. Plaintiff's counsel's telephone number is (510) 582-1080. Plaintiff's counsel's e-mail addresses are rick@fjslaw.com and kellyk@fjslaw.com

3. As set forth in paragraph 4, Defendant Watchtower Bible and Tract Society of New York, Inc. and Defendant North Congregation of Jehovah's Witnesses, Fremont, California (collectively the "Church Defendants") have complied with the ex parte application notice requirements of California Rules of Court, Rules 3.1203 and 3.1204, and with the rules of Department 22.

4. On June 16, 2012, I sent Mr. Simons and Ms. Kraetsch an e-mail notifying them that the Church Defendants would make this ex parte application to temporarily stay, during the parties' post-trial litigation, enforcement of any judgment entered in this matter and, if necessary, during the pendency of the Church Defendants posting the requisite bond for any subsequent appeal. The e-mail also notified them that (a) this ex parte application would be filed on June 19, 2012, after 10:00 a.m. PDT, (b) that pursuant to Department 22 and the Honorable Robert D. McGuiness' standing order, applications are considered only on the moving papers and any written opposition, and (c) that Plaintiff's opposition must be filed within 24 hours of the Church Defendants filing this application with the Court. The e-mail also requested that Mr. Simons and Ms. Kraetsch notify me whether Plaintiff will stipulate to the stay or if she instead intended to oppose the application. Attached hereto as **Exhibit A** is a true copy of the e-mail to Mr. Simons and Ms. Kraetsch. Mr. Simons responded that Plaintiff will not oppose this application subject to certain conditions.

5. With other Firm attorneys and in coordination with co-defense counsel, I am preparing the Church Defendants' motion for judgment notwithstanding the verdict, an alternative motion for new trial, and a motion for remittitur, among others. I will also assist

with preparation of an appeal should the Church Defendants' post-trial motions be unsuccessful in whole or in part.

6. I anticipate that the Court will enter judgment based on the jury's special verdicts entered on June 13 and 14, 2012. I anticipate that a substantial amount of that judgment ($21,000,001) will based on the jury's special verdict on Plaintiff's punitive damages claim against Defendant Watchtower, and I also anticipate that the judgment will be entered against each of the Church Defendants based on the percentages allocated to each of them with respect to the $6,870,000 awarded by the jury in gross non-economic damages to Plaintiff, all with accruing interest under state law.

7. The Church Defendants' post-trial motions and appeal may eliminate, reduce, modify, or otherwise affect the judgment in this case. Therefore, the Church Defendants will each be irreparably harmed if the anticipated judgment is executed against either of them before their post-trial motions are ruled on and/or before they have posted the requisite bond for any appeal.

8. Good cause exists to grant the Church Defendants' application and hear it ex parte for the reasons set forth above and for the reasons set forth in the application.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of June 2012, at Sacramento, California.

RJ Schnack

Robert J. Schnack

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.

Case No. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On June 16, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☒ **BY ELECTRONIC MAIL:** By transmission of a true copy to the e-mail address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 16, 2012, at ~~Oakland~~ Sacramento, California.

Robert Schnack

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.

Case No. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On June 18, 2012, I served the following document(s) described as **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY NORCO OVERNIGHT DELIVERY:** I caused the above-referenced document(s) to be delivered to Counsel for Plaintiff for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the e-mail address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 18, 2012, at Sacramento, California.

Noreen Witt

Noreen Witt

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.

Case No. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

10381636
FILED
ALAMEDA COUNTY
JUN 19 2012
By Exec. Off/Clerk

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE, Plaintiff, v. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10, Defendants.	Case No.: HG11558324 **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY BRIEF IN SUPPORT OF EX PARTE APPLICATION TO STAY ENFORCEMENT OF JUDGMENT** TRIAL DATE: May 21, 2012

Defendants Watchtower and North Fremont Congregation (the "Church Defendants") submit this reply to Plaintiff's limited opposition to their ex parte application to stay enforcement of judgment in this matter. Plaintiff's opposition states a willingness to agree to a stay of execution of the judgment on the condition that Defendant Watchtower "not transfer, convey, or

change title to any of its real property prior to the filing of a bond or undertaking required as a condition of appeal." This condition puts the proverbial cart before the horse.

As explained in the ex parte application, a temporary stay of enforcement of the judgment is necessary to protect the Church Defendants because of the uncertainty of the judgment. The judgment may be eliminated, reduced, modified, or otherwise affected by the post-trial motions the Church Defendants intend to file. Also, depending on the outcome of the post-trial litigation, the Church Defendants may appeal the judgment and, *at that time*, will file the required bond to stay enforcement of the judgment during the appellate process.

Temporary stays like the one the Church Defendants are requesting here are routinely granted to protect the parties when a judgment is uncertain. While Defendant Watchtower has absolutely no intent to make any fraudulent transfers of real property now or in the future, to the extent any such transfers of real property should occur during the stay to prevent Plaintiff from collecting on any ultimate judgment that may survive the post-trial motions and appeals, remedies would plainly be available to Plaintiff. That said, again, Plaintiff's claimed concern is premature, plus the Church Defendants have no intention of defrauding Plaintiff out of any judgment that ultimately may be owed to her once all post-trial motions and appeals have run their course. Until that time, the protection of a routine temporary stay is needed, and the Church Defendants request that their ex parte application be granted.

DATED: June 16, 2012

JACKSON LEWIS LLP

By _____
Robert J. Schnack

Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.

DATED: June 16, 2012

THE McCABE LAW FIRM, APC

By _____
James M. McCabe

Attorneys for Defendant North Congregation of Jehovah's Witnesses, Fremont, California

PROOF OF SERVICE
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On June 19, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S REPLY BRIEF IN SUPPORT OF THEIR EX PARTE APPLICATION TO STAY ENFORCEMENT OF JUDGMENT** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT DELIVERY** - by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Norco Delivery Services or delivering to an authorized courier or driver authorized by Norco Delivery Services to receive documents, addressed as set forth below.

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____.
The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 19, 2012, at Sacramento, California.

Lori J. Comette

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
CASE NO. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

8096262

FILED
ALAMEDA COUNTY
JUN 20 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly DEPUTY

FAXED

COPY

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, a California corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

[PROPOSED] ORDER GRANTING DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT

TRIAL DATE: May 21, 2012

On June 19, 2012, Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") and North Congregation of Jehovah's Witnesses, Fremont, California (collectively, the "Church Defendants") filed their Ex Parte Application to Stay Enforcement of the Judgment.

After considering the submitted papers, including any response or opposition filed on behalf of Plaintiff, this Court grants the Church Defendants' application as follows:

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT:

(1) Enforcement of the judgment to be entered on the jury's special verdicts of June 13 and 14, 2012 shall be temporarily and completely stayed ~~until ten (10) days after the last~~ day on which ~~a notice of appeal may be filed on said judgment;~~ and, PENDING FURTHER ORDER OF COURT

(2) Any existing liens, levies or attachments pertaining to the forthcoming judgment referenced in (1) above are hereby extinguished and ~~no new liens, levies or attachments may~~ be ~~created during~~ the pendency of this stay. RDM

IT ~~IS SO ORDERED~~.

DATED: 6/20, 2012

RD McGuinnes

HON. ROBERT D. MCGUINNES
JUDGE OF THE SUPERIOR COURT

(3) THE FOREGOING STAY IS EXPRESSLY CONDITIONED UPON Δ'S THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK INC.'S NOT TRANSFERRING, CONVEYING OR CHANGING TITLE TO ANY REAL PROPERTY IN ITS NAME TODAY PENDING FURTHER ORDER OF COURT

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NAME: JANE DOE VS THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al

ACTION NO.: HG11-558324

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak Street, Oakland, California. I served the **ORDER GRANTING DEFENDANT'S WATCHTOWER AND NORTH FREMONT CONGREGATION'S EX PARTE APPLICATION TO STAY ENFORCEMENT OF THE JUDGMENT** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Richard J. Simons, Esq.
Furtado, Jaspovice & Simons
22275 Main Street
Hayward, CA 94541

Robert J. Schnack
JACKSON LEWIS LLP
801 K Street, Suite 2300
Sacramento, CA 95814

The McCabe Law Firm, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561

I declare under penalty of perjury that the following is true and correct

Executed on June 20, 2012 at Oakland, California.

Pat Sweeten
Executive Officer/Clerk of the Superior Court

By Miranda Edgerly
Miranda Edgerly, Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge
Reporter Adrienne Peretti CSR #11029

Cause called for Case Management Conference on June 14, 2011.

Richard J. Simons appearing for plaintiff via conference call.
No appearance by defendants.

Court and counsel confer on the record.

ORDER re: CASE MANAGEMENT

& TRIAL SETTING ORDER WITH NOTICE OF TRIAL

The Court has ordered the following at the conclusion of a judicially supervised Case Management Conference.

MANDATORY SETTLEMENT CONFERENCE (CRC § 3.1380)

A Mandatory Settlement Conference pursuant to CRC § 3.1380 is set for 02/24/2012 in Dept. 14 at 01:30 PM.
Trial counsel, the parties, claims representatives and all other persons with full authority to settle the case must personally attend unless the Court has, before the Conference, authorized telephonic participation upon written application with notice to all other parties and good cause shown.
A Settlement Conference Statement complying with CRC § 3.1380 must be filed with the court no later than 02/17/2012 and served on all other parties.
If the foregoing date is a court holiday or a weekend, the time is extended to the next business day.

PRETRIAL CONFERENCE

A Pretrial Conference is scheduled for 03/02/2012 at 08:30 AM in Dept. 22.

TRIAL SETTING ORDERS

The Court makes the following trial setting orders:

Jurt Trial is set for 3/26/2012 at 08:30 AM in Dept. 22.

NOTICES

Clerk is directed to serve endorsed-filed copies of this order, with proof of service, to counsel and to self-represented parties of record by mail.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Case Management Conference on November 17, 2011.

No appearances expected. All future dates maintained.

Minutes of 11/17/2011
Entered on 11/17/2011

Executive Officer / Clerk of the Superior Court

By Kasey McKeon digital
Deputy Clerk

Minutes of 06/14/2011
Entered on 06/19/2011

Executive Officer / Clerk of the Superior Court

By _____ digital
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 21, 2012.

Tina Kelly, CSR# 12502

Jane Doe represented by Richard J. Simons and Kelly Kraetsch.

The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Robert J. Schnack and Douglas M. Egbert.

The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.

The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack and Douglas M. Egbert.

Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Robert J. Schnack and Douglas M. Egbert.

Jonathan Kendrick appearing in pro per.

Fremont California Congregation of Jehovah's Witness, North Unt represented by James M. McCabe.

1:25 PM - Court, Plaintiff's counsels and Defendant's counsels are present in open court. Court and counsel discuss motions in limine.

The Court rules on Plaintiff's and Defendant's motions in limine as recited on the record in open court.

2:40 PM - The matter is continued to May 22, 2012 at 8:30 a.m. for Jury Selection/Jury Trial. Court stands adjourned.

Case continued to 08:30 AM on 05/22/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/21/2012
Entered on 05/21/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 22, 2012.

Not Reported.

Jane Doe appearing represented by Richard J. Simons and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.

The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J. and Douglas M. Egbert.

Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J. and Douglas M. Egbert.

Jonathan Kendrick not appearing.

Fremont California Congregation of Jehovah's Witness, North Unt not appearing.

9:30 AM - 75 prospective jurors are present in the jury assembly room to complete questionnaires and hardship requests.

10:05 AM - Court and counsel present in open court with those prospective jurors who are requesting to be excused for hardship. Court and counsel review the hardship requests.

10:20 AM - The Court reads the names of those prospective jurors who have been deferred to serve at another time.

10:32 AM - Recess

11:45 AM - An additional 26 jurors are present in the jury assembly room to complete questionnaires and hardship requests.

11:15 AM - Court and counsel present in open court with those prospective jurors who are requesting to be excused for hardship. Court and counsel review the hardship requests.

11:20 AM - The Court reads the names of those prospective jurors who have been deferred to serve at another time.

11:25 AM - Court and counsel engage in colloquy off the record.

11:30 AM - Forty (40) additional jurors are ordered for May 23, 2012 for further jury selection. Court stands adjourned.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 23, 2012.

Not Reported.

Jane Doe represented by Richard J. Simons and Kelly Kraetsch.

The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack and Douglas M. Egbert.

Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Robert J. Schnack and Douglas M. Egbert.

Jonathan Kendrick appearing in pro per.

Fremont California Congregation of Jehovah's Witness, North Unt represented by James M. McCabe.

8:35 AM - 37 prospective jurors are present in the courtroom. The Court reads the statement of the case and introduces the parties.

8:50 AM- Panel A and Panel B are sworn on voir dire. The names of 18 prospective jurors are called from the random list and seated in the jury box. The court commences voir dire of the prospective jurors.

9:02 AM - Plaintiff's counsel commence voir dire of the prospective jurors.

10:18 AM - Recess.

10:20 AM - Court, counsel and clerk are present in Dept. 17 in open court. Court and counsel review the 26 hardship requests from panel C.

10:28 AM - The 26 prospective jurors with hardships are deferred for service at another time.

10:35 AM - All parties are present in Department 22. Defendant's counsel commence voir dire examination.

11:00 AM - Court and counsel voir dire (3) prospective jurors in chambers. Court stands in recess.

11:45 AM - All parties are present in open court. Steven Bailey, Dana Kuhn, Janice Hitchcock, and Vilma Nicolas are excused for cause.

11:50 AM - The names of prospective jurors are called from the random list and are seated in the jury box. Voir dire examination continues.

12:02 PM - Jurors seated in 14 - 18 are ordered to return at 1:15 p.m. Court declares lunch recess.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 24, 2012.

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by , Robert J. Schnack.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by , Robert J. Schnack.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unt appearing represented by James McCabe.

8:55 AM - Court and counsel confer in chambers.

9:00 AM - Court, respective counsel, plaintiff, and prospective jurors are present in open court. Li Liang is excused by stipulation for medical reasons. Plaintiff's counsel resumes voir dire examination.

9:14 AM - Peremptory challenges are exercised. Voir dire examination continues.

9:45 AM - The Court declares a brief recess.

10:15 AM - All parties are present. Andrew Wolfsmith and Nellie Montes are excused for cause. Voir dire examination continues.

10:20 AM - Both sides exercise their peremptory challenges.

10:24 AM - Both sides now being satisfied, the following jurors and alternates are sworn to try the cause:
1. Leslie Hawkins-Brown, 2. Richard Ng, 3. Nancy Lynn, 4. David Gonzales,
5. Kathleen Shipp, 6. Carrie Wolfenberger, 7. Nigel Pan, 8. Tracy Matsuoka,
9. Hugh Hui, 10. Geoffrey Brown, 11. Gary Donelan, and 12. Tawni DeNijs.

Alternates: 13. Russell Crisologo, 14. Vera Ferris, and 15. Kenny Man.

The remaining jurors are thanked and excused from further service in this action.

10:34 AM - The jury and alternates are ordered to return May 29, 2012 at 8:30 a.m. for Further Jury Trial.

Carrie Hewerdine, RDR (CSR 4579)
10:40 AM - Outside the presence of the jury, Court and counsel discuss motions in limine and jury instructions on the record. The Court rules on the motion in limine as recited on the record in open court.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 29, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unt represented by James M. McCabe.

8:35 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:45 AM - The jury is now present in open court. The Court pre-instructs the jury on the applicable law herein.

9:10 AM - Plaintiff's counsel Rick Simons presents his opening statements.

9:38 AM - James M. McCabe presents his opening statements on behalf of Fremont California Congregation.

10:05 AM - The Court declares recess.

10:24 AM - All parties are present. Robert J. Schnack presents his opening statements on behalf of The Watchtower Bible and Tract Society of New York.

10:45 AM - GARY ABRAHAMSON is sworn and examined on behalf of the petitioner under Evidence Code 776.

Plaintiff's Exhibit 9 (Deft. 98) - Letter from North Congregation Body of Elders to Watchtower dated November 15, 1993, In Evidence.
Plaintiff's Exhibit 17 (Deft. 59) - Awake!, January 22, 1985 Child Molesting article, In Evidence
Plaintiff's Exhibit 37 (Deft. 64) - Awake! October 8, 1993Your Child is in Danger! article, In Evidence.

11:44 AM - Cross-examination of the witness by Mr. McCabe.

12:10 PM - The jury is admonished and the Court declares lunch recess.

1:17 PM - Outside the presence of the jury, Court and counsel confer on the record. Defendant's exhibit 99 (Plaintiff's 10) -Letter from Watchtower to North Congregation Body of Elders dated December 3, 1993 is redacted as recited on the record.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 30, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.
8:44 AM - Court, respective counsel, plaintiff, and jury are present. MICHAEL CLARKE previously sworn resumes the stand for cross-examination by Mr. McCabe.

Plaintiff's Exhibit 27 (Deft. 032) -Letter to all Bodies of Elders dated March 23, 1992, In Evidence

8:50 AM - Cross-examination of the witness by Mr. Schnack.
8:53 AM - Redirect examination of the witness by Mr. Simons.

Plaintiff's Exhibit 18 (Deft. 106) - Letter from North Congregation Body of Elders to Oakley Congregation Body of Elders dated December 20, 2009, In Evidence

9:07 AM - The witness is excused. EVELYN RUTH KENDRICK is sworn under direct examination on behalf of the plaintiff.
9:20 AM - Cross-examination of the witness by Mr. Schnack.

Plaintiff's Exhibit 5 (Deft. 94) - Fremont Police Report 940218027, Identification only

9:35 AM - Cross-examination of the witness by Mr. McCabe.
9:38 AM - Redirect examination of the witness.
9:39 AM - Recross examination of the witness.
9:40 AM - The witness is excused.
9:43 AM - CLAUDIA FRANCIS is sworn under direct examination on behalf of the plaintiff.
10:05 AM - The witness is excused. The Court declares recess. Outside the present of the jury, Court and counsel confer on the record.
10:10 AM - Recess.
10:28 AM - All parties are present. The witness resumes the stand for cross-examination by Mr. McCabe.
10:38 AM - Cross-examination of the witness by Mr. Schnack.
10:39 AM - Redirect examination of the witness by Mr. Simons,

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on May 31, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:33 AM - Court, respective counsel, plaintiff, and jury are present. CARL LEWIS is sworn under direct examination on behalf of the plaintiff. The Court finds the Carl Lewis an expert in Child and Sexual Abuse Accommodation Syndrome.

9:12 AM - Cross-examination of the witness by Mr. Schnack.

9:15 AM - Redirect examination of the witness.

9:17 AM - Recross examination of the witness

9:18 AM - The witness is excused. NEAL CONTI is sworn under direct examination on behalf of the plaintiff.

9:24 AM - Cross-examination of the witness by Mr. McCabe.

10:12 AM - Recess.

10:31 AM - All parties are present. The witness resumes the stand for further redirect examination.

10:40 AM - The witness is excused. Video deposition of Allen Shuster dated 2/15/12 is played to the jury in open court.

11:18 AM - Recess.

11:27 AM - All parties are present. Video deposition resumes.

11:52 AM - Video deposition of Helene Harmatz, PhD. dated 4/30/12 is played to the jury in open court.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 04, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:32 AM - The Court finds there is a duty.

8:37 AM - Court, respective counsel, plaintiff, and jury are present. The Court updates the jury on the trial schedule.

8:40 AM - OFFICER ROBERT DAVILA, FREMONT POLICE DEPARTMENT is sworn under direct examination on behalf of the plaintiff..

8:44 AM - Cross-examination of the witness by Mr. Schnack.

8:48 AM - Cross-examination of the witness by Mr. McCabe.

8:50 AM - Redirect examination of the witness.

8:51 AM - The Court discusses limiting instructions to the jury.

8:52 AM - The witness is excused. CAROLYN MARTINEZ is sworn under direct examination on behalf of the plaintiff.

Plaintiff's Exhibit 30 - Arial view of Kingdom Hall, Fremont, CA, In Evidence

9:05 AM - Cross-examination of the witness by Mr. McCabe.

9:08 AM - Redirect examination of the witness.

9:09 AM - Re-cross examination of the witness.

9:10 AM - The witness is excused. ANNA SALTER, PHD. is sworn under direct examination behalf of

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 05, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:25 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:40 AM - Court, respective counsel, plaintiff, and jury are present in open court.
LYNN ELISABETH PONTON, M.D. is sworn under direct examination on behalf of the plaintiff. The Court finds the witness qualified as an expert in Psychiatry and Child and Adolescent Psychiatry.

9:20 AM - Cross-examination of the witness by Mr. Schnack.

9:23 AM - Redirect examination of the witness.

9:24 AM - The witness is excused. Plaintiff Rests.

9:28 AM - Mr. Schnack's oral motion for a Directed Verdict as to the Punitive Damages Count is reserved.

9:29 AM - The Court declares a brief recess.

9:48 AM - All parties are present in open court. BERNICE MUNOZ is sworn and examined on behalf of the defendant by Mr. McCabe.

9:59 AM - The witness is excused. SYLVIA MUNOZ is sworn and examined on behalf of the defendant by Mr. McCabe.

10:10 AM - Cross-examination of the witness.

10:12 AM - The witness is excused. PAMELA MUNOZ is sworn and examined on behalf of the defendant by Mr. McCabe.

10:23 AM - Cross-examination of the witness.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 06, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

10:25 AM - Court and counsel confer off the record regarding jury instructions.

10:55 AM - Court and respective counsel present on the record. Respective counsel present their requested jury instructions to the court.

11:02 AM - Argument regarding defendant's Motion for Directed Verdict.

11:10 AM - Defendant's Motion for Directed Verdict as to the Punitive Damages is denied.

11:15 AM - Court and counsel resumes legal discussions on the record.

12:30 PM - Court stands adjourned.

Case continued to 08:30 AM on 06/11/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/06/2012
Entered on 06/11/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 11, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

7:40 AM - Outside the presence of the jury, Court and counsel confer on the record.

8:45 AM - Court and counsel confer on the record regarding jury instructions.

9:30 AM - Court, respective counsel, plaintiff and jury are now present in open court. The Court instructs the jury on the applicable law herein.

10:18 AM - Mr. Simons for the plaintiff, presents his closing arguments to the jury.

11:12 AM - The Court declares recess.

11:30 AM - All parties are present. The Court addresses the jury regarding the lunch schedule for today. Mr. McCabe for Fremont Congregation, presents his closing arguments to the jury.

12:30 PM - Mr. Schnack for Watchtower presents his closing arguments to the jury,

1:12 PM - The Court calls a brief recess.

1:25 PM - All parties are present. Mr. Simons for the plaintiff presents his rebuttal argument to the jury.

1:40 PM - Court attendant Hill Martin is sworn to take charge of the jury. The alternate jurors are released on phone standby.

1:45 PM - The Court declares lunch recess.

2:40 PM - Jury retires to commence their deliberations. Court stands in recess during deliberations.

4:15 PM - The jury will return June 12, 2012 at 8:30 a.m. in Department 22 for further deliberations. Court stands adjourned.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 12, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:30 AM - Outside the presence of the jury, Court and counsel confer on the record regarding Request by Jury.

9:15 AM - The Court orders the court reporter may read testimony of Michael Clarke and Gary Abramson.

9:20 AM - The Court stands in recess.

10:00 AM - The court reporter reads back the relevant testimony of Michael Clarke and Gary Abramson to the jury in the jury room.

12:20 PM - The jury is taken to lunch with sworn Court Attendants Hill Martin and Mario Vela.

2:00 PM - Jury retires to commence their deliberations. Court stands in recess during deliberations.

2:15 PM - The court reporter reads back testimony of Lynn Elisabeth Ponton, M.D. to the jury in the jury room.

2:50 PM - Jury resumes their deliberations. Court stands in recess during deliberations.

3:30 PM - Outside the presence of the jury, Court and counsel confer on the record regarding Request from the Jury.

3:38 PM - Court stands in recess during deliberations.

4:30 PM - The jury will return June 13, 2012 at 8:30 a.m. in Department 22 for further deliberations. Court stands adjourned.

Case continued to 08:30 AM on 06/13/2012 in Department 22, Civil Jury Trial, Administration Building,

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Jury Trial on June 13, 2012.

Court Reporter: Kathryn Lloyd, CSR 5955

Jane Doe represented by Simons, Richard J. and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unit represented by James M. McCabe.

8:45 AM - All jurors are present and the jury resumes deliberations. The court stands in recess during deliberations.

12:30 PM - The jury is in recess for lunch in the jury room.

1:00 PM- The jury resumes deliberations and the court stands in recess.

2:47 AM - Court, counsel, parties and jury are present; the jury renders a Special Verdict. At the direction of the Court the clerk reads the verdict. The jury is polled and the verdict is affirmed as recited on the record. Court directs the clerk of the court to record the Verdict.
See Special Verdict Filed June 13, 2012.

3:05 PM - The jury is ordered to return June 14, 2012 at 10:00 a.m. for Phase Two of the trial.

3:20 PM - Outside the presence of the jury, Court and counsel confer on the record. Defendant Watchtower's oral Motion to Set Aside Punitive Damages is DENIED.

3:22 PM - The matter is continued to June 14, 2012 at 10:00 a.m. in Department 22 for Phase Two. Court stands adjourned.

Note: The matter will be heard at 10:00 a.m.

Case continued to 09:00 AM on 06/14/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Document Registered: Jury Verdict (Special)

Minutes of 06/13/2012
Entered on 06/13/2012

Case continued to 08:30 AM on 05/23/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/22/2012
Entered on 05/22/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

1:15 PM - Court and counsel confer in chambers.

1:40 PM - All parties are present. The following jurors are excused for cause: Kenneth Wong, Michael Keeley, and Maria Molina.

1:45 PM - Panel C is present. The Court reads the statement of the case and introduces the parties.

1:50 PM - Counsel continues voir dire examination.

2:15 PM - Peremptory challenges are exercised. Voir dire examination continues.

2:45 PM - Court and counsel confer in chambers.

2:50 PM - Clerk swears in Panel C on voir dire.

2:55 PM - All parties are present. Kenneth Bochert is excused for Cause.

3:00 PM - The matter is continued to May 24, 2012 at 9:00 a.m. for further jury selection/ jury trial. Court stands adjourned.

Case continued to 08:30 AM on 05/24/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/23/2012
Entered on 05/24/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

11:10 AM - Court stands adjourned.

Case continued to 08:30 AM on 05/29/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/24/2012
Entered on 05/24/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

1:32 PM - All parties are present. The witness resumes the stand for redirect examination.

1:35 PM - The witness is excused. Three (3) Requests for Admissions are recited on the record.

1:38 PM - MICHAEL CLARKE is sworn and examined on behalf of the plaintiff under Evidence Code 776.

Plaintiff's Exhibit 1 (Deft. 026) -Letter to all Bodies of Elders dated July 1, 1989, In Evidence.

2:55 PM - The jury is admonished and ordered to return May 30, 2012 at 8:30 a.m. in Department 22 for Further Jury Trial. Court stands adjourned.

Case continued to 08:30 AM on 05/30/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/29/2012
Entered on 05/29/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

10:40 AM - The witness is excused. ANDREA SYLVIA is sworn under direct examination on behalf of the plaintiff.
10:50 AM - Cross-examination of the witness by Mr. Schnack.
10:52 AM - The witness is excused. KATHLEEN CONTI is sworn under direct examination on behalf of the plaintiff.
11:23 AM - Cross-examination of the witness by Mr. Schnack.
11:33 AM - The witness is excused. DOROTHY CONTI is sworn under direct examination on behalf of the plaintiff.

Plaintiff's Exhibit 2 - Photo of Candace Conti with a horse, In Evidence
Plaintiff's Exhibit 3 - Graduation photo of Candice Conti, In Evidence

11:48 AM - Cross-examination of the witness by Mr. Schnack.
11:49 AM - The witness is excused. The jury is admonished and excused for lunch recess. Outside the presence of the jury, Court and counsel confer on the record.
11:55 AM - Recess.
1:17 PM - All parties are present. CLIFFORD WILLIAMS is sworn and examined on behalf of the plaintiff under Evidence Code 776.

Plaintiff's Exhibit 19 - Letter from Downey Congregation to M. Iglesias, Oakley Congregation , January 14, 2010, In Evidence

1:30 PM - The Court declares a brief recess. Outside the presence of the jury, Court and counsel confer on the record.
1:35 PM - All parties are present. The witness resumes the stand for direct examination.
1:40 PM - The witness is excused. The jury is admonished and the Court declares recess.
1:51 PM - All parties are present. LAWRENCE LAMBERDIN is sworn under direct examination on behalf of the plaintiff.

Plaintiff's Exhibit 4 - DOJ Photo of Jonathan Kendrick, In Evidence.
Plaintiff's Exhibit 14 (Deft. 101) - Letter from North Congregation Body of Elders to Watchtower dated August 31, 1998 (redacted version), In Evidence.

2:20 PM - Cross-examination of the witness by Mr. McCabe.

Defendant's Exhibit 132 - Photographs (interior and exterior) of Kingdom Hall and surroundings, In Evidence

2:49 PM - Redirect examination by Mr. Simons.
3:05 PM - Cross-examination of the witness by Mr. McCabe.
3:06 PM - The witness is excused. The jury is admonished and ordered to return May 31, 2012 at 8:30 a.m. for further jury trial. Outside the presence of the jury, Court and counsel confer on the record.
3:08 PM - Court stands adjourned.

Case continued to 08:30 AM on 05/31/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/30/2012
Entered on 05/30/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

12:19 PM - The jury is admonished and the Court declares lunch recess.

1:30 PM - All parties are present. Video deposition of Laura Walton, M.D. is played to the jury.

1:50 PM - Video deposition of Laura Fraser, LMFT is played to the jury.

3:03 PM - The jury is admonished and ordered to return June 4, 2012 at 8:30 am Department 22 for Further Jury Trial.

Case continued to 08:30 AM on 06/04/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 05/31/2012
Entered on 06/03/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

the plaintiff .

9:23 AM - The Court finds the witness may testify as an expert in Child Sexual Abuse and Prevention.

9:32 AM - The Court declares a brief recess.

9:45 AM - All parties are present. The witness resumes the stand for further direct examination.

Plaintiff's Exhibit 55 - Bay Valley Medical Group Records: August 2002, In Evidence.

10:05 AM - Cross-examination of the witness by Mr. Schnack.

10:24 AM - Cross-examination of the witness by Mr. McCabe.

10:28 AM - The witness is excused. The Court declare a brief recess.

10:45 AM - All parties are present. CANDICE CONTI is sworn under direct examination.

11:22 AM - The Court declares a brief recess.

11:33 AM - All parties are present. The witness resumes the stand for cross-examination by Mr. McCabe.

11:45 AM - Cross-examination of the witness by Mr. Schnack.

11:58 PM - The Court declares lunch recess. Outside the presence of the jury, Court and counsel discuss legal issues on the record.

12:12 PM - Recess.

1:25 PM - Outside the presence of the jury, Court and counsel confer on the record.

Defendant's Exhibit 135 is Admitted Into Evidence

1:35 PM - All parties are now present. The witness resumes the stand for further cross-examination by Mr. Schnack.

1:38 PM - Redirect examination of the witness.

1:45 PM Re-cross examination of the witness by Mr. Schnack.

1:50 PM - The witness is excused. Plaintiff rests except for one witness Tuesday morning.

1:55 PM - The jury is admonished and ordered to return for further jury trial.

1:57 PM - Outside the presence of the jury, Court and counsel discuss legal issues on the record.

2:10 PM - Court stands adjourned.

Case continued to 08:30 AM on 06/05/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/04/2012
Entered on 06/04/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

10:28 AM - The witness is excused. MONICA APPLEWHITE video deposition dated May 18, 2012 is played to the jury.

11:40 AM - The Court addresses the jury regarding updated trial schedule. The jury is excused for lunch recess.

1:02 PM - Outside the presence of the jury, Court and counsel confer on the record.

1:07 PM - All parties are present. ALEN SHUSTER previously sworn resumes the stand for on behalf of the defendant on direct examination by Mr. McCabe.

Defendant Exhibit 131- Graphics of Jehovah's Witnesses' Theocratic Structure, Identification Only

Plaintiff's Exhibit 60 (Deft. 29) - Awake! October 8, 1991 p. 3 "The Innocent Victims of Child Abuse", In Evidence.
Plaintiff's Exhibit 29 - (Deft. 44) - Letter to all Bodies of Elders dated August 1, 1995, In Evidence
Plaintiff's Exhibit 12 - (Deft. 50) - Letters to all Bodies of Elders dated March 14, 1997, In Evidence
Plaintiff's Exhibit 65 (Deft. 49) - The Watchtower, January 1, 1997, pp. 26-29 "Let us Abhor What is Wicked", In Evidence

1:46 PM - Cross-examination of the witness. Excerpts of CANDICE CONTI deposition transcript is shown and read to the jury by Mr. Schnack.

2:02 PM - Defendant's Rest.

2:05 PM - The jury is admonished and ordered to return June 11, 2012 at 8:30 a.m. in Department 22. Counsel are ordered to return June 6, 2012 at 9:00 a.m. to prepare jury instruction and for Motion to Strike Testimony of Carl Lewis and Motion for Directed Verdict.
2:08 PM - Court stands adjourned.

Case continued to 08:30 AM on 06/06/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/05/2012
Entered on 06/06/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Case continued to 08:30 AM on 06/12/2012 in Department 22, Civil Jury Trial, Administration Building, 1221 Oak Street, Oakland.

Minutes of 06/11/2012
Entered on 06/12/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

1221 Oak Street, Oakland.

Minutes of 06/12/2012
Entered on 06/12/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly
Deputy Clerk

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgerly

Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Motion: May 19, 2011.

No one contested the Court's tentative ruling and it is affirmed as follows:

The Demurrer of Defendants Watchtower Bible and Tract Society of New York, Watchtower Bible and Tract Society of Pennsylvania, Inc., Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses ("Defendants") to the Complaint is OVERRULED. Plaintiff Jane Doe ("Plaintiff") has sufficiently alleged facts to support a duty by Defendants to Plaintiff in order to support this negligence claim. (See Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377.)

The Court notes that in Defendants' moving papers, Defendants cite to out-of-state cases, but have not provided copies of such cases. In the future, Defendants should comply with Cal. Rules of Court, Rule 3.1113(i).

Defendants shall file and serve an answer to the Complaint within 20 days, which time shall run from service of notice of entry of this order by Plaintiff.

Minutes of 05/19/2011
Entered on 05/22/2011

Executive Officer / Clerk of the Superior Court

By digital
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Motion: May 03, 2012.

The motion of Jane Doe to file amended complaint adding punitive damage allegations against defendant Watchtower Bible and Tract Society ("Watchtower") under CCP 425.14 is GRANTED.

Plaintiff filed this motion on April 10, 2012, just six weeks before the trial date of May 21, 2012. Plaintiff did not delay unduly in filing this motion, and Watchtower has not identified any specific liability or fact discovery that it will need from Plaintiff as a result of the addition of the punitive damages allegations.

Under CCP 425.14, a plaintiff cannot assert a claim for punitive damages against a religious corporation until the court finds that the plaintiff has presented sufficient evidence of a prima facie showing of liability under the preponderance of evidence standard and a showing of recklessness, oppression or fraud under the clear and convincing standard. Little Co. of Mary Hosp. v. Superior Court (2008) 162 Cal.App.4th 261, 267, 271; Rowe v. Superior Court (1993) 15 Cal.App.4th 1711, 1723.

The proposed First Amended Complaint includes a third cause of action entitled "Acts of Malice." The court reads the cause action as a claim that defendant Watchtower is liable for negligence because it acted with a willful and conscious disregard of the rights or safety of others. (Civil Code 3294(c)(1).) To establish conscious disregard, plaintiff must show that the defendant was aware of the probable dangerous consequences of its conduct, and that he willfully and deliberately failed to avoid those consequences. (Hoch v. Allied Signal (1994) 24 Cal.App.4th 48, 61.)

Plaintiff has presented a prima facie showing that she could potentially prove a claim against Watchtower for negligence by a preponderance of the evidence. There is evidence that Watchtower's officers, directors, or managing agents knew or had reason to know in 1993 that Jonathan Kendrick had confessed to inappropriate touching of a child (PX 2; DX L and M), that Watchtower failed to notify the congregation or to take other measures to protect children in the church (PX 3 and 4; DX K), and that as a result plaintiff suffered injury from 1994 through 1996.

Plaintiff has presented a prima facie showing that she could potentially prove by clear and convincing evidence that Watchtower was aware of the probable dangerous consequences of its decision not to alert church members of Kendrick's dangerous tendencies, and that Watchtower willfully and deliberately failed to avoid those consequences. (PX 2, 3, 4.)

Watchtower raises the issue of the appropriate balance between the clergy-penitent privilege and appropriate disclosures to congregants that a member may be a threat to children. Watchtower also notes that most of the case law on the responsibility of entities for sexual abuse concerns abuse perpetrated by employees or agents rather than by member of the entity who were not in positions of authority at the time of the abuse. (But see Wallace v. Der-Ohanian (1962) 199 Cal.App.2d 141.) These concerns present fact specific issues that are beyond the scope of a motion where the plaintiff need only present sufficient evidence to establish a prima facie case of liability and punitive damages.

The court OVERRULES the objection to PX 27 (percipient witness), to PX 26 (percipient witness to statements by Kendrick), to PX 30 (offered as evidence that Watchtower was on notice, not for truth of matter asserted), PX 31 (admissible to extent based on personal knowledge, but court disregards testimony regarding the "true purpose" of Watchtower), and PX 32 (witness is arguably a qualified expert with pertinent information regarding the standard of care during the relevant time period).

The motion of Jane Doe for an order permitting financial discovery is DENIED. If the jury finds that Watchtower is liable for punitive damages, then the court will expect Watchtower to produce its pertinent financial information by 9:00 am the following morning and to have witnesses available to testify by the following day.

Plaintiff must file the proposed First Amended Complaint on or before May 11, 2012.

The Court further orders the parties to comply with the Pretrial Orders: File Motions in Limine and related documents by May 16, 2012 at 2:30 p.m.

Minutes of 05/03/2012
Entered on 05/04/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Motion: September 29, 2011.

No one contested the court's tentative ruling and it is affirmed as follows:

The Motion of Plaintiff Jane Doe to Compel Answers to Questions at Deposition of Gary Abrahamson and for Sanctions is GRANTED. Plaintiff has established that the information sought is not precluded from disclosure under the penitent-clergy privilege, Evidence Code §1031-1034 because the questions do not appear to call for communications that were presumed to be kept confidential with only the clergy member to whom they were communication. Instead, the questions appear to call for information and communications of a kind that would be expected to be communicated beyond that clergy member to others within the religious organization, i.e. a judicial investigating committee, for purposes of taking responding to the communication within the church. (Cf. Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417, 445-46.)

Defendant shall present Gary Abrahamson for further deposition and shall not instruct him not to answer the questions identified in the motion based upon clergy-penitent privilege.
The further deposition shall take place at a mutually-convenient time, but no later than 20 days after entry of this order.

The request for sanctions in connection with this motion is DENIED.

Minutes of 09/29/2011
Entered on 09/30/2011

Executive Officer / Clerk of the Superior Court

By Kasey McKeon digital
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge
Reporter Adrienne Peretti CSR #11029

Cause called for Motion: August 25, 2011.

The Motion of Plaintiff Jane Doe ("Plaintiff") to Compel Production of Documents and for Sanctions from Defendants Watchtower Bible and Tract Society of New York and North Congregation of Jehovah's Witnesses, Fremont, California (erroneously sued herein as Jehovah's Witnesses on Peralta Blvd) is CONTINUED to September 29, 2011, at 3:00 p.m. in Department 22.
In the interim, parties are to meet and confer in person in a good faith effort to resolve this discovery dispute on an item-by-item basis. Counsel for both parties are referred to the Alameda County Bar Association Statement of Professionalism and Civility. See also Townsend v. Superior Court (1998) 61 Cal.App.4th 1431, 1439; and Manzetti v. Superior Court (1993) 21 Cal.App.4th 373, 380, fn.8. The meeting is to be tape-recorded and the tape is to be made available to the Court at the hearing. At least 5 COURT days prior to the continued hearing date, the parties are to file a JOINT status report of no more than 5 pages outlining which, if any, items remain in dispute and why.

It is not enough to refer the court back to the separate statement/other papers in association with each motion. Moreover, the joint status report should proceed to list items still remaining in dispute along with the reason(s) why. Counsel should be careful to delineate the items in dispute in such a way that the Court will be fully aware as to which set of discovery the item in dispute is referring. If an item is not specifically listed and briefed in the joint status report, the Court will assume that the issue has been resolved. The parties are admonished to be reasonable in this process.

A courtesy copy of the joint status report shall be delivered directly by fax to (510) 268-4835 marked: attention Department 22 Research Attorney.

Should the parties resolve their dispute prior to the continued hearing, please contact the clerk via email at dept22@alameda.courts.ca.gov no later than 3 COURT days prior to the hearing to take the matter off-calendar. ruled on as follows:

Minutes of 08/25/2011
Entered on 08/30/2011

Executive Officer / Clerk of the Superior Court

By Kasey McKiernan digital
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

September 29, 2011.

Matter comes on calendar in Dept. 22 for plaintiff's Motion to Compel Production of Documents and for Sanctions.

Martin Jaspovice appearing for plaintiff.
James M. McCabe appearing for defendant via conference call.

Court and counsel present on the record for argument on the above Motion.

Counsel to submit documents for in-camera review by Monday, 10/3/11.

Matter is continued for in-camera review to 03:00 PM on 10/03/2011 in Department 22, Civil Law and Motion, Administration Building, 1221 Oak Street, Oakland.

Minutes of 09/29/2011
Entered on 09/30/2011

Executive Officer / Clerk of the Superior Court

By digital
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Motion: October 03, 2011.

No parties expected.

Documents received 10/03/2011.

Ruling on Motion to Compel Production of Documents Taken Under Submission

Minutes of 10/03/2011
Entered on 10/03/2011

Executive Officer / Clerk of the Superior Court

By Kasey McClain digital
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge
Reporter Nancy Cardoza CSR #3815

Cause called for Motion: January 19, 2012.

The Motion of Jonathan Kendrick for relief from default is GRANTED.

The court is concerned that the evidence suggests that Mr. Kendrick was aware of the lawsuit, had consulted with counsel, and was possibly aware that he was required to file a responsive pleading yet failed to do so within the allotted time. The court also notes that the motion was filed shortly after the default, which mitigates any prejudice to the Plaintiff, that counsel for Plaintiff did not did not provide notice to Plaintiff before taking the default, Kim v. Westmoore Partners, Inc. (2011) 201 Cal.App.4th 267, 271 fn 1, and that there is a strong policy preference in favor of resolving cases on their merits, Fasuyi v. Permatex, Inc. (2008) 167 Cal.App.4th 681, 696. Weighing these factors, the court finds that defendant Mendrick has made the "very slight" showing required for excusable neglect and grants the relief requested under CCP 473(b).

Because of the significant evidence that Mr. Kendrick was aware that he was required to file a responsive pleading, the court makes the grant of this motion conditional on Mr. Kendrick paying Plaintiff $1000 for the fees that plaintiff incurred as a result of Mr. Kendrick's failure to file a timely answer. Vanderkous v. Conley (2010) 188 Cal.App.4th 111, 118-119.

Defendant Kendrick must file the proposed answer on or before January 26, 2012.

Minutes of 01/19/2012
Entered on 01/19/2012

Executive Officer / Clerk of the Superior Court

By Adrian Williams digital
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Case Management Conference on May 18, 2012.

Not Reported.

Jane Doe represented by Richard J. Simons and Kelly Kraetsch.
The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Schnack, Robert J.
The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
The North Congregation of Jehovah's Witnesses, Freemont California represented by Schnack, Robert J.
Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Schnack, Robert J.
Jonathan Kendrick not appearing.
Fremont California Congregation of Jehovah's Witness, North Unt represented by James McCabe.

Court and respective counsel discuss that "Standing" Pretrial Orders and Motions In Limine off the record.

June 1, 2012 Department 22 will be in session for the trial.

The Court orders the matter continued to May 21, 2012 at 1:30 p.m. in Department 22 for Jury Trial/Motions In Limine.

Minutes of 05/18/2012
Entered on 05/18/2012

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 14 Honorable Thomas Rasch , Commissioner

Cause called for Settlement Conference on April 26, 2012.

Plaintiff Jane Doe represented by Richard Simons.
Defendant Jonathan Kendrick not appearing.
Defendant Kingdom Hall of Jehovah's Witnesses, a Corporation represented by Robert J. Schnack & James McCabe.
Defendant The Governing Body of Jehovah's Witnesses, an unincorporated association not appearing.
Defendant The North Congregation of Jehovah's Witnesses, Freemont California represented by Robert J. Schnack & James McCabe.
Defendant The Watchtower Bible and Tract Society of New York, Inc., a Corporation represented by Robert J. Schnack & James McCabe.
Defendant The Watchtower Bible and Tract Society of Pennsylvania, a Corporation represented by Robert J. Schnack & James McCabe.

Document Registered: Judge's Memo to Clerk

Case not settled.
Maintain all future hearing dates in Department 22 :
Motion to Amend Complaint set on 5/3/12 at 3pm.
Case Management Conference set on 5/18/12 at 8:30am.
Jury Trial set on 5/21/12 at 8:30am.

Minutes of 04/26/2012
Entered on 04/27/2012

Executive Officer / Clerk of the Superior Court

By Melinda Guerrero digital
Deputy Clerk

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

ENDORSED
FILED
ALAMEDA COUNTY
AUG 02 2012
CLERK OF THE SUPERIOR COURT
By Barbara LaMotte Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTIONS FOR NEW TRIAL AND J.N.O.V. OF DEFENDANTS WATCHTOWER NEW YORK AND FREMONT CONGREGATION

Date: August 13, 2012
Time: 8:30 a.m.
Dept: 22

///

///

///

///

///

///

///

///

///

///

///

///

TABLE OF CONTENTS

		Page
TABLE OF CONTENTS		i
TABLE OF AUTHORITIES		ii
INTRODUCTION		1
I.	THE MOTION FOR J.N.O.V. FAILS TO MEET THE STATUTORY STANDARD AND IGNORES EVIDENCE SUFFICIENT TO SUPPORT THE VERDICT.	1
	A. Evidence on Malice	1
	B. "National Policy"	6
II.	THERE WAS NO ERROR IN EXCLUDING NON-PARTIES FROM VERDICT FORM.	8
	A. Law Enforcement Agencies	8
	B. Parents	8
III.	THERE WAS NO PREDJUDICIAL ERROR IN REFUSING DEFENDANTS' PROPOSED MANDATED REPORTING INSTRUCTION.	10
IV.	DEFENDANTS' ARGUMENT ON EXCESSIVE DAMAGES FAILS AS A MATTER OF LAW.	11
	A. Non-Economic Damages	11
	B. Punitive Damages	13
	1. Malice & National Policy	13
	2. Excessive Punitive Damages	14
	a. Reprehensibility	14
	b. Ratio	14
CONCLUSION		15

TABLE OF AUTHORITIES

Cases	Page
Sweatman v. Department of Veterans Affairs (2001) 25 Cal.4th 62, 68	2
Hauter v. Zogarts (1975) 14 Cal.3d 104, 110	2
Fountain Valley Chateau Blanc Homeowner's Ass'n v. Dep't. of Veterans' Affairs (1998) 67 Cal.App.4th 743, 750	2
Donchin v. Guerrero (1995) 34 Cal. App. 4th 1832, 1839-40	5
BMW of North America, Inc. v. Gore (1996) 517 U.S. 559	6,7,15
Johnson v. Ford Motor Company (2005) 35 Cal.4th 1191	6,7,8
Phillip Morris USA v. Williams (2007) 549 U.S. 346, 349	7
Ford v. Polaris Industries, Inc. (1997) 139 Cal.App.4th 755, 778-80	8
Wilson v. Ritto (2003) 105 Cal.App.4th 361, 369-70	8
Chakalis v. Elevator Solutions, Inc. (2012) 205 Cal. App. 4th 1557, 1569-70	8
Denton v. City of Fullerton (1991) 233 Cal.App.3d 1636, 1640-41	8
Thompson v. County of Alameda (1980) 27 Cal. 3d 741	8
Romero v. Superior Court (2001) 89 Cal.App.4th 1068	9
Chaney v. Superior Court (1995) 39 Cal.App.4th 152	9
Williams v. Garcetti, (1993) 5 Cal.4th 561	9
Soule v. General Motors Corp. (1994) 8 Cal.4th 548, 570	10
Rowland v. Christian	11
Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 407	14
State Farm Mutual v. Campbell (2003) 538 U.S. 408	15

Statutes	Page
C.C.P. §663	2
Institutions Code §	9
Penal Code §272	10
Penal Code §11166	10
C.C.P. 657(7)	11

INTRODUCTION

Watchtower New York and the North Fremont Congregation (the "Church Defendants") jointly move for New Trial and, as to Watchtower only, for Judgment Notwithstanding the Verdict on the issues of punitive damages. Not a single ground for the combined Motions has legal or factual merit. The Church Defendants base their Motions on claimed insufficiency of the evidence, but exclude reference to any evidence favorable to Plaintiff. They base their Motions on claimed error in the Trial Court's ruling excluding non-parties from the Special Verdict and its refusal to instruct the jury on inapplicable mandatory reporting statutes, but again fail to accurately state the evidence or address to the controlling authorities relied on by the Court. Defendant Watchtower claims Constitutional violations in the punitive damage award, but the arguments misinterpret the cases it cites. The Church Defendants attack the jury's award of damages as resulting from passion and prejudice, but ignore their own failure to offer either evidence or argument on the issue of compensatory damages.

The jury's verdict was neither capricious nor arbitrary. Jury selection was guided by the Trial Court, with caution to exclude any prospective juror who demonstrated bias against Jehovah's Witnesses or strong emotion about child sexual abuse. Defendants did not raise a single objection to any ruling in the voir dire process. During trial the jury was extremely attentive. Their deliberations were methodically conducted over four days. The jurors were thorough, asking for portions of testimony to be re-read and reporting the omission of Table A from the Present Cash Value instruction that had been overlooked by counsel and the Court.

I. THE MOTION FOR J.N.O.V. FAILS TO MEET THE STATUTORY STANDARD AND IGNORES EVIDENCE SUFFICIENT TO SUPPORT THE VERDICT.

A. Evidence on Malice

Watchtower's Motion for J.N.O.V. argues that the evidence is insufficient to support a finding by the clear and convincing standard that Watchtower's conduct harming Plaintiff constituted legal malice. The identical argument has been rejected by the Trial Court twice, once in granting Plaintiff's Motion to Amend her Complaint and again in denying Watchtower's Motion for Nonsuit/Directed Verdict. As before, Watchtower incorrectly argues that "Plaintiff's entire argument regarding malice

. . . was based solely on the July 1, 1989 letter from Defendant Watchtower to all bodies of elders." (Def. MPA 4:22-24.) The argument fails to mention the evidence showing three interrelated Watchtower corporate policy decisions that contributed to Plaintiff's harm. The first is the policy of keeping child sexual abuse reports secret, embodied in the 1989 letter that was Plaintiff's Exhibit 1. The second is the related policy of relying exclusively on parents to protect children in Jehovah's Witnesses against childhood sexual abuse, while simultaneously denying them the information to identify confirmed child abusers who are in frequent contact with their children. The third is the total absence of any program or policy on child sexual abuse *prevention*, as opposed to parental *education*. Although Watchtower argues the evidence showed it had good "policies to protect children" (Def. MPA 7:24-25), even Defendants' expert Dr. Applewhite pointedly refused to support Defendants' child sex abuse prevention program. (Applewhite testimony, Simons Dec., Ex. 14, 136:2-15.) Plaintiff's counsel argued all three policy issues in closing. (Plaintiff's closing, Simons Dec., Ex. 15, 95:6-9; 101:9-12; 119:17-121:5.)

The Church Defendants argue that the jury was required to believe, accept, and give 100% credence to the defense witnesses' testimony, including their expert Dr. Applewhite. (Def. MPA 7:1-20.) They argue that the jury was required to interpret the July 1, 1989 letter to all bodies of elders only as the defense attorneys suggested. (MPA 5:4-6:27.) They argue that there was no contrary evidence presented. (Def. MPA 7:21-28.) All three arguments sidestep the rule that J.N.O.V. "may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support." (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68, emphasis added; See C.C.P. §663.) "If there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied." (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.) The party in whose favor the verdict was rendered is "entitled to the benefit of every favorable inference which may reasonably be drawn from the evidence and to have all conflicts in the evidence resolved in his favor." (*Fountain Valley Chateau Blanc Homeowner's Ass'n v. Dep't. of Veterans' Affairs* (1998) 67 Cal.App.4th 743, 750.)

The content and timing of the 1989 letter, with repeated references to avoiding lawsuits, leads to the inference that its true purpose was to avoid claims like Plaintiff's, based either on sexual abuse of a child by a perpetrator already known to the Church Defendants, like Jonathan Kendrick, or possible suits by other abused children, who might remain unaware that they were not their abuser's only victims. The timing of the letter, coming soon after national attention focused on multiple lawsuits involving sexual abuse in the Catholic Church, supports that inference. (Salter test., Simons Dec., Ex. 7, 54:25-56:21; 61:14-65:3.) The jury was reasonably persuaded by the repeated secular and lawsuit-related concerns expressed in the letter that its true purpose was not to instruct on religious beliefs, but rather to hide the existence of known child sexual abusers from the congregations and the public. The jury doubtlessly waited for the explanation - which the Church Defendants never offered - as to why, if the 1989 letter represented only a common sense, garden variety instruction in basic confidentiality when taking confessions or performing counseling, it ends with a P.S. instructing elders to not copy the letter or disclose its contents to anyone, ever. (Trial Ex. 1/Def. 026; Plaintiff's closing, Simons Dec., Ex. 15, 105:23-106:9.)

Watchtower knew that secrecy protects molesters and injures victims. (Awake Magazine, Trial Ex. 64/Def. 37, Oct. 8, 1993); that secrecy is why child sex abusers were allowed to roam free in the Catholic Church (*Ibid.*); that child sex abusers could be otherwise trusted persons within the church (*Ibid.*); and that child sex abuse has devastating effects on children. (Awake Magazine, Trial Ex. 60/Def. 29, Oct. 8, 1991; Trial Ex. 63/Def. 36, July 22, 1993.) Slogans about "Abhorring Child Abuse" aside, Watchtower's actual policies deliberately kept child sex abusers secret with the result of causing devastating harm to Plaintiff.

The jury had many good reasons to disbelieve and reject some or all of the Church Defendants' testimony on these issues. None of the witnesses who testified regarding the reasons for the July 1, 1989 policy were involved in creating it or had any personal knowledge on the issue above what they were told by unknown individuals at Watchtower New York. (Shuster test., Simons Dec., Ex. 11, 115:19-116:5; Clarke test., Simons Dec., Ex. 10, 188:18-20; Ex. 16, 31:1-7; Lamerdin test., Simons Dec., Ex. 13, 204:7-16.) For reasons of their own, the Church Defendants chose not to

call anyone who was involved in the actual creation of the policy set forth in the letter to explain or defend it. Although the policies were admitted to be those of the Governing Body, none of its members testified in this action. (Shuster test., Simons Dec., Ex. 11, 116:14-117:5.) The jury may have reasonably decided to follow the Court's instruction and view with suspicion the weaker second-hand evidence of the letter's intent and basis offered by the low-ranking elders who were produced to testify on the issue. (CACI 203, Court's Inst., Simons Dec, Ex. 18, 53:17-22.)

The jury may have reasonably found that the elders were willfully false in significant portions of their testimony, and decided to disbelieve the rest. (CACI 5003, Court's Inst., Simons Dec., Ex. 18, 81:18-20.) Elders Abrahamson's and Clarke's versions of the Kendrick family meeting in 1993, where they learned Kendrick had molested his step-daughter, were repeatedly contradicted by Evelyn Kendrick and Andrea Sylvia. (Abrahamson test., Simons Dec., Ex. 1, 108:6-110:3, 136:7-18 and Clarke test., Simons Dec., Ex. 10, 173:11-23, 179:13-23 v. E. Kendrick test., Simons Dec., Ex. 2, 41:19-42:19 and Sylvia test., Simons Dec., Ex. 3, 94:1-95:17 [touching was intentional, in bedroom, skin-to-skin, and included pelvic area]; Clarke test., Simons Dec., Ex. 10, 184:22-185:14 v. E. Kendrick test., Simons Dec., Ex. 2, 43:6-20 and Sylvia test., Simons Dec., Ex. 3, 97:12-98:1 [report not "private"]; Clarke test., Simons Dec., Ex. 10, 166:22-167:4 v. E. Kendrick test., Simons Dec., Ex. 2, 40:14-41:4 [meeting held because Evelyn called Clarke for protection, not because Jonathan Kendrick called Clarke for "counseling"]; Abrahamson test., Simons Dec., Ex. 1, 114:24-115:4 v. E. Kendrick test., Simons Dec., Ex. 2, 42:20-43:5 [blaming Evelyn].)

Mr. Shuster and the Fremont elders testified that Kendrick would never have been allowed to be in field service with Plaintiff, then age eight, nine, and ten. (Abrahamson test., Simons Dec., Ex. 1, 122:21-123:6, Clarke test., Ex. 10, 208:20-209:11; Shuster test., Ex. 12, 177:13-25.) This testimony was contradicted by witness Carolyn Martinez, who saw them in field service together. (Martinez test., Simons Dec., Ex. 6, 41:10-18.) Mr. Shuster falsely testified that he believed Watchtower has a written policy proscribing known child molesters from performing field service with children, but was unable to produce it. (Shuster test., Simons Dec., Ex. 12, 177:13-179:23.) And Mr. Shuster and Elders Abrahamson and Lamerdin each gave the inherently ridiculous testimony that they do not

believe parents would be better equipped to decide who to trust with their children if they knew the identity of confirmed child molesters in their congregation. (Shuster test., Simons Dec., Ex. 12, 181:6-12; Abrahamson test., Simons Dec., Ex. 1, 118:15-120:9; Lamerdin test., Simons Dec., Ex. 13, 202:14-18.)

The jury could have reasonably decided not to believe any of the testimony of the elders as to why they were instructed to and did keep Kendrick's record of child sexual abuse secret from the congregation, giving him the opportunity to groom other girls for molestation. In rejecting the elders' testimony that the purpose was to protect the Kendrick family's privacy, and not to hush-up victims and avoid unwanted attention, legal or otherwise, the jury may reasonably have concluded that the opposite was true – that Watchtower was far more concerned with protecting Jehovah's Witnesses from image-damaging attention and hushing-up any victims than it was with protecting its flock from Brother Kendrick. "To disbelieve the denial of the existence of a fact is to believe in the existence of that fact." (*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1840.) This is particularly true in the case where the evidence establishing state of mind, such as malice, is exclusively within the control of the defendant. (*Ibid.*)

Defense counsel's interpretation of the 1989 letter was also within the jury's power to reject. Elder Abrahamson specifically admitted that elders did have the authority to "inform" parents of a known molester like Kendrick, which contradicts the Church Defendants' counsel's, and other elders', testimony that biblical mandates required secrecy. (Abrahamson test., Simons Dec., Ex. 1, 116:11-18.) Defendants argue that the 1989 policy was to avoid lawsuits by child sexual abusers for invasion of privacy and improper disclosure of confidential information. (Def. MPA 5:21-23.) However, no evidence of any such lawsuits was introduced, and the fact that Kendrick was publicly convicted in the criminal courts demonstrates that there was no right of privacy involved in this case. Evelyn and Andrea Kendrick did not consider the matter private. (E. Kendrick test., Simons Dec., Ex. 2, 43:6-20; Sylvia test., Simons Dec., Ex. 3, 97:12-98:1.) Furthermore, under repeated cross-examination, elders Abrahamson and Clark admitted that Kendrick's "confession" was really a lie. (Abrahamson test., Simons Dec., Ex. 1, 105:16-107:14; Clarke test., Simons Dec., Ex. 10, 173:24-

174:6.) There was more than sufficient evidence to clearly convince the jury that the Fremont elders were instructed and carried out policies of keeping known child sex abusers secret, and failed to protect children, including Plaintiff, for the benefit of Watchtower and to the risk and detriment of children.

In closing argument, Plaintiff's counsel went through the July 1, 1989 letter in great detail, and offered an interpretation of the document that was in stark contrast to that offered by Defendants' attorneys. (Plaintiff's closing, Simons Dec., Ex. 15, 101:9-106:9.) As the Trial Court found in granting Plaintiff's Motion to Amend her Pleadings to add the punitive damages claim, and in denying the Motion for Non-Suit/Directed Verdict on the issue of malice, there was sufficient evidence for Plaintiff to have proven a prima facie case on the issue of malice.

B. "National Policy"

The Church Defendants argue "the punitive damages award must also be vacated in its entirety because Plaintiff's stated purpose for pursuing punitive damages was to effect a change in Watchtower's national policy." (Def. MPA 8:5-7.) They assert that "seeking punitive damages for that purpose is improper." (*Id.* at 8:7-8.)

The Church Defendants have confused two separate and distinct concepts: the prohibition against awarding punitive damages to punish conduct committed outside of the state's jurisdiction, and the permissible goal of deterring future wrongful conduct by changing a national policy through an award of punitive damages for the conduct against the plaintiff who is before the Court. This confusion arises from the Church Defendants' failure to properly read *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, and failure to review or cite *Johnson v. Ford Motor Company* (2005) 35 Cal.4th 1191.

BMW was an Alabama case against the automobile manufacturer that sold a repainted BMW as a new vehicle. Evidence was introduced at trial of nationwide sales of nearly 1000 such cars, all but 14 of them sold in other states. In addition to awarding compensatory damages of $4000, the jury awarded two million dollars in punitive damages: a ratio of 500 to 1.

The U.S. Supreme Court held that "a state may not impose economic sanctions on violations of its laws with the intent of changing the tortfeasor's **lawful** conduct in other states." (517 U.S. at p. 572 [emphasis added].) A state may not impose punitive damages to punish a defendant for conduct that did not occur in, or had no impact on, the state where the trial was held. (*Id.* at p. 572-73.) Due Process prohibits punishing a defendant for harm to persons not before the Court. (*Phillip Morris USA v. Williams* (2007) 549 U.S. 346, 349.) Thus, although evidence of harm to others is admissible on the issue of reprehensibility, the Court must protect against the risk that the jury will punish the defendant for harm caused to others. (*Id.* at p. 355.)

None of these rules were violated in this case. The jury's award of punitive damages could not have been for the purpose of punishing Watchtower for harm to others outside of California, because the Trial Court granted the Church Defendants' Motion in Limine to exclude evidence of any other victims and no such evidence was admitted. Because there was no evidence of harm to others outside of California or of harm to others besides Plaintiff, there is no basis to argue that the jury awarded punitive damages based upon harm to anyone other than Plaintiff. Moreover, the jury was instructed that punitive damages were only for the purpose of punishing Defendant Watchtower "for the conduct [that] harmed the Plaintiff and to discourage similar conduct in the future." (CACI 3949, Court's Inst., Simons Dec., Ex. 19, 13:5-8), and not to award punitive damages "for the impact of its alleged misconduct [on] persons other than Candace Conti." (*Id.* at 14:12-14.)

There was also no evidence of Watchtower's lawful conduct in other states. Unlike *BMW*, Plaintiff's expert Dr. Anna Salter testified that the policy of Defendant Watchtower violated national standards of care, applicable in all 50 states where she trains and teaches. (Salter test., Simons Dec., Ex. 7, 61:14-65:3.) There is no evidence from which the jury could have concluded that the policies at issue were lawful in any state. Therefore, the prohibition on imposing punitive damages "with the intent of changing the tortfeasor's lawful conduct in other states" has no applicability to this case. (*BMW, supra*, 517 U.S. at p. 572.)

As the California Supreme Court recognized in *Johnson v. Ford Motor Company, supra*, the fact that wrongful conduct involves a national policy does not preclude the use of punitive damages

to deter continuation of that policy. (35 Cal.4th 1191 at p. 1207.) The scale of the wrongful conduct, including whether or not it is resulting from a national policy that would be applied to all similar cases, remains "relevant to reprehensibility and hence to the size of award warranted, under the guidepost, to meet the state's interest in deterrence." (*Ibid.*) Even more strongly, the *Johnson* Court stated, "Nothing the high court has said about due process review requires that California juries and courts ignore evidence of corporate policies and practices and evaluate the defendant's harm to the plaintiff in isolation."

Defendant Watchtower's argument that a jury may not consider the scope of a national policy in determining reprehensibility and an award of punitive damages is simply wrong and not supported by either the authorities it cites or the authorities it omits.

II. THERE WAS NO ERROR IN EXCLUDING NON-PARTIES FROM VERDICT FORM.

As their first-claimed basis for new trial, the Church Defendants argue that the Court erred in not including various public entities and Plaintiff's parents on the verdict form. The Court's ruling rejecting the request was based on case law showing none of the claimed at fault non-parties had a legal duty to Plaintiff under the facts of this case. Defendants' Motion for New Trial neither addresses these cases nor cites any evidence that would establish a prima facie case against any non-party. A non-party may only be included on a Special Verdict form if the evidence is sufficient to establish a legal duty, the breach of that duty, and causation of the plaintiff's injury. (*Ford v. Polaris Industries, Inc.* (1997) 139 Cal.App.4th 755, 778-80; *Wilson v. Ritto* (2003) 105 Cal.App.4th 361, 369-70; *Chakalis v. Elevator Solutions, Inc.* (2012) 205 Cal. App. 4th 1557, 1569-70.) The Church Defendants did not introduce sufficient evidence to meet this standard.

A. Law Enforcement Agencies

Absent a "special relationship," law enforcement agencies and public agencies have no duty in California to warn citizens of an individual who presents a danger to others. (*Denton v. City of Fullerton* (1991) 233 Cal.App.3d 1636, 1640-41 [police officers aware of a sexual assault in an apartment complex laundry room had no duty to warn residents of the complex of the risk of sexual assaults on the property]; *Thompson v. County of Alameda* (1980) 27 Cal. 3d 741 [County employees

had no duty to warn neighbors that a juvenile released from Juvenile Detention may constitute a danger to others].)

In this case, the public agencies Defendants blame had no duty to warn anyone of Kendrick's risk of further molestations, because - unlike the Church Defendants – those agencies had no special relationship to Plaintiff, and no readily identifiable individual or group of individuals who were Kendrick's future victims. There is no discrimination against the Church Defendants in violation of the First Amendment, as they suggest. (Def. MPA 13:3-13.) The Church Defendants' duty arose from their combined specific knowledge of Kendrick and their relationship with Plaintiff, a combination the agencies did not share.

B. Parents

The Church Defendants do not produce any argument or evidence that Mr. or Mrs. Conti, Plaintiff's parents, had actual knowledge that Kendrick was a child molester or that he was molesting Candace. The Defendants instead argue the Contis were bad parents. (Def. MPA 14:12-25.) Although their parenting flaws may have made their daughter more vulnerable, that evidence does not meet the threshold to create a legal duty to prevent her molestation in this case. The Church Defendants do not discuss or distinguish *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068 or *Chaney v. Superior Court* (1995) 39 Cal.App.4th 152, both of which were relied on by the Trial Court. Both cases state the requirement that a private person must have actual knowledge of the perpetrator's propensity for sexual abuse before imposition of a duty to protect a minor can be imposed. The *Romero* Court held that no duty could be imposed on the parents "because there is no evidence from which the trier of fact could find that the Romeros had prior actual knowledge of Joseph's propensity to sexually assault female minors." (89 Cal.App.4th at p. 1080.)

As the Trial Court previously found, neither Welfare and Institutions Code section 300 nor *Williams v. Garcetti*, (1993) 5 Cal.4th 561, establish a duty on Plaintiff's parents in this case. Welfare and Institutions Code section 300 is the Juvenile Dependency statute, and there is no authority that it creates a tort duty. *Williams* was a taxpayer group's action for injunctive relief, seeking to prohibit the

District Attorney from enforcing Penal Code section 272, and did not involve parents' failure to protect their child from sexual assault.

III. THERE WAS NO PREDJUDICIAL ERROR IN REFUSING DEFENDANTS' PROPOSED MANDATED REPORTING INSTRUCTION.

The Church Defendants argue that the Court erred in refusing to give their requested jury instruction regarding clergy not being specifically named as mandated reporters in 1993. (Def. MPA 15:19-16:22.) Where a moving party asserts instructional error as grounds for a new trial, it must prove that the error was prejudicial. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 570.) A court may not grant a new trial on this basis if "it is not reasonably probable defendant would have obtained a more favorable result in its absence." (*Ibid.*)

The argument that the refusal to give the requested instruction was prejudicial error rests on two prongs, both of which are factually erroneous. First, Defendants argue that the instruction was required because "Plaintiff's expert, Anna Salter, Ph.D., intentionally misled the jury on this issue by suggesting that clergy were legally obligated to report." (Def. MPA 16:25-27.) Secondly, Defendants argue that Plaintiff's counsel "suggested to the jury that one measure the Church Defendants could have taken was reporting Kendrick's confession . . . to the authorities." (Def. MPA 17:9-11.)

Dr. Salter did not mislead the jury, intentionally or otherwise. Plaintiff's counsel did not ask any questions at all regarding mandatory reporting during direct examination. Defense counsel raised the issue as its first cross-examination question. (Salter test., Simons Dec., Ex. 7, 71:3-12.) Dr. Salter stated only: "I believe that there was a law in place that required people who were involved with children to report." She agreed "there was not a law that specifically addressed ministers." (*Id.* at 71:14-17.) Dr. Salter did accurately point out that the mandatory reporting law was broader than defense counsel suggested, and included "institutions that involve children." (*Id.* at 71:21-23.) This testimony accurately stated the content of Penal Code section 11166 as it existed in 1993. (Plaintiff's [Denied] Request for Judicial Notice, Simons Dec., Ex. 17.)

Similarly, the Church Defendants' argument that Plaintiff's counsel told the jury the Church Defendants could be held liable for not reporting Kendrick's confession to authorities is simply false.

Two citations to the trial transcript are offered: Mr. Schnack's Declaration, Ex. F, at 107:6-10 and 215:20-216:19. Neither quotation makes the suggestion now argued.

The Church Defendants also claim that there was error in the instruction because "the testimony of the Church Defendant elders and the July 1, 1989 letter to all bodies of elders clearly showed that this would have been a serious breach of confidentiality in violation of the tenants and practices of their faith." (Def. MPA 17:22-25.) As reviewed above, this point was neither "clearly shown" by any witness with personal knowledge of the policy, nor clearly shown to involve "confidential" information.

The Court properly ruled that the question of common law duty in this case under *Rowland v. Christian* and the legal requirements of mandated reporting were separate issues, and that the mandated reporting statutes were irrelevant and potentially confusing. The Court's duty instruction did not refer to or incorporate mandated reporting statutes, or reporting at all. The Court was correct in instructing the jury to disregard them. In any event, the Church Defendants have failed to show any prejudice from this instruction.

IV. DEFENDANTS' ARGUMENT ON EXCESSIVE DAMAGES FAILS AS A MATTER OF LAW.

"A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." (C.C.P. § 657(7).)

A. Non-Economic Damages

The Church Defendants argue the award of non-economic damages of $6,870,000 is the result of an "inflamed" jury's passion and prejudice, rather than a "sober" decision based on the evidence. (Def. MPA 20:9-15.) During the trial, however, neither defendant chose to present any evidence on the issue of damages. Neither presented any evidence challenging the causation of Plaintiff's harm. Although there was evidence that Plaintiff was evaluated by a mental health expert

retained by Defendants, a Dr. Williams, he was not called to testify. Defense counsel asked few questions of Plaintiff's current treating mental health care providers from Kaiser, Dr. Laura Walton and LCSW Helene Harmatz, and those questions were directed at her good progress now that she is in treatment. None of Plaintiff's treating providers from her adolescence were offered to testify except Laura Fraser, who strongly supported the likelihood that Plaintiff would not have disclosed her abuse at the time it was occurring or in the chaotic years that followed. Although defense counsel did not respect Dr. Ponton or her opinions, they did not offer any evidence to dispute either her qualifications or her conclusions.

There was substantial evidence of serious non-economic damages sustained by Plaintiff in the past and the likelihood of such damages for the remainder of her lifetime. (Walton test., Simons Dec., Ex. 5, 154:12-13, 155:10-15, 156:23-157:2, 158:11-159:1, 164:20-165:2; Ponton test., Simons Dec., Ex. 9, 21:16-19, 29:7-24, 34:18-35:6, 45:17-24, 46:9-47:7.) Defendants' own evidence admits that child sexual abuse wreaks havoc and leaves "deep emotional scars." (Awake, Trial Ex. 60/Def. 029, Oct. 8, 1991, p. 3.) Plaintiff's counsel's argument on damages was not manipulative, inflammatory, nor outside the evidence. (Plaintiff's closing, Simons Dec., Ex. 15, 125:23-129:5.)

The Church Defendants' argument as to excessive compensatory damages fails to cite any of the testimony or evidence that supported the jury's finding. Instead, the Court is presented with a rehash of rejected factual assertions and disputed testimony on liability issues, all of which the jury properly exercised its power to consider and reject. Church Defendants argue that Plaintiff was the only witness to her abuse. (Def. MPA 18:22-23.) Child molesters, however, generally operate in secret, without witnesses. They quibble over Kendrick's abuse occurring "after" or "during" field abuse. (Def. MPA at 19:2-3.) Both words apply where the evidence established Kendrick interrupted field service to take Plaintiff to his house, and then returned her to Kingdom Hall. (Plaintiff test., Simons Dec., Ex. 8, 110:22-111:13, 113:22-24.) The Church Defendants cite the testimony of their witnesses to dispute that Kendrick paid attention to Plaintiff at Kingdom Hall, a disputed fact not relevant to damages. The Elders attested that Plaintiff would never have been in field service with

Kendrick, (Abrahamson test., Simons Dec., Ex. 1, 122:21-123:6; Clarke test., Simons Dec., Ex 10, 208:20-209:11), testimony flatly contradicted by Carolyn Martinez. (Martinez test., Simons Dec., Ex. 6, 41:10-18.) Defendants argue that the abuse could not have occurred many times because Kendrick did not live alone. (Def. MPA 19:24-20:2.) That argument ignores evidence explaining why Plaintiff at age nine and ten would not have seen Evelyn or Andrea Kendrick at the house and had the impression they did not live there. (E. Kendrick test., Simons Dec., Ex. 2, 58:1-20, Sylvia test., Simons Dec., Ex. 3, 98:22-100:4.) Defendants argue that the jury was required to believe the elders "kept an eye on" Kendrick. (Def. MPA 19:15-16.) There was good reason for the jury to reject this self-serving testimony. (Plaintiff's closing, Simons Dec., Ex. 15, 97:3-98:1.) Defendants argue damages are excessive because Plaintiff was unable to recall with accuracy the exact number of times she was abused over the course of two years when she was nine and ten. (Def. MPA 18:23-24.) The uncontradicted expert testimony of Carl Lewis, however, established that children of that young age often are not able to accurately tabulate the number of times a serial abuser molested them. (Lewis test., Simons Dec., Ex. 4, 33:1-35:1.) The jury's award of compensatory damages would have been reasonable and appropriate whether she was horribly violated by Kendrick 100 times or "only five or ten" as argued by the defense.

None of the evidence cited by Defendants demonstrates that the jury "clearly" should have reached a different verdict on the issue of compensatory damages. None of the evidence suggests that the jury, who did not receive the benefit of contrary evidence or argument on damages from the defense, awarded Plaintiff the amount of damages she requested because of "passion or prejudice" rather than the evidence and argument they were provided by the only side to address the issue.

B. Punitive Damages

1. Malice & National Policy

For the same reasons set forth in the earlier discussion on J.N.O.V., Defendant Watchtower's arguments that the evidence did not establish malice and that due process prohibits an award of punitive damages to deter a national policy are factually and legally incorrect.

2. Excessive Punitive Damages

a. Reprehensibility

"Society's greatest responsibility . . . is our common goal of safeguarding our children." (*Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 407.) The jury was instructed, without objection by Watchtower, on four factors to consider on the issue of reprehensibility. (Jury Inst., Simons Dec., Ex. 19, 13:17-14:2.) Defendant Watchtower does not address these factors or apply them to the facts of the case. (Def. MPA 21:23-22:2.) Instead it merely argues that its conduct was not reprehensible - period.

The first factor in reprehensibility is whether the conduct caused physical harm. In this case it did: the despicable physical harm of serial sexual abuse of a child. The second factor is whether the defendant disregarded the health or safety of others. The evidence showed that it did: Wachtower ignored the health and safety of children in order to keep childhood sexual abuse within its congregation a secret. The third factor is whether the defendant's conduct involved a pattern or practice. Although no evidence was admitted of other victims or abuse, the national policies involved constitute a practice that the elders were required to follow, nationwide, in all cases. (Abrahamson test., Simons Dec., Ex. 1, 89:21-90:16, 103:17-104:10, 121:12-16; Clarke test., Simons Dec., Ex. 10, 182:20-23, 188:10-20; Ex. 16, 29:23-25; Shuster test., Simons Dec., Ex. 12, 183:13-21.) The last factor is whether the defendant acted with trickery or deceit. There is deceit in representing a congregation member in good standing as a qualified "Brother" and "Minister," and fit to go in field service preaching the Gospel, in the company of children, when Defendants and Defendants alone know that the individual – Jonathan Kendrick – is a confirmed child molester. All of the relevant factors in the jury's analysis of reprehensibility favor the punitive damage award and none suggest it was improper in any way.

b. Ratio

Watchtower argues that the ratio between compensatory damages and punitive damages is excessive, because it greatly exceeds the percentage of non-economic damages attributable to it, and because it exceeds a 1:1 ratio to compensatory damages. (Def. MPA 22:3-18.) Neither argument is

supported by law.

The ratio of punitive damages to total compensatory damages suffered by the Plaintiff is the correct and Constitutional measure of disparity, not the ratio to the individual defendant's proportionate share of non-economic damages. This rule is repeatedly identified in *BMW, supra*, in which the Court states: "The principle that exemplary damages must bear a 'reasonable relation' to compensatory damages has a long pedigree." (517 U.S. at p. 580, and fn. 32.) The Court again reiterated, "the proposition that a comparison between the compensatory award and the punitive award is significant." (*Id.* at p. 581.) This rule is fair because Defendant Watchtower's conduct, while less than 100% of the total fault, was a substantial factor in causing 100% of the compensatory damages suffered by Plaintiff. There is no authority to the contrary, and none is cited by Defendant Watchtower.

The jury was instructed: "Any amount of punitive damages you award must bear a reasonable relationship to Candace Conti's harm." (Court's Inst., Simons Dec., Ex. 19, 13:11-13.) In awarding treble damages, the jury was well within the reasonable ratio that the *BMW* Court observed are "historically rooted" in over 65 enactments between 1275 and 1753 for double, treble, or quadruple damages. (*BMW, supra*, 517 U.S. at p. 580-81, and fn. 33.) *State Farm Mutual v. Campbell*, (2003) 538 U.S. 408, does not mandate a maximum 1:1 ratio. On the contrary, it specifically recognizes single digit multipliers of punitive damages consistent with the 700-year history of "double, treble, or quadruple damages to deter and punish." (*Id.* at p. 424-25.)

CONCLUSION

The only injustice in this case would arise if the Court decided to ignore the law it carefully reviewed and followed during the trial, or disregard the jury's authority to decide the facts. Based on the foregoing, the Court must deny the Church Defendants' Motions in their entirety.

Dated: August 2, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 05/19/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 05/23/2011.

Executive Officer / Clerk of the Superior Court

By digital _____
Deputy Clerk

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Law Offices Of James M. McCabe
Attn: McCabe, James M.
4817 Santa Monica Avenue
Suite B
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Demurrer to Complaint Overruled

The Demurrer to Complaint was set for hearing on 05/19/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Demurrer of Defendants Watchtower Bible and Tract Society of New York, Watchtower Bible and Tract Society of Pennsylvania, Inc., Jehovah's Witnesses on Peralta Blvd., Fremont, and Kingdom Hall of Jehovah's Witnesses ("Defendants") to the Complaint is OVERRULED. Plaintiff Jane Doe ("Plaintiff") has sufficiently alleged facts to support a duty by Defendants to Plaintiff in order to support this negligence claim. (See Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377.)

The Court notes that in Defendants' moving papers, Defendants cite to out-of-state cases, but have not provided copies of such cases. In the future, Defendants should comply with Cal. Rules of Court, Rule 3.1113(i).

Defendants shall file and serve an answer to the Complaint within 20 days, which time shall run from service of notice of entry of this order by Plaintiff.

Dated: 05/19/2011

Robert McGuiness - facsimile

Judge Robert McGuiness

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Amend Complaint Granted

The Motion to Amend Complaint was set for hearing on 05/03/2012 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion of Jane Doe to file amended complaint adding punitive damage allegations against defendant Watchtower Bible and Tract Society ("Watchtower") under CCP 425.14 is GRANTED.

Plaintiff filed this motion on April 10, 2012, just six weeks before the trial date of May 21, 2012. Plaintiff did not delay unduly in filing this motion, and Watchtower has not identified any specific liability or fact discovery that it will need from Plaintiff as a result of the addition of the punitive damages allegations.

Under CCP 425.14, a plaintiff cannot assert a claim for punitive damages against a religious corporation until the court finds that the plaintiff has presented sufficient evidence of a prima facie showing of liability under the preponderance of evidence standard and a showing of recklessness, oppression or fraud under the clear and convincing standard. Little Co. of Mary Hosp. v. Superior Court (2008) 162 Cal.App.4th 261, 267, 271; Rowe v. Superior Court (1993) 15 Cal.App.4th 1711, 1723.

The proposed First Amended Complaint includes a third cause of action entitled "Acts of Malice." The court reads the cause action as a claim that defendant Watchtower is liable for negligence because it acted with a willful and conscious disregard of the rights or safety of others. (Civil Code 3294(c)(1).) To establish conscious disregard, plaintiff must show that the defendant was aware of the probable dangerous consequences of its conduct, and that he willfully and deliberately failed to avoid those consequences. (Hoch v. Allied Signal (1994) 24 Cal.App.4th 48, 61.)

Plaintiff has presented a prima facie showing that she could potentially prove a claim against Watchtower for negligence by a preponderance of the evidence. There is evidence that Watchtower's officers, directors, or managing agents knew or had reason to know in 1993 that Jonathan Kendrick had confessed to inappropriate touching of a child (PX 2; DX L and M), that Watchtower failed to notify the congregation or to take other measures to protect children in the church (PX 3 and 4; DX K), and that as a result plaintiff suffered injury from 1994 through 1996.

Plaintiff has presented a prima facie showing that she could potentially prove by clear and convincing evidence that Watchtower was aware of the probable dangerous consequences of its decision not to alert church members of Kendrick's dangerous tendencies, and that Watchtower willfully and deliberately failed to avoid those consequences. (PX 2, 3, 4.)

Watchtower raises the issue of the appropriate balance between the clergy-penitent privilege and appropriate disclosures to congregants that a member may be a threat to children. Watchtower also notes that most of the case law on the responsibility of entities for sexual abuse concerns abuse perpetrated by employees or agents rather than by member of the entity who were not in positions of authority at the time of the abuse. (But see Wallace v. Der-Ohanian (1962) 199 Cal.App.2d 141.) These concerns present fact specific issues that are beyond the scope of a motion where the plaintiff need only present sufficient evidence to establish a prima facie case of liability and punitive damages.

The court OVERRULES the objection to PX 27 (percipient witness), to PX 26 (percipient witness to statements by Kendrick), to PX 30 (offered as evidence that Watchtower was on notice, not for truth of matter asserted), PX 31 (admissible to extent based on personal knowledge, but court disregards testimony regarding the "true purpose" of Watchtower), and PX 32 (witness is arguably a qualified expert with pertinent information regarding the standard of care during the relevant time period).

The motion of Jane Doe for an order permitting financial discovery is DENIED. If the jury finds that Watchtower is liable for punitive damages, then the court will expect Watchtower to produce its pertinent financial information by 9:00 am the following morning and to have witnesses available to testify by the following day.

Plaintiff must file the proposed First Amended Complaint on or before May 11, 2012.

The Court further orders the parties to comply with the Pretrial Orders: File Motions in Limine and related documents by May 16, 2012 at 2:30 p.m.

Dated: 05/03/2012

facsimile

Judge Robert McGuiness

SHORT TITLE:	CASE NUMBER:
Doe VS The Watchtower Bible and Tract Society of New York, I	HG11558324

ADDITIONAL ADDRESSEES

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 05/03/2012

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 05/14/2012.

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely
Deputy Clerk

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Law Offices Of James M. McCabe
Attn: McCabe, James M.
4817 Santa Monica Avenue
Suite B
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Further Answers at Deposition Granted

The Motion to Compel Further Answers at Deposition was set for hearing on 09/29/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of Plaintiff Jane Doe to Compel Answers to Questions at Deposition of Gary Abrahamson and for Sanctions is GRANTED. Plaintiff has established that the information sought is not precluded from disclosure under the penitent-clergy privilege, Evidence Code §1031-1034 because the questions do not appear to call for communications that were presumed to be kept confidential with only the clergy member to whom they were communication. Instead, the questions appear to call for information and communications of a kind that would be expected to be communicated beyond that clergy member to others within the religious organization, i.e. a judicial investigating committee, for purposes of taking responding to the communication within the church. (Cf. Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417, 445-46.)

Defendant shall present Gary Abrahamson for further deposition and shall not instruct him not to answer the questions identified in the motion based upon clergy-penitent privilege.
The further deposition shall take place at a mutually-convenient time, but no later than 20 days after entry of this order.

The request for sanctions in connection with this motion is DENIED.

Dated: 09/29/2011

Robert McGuiness - facsimile
Judge Robert McGuiness

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 09/29/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/05/2011.

Executive Officer / Clerk of the Superior Court

By Digital _____

Deputy Clerk

8801473

Furtado, Jaspovice & Simons
Attn: ~~Simons, Richard J.~~ Martin Jaspovice
A Law Corporation
22274 Main Street
Hayward, CA 94541____

James M. McCabe
The McCabe Law Firm
4817 Santa Monica Ave.
San Diego, CA 92107

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Compel Production of Documents Granted

The Motion to Compel Production of Documents filed for Jane Doe was set for hearing on 10/03/2011 at 03:00 PM in Department 22 before the Honorable Robert McGuiness.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

Pursuant to the court's prior order in this matter, it conducted an in camera review of two letters dated respectively, November 15, 1993 and December 3, 1993, to determine whether the same were (are) privileged communications within the application of Evidence Code section 1034 and related statutes. After review, the court determines that the letters are not privileged and plaintiff's motion to compel production is granted. However, the court will withhold production of the subject letters and they shall remain under seal until November 17, 2011 so as to allow defendants time to consider and seek appellate review here. The court has determined this matter largely within the context of the holding of Roman Catholic Diocese of Los Angeles v. Superior Court, 131 Cal. App. 4th 417. The record there and here demonstrate that the communications were likely to be shared with more than one person; persons other than elders would be likely to consider same and that the penitent (defendant Kendrick) did not expect the communications to be kept confidential (under the circumstances related and presented).

Dated: 10/17/2011

Ronni Lewis - facsimile
Judge Robert McGuiness

Order

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 10/17/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/17/2011.

Executive Officer / Clerk of the Superior Court

By Kasley McLean digital
_____
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 10/17/2011

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/17/2011.

Executive Officer / Clerk of the Superior Court

By Kasey McClean digital
_____
Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Motion: October 03, 2011.

No parties expected.

Documents received 10/03/2011.

Ruling on Motion to Compel Production of Documents Taken Under Submission

Minutes of 10/03/2011
Entered on 10/03/2011

Executive Officer / Clerk of the Superior Court

By Kasey McClain digital
Deputy Clerk

Furtado, Jaspovice & Simons
Attn: Simons, Richard J.
A Law Corporation
22274 Main Street
Hayward, CA 94541____

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) VS. The Watchtower Bible and Tract Society of New York, I Defendant/Respondent(s) (Abbreviated Title)	No. HG11558324 Order Motion to Vacate/Set Aside Granted

The Motion to Vacate/Set Aside was set for hearing on 01/19/2012 at 03:00 PM in Department 22 before the Honorable Robert McGuiness. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

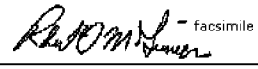
The tentative ruling is affirmed as follows: The Motion of Jonathan Kendrick for relief from default is GRANTED.

The court is concerned that the evidence suggests that Mr. Kendrick was aware of the lawsuit, had consulted with counsel, and was possibly aware that he was required to file a responsive pleading yet failed to do so within the allotted time. The court also notes that the motion was filed shortly after the default, which mitigates any prejudice to the Plaintiff, that counsel for Plaintiff did not did not provide notice to Plaintiff before taking the default, Kim v. Westmoore Partners, Inc. (2011) 201 Cal.App.4th 267, 271 fn 1, and that there is a strong policy preference in favor of resolving cases on their merits, Fasuyi v. Permatex, Inc. (2008) 167 Cal.App.4th 681, 696. Weighing these factors, the court finds that defendant Mendrick has made the "very slight" showing required for excusable neglect and grants the relief requested under CCP 473(b).

Because of the significant evidence that Mr. Kendrick was aware that he was required to file a responsive pleading, the court makes the grant of this motion conditional on Mr. Kendrick paying Plaintiff $1000 for the fees that plaintiff incurred as a result of Mr. Kendrick's failure to file a timely answer. Vanderkous v. Conley (2010) 188 Cal.App.4th 111, 118-119.

Defendant Kendrick must file the proposed answer on or before January 26, 2012.

Dated: 01/19/2012



Judge Robert McGuiness

SHORT TITLE:	CASE NUMBER:
Doe VS The Watchtower Bible and Tract Society of New York, I	HG11558324

ADDITIONAL ADDRESSEES

Jackson Lewis LLP,
Attn: Schnack, Robert J
801 K Street
Suite 2300
Sacramento, CA 95814____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order After Hearing Re: of 01/19/2012

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 01/20/2012.

Executive Officer / Clerk of the Superior Court

By digital _____

Deputy Clerk

U-RCP

8800899

FILED
ALAMEDA COUNTY
MAR 28 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; THE WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation; THE GOVERNING BODY OF JEHOVAH'S WITNESSES, an unincorporated association; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE; ~~[PROPOSED]~~ ORDER

Pre-Trial Conference: May 4, 2012
Trial: May 21, 2012

Plaintiff and defendants, through their undersigned counsel of record, all hereby stipulate to continue the pretrial conference set for May 4, 2012 to ~~May 11~~ 5/18/12 8:30 AM, 2012, should the Court agree to do so. The parties are NOT requesting that trial set for May 21, 2012 be continued.

BY FAX

Date: March 27, 2012

JACKSON LEWIS LLP

By: _____
Robert J. Schnack

Attorneys for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK

Date: March 27, 2012

THE McCABE LAW FIRM, APC

By: _____
James M. McCabe

Attorneys for Defendant NORTH CONGREGATION

Date: March _____, 2012

FURTADO, JASPOVICE & SIMONS

By: _____
Rick Simons

Attorneys for Plaintiff JANE DOE

Date: March _____, 2012

STONE & GRAVES

By: _____
Eric Graves

Attorneys for Defendant JONATHAN KENDRICK

ORDER

Based on the foregoing stipulation and otherwise finding good cause therefor,

IT IS HEREBY ORDERED that the Pre-Trial Conference previously scheduled for May 4, 2012 has been continued to ~~May 11, 2012~~ 5/18/12 at 8:30 a.m. in Department 22.

IT SO ORDERED.

DATED: 3/28, 2012

_____
Honorable Robert McGuiness
Judge of the Superior Court

Date: March ____, 2012

JACKSON LEWIS LLP

By:_____
Robert J. Schnack

Attorneys for Defendant WATCHTOWER. BIBLE AND TRACT SOCIETY OF NEW YORK

Date: March ____, 2012

THE McCABE LAW FIRM, APC

By:_____
James M. McCabe

Attorneys for Defendant
NORTH CONGREGATION

Date: March 27, 2012

FURTADO, JASPOVICE & SIMONS

By:_____
Rick Simons

Attorneys for Plaintiff JANE DOE

Date: March ____, 2012

STONE & GRAVES

By:_____
Eric Graves

Attorneys for Defendant JONATHAN KENDRICK

ORDER

Based on the foregoing stipulation and otherwise finding good cause therefor,

IT IS HEREBY ORDERED that the Pre-Trial Conference previously scheduled for May 4, 2012 has been continued to May 11, 2012 at 8:30 a.m. in Department 22.

IT SO ORDERED.

DATED: _____, 2012

_____
Honorable Robert McGuiness
Judge of the Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NAME: JANE DOE VS THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al

ACTION NO.: HG11-558324

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak Street, Oakland, California. I served the **STIPULATION AND ORDER TO CONTINUE PRETRIAL CONFERENCE** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Richard J. Simons, Esq.
Furtado, Jaspovice & Simons
22275 Main Street
Hayward, CA 94541

Robert J. Schnack
JACKSON LEWIS LLP
801 K Street, Suite 2300
Sacramento, CA 95814

The McCabe Law Firm, APC
James M. McCabe, Esq.
4817 Santa Monica Avenue
San Diego, CA 92107

Eric L. Graves, Esq.
Stone & Graves
2377 Gold Meadow Way, Ste 210
Gold River, CA 95670

I declare under penalty of perjury that the following is true and correct

Executed on March 29, 2012 at Oakland, California.

Pat Sweeten
Executive Officer/Clerk of the Superior Court

By Miranda Edgerly
Miranda Edgerly, Deputy Clerk

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: HG11558324
Order of 01/13/2012

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 01/13/2012.

Executive Officer / Clerk of the Superior Court

By digital Miranda Edgely

Deputy Clerk

WRob

8798595

FILED
ALAMEDA COUNTY
APR 19 2012
CLERK OF THE SUPERIOR COURT
By Miranda Edgerly
DEPUTY

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
Douglas M. Egbert (SBN 265062)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation;

Defendants.

Case No.: HG11558324

STIPULATION TO CONTINUE DEADLINE TO FILE AND SERVE OPPOSITION AND REPLY PAPERS TO MOTION OF PLAINTIFF JANE DOE TO AMEND COMPLAINT AND FOR ORDER PERMITTING FINANCIAL DISCOVERY; [PROPOSED] ORDER

NDR

Date: 5/3/12
Time: 3:00 p.m.
Dept: 22

BY FAX

Trial: May 21, 2012

Plaintiff and defendant Watchtower Bible and Tract Society of New York, Inc., through their undersigned counsel of record, all hereby stipulate to: (1) continue the deadline for defendant to file and serve its opposition to the Motion of Plaintiff Jane Doe to Amend Complaint and For Order Permitting Financial Discovery to April 27, 2012; and (2) continue the deadline for plaintiff to file and serve her reply in support of her motion to April 30, 2012.

///

The parties are NOT requesting that the May 3, 2012 hearing on the motion be continued.

IT IS SO STIPULATED.

Date: April 19, 2012

JACKSON LEWIS LLP

By: _____
Robert J. Schnack
Douglas M. Egbert

Attorneys for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK

Date: ~~March~~ 4/19, 2012

FURTADO, JASPOVICE & SIMONS

By: _____
Rick Simons

Attorneys for Plaintiff JANE DOE

ORDER

Based on the foregoing stipulation and otherwise finding good cause therefor,

IT IS HEREBY ORDERED that: (1) the deadline for defendant to file and serve its opposition to the Motion of Plaintiff Jane Doe to Amend Complaint and For Order Permitting Financial Discovery is continued to April 27, 2012; and (2) the deadline for plaintiff to file and serve her reply in support of her motion is continued to April 30, 2012.

IT SO ORDERED.

DATED: 4/19, 2012

_____
Honorable Robert McGuiness
Judge of the Superior Court

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

ENDORSED
FILED
ALAMEDA COUNTY

AUG 17 2012

CLERK OF THE SUPERIOR COURT
By _____
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S SUPPLEMENTAL BRIEFING ON PUNITIVE DAMAGE ISSUES IN OPPOSITION TO MOTIONS FOR NEW TRIAL AND J.N.O.V. OF DEFENDANTS WATCHTOWER NEW YORK AND FREMONT CONGREGATION

Date: August 13, 2012
Time: 8:30 a.m.
Dept: 22

///

///

///

///

///

///

///

///

///

///

///

TABLE OF CONTENTS

		Page
TABLE OF CONTENTS		i
TABLE OF AUTHORITIES		ii
INTRODUCTION		1
I.	THE COURT'S POWER IS TO INDEPENDENTLY REVIEW THE JURY'S VERDICT FOR DUE PROCESS PROTECTION.	1
II.	THE COMPENSATORY DAMAGES AWARD WAS NOT PUNITIVE.	2
A.	No Punishment of Church Defendants.	2
B.	No Punishment of Mr. Kendrick.	5
III.	NEITHER THE AMOUNT OF COMPENSATORY DAMAGES NOR DUE PROCESS REQUIRES DISTURBING THE RATIO OF PUNITIVE DAMAGES UNDER THE FACTS OF THIS CASE.	7
A.	Permissible Ratios.	7
B.	Reprehensibility.	8
C.	The Ratio is Proper.	10
1.	The Base Number.	10
2.	The Issue of Net Worth.	11
3.	All of the Numbers are Proper.	12
CONCLUSION		13

TABLE OF AUTHORITIES

Cases	Page
Bankhead v. ArvinMeritor, Inc. (2012) 205 Cal.App.4th 68	1,2,4,7,10,11
State Farm Mutual Auto Insurance Co. v. Campbell (2003) 538 U.S. 4	3,7
Roby v. McKesson Corp. (2009) 47 Cal.4th 686	4,7,9,12
Gober v. Ralph's Grocery Co. (2006) 137 Cal.App.4th 2	2,12
Walker v. Farmers Insurance Exchange (2007) 153 Cal.App.4th 965	4,5
Simon v. San Paolo US Holding Company, Inc. (2005) 35 Cal.4th 1159	2,7,12
Diamond Woodworks, Inc. v. Argonaut Insurance Co. (2003) 109 Cal.App.4th 1020	7
Weeks v. Baker and McKenzie (1998) 63 Cal.App.4th 1128, at 1166-67	7,12
Johnson v. Ford Motor Co. (2005) 35 Cal.4th 1191	9
Bullock v. Philip Morris USA, Inc. (2011) 198 Cal.App.4th 543, 562	10
Downey Savings & Loan Assoc. v. Ohio Casualty Insurance Co. (1987) 189 Cal.App.3rd 1072, 1099-1100	11

INTRODUCTION

The jury verdict in this case awarded $130,000.00 in economic damages to Candace Conti, and $6,870,000.00 in past and future non-economic damages. The jury assessed 27% fault to Watchtower New York, and 13% fault to the North Fremont Congregation. The North Fremont Congregation allocation was based exclusively on the jury's answer to Special Verdict Questions 3 and 4, in which they found that Elders Abrahamson and Clarke, each "as an Agent of Watchtower", were negligent and a cause of harm to Plaintiff. The jury's finding of total fault attributed to Watchtower through the combined conduct of its agents in Fremont and those in New York was therefore 40%.

The Court has asked for further briefing on specific issues involving the amount of punitive damages permissibly awarded against Watchtower New York, including analysis of the specific issues of the amount of compensatory damages, reprehensibility of Watchtower's conduct, and the appropriate ratios permitted under due process. As demonstrated below, all of the 5 factors relevant to the characterization of the degree of reprehensibility favor plaintiff and are against Watchtower. The Court will properly conclude that the degree of Watchtower's reprehensibility is serious, and their financial condition very strong. An independent due process review of the facts and circumstances of this specific case, through the filter of the many due process decisions, leads to the conclusion that the amount of punitive damages awarded in this case of $21,000,001.00 is consistent with due process requirements and should be affirmed, whether the ratio is 3:1 as argued by plaintiff, 7.3:1, if the ratio if all of Watchtower's 40% of cumulative fault is considered, or even the extreme 10.4:1 as argued by Watchtower.

I. THE COURT'S POWER IS TO INDEPENDENTLY REVIEW THE JURY'S VERDICT FOR DUE PROCESS PROTECTION.

Punitive damage judgments are independently reviewed by the trial Court as a "thirteenth juror" to determine whether the award was influenced by "passion or prejudice". (*Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, at 76) While the Court makes an independent assessment of the reprehensibility of the defendant's conduct and the relationship between the

award and harm done to the plaintiff to determine compliance with due process concerns, the express or implied factual findings of the trier of fact must be recognized under the substantial evidence rule. (Id. at 85) As expressly acknowledged by the Court in *Bankhead*, supra, the Court's obligation to conduct a due process analysis regarding punitive damages does not create an opportunity for the defendant "to make an end run around those factual findings" made by the jury. (Id., at 86). Although the amount of punitive damages is independently reviewed by the Court for constitutional due process compliance, a question of law, the underlying factual findings of the jury, including the finding of malice, are not reviewable if supported by any substantial evidence. (*Gober v. Ralph's Grocery Co.* (2006) 137 Cal.App.4th 204, 212) The Court's constitutional mission "is only to find a level higher than which an award *may not* go; it is not to find the "right" level in the Court's own view" (*Simon v. San Paolo US Holding Co, Inc.* (2005) 35 Cal.4th 1159, at 1188) In enforcing federal due process limits, a Court "does not sit as a replacement for the jury, but only as a check on arbitrary awards." (Id.).

To the extent that the Motions by Watchtower to reduce the punitive damages in this case rely on rearguing factual issues the jury determined against them, including the finding of malice, the arguments are outside the scope of permissible consideration, and are instead the prohibited "end run" which seeks to deprive plaintiff of her constitutional right to jury trial.

II. THE COMPENSATORY DAMAGES AWARD WAS NOT PUNITIVE.

A. No Punishment of Church Defendants.

Plaintiff was awarded $6,870,000.00 in non-economic damages to compensate her for "past and future physical pain, mental suffering, depression, anxiety, humiliation, and emotional distress." (CACI 3905-A, 6/14/12 Trial Transcript (TT) 71:22-72:1). The Church Defendants did not dispute either the evidence supporting the compensatory damage award, or argue that the numbers were unreasonable or excessive. While the number itself is significant, the facts of this case warrant the award as a result of which it cannot be concluded that a punitive element was included. There was substantial evidence of repeated, serial, horrific sexual abuse by Jonathan Kendrick at the time that Ms. Conti was 9 and 10 years of age. There was substantial evidence of major depression, an anxiety

disorder called post traumatic stress disorder (PTSD), both physical pain and mental suffering, substantial and repeated humiliation, and severe and lifelong emotional distress requiring professional care and treatment. The evidence was uncontradicted that these damages were lifetime damages, and were chronic and recurring. Neither evidence concerning compensatory damages, nor the amount requested by plaintiff's counsel in closing argument, was contested by the Church Defendants.

The jury was also instructed in CACI 3924, specifically being told "you must not include in your award any damages to punish or make an example of Jonathan Kendrick, Watchtower Bible and Tract Society of New York, Inc., or Fremont Congregation of Jehovah's Witnesses North Unit. You must award only the damages that will fairly compensate Candace Conti for her harm." (CACI 3924, TT 72:20-73:2). There is no evidence from which one could reasonably conclude that the jury disregarded the Court's instructions, including this one.

Those cases holding a non-economic award to be partly punitive in nature are very different from this case. For example, in *State Farm Mutual Auto Insurance Co. v. Campbell* (2003) 538 U.S. 408, the compensatory award of $1 Million was for a year and a half of emotional distress, arising solely from an economic transaction rather than physical assault or trauma. (538 U.S. at 426) The emotional distress claimed by the Campbells was limited to outrage and humiliation caused by the defendant insurance company's refusal to pay their claim, which was a form of damage duplicative of the punitive damage award. (Ibid.) In this case, however, there is no duplication of damages. Ms. Conti was not aware of Watchtower's policy or its knowledge of Kendrick's record of previous childhood sexual abuse until over a decade after her own sexual abuse at his hands. Her non-economic damage was lifetime, rather than a year and a half, and involved the worst possible physical injuries of child sex abuse, rather than solely economic damages from the denial of a claim. Ms. Conti experienced her abuse as a child, with no one to comfort her for many years. Her harm came directly from the physical abuse and its emotional consequences, not her anger with or disappointment about watchtower's policies.

In *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, non-economic damages were also deemed to include a "punitive" element. In *Roby*, as in *State Farm*, there was no physical harm, and the award for the three separate claims of the plaintiff overlapped. Unlike Ms. Conti's case, the award of non-economic damages from the jury exceeded even the amount requested by the plaintiff's attorney. (47 Cal.4th at 698) *Roby*, unlike Ms. Conti, also experienced her harm as an adult, and was able to obtain prompt therapy and support. Ms. Conti suffered in silence with depression, anxiety, and isolation from self-medicating drug use, for years.

The Court's attention has been drawn to *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68. The *Bankhead* Court upheld a 2.4:1 ratio of punitive damages to compensatory damages, while acknowledging that the $2.5 Million emotional distress award for the plaintiff asbestosis victim and his spouse was "high enough that it appears to include a punitive component." (205 Cal.App.4th at 90) Although the Court did not explain why it reached this conclusion, presumably it was influenced by the fact that the period of time from the onset of the symptoms to the death of the plaintiff asbestosis victim was less than three years. Medical care and family support were all available throughout the illness. In Ms. Conti's case, the injury occurred over a prolonged period of time beginning in early childhood and the harm she has experienced will last her lifetime. The uncontradicted testimony of Ms. Conti's LCSW during her pre-teen years, Laura Fraser, was that no support system or safety net was available for Candace Conti during the critical years she was experiencing the abuse, and in the years thereafter. Neither case involved the type of harm any rational person would suffer for any amount of money, but the many additional years of suffering, and the harm's origin is sexual abuse of a vulnerable child rather than the terminal medical condition of an adult, certainly must be recognized before a court attributes a punitive motive to the compensatory damages awarded Candace Conti.

In *Walker v. Farmers Insurance Exchange* (2007) 153 Cal.App.4th 965, the trial court found that $750,000.00 in emotional distress damages included a punitive element, and the Court of Appeal agreed. (153 Cal.App.4th at 974) In *Walker*, as in *State Farm* and *Roby*, there was no direct physical injury. The injury was transitory in nature, and all of the economic damages – including

attorney's fees – were recouped in a relatively short period of time. The sole injury in *Walker* was the insurer's failure to defend a lawsuit, causing the insured to pay $6,500.00 in a settlement prior to prevailing in their case against the insurer.

The basis of these cases is clear – a non-economic award may be deemed to include a punitive element when it is extremely large when measured against the type of harm, the duration of that harm, and the evidence and argument presented in support of the award. A "substantial" compensatory award cannot be deemed to be punitive in isolation, but rather by comparing the number to the actual physical and mental injury, the certainty that the injury occurred, and the impact of that injury on the plaintiff's life. In a society that pays $6.87 Million and much more to a professional athlete for one season of playing a sport, the same amount for the undisputed non-economic consequences of serial child sex abuse of a 9 and 10 year old, with suffering over a lifetime, is not "punitive". The undisputed and uncontradicted compensatory damages were properly awarded pursuant to the Court's instruction.

B. No Punishment of Mr. Kendrick.

In oral argument of this Motion, the Court expressed some concern that the compensatory damages may have included a punitive element to punish Mr. Kendrick. However, through defense Ex. 135, defense cross-examination, and extensive defense argument, as well as concurrence by plaintiff's counsel, the jury was repeatedly advised that Mr. Kendrick would not be paying any judgment rendered against him, that he had entered into a restraining order agreement in exchange for a Covenant Not to Execute, and that his punishment would come through the criminal system as the Fremont Police Department was now involved in an active investigation of Mr. Conti's molestation. The jury was fully and repeatedly advised and informed that Mr. Kendrick would not be paying any compensatory damage award, and therefore had no reason to "punish" him through the compensatory damages finding.

The Court also expressed concern over the use of the word "monster". However, the transcript is abundantly clear: neither plaintiff nor her attorney ever called Mr. Kendrick a monster. Defense counsel were the only persons in the courtroom to do so, to further their own purpose of

shifting the allocation of fault to Mr. Kendrick and away from themselves. There was never any expression by any witness or argument by counsel to suggest Mr. Kendrick should be punished in the compensatory award because he was a "monster".

The trial transcript reflects that Candace Conti used the word "monster" one time in direct examination, when she testified as follows:

> "Q. And what was it about Jonathan Kendrick that you were scared of?
> A. He seemed like a monster." (TT 6/4/12, 100:9-11).

Mr. McCabe used the word twice in his questions and cross-examination (Id., 118:19; 119:4), but Ms. Conti did not use the word again. Of the three total uses of the word "monster" during the evidence phase of the trial, Mr. McCabe used the word twice. There was no further use of the word until closing argument, when plaintiff's counsel described Candace Conti's nightmares as "that feeling and reliving that experience of being crushed by this monster", referring to her feelings rather than directly calling Mr. Kendrick a name. Mr. McCabe called Kendrick a "monster" ten times during his closing argument and Mr. Schnack did so once. Of the total of 15 times the word "monster" was mentioned, 13 were by defense counsel. This does not in any way suggest the compensatory damage award was enlarged to punish Mr. Kendrick.

A large compensatory damage award, including emotional distress damage, is not only appropriate, but required where the plaintiff has suffered a substantial, lifelong, and very real injury, particularly where the extent and amount of emotional distress damages were not contested. In this case the facts show the compensatory damages were truly compensatory, and not punitive. To hold this emotional distress award as a limiting factor in the ratio of punitive damages analysis is to discriminate against and punish Ms. Conti because she was sexually abused as a vulnerable child, and reward the defendants whose conduct and malice made it all possible. Such a result would discriminate against Ms. Conti under the supposed goal of reviewing a punitive damage judgment to provide conformity with due process. This is not the purpose of a due process review.

///

III. NEITHER THE AMOUNT OF COMPENSATORY DAMAGES NOR DUE PROCESS REQUIRES DISTURBING THE RATIO OF PUNITIVE DAMAGES UNDER THE FACTS OF THIS CASE.

A. Permissible Ratios

Courts have uniformly recognized that a reasonable ratio between punitive damages and compensatory damages must exist to comply with due process requirements. However, these same Courts have uniformly recognized that ratio alone does not answer the question of due process, and that double digit ratios may, under the circumstances of an individual case, be entirely consistent with due process. For example, in *Simon v. San Paolo US Holding Company, Inc.* (2005) 35 Cal.4th 1159, a 10:1 ratio was found to be constitutional, even where the reprehensibility of the defendant's conduct was low. (35 Cal.4th at 1189) The *Simon* Court opined that higher ratios may be more appropriate when only economic damages were suffered by the plaintiff. It held that a 10:1 ratio appropriate in that case, specifically rejecting the argument that the outer constitutional limit of punitive damages is a maximum of 4 times compensatory damages. (35 Cal.4th at 1182-3, overruling *Diamond Woodworks, Inc. v. Argonaut Insurance Co.* (2003) 109 Cal.App.4th 1020)

The appropriate ratio requires a consideration of the degree of reprehensibility of the defendant's misconduct, the disparity between actual harm and punitive damages, and in an appropriate case, the difference between punitive damages awarded by the jury and civil penalties. (*State Farm Mutual Auto Insurance Co. v. Campbell* (2003) 538 U.S. 408, at 418) It is generally recognized in civil tort cases that the third category of civil penalty analogy is irrelevant. (*Bankhead v. ArvinMeritor, Inc.*, supra, 205 Cal.App.4th at 85, Fn.10) In cases involving sexual abuse, awards with extremely large ratios of punitive to compensatory damages have been approved as consistent with due process. For example, in *Weeks v. Baker and McKenzie* (1998) 63 Cal.App.4th 1128, at 1166-67, the repeated sexual abuse of an employee was an adequate basis for a 70:1 ratio for punitive damages. The *Weeks* holding was recognized recently in *Roby v. McKesson Corp.*, supra, 47 Cal.4th at 717.

///

///

B. Reprehensibility.

All of the many punitive damage Due Process cases agree that the single most critical factor in determining what amount and ratio of punitive damages due process allows is the degree of reprehensibility of the conduct constituting malice. The jury was instructed on this issue by CACI 3949 as modified and agreed to by all parties. Four factors of reprehensibility were provided to the jury: (1) whether the conduct caused physical harm; (2) whether the defendant disregarded the health or safety of others; (3) whether the defendant's conduct involved a pattern of practice; and (4) whether the defendant acted with trickery or deceit. (TT 6/14/12, 8:24-9:6).

The first factor in the reprehensibility analysis is whether or not the plaintiff suffered physical harm as opposed to merely economic damage. The answer in this case is not only yes, it is an emphatic yes. The plaintiff suffered repetitive, invasive, terrifying sexual abuse over a sustained period of time during which she was 9 and 10 years old.

The second factor is whether or not the defendant acted with reckless disregard of Candace Conti's health and safety. The jury found Watchtower's managing agents did so in this case by allowing her to be exposed to the known child molester Kendrick while in Congregation activities. The evidence from Awake Magazine showed that Watchtower knew that individuals who had sexually molested a child in the past were likely to do so again; Watchtower knew such criminals could be trusted or popular members of the Congregation who would not be obvious to other Congregation members; that Watchtower knew "hush hush" and secrecy about abusers within the Congregations protected abusers rather than victims; Watchtower knew that secrecy about sexual abusers in the midst of the Congregations promoted further abuse; and Watchtower knew the effects of abuse on children were devastating. (Awake Magazine, Trial Ex. 64/Def. 37, Oct. 8, 1993). Watchtower also knew that the official hierarchy's policy of secrecy is why child sex abusers were allowed to roam free in the Catholic Church (*Ibid.*). Knowing all of this, Watchtower followed its corporate policy of secrecy anyway, instructing the North Fremont Congregation Elders to keep Jonathan Kendrick's sexual abuse secret from the parents in the Congregation, and sabotaging the parental "first line of defense" for protection of Congregation children from abuse. The instructions included following the 1989 policy

of keeping confirmed child sexual abusers secret, even when the victims did not want the matter kept private, and the perpetrator was criminally convicted. The Watchtower's intentional and reckless disregard of Candace Conti's health and safety factor in this case also supports a finding of reprehensibility.

The third factor is whether or not the conduct was an isolated incident, or a pattern and practice. Although no evidence of harm to other victims or other cases of secrecy were presented to the jury, plaintiff Conti proved the Watchtower's managing agents had adopted a business practice and policy of keeping known sex abusers secret from parents in the Congregation, and it instructed the Fremont Elders to do so in this case. As stated in *Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, "by placing the defendant's conduct on one occasion into the context of a business practice or policy, an individual plaintiff can demonstrate that the conduct toward him or her was more blameworthy and warrants a stronger penalty to deter continued or repeated conduct of the same nature." (35 Cal.4th at 1206-7 and Fn.6). It was indeed the business policy of Watchtower to keep sexual abusers secret, allowing them to mingle freely within the Watchtower Congregations, and following that policy allowed Jonathan Kendrick to molest a second girl in the North Fremont Congregation. This factor also supports the finding of reprehensibility.

The last factor provided to the jury was whether or not the "defendant's conduct was intentional", or whether the conduct resulted from a "mere accident". In Ms. Conti's case, there was no mere accident. The Watchtower decision to keep secret the risk that Jonathan Kendrick presented to children in the North Fremont Congregation, and to keep secret from the parents in the Congregation the knowledge that there was a known child abuser among their fellow "brothers and sisters" was the result of a national policy promulgated and enforced by Watchtower's New York office. This policy and conduct is consistent with a "corporate culture that encouraged such supervisory conduct", rather than the "isolated actions of a single supervisor combined with the onetime failure on the part of the employer". (*Roby v. McKesson Corp.*, supra, 47 Cal.4th at 715-16) As noted in *Johnson*, supra, the business policy of Watchtower is relevant, and does establish a

corporate policy rather than an isolated incident or low level conduct. This factor of reprehensibility also favors plaintiff and her claim for punitive damages.

The issue of financial vulnerability, which appears in the CACI instruction, was not provided to the jury by stipulation of the parties. However, in the Court's independent due process review of damages, it is appropriate to consider vulnerability to physical harm. (*Bullock v. Philip Morris USA, Inc.*, supra, 198 Cal.App.4th at 562) The *Bullock* Court stated that "we have no trouble concluding, however, that in a case involving physical harm, the physical or physiological vulnerability of the target of the defendant's conduct is an appropriate factor to consider in determining the degree of reprehensibility..." (Ibid). Plaintiff Candace Conti, as a 9 and 10 year old from a dysfunctional family whose mother was "unable to even care for herself" and whose father was distracted and oblivious to the real nature of his "friend" and fellow Jehovah's Witness Congregation member Jonathan Kendrick, was particularly vulnerable to abuse. Her childhood LLSW, Dr. Fraser, so testified, and her testimony was uncontradicted. This factor of reprehensibility also favors plaintiff.

All five of the reprehensibility factors favor the imposition of punitive damages. It has been recognized that, where all of the reprehensibility factors are in favor of the plaintiff, the reprehensibility can be considered "extreme". (*Bullock*, supra, 198 Cal.App.4th at 563) In this case, the reprehensibility of Watchtower's conduct can fairly be stated to be, at the very least, "serious".

C. The Ratio is Proper.

1. The Base Number.

Watchtower argues that *Bankhead v. ArvinMeritor, Inc.* is controlling, and that in that case the Appellate Court found that "this Court is required to use the net compensatory damages" in determining the issue of ratio. However, the *Bankhead* Court did not so hold. The parties in *Bankhead* Court did not brief, argue, or dispute the point. Instead, the *Bankhead* parties agreed that the 2.4:1 ratio of punitive damages to the defendant's share of compensatory damages was the measure used, and the Court of Appeal only incorporated that agreement in affirming that ratio. The Court's conclusion that the assignment of a low percentage of liability reduces the amount of compensatory damages with which the punitive damage amount is compared cited no authority and

did no analysis. The Court's *dicta* was not necessary to its decision. (205 Cal.App.4th at 87, and at 90). An Appellate Court decision is not authority for a proposition that it did not consider, and which was not essential to its determination of the issues. (*Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409, 422)

The correct base number against which punitive awards must be measured is "the actual or potential harm suffered by the plaintiff." (*State Farm, supra.,* 538 U. S. at 418) This is a fair measure, as it reflects the jury's finding that the Watchtower's conduct was a substantial factor in causing her harm, and one without which the harm would not have occurred. (CACI 430 TT 6/11 61:19-21) No case has yet been cited which holds or decides to the contrary.

However, in the event the Court determines that the amount of damages attributable to watchtower alone after a reduction for Kendrick's share of fault, the correct number is $2,870,000.00, or 40% of the non-economic damages and the $130,000.00 in economic damages. All of that 40% of fault is attributable to Watchtower, carrying out its corporate policies through its agents. The Special Verdict specifically found that the North Fremont Congregation Elders were agents of Watchtower, and the matter was also admitted at trial. Therefore, the minimal comparison of punitive damages to compensatory damages in the jury's present award is the ratio of 7.3:1, not the 10:1 that Watchtower argues.

2. The Issue of Net Worth.

Defendant has not raised the issue of its wealth as part of the review of the award, but the Court is required to consider the defendant's wealth as one of the three criteria for its review. (*Bankhead*, supra, 205 Cal.App.4th 68 at 77). As recognized in *Bankhead* and many other cases, "the wealthier the wrongdoer, the larger the award of punitive damages." (*Bankhead*, supra, 205 Cal.App.4th at 77, citing *Downey Savings & Loan Assoc. v. Ohio Casualty Insurance Co.* (1987) 189 Cal.App.3rd 1072, 1099-1100)

In this case, Watchtower admitted to having over $1 Billion in assets and had $30 Million cash on hand as well. The punitive damage award of $21,000,001.00 constitutes only 2% of the wealth of defendant placed in evidence. Defendant did not introduce any evidence or make any

argument that the punitive damage award would in any way interfere with its operations, solvency, or destroy its business. In order to accomplish the purpose of punitive damages, the extensive holdings and wealth of Watchtower must be considered.

3. All of the Numbers are Proper.

Whichever numbers are utilized in the due process analysis, the award of $21,000,001.00 in punitive damages is proper, appropriate, and consistent with due process concerns. High ratios in cases involving sexual abuse have been upheld in the past, including as high as 70:1. (*Weeks v. Baker and McKenzie* (1998) 63 Cal.App.4th 1128, cited with approval in *Roby v. McKesson Corp.*, supra, 47 Cal.4th at 717). The *Weeks* case involved repeated sexual harassment of an employee by a partner in the defendant's law firm. None of the physical touching was under the clothing. (63 Cal.App.4th at 1138-1144). The Court concluded that

> "Applying the relevant criteria here, we cannot conclude that the award of punitive damages was excessive. To be sure, the amount awarded was 70 times greater than the compensatory damage award. In *Neo v. Farmers Exchange,* however, the Court upheld a punitive damage award that was 74 times greater than the amount of compensatory damages awarded." (63 Cal.App.4th at 1166).

In *Gober v. Ralph's Grocery Co.*, supra, the Court found the reprehensibility to be "modest". (137 Cal.App.4th at 222) The reprehensibility factors in *Gober* were much less in favor of the award of punitive damages than in the Conti case, as there was no personal injury involved in *Gober*, and the sexual harassment in that case did not present a "*substantial* threat to the health and safety" of the plaintiffs. (137 Cal.App.4th at 222) Based upon the "modest" degree of reprehensibility, the Court of Appeal held that an award of a 6:1 ratio of punitive damages was the constitutional maximum.

In this case, the reprehensibility factors are Serious- more substantial than in many of those cases, such as *Simon* (low) and *Gober* (moderate), both of which awarded large ratios of punitive damages. In this case, the wealth of Watchtower is extensive, far beyond the ability of one punitive damage award to substantially affect their business operations. In this case, there is not a shred of evidence of contrition or remorse. In this case, the degree of harm suffered by this plaintiff enormous, certain, and uncontested. Taking into account all of the facts and circumstances of this

individual case, the punitive damage award ratio is not excessive, regardless of the manner in which it is calculated. The jury's award should remain undisturbed.

CONCLUSION

Plaintiff Candace Conti was compensated for her harm by the jury's damage award, but the public interest in punishing despicable conduct is not served by that award alone. A review of the serious reprehensibility of Watchtower's conduct, its financial wealth, and the extreme repercussions to the health and safety of a vulnerable child, all support a jury's determination that $21,000,001.00 was a rational and reasonable amount to award to serve the purposes of punishment and deterrence in this case.

Dated: August 16, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On August 17, 2012, I served the within **PLAINTIFF'S SUPPLEMENTAL BRIEFING ON PUNITIVE DAMAGE ISSUES IN OPPOSITION TO MOTIONS FOR NEW TRIAL AND J.N.O.V. OF DEFENDANTS WATCHTOWER NEW YORK AND FREMONT CONGREGATION** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below:

Jonathan Kendrick, In Pro Per
200 Honey Lane
Oakley, CA 94561
925/679-0411 Telephone

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[X] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[X] By Email By transmitting a true copy thereof to the email address(es) shown below:

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
jim@mccabelaw.net
Attorneys for Defendants
CHURCH DEFENDANTS

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
SchnackR@jacksonlewis.com
egbertd@jacksonlewis.com
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 17, 2012, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

VRED

10381820

RICHARD J. SIMONS, ESQ. State Bar No. 72676
KELLY KRAETSCH, ESQ. State Bar No. 281688
FURTADO, JASPOVICE & SIMONS
A Law Corporation
22274 Main Street
Hayward, CA 94541
510/582-1080 Telephones
510/582-8254 Facsimile
Rick@fjslaw.com
KellyK@fjslaw.com

Attorneys for Plaintiff
JANE DOE

FILED
ALAMEDA COUNTY

AUG 0 9 2012

Exec. Off/Clerk
By Elaine Baldwin

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S SURREPLY MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTIONS FOR NEW TRIAL AND J.N.O.V. OF DEFENDANTS WATCHTOWER NEW YORK AND FREMONT CONGREGATION

Date: August 13, 2012
Time: 8:30 a.m.
Dept: 22

INTRODUCTION

In their Reply, the Church Defendants raise new arguments and authorities not cited in their initial briefing. Specifically, Watchtower makes a number of arguments which cite *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68. Because plaintiff has been deprived of the opportunity to address the new arguments and new authorities omitted from Watchtower's initial briefing, a Surreply is appropriate.

I. THE *BANKHEAD* DECISION DOES NOT CONTROL THE ISSUE OF RATIO IN THIS CASE.

Watchtower argues that *Bankhead v. ArvinMeritor, Inc.* is controlling, and that in that case the Appellate Court found that "this Court is required to use the net compensatory damages" in determining the issue of ratio. However, the *Bankhead* Court did not so hold. On the contrary, the parties in *Bankhead* Court neither briefed, argued, nor disputed the point. Instead, the *Bankhead*

parties agreed that the 2.4:1 ratio of punitive damages to the defendant's share of compensatory damages was the measure used, and the Court of Appeal only incorporated that agreement in affirming that ratio. The Court's conclusion that the assignment of a low percentage of liability reduces the amount of compensatory damages with which the punitive damage amount is compared cited no authority and did no analysis. The dicta was not necessary to its decision. (205 Cal.App.4th at 87, and at 90). An Appellate Court decision is not authority for a proposition that it did not consider, and which was not essential to its determination of the issues. (*Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409, 422).

No Due Process case has analyzed this issue and held that due process requires comparison of the plaintiff's harm with only the share of the compensatory damage award attributable to the party assessed punitive damages. Watchtower's conduct was a substantial factor in causing all of plaintiff's harm, regardless of their share of fault. The jury found that none of the plaintiff's harm would have resulted in the absence of Watchtower's conduct. (CACI 430). Therefore, it is plaintiff's harm, and not a reduced share of plaintiff's harm, which is the basis for the ratio of punitive damages.

II. THE *BANKHEAD* DECISION DOES NOT REQUIRE A MAXIMUM 2.4:1 RATIO.

Watchtower further argues that *Bankhead* requires a maximum ratio of punitive damages to compensatory damages of 2.4:1. (Reply, 8:8-11). This simply misreads *Bankhead*. *Bankhead* specifically notes that the "extreme reprehensibility" of a defendant's conduct, together with other factors in evidence, can justify even a 16:1 ratio of punitive damages. (205 Cal.App.4th at 90, citing *Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, at 560-569).

Watchtower argues that *Bankhead* requires a reduction where the compensatory damages "already includes a punitive element." (Reply, 7:12-16). However, in this case, there is absolutely no basis to conclude that the emotional distress damages included a punitive element. In view of the horrible nature of the abuse plaintiff's suffered, the length of time, and the lifetime effects, plaintiff submitted the figure of $7 Million as a reasonable amount of compensation. The defendant introduced neither evidence nor argument to contradict this number. The jury was instructed not to

include punitive damages in its verdict. There is no "punitive element" about this compensatory damage award that would bring in the *Bankhead* Court's concern.

III. THE *BANKHEAD* PUNITIVES ARE ONLY TO PUNISH RATHER THAN DISCOURAGE.

All of the conduct by the defendant in *Bankhead* was past conduct, which it no longer engaged in by the time of trial. The Defendant no longer employed a policy of hiding the risks of asbestos, and no longer failed to protect workers from those risks. Therefore, the recognized purpose of punitive damages to discourage future similar conduct was not applicable in that analysis.

In this case, however, the Court's instruction and plaintiff's counsel's argument focused on discouragement of future harm. Watchtower seeks to shoehorn the punitive nature of the *Bankhead* award into confining the purpose of punitive damages awarded by the jury in this case to punishment only. However, the Supreme Court in *Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, specifically recognized the proper purposes of punitive damages include protecting citizens against future harm by "deterring a wrongful corporate practice". (35 Cal.4th at 1206 and at 1212). All of the claimed prejudice and error argued by Watchtower because plaintiff's counsel referred to children, when viewed in the context of the right of the state to protect its children, are meritless.

IV. *BANKHEAD* PROVIDES SUPPORT FOR THE JURY'S AWARD.

The *Bankhead* opinion provides substantial support for plaintiff's argument that Watchtower's Motions should be denied. The Church Defendants' selective factual citations, which ignore the substantial evidence rule, are similar to the misstatements of the defendant in *Bankhead*, where the Court stated that the Appellate review was not "an opportunity for [the defendant] to make an end run" around the jury's factual findings. (205 Cal.App.4th at 86).

Bankhead also recognizes that punitive damages are proper, even where there is no evidence that the defendant intended to injure the plaintiff "or anyone else in particular", where that defendant failed to take adequate measures to protect those persons made vulnerable by its conduct. (Id, at 86-88). That failure in *Bankhead* justified the jury's conclusion that the defendant's conduct constituted malice. The same is true in this case.

///

Dated: August 9, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

STATE OF CALIFORNIA ss.
COUNTY OF ALAMEDA

I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California 94541.

On August 9, 2012, I served the within **PLAINTIFF'S SURREPLY MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTIONS FOR NEW TRIAL AND J.N.O.V. OF DEFENDANTS WATCHTOWER NEW YORK AND FREMONT CONGREGATION** on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Hayward, California, addressed as shown below:

Jonathan Kendrick, In Pro Per
200 Honey Lane
Oakley, CA 94561
925/679-0411 Telephone

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[X] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below:

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[X] By Email By transmitting a true copy thereof to the email address(es) shown below:

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue
San Diego, CA 92107
619/224-2848 Telephones
619/224-0089 Facsimile
jim@mccabelaw.net
Attorneys for Defendants
CHURCH DEFENDANTS

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
916/341-0404 Telephones
916/341-0141 Facsimile
SchnackR@jacksonlewis.com
egbertd@jacksonlewis.com
Attorney for Defendant
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 9, 2012, at Hayward, California.

Elaine T. Landro

ELAINE T. LANDRO

8787156

JACKSON LEWIS, LLP
Robert J. Schnack, Esq. (SBN 191987)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

FILED
ALAMEDA COUNTY
SEP 21 2012
CLERK OF THE SUPERIOR COURT
By [signature] Deputy

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation;

Defendants.

Case No.: HG11558324

NOTICE OF POSTING BOND/ UNDERTAKING FOR APPEAL OF JUDGMENT UNDER CODE OF CIVIL PROCEDURE SECTION 917.1 FILED ON BEHALF OF DEFENDANTS AND APPELLANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

(Code Civ. Proc. § 917.1)

Complaint Filed: 01-28-2011
Judgment Entered: 06-27-2012
Amended Judgment Entered: 09-17-2012

TO PLAINTIFF JANE DOE, HER ATTORNEYS OF RECORD, THE ABOVE-ENTITLED COURT AND THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendants and Appellants, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK and NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA, hereby give notice that a Bond/Undertaking is hereby posted for an appeal under Section 917.1 of the California Code of Civil Procedure in the amount of Seventeen Million Two Hundred Seventy Seven Thousand Two Hundred Ninety Nine Dollars and 37/100 ($17,277,299.37). A true and correct copy of the Bond/Undertaking is attached hereto as **Exhibit A.**

DATED: September 20, 2012

JACKSON LEWIS LLP

By: _____
Robert J. Schnack

Attorneys for Defendant Watchtower

DATED: September 20, 2012

THE McCABE LAW FIRM, APC

By: _____
for James M. McCabe

Attorneys for Defendant North Fremont Congregation

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
(address for service under Section 995.320 C.C.P.)

Bond No: 105790101
Premium: 86,386.00

IN THE SUPERIOR COURT
COUNTY OF ALAMEDA STATE OF CALIFORNIA

Candace Conti, Plaintiff

vs.

Watchtower Bible and Tract Society of New York, Inc.; AND Fremont Congregation of Jehovah's Witnesses, North Unit,

Defendants

CASE NO. HG11558324
Undertaking Under Section 917.1 C.C.P.

WHEREAS the above named Watchtower Bible and Tract Society of New York, Inc.; AND Fremont Congregation of Jehovah's Witnesses, North Unit, desires to give an undertaking for an appeal as provided by 917.1 C.C.P.

NOW, THEREFORE, the undersigned Surety, does hereby obligate itself, jointly and severally, to Candace Conti, Plaintiff, under said statutory obligations in the sum of Seventeen Million Two Hundred Seventy Seven Thousand Two Hundred Ninety Nine Dollars and 37/100 Dollars ($ 17,277,299.37).

IN TESTIMONY WHEREOF, the said Surety has caused its corporate name and seal to be hereunto affixed by its duly authorized officer at Chicago, Illinois, on the 18th day of September, 2012.

Travelers Casualty and Surety Company of America
By: Robin L Amstutz
Robin L. Amstutz Attorney-in-Fact

The undersigned declares under penalty of perjury under the Laws of the State of California that he/she is an attorney in fact for said surety and that an unrevoked power of attorney is on file in the Office of the Clerk of the above Court or attached hereto.

(Document Printed On Recycled Paper: C.R.C. Rule 201 (b))

STATE OF Illinois
COUNTY OF Cook } SS.

On September 18, 2012, before me, Angus E. Dunn

PERSONALLY APPEARED Robin L. Amstutz

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

OFFICIAL SEAL
Angus E Dunn
NOTARY PUBLIC, STATE OF ILLINOIS
My commission expires 8/15/2016

This area for Official Notarial Seal

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER
  TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☒ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
Travelers Casualty and Surety Company of America

DESCRIPTION OF ATTACHED DOCUMENT

Appeal Bond
TITLE OF TYPE OF DOCUMENT

1
NUMBER OF PAGES

9/18/2012
DATE OF DOCUMENT

N/A
SIGNER(S) OTHER THAN NAMED ABOVE

ID-081 Rev. 6/94

ALL-PURPOSE ACKNOWLEDGEMENT

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERS

POWER OF ATTORNEY

105790101

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223098 **Certificate No.** 004893512

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Stephen B. Miller, Paul J. Souppa, Robin L. Amstutz, Nancy J. Aque, and Linda C. Pratt

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 5th day of June, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: George W. Thompson, Senior Vice President

On this the 5th day of June, 2012, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.

Marie C. Tetreault, Notary Public

58440-6-11Printed in U.S.A.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

WA[redacted] THIS POWER OF ATTORNEY IS INVALID WITHOUT TH[redacted] BORDER

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 18th day of September, 20 12.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On September 20, 2012, I served the following document(s) described as **DEFENDANTS NOTICE OF POSTING BOND/ UNDERTAKING FOR APPEAL OF JUDGMENT UNDER CODE OF CIVIL PROCEDURE SECTION 917.1 FILED ON BEHALF OF DEFENDANTS AND APPELLANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA (Code Civ. Proc. § 917.1)** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

Jonathan Kendrick
200 Honey Lane
Oakley, CA 94561
Telephone: (925) 484-1008

☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to _____for delivery to the above address(es).

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 20, 2012, at Sacramento, California.

Lori Gilmette

Lori Gilmette

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
(address for service under Section 995.320 C.C.P.)

Bond No: 105790101
Premium: 86,386.00

IN THE SUPERIOR COURT
COUNTY OF ALAMEDA STATE OF CALIFORNIA

Candace Conti, Plaintiff

vs.

CASE NO. HG11558324
Undertaking Under Section 917.1 C.C.P.

Watchtower Bible and Tract Society of New York, Inc.; AND
Fremont Congregation of Jehovah's Witnesses, North Unit,

Defendants

WHEREAS the above named Watchtower Bible and Tract Society of New York, Inc.; AND Fremont Congregation of Jehovah's Witnesses, North Unit, desires to give an undertaking for an appeal as provided by 917.1 C.C.P.

NOW, THEREFORE, the undersigned Surety, does hereby obligate itself, jointly and severally, to Candace Conti, Plaintiff, under said statutory obligations in the sum of Seventeen Million Two Hundred Seventy Seven Thousand Two Hundred Ninety Nine Dollars and 37/100 Dollars ($ 17,277,299.37).

IN TESTIMONY WHEREOF, the said Surety has caused its corporate name and seal to be hereunto affixed by its duly authorized officer at Chicago, Illinois, on the 18th day of September, 2012.

Travelers Casualty and Surety Company of America
By: Robin L. Amstutz
Robin L. Amstutz Attorney-in-Fact

The undersigned declares under penalty of perjury under the Laws of the State of California that he/she is an attorney in fact for said surety and that an unrevoked power of attorney is on file in the Office of the Clerk of the above Court or attached hereto.

(Document Printed On Recycled Paper: C.R.C. Rule 201 (b))

STATE OF Illinois
COUNTY OF Cook } SS.

On September 18, 2012, before me, Angus E. Dunn

PERSONALLY APPEARED Robin L. Amstutz

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

OFFICIAL SEAL
Angus E Dunn
NOTARY PUBLIC, STATE OF ILLINOIS
My commission expires 8/15/2016

This area for Official Notarial Seal

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER
  TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☒ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
Travelers Casualty and Surety Company of America

DESCRIPTION OF ATTACHED DOCUMENT

Appeal Bond
TITLE OF TYPE OF DOCUMENT

1
NUMBER OF PAGES

9/18/2012
DATE OF DOCUMENT

N/A
SIGNER(S) OTHER THAN NAMED ABOVE

ID-081 Rev. 6/94

ALL-PURPOSE ACKNOWLEDGEMENT

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERS

POWER OF ATTORNEY

105790101

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223098 **Certificate No.** 004893512

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Stephen B. Miller, Paul J. Souppa, Robin L. Amstutz, Nancy J. Aque, and Linda C. Pratt

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 5th day of June, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: George W. Thompson, Senior Vice President

On this the 5th day of June, 2012, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.

MARIE C. TETREAULT NOTARY PUBLIC CONNECTICUT

Marie C. Tetreault, Notary Public

58440-6-11Printed in U.S.A.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 18th day of September, 20 12.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Doe Plaintiff/Petitioner(s) **VS.** **The Watchtower Bible and Tract Society of New York, I** Defendant/Respondent(s) **(Abbreviated Title)**	**No. HG11558324** **Minutes**

Department 22 Honorable Robert McGuiness , Judge

Cause called for Compliance Hearing on July 17, 2012.

The matter is dropped.

Minutes of 07/17/2012
Entered on 07/19/2012

Executive Officer / Clerk of the Superior Court

By digital _____
Deputy Clerk

JACKSON LEWIS LLP
Robert J. Schnack (SBN 191987)
Douglas M. Egbert (SBN 265062)
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorney for Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

THE McCABE LAW FIRM, APC
James M. McCabe (SBN 51040)
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, FREMONT, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JANE DOE, Plaintiff, vs. THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation; JEHOVAH'S WITNESSES ON PERALTA BLVD. FREMONT, an entity; KINGDOM HALL OF JEHOVAH'S WITNESSES, a corporation; JONATHAN KENDRICK, an individual; and DOES 1 to 10a corporation; Defendants.	Case No.: HG11558324 **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S COMBINED NOTICE OF MOTIONS FOR JNOV AND NOTICE OF INTENT TO FILE MOTIONS FOR NEW TRIAL** Date: August 13, 2012 Time: 8:30 a.m. Dept.: 22 Trial: May 21, 2012

TO PLAINTIFF JANE DOE AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that this Notice is filed pursuant to the Stipulation and Order Regarding Briefing of Post-Trial Motions, signed by the Court on June 27, 2012.

PLEASE TAKE FURTHER NOTICE that on August 13, 2012 at 8:30 a.m., or another date and/or time as may be scheduled by the Court, in Department 22 of the above-referenced Court located at 1221 Oak Street, Fourth Floor, Oakland, CA 94612, Defendant Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") will and hereby does move the Court pursuant to Code of Civil Procedure section 629 for an order for judgment notwithstanding the verdict ("JNOV") as to Plaintiff's claim for punitive damages on the grounds, including but not limited to that (1) there was no clear and convincing evidence of malice to support the award of punitive damages, and (2) the award of punitive damages is unconstitutional because Plaintiff's intent was to change Watchtower's national policy.

PLEASE TAKE FURTHER NOTICE that on August 13, 2012 at 8:30 a.m., or another date and/or time as may be scheduled by the Court, in Department 22 of the above-referenced Court located at 1221 Oak Street, Fourth Floor, Oakland, CA 94612, Defendants Watchtower and North Congregation of Jehovah's Witnesses, Fremont, California ("North Fremont Congregation") (collectively the "Church Defendants") each intend to and hereby do move pursuant to Code of Civil Procedure section 657 for a new trial on the alternative grounds that (1) there were irregularities in the proceedings of the court, jury and/or adverse party, and orders of the court and abuse of discretion by which the Church Defendants each were prevented from having a fair trial, (2) there were insufficiencies of the evidence to justify the verdict and other decisions, and the verdict and other decisions are against law, (3) there were errors in law, occurring at the trial and excepted to by the Church Defendants, and (4) the non-economic damages awarded are excessive and not supported by substantial evidence, and Defendant Watchtower also intends to and hereby does move for a new trial on the additional ground that the punitive damages awarded are excessive. In addition, should the Court find and/or rule that the non-economic damages and/or the punitive damages awarded to plaintiff are excessive and order a new trial, then the Church Defendants each do hereby request remittitur pursuant to Civil Code section 662.5.

These motions will be and are based on this notice of motion for JNOV and notice of intent to move for a new trial, the memoranda of points and authorities to be submitted later to

the Court pursuant to an agreed or stipulated briefing schedule, the supporting declaration(s) and additional evidence submitted therewith, and such additional facts and arguments that will be presented in reply briefing and/or at the hearing.

Per the Clerk of the Court, no tentative ruling will be issued and the parties are expected to appear for hearing on August 13, 2012 at 8:30 a.m.

DATED: July 9, 2012

JACKSON LEWIS LLP

By: _____
Robert J. Schnack
Douglas M. Egbert

Attorneys for Defendant Watchtower

DATED: July 9, 2012

THE McCABE LAW ~~FIRM, APC~~

By: _____
for James M. McCabe

Attorneys for Defendant North Fremont Congregation

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and am not a party to the within action; my business address is 801 K Street, Suite 2300, Sacramento, California 95814.

On July 9, 2012, I served the following document(s) described as **DEFENDANTS WATCHTOWER AND NORTH FREMONT CONGREGATION'S NOTICE OF MOTIONS FOR JNOV AND NOTICE OF INTENT TO FILE MOTIONS FOR NEW TRIAL** on all interested parties to this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Jackson Lewis LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

☒ **BY OVERNIGHT COURIER:** By depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by NORCO Delivery Services or delivering to an authorized courier or driver authorized by NORCO Delivery Services to receive documents, addressed as set forth below.

☐ **BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (916) 341-0141 to Fax No. _____ directed to_____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

☐ **BY ELECTRONIC MAIL:** By transmission of a true copy to the email address(es) shown on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 9, 2012, at Sacramento, California.

Keri Gilmette

SERVICE LIST
JANE DOE v. WATCHTOWER, et al.
Case No. HG11558324

Counsel for Plaintiff

Richard J. Simons, Esq.
FURTADO, JASPOVICE & SIMONS
22274 Main Street
Hayward, CA 94541
Telephone: (510) 582-1080
Facsimile: (510) 582-8255
rick@fjslaw.com

Jonathan Kendrick, Defendant in pro per
200 Honey Lane
Oakley, CA 94561
(925) 484-1008

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

MAY 29, 2012

DAY 1

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A604CB8

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: Kellyk@fjslaw.com

Email: Rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF

JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: Jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY

OF NEW YORK, INC.

JACKSON LEWIS, LLP

BY: ROBERT SCHNACK, ESQ.

801 K Street, Suite 2300

Sacramento, CA 95814

Tel: (916) 341-0404

Fax: (916) 341-0141

Email: Schnackr@jacksonlewis.com

--oOo--

I N D E X

	PAGE
JURY INSTRUCTIONS:	11
OPENING STATEMENTS	
BY MR. SIMONS	30
BY MR. McCABE	46
BY MR. SCHNACK	67

INDEX OF EXAMINATIONS:

EVIDENCE CODE 776, ADVERSE WITNESS FOR THE PLAINTIFF:

	PAGE
WITNESS: GARY ABRAHAMSON	
DIRECT EXAMINATION BY: MR. SIMONS	86
CROSS-EXAMINATION BY: MR. McCABE	127
REDIRECT EXAMINATION BY: MR. SIMONS	158
WITNESS: MICHAEL CLARKE	
DIRECT EXAMINATION BY: MR. SIMONS	162
CROSS-EXAMINATION BY: MR. McCABE	190

--oOo--

INDEX OF EXHIBITS:

NUMBER	ADMITTED
Defendant's 17	111
Plaintiff's 37	115
Plaintiff's 9, Defendant's 98	135
Plaintiff's 1, Defendant's 26	181

(not attached)

--oOo--

MAY 29, 2012 8:36 A.M

PROCEEDINGS

THE COURT: All right. We are back on the record in the matter of the Candace Conti versus Watchtower Bible and Tract Society, New York, Inc., a corporation, and the Fremont, California Congregation of Jehovah's Witnesses, North Unit, and Jonathan Kendrick.

All counsel are here. Counsel arrived promptly at 8:00 o'clock this morning.

I am going to ask Mr. Schnack if he has unedited versions of the letters explaining the purpose as to what my rulings were. And I will recite the agreement on the things we decided, the terms, Mr. Schnack.

MR. McCABE: Your Honor, with respect to the letter from the North Congregation to Watchtower Bible and Tract Society, dated November 15, 1993, the entire last paragraph of the first page has been redacted by agreement among counsel.

On the second page, the first paragraph at the top, the language that will remain in the document are, quote: "Here are the facts as best as we can present them."

And the rest of that sentence has been

redacted, according to your ruling.

The bullet point Number 1 on the second page of that letter has been redacted by agreement among counsel.

The second bullet point, the following words are being redacted by agreement of counsel:

"We assume that Brother Kendrick does not qualify any longer as ministerial servant."

Let me back up. The word "ministerial servant" stays in, and following sentence stating:

"We will announce to the congregation that he is no longer serving as such. If this is incorrect, please inform us."

And with respect to Item Number 3, the following words stating:

"The Legal Department has given us some direction."

And the balance of that sentence is being redacted, according to your ruling.

THE COURT: I think that is an accurate statement as to the rulings, counsel.

Do you agree, Mr. Simons?

MR. SIMONS: I do.

THE COURT: Okay. Next letter.

MR. McCABE: Then with respect to the letter,

dated December 20, 2009, from the North Congregation to the Oakley Congregation, the last three sentences of the second paragraph have been redacted, pursuant to agreement of counsel.

The last paragraph on the first page of that December 20, 2009 letter, the first sentence that reads: "Her biggest concern seems to be protecting other children from harm" will stay in.

The balance of that paragraph will be redacted at this point in time with respect to opening argument through ruling of the court.

Turning to the second page, the defense objected to all but the first sentence of the first paragraph, the second page.

The court ruled that the entire first paragraph on the second page shall remain in.

The parties redacted by agreement, from the end of that first paragraph down to the heading "12-16-09" by agreement.

And that covers that letter.

THE COURT: And I would agree.

Mr. Simons?

MR. SIMONS: I do as well.

THE COURT: Counsel raised other issues with the court, including motion in limine regarding Dr.

Applewhite, which I will read during my lunch hour; and likewise, I will look at Plaintiff's Number 10.

MR. McCABE: And we also had a brief discussion, your Honor, about no mention of a duty to warn during the opening statements.

Can that be addressed to the court?

THE COURT: Agreed.

MR. SIMONS: Agreed.

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: All right. Several things. First of all, thank you for your time.

Because of all the activity going on around here, I started with counsel and I, making decisions since 8:00 o'clock this morning, relative to this particular matter.

In the future, and starting tomorrow morning, Wednesday, you will have your own jury room. So you are welcome to come early, go about your business, do whatever you need to do. Hill will take you to your jury room so you know where it is.

I will ask you not to come in between 8:00 and 8:30 because, again, I may be in the middle of making some decisions.

As you work, I work. I work outside the

province of the jury, making decisions and other decisions and things of that nature. So Hill will educate you as to that.

I expect, other than today -- we have had to set up the courtroom, and I had to make a number of decisions regarding today and the presentation circumstances.

Tomorrow, I would expect to have you in those chairs at 8:30. Hopefully, you had a nice Memorial Day weekend.

I have indicated to all counsel -- Mr. Simons has been hobbling a little bit. But it comes with a territory as some part of the aging process.

So I have invited each counsel to either stand or sit, depending upon what they would like to do. I thought I would make some mention of that.

I inferred -- I have also mentioned that during the course of the trial, either Ms. Conti or any party -- today we have Mr. Clarke and Mr. Abrahamson --

Gentlemen, why don't you stand up.

-- on behalf of the Congregation. And that may change daily.

So Plaintiff and Defendants, to the extent somebody comes that I feel a need to introduce to you, I will. I just want you to understand that it happens all

the time in civil trials that the parties may be here for a portion, all of it at their choice, and subject to any other demands they have. And so I will say that.

Now, in a minute I'm going to give you the -- what I call pre-flight instructions, including about no taping and whatnot.

You know, all judges have their own different assessments of these things. Most now -- and I insist upon giving you the assess of what your duties are and what is going to happen here, so you are not thinking about as to what is going to happen all through the case.

I call it pre-flight and I do it because I am concerned the jurors will assess what your duties are, you know, in terms of how you evaluate things, the burden of proof.

So that having been said, let me give you some of what I call pre-flight instructions.

JURY INSTRUCTIONS

THE COURT: All right. Casey 100: Preliminary Admonitions. Before I read this, when I started as a lawyer, a number of years ago, there was a lot of Latin going on in the courtroom. There were a whole different set of jury instructions. California spent eight years trying to make the process more

intelligible and understandable by those who sit as jurors.

And in terms of the use of language, don't think for a minute that there is a hundred percent success. I can tell you and look you all in the eye, collectively and individually, that you don't hear much Latin around here. The only word you'll hear is the voir dire process, which is seeking impartial jurors, that's a Latin phrase, of course. But you rarely hear Latin in the State of California any longer. You rarely hear it anywhere.

Let me give you the preliminary admonitions:

You each have now been sworn as jurors in this case. I wanted to impress on you the seriousness and importance of serving on a jury.

Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, it comes to the case without bias, and it will attempt to reach a verdict based upon evidence presented.

Before we begin, I need to explain how you must conduct yourself during the trial.

I just violated my first rule. And when I do that, I fine myself and put it in the kitty for the department. And so forgive me. I will fine myself.

Forgive me.

All right. Before we begin again I need to explain how you must conduct yourself during the trial. Do not allow anything that happens outside this courtroom to affect your decision. During the trial, do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and co-workers, spiritual leaders, advisors or therapists or anyone else for that matter, whatever their title.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications.

Do not use any electronic device or any media such as cell phone or Smart phone, PDA, computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog or website, including social networking websites or online diaries to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

We had a little monologue about that. Please do not do it. It imperils the fairness of the trial and it doesn't matter as to what it is. It really imperils

the fairness as to each party involved in this matter.

Upon contact, you may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you it is time for you to decide the case.

During the trial, you must not listen to anyone else talk about the case or the people involved in the case.

You must avoid any contact with the parties, the lawyers, the witnesses and anyone else who may have a connection to the case.

If anyone tries to talk to you about the case, tell that person that you cannot discuss it because you are a juror.

If he or she keeps talking to you, simply walk away and report the incident to the court, Mr. Martin, my attendant, as soon as you can.

After the trial is over and I release you from your jury duty, you may discuss the case with anyone, but you are not required to do so.

During the trial, do not read, listen to or watch any news reports about this case.

And I have no information that there will be news reports about the case. But, again, please do not

read, watch or listen to any.

This prohibition extends to use of the internet in anyway, including reading any blog about the case or have anyone involved with it or using internet maps or mapping programs or any other program or device to search for or to view any place discussed in the testimony.

Do not do any research on your own or as a group. Do not use dictionaries, the internet or other reference materials.

Do not investigate the case or conduct any experiments.

Do not contact anyone to assist you, such as family, accountant, doctor or lawyer.

Do not visit or view the scene of any event involved in this case.

If you happen to pass by the scene, do not stop or investigate.

If you do view the scene during trial, you will be taken as a group with proper group supervision.

You must decide this case based only on the evidence presented in the trial and instructions of the law that I will provide.

Nothing that you see, hear or learn outside this courtroom is evidence, unless I specifically tell

you it is.

If you receive any information about this case from any source outside of the courtroom, promptly report it to Mr. Martin, my court attendant.

It is important that all jurors see and hear the same evidence at the same time.

It is important to keep an open mind about this trial. Evidence can only be presented a piece at a time.

Do not form or express an opinion about this case while the trial is going on.

You must not decide on the verdict until after you have heard all the evidence and discuss it thoroughly with your fellow jurors in deliberations.

Do not concern yourselves with the reasons for the rulings I will make during the course of this trial.

Do not guess about anything your verdict should be from anything I might say or do.

When you begin your deliberations, you may discuss this case only in the jury room and only when all the jurors are present.

You must decide what the facts are in this matter. And I repeat, your verdict must be based only on evidence you hear or see in this courtroom.

Do not let bias, sympathy, prejudice or public opinion affect your verdict.

At the end of the trial, I will explain the law you must follow to reach your verdict. You must follow the law as I explain to you, even if you do not agree with the law.

101: Overview of Trial.

To assist you in your cast as jurors, I will now explain how the trial proceeds.

I have previously identified counsel and the parties in this lawsuit.

Ms. Conti is called a Plaintiff. She seeks damage from the Defendants in this matter.

I have indicated to you that the Defendants in this matter are the Defendant, Watchtower Bible and Track Society of New York Inc, and the North Congregation of Jehovah's Witnesses, Fremont, California.

First, each side may make an opening statement, but neither side is required to do so.

MR. McCABE: Your Honor, sorry to interrupt but Jonathan Kendrick is also a defendant in this case.

THE COURT: Forgive me. And Mr. Jonathan Kendrick, as I indicated, is also a defendant in the case.

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show.

Also, because it is often difficult to give you evidence in the order we prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence.

Next, you will hear the evidence. Ms. Conti, through her counsel, will present evidence first. When she is finished, the defendants -- I have just named them, including Mr. Kendrick -- presuming he is here. He is not here up to this point -- will have an opportunity to present evidence.

Each witness will first be questioned by the side that asks the witness to testify. This is called direct examination. And the other side is permitted to question the witness. This is called cross-examination.

Documents are obviously referred to during the trial, are called exhibits. Exhibits are given either a number or letter so they may be clearly identified. The exhibits are not evidence until I admit them into evidence.

During your deliberations, you will be able

to look at all exhibits admitted into evidence. There are many rules that govern whether something will be admitted into evidence. As one side presents evidence, the other side has a right to object and to ask me to decide if the evidence is permitted by the rules.

Usually, I will decide immediately, but sometimes I may have to hear arguments outside your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

What the parties say in closing argument is not evidence. The arguments are offered to help you understand the evidence and how the law applies to it.

Casey 102: Taking notes during the trial. You have been given notebooks and may take notes during the trial. Please do not take the notebooks out of the courtroom or jury room at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify, nor should you allow your

impressionable witness or other evidence to be influenced by whether or not other jurors are taking notes.

Your independent recollection of the evidence should govern your verdict and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

The court reporter is making a record of everything that is said. If during the deliberations you have a question about what the witness said, you should ask that the court reporter read that to you. You must accept the court reporter's record as accurate.

At the end of the trial your notes will be collected and destroyed.

Multiple Parties 103. There is one plaintiff in this trial. You should decide the case of the plaintiff separately as if it were a separate lawsuit. The plaintiff is entitled to separate consideration of her claims.

There are three defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or their own defenses.

Unless I tell you otherwise, all instructions

apply to the Plaintiff and each Defendant.

104: Non-person Parties.

A corporation is a party to this lawsuit. The corporation is entitled to the same fair and impartial treatment you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in any instructions -- in these instructions -- to refer to a party, these instructions also apply to the corporation involved.

105: Insurance. You must not consider whether any of the parties in this case have any insurance. The presence or absence of insurance is totally irrelevant. You must decide this case based only upon the law and the evidence.

Casey 106: Evidence. Sworn testimony, documents or anything else may be admitted into evidence.

You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys or

witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorney's questions are not evidence. Only the witnesses' answers are evidence.

You should not think that something is true just because an attorney's question suggests that it is true.

However, the attorneys for both sides can agree that certain facts are true. This agreement is called a "stipulation."

No other proof is needed, and you must accept those facts as true in this trial.

Each side, again, has a right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled.

If I overrule an objection, the witness will answer and you may consider the evidence.

If I agree with the objection, I will say, it's sustained. If I sustain an objection, you must ignore the question.

If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection.

If the witness has already answered, you must ignore the answer.

An attorney may make a motion to strike testimony that you heard. And if I grant the motion, you must totally disregard that testimony, and you must treat it as though it did not exist.

Casey 107: Witnesses.

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness' testimony is to the case. You may believe all, part or none of the witness' testimony.

In deciding whether to believe a witness' testimony, you may consider among other factors, the following:

(A) How well did the witness see, hear or otherwise sense what he or she described in court?

(B) How well did the witness remember and describe what happened?

(C) How did the witness look, act and speak while testifying?

(D) Did the witness have any reason to say

something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

(E) What was the witness' attitude toward this case about giving testimony?

Sometimes the witness may say something that is not consistent with something else he or she said.

Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember.

Also two people may see the same event but remember it differently. You may consider --- but do not decide the testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything the witness said.

On the other hand, if the think the witness testified untruthfully about some things but told the truth about others, you may accept what you think is true and ignore the rest.

Please do not make any decisions simply

because there were more witnesses on one side than the other. If you believe it is true then a testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin or socioeconomic status.

111: Instructions to Alternate Jurors.

As an alternate juror -- or as alternate jurors, you are bound by the same rules that govern the conduct of the jurors who are sitting on the panel. You will observe the same trial and should pay attention to all of my instructions just as if you were sitting on the panel.

Sometimes a juror needs to be excused during a trial for illness or some other legitimate reasons. If that happens, an alternate will be selected to take that juror's place.

112: Questions from Jurors.

If during the trial you have a question that you believe should be asked of a witness, you may write out the question and send it to me through my staff. I will share your question with the attorneys and decide whether it may be asked.

Do not feel disappointed if your question is

not asked. Your question may not be asked for a variety of reasons.

For example: The question may call for an answer that is not allowed for legal reasons. Also, you should not try to guess a reason why a question is not asked or speculate about what the answer might have been.

Because the decision whether to allow the question is mine alone, please do not hold it against any of the attorneys or their clients if your question is not asked.

Remember, you are not an advocate for one side or the other. Each of you is an impartial judge of the facts.

Your question should be posed in as neutral a fashion as possible. Please do not discuss the question asked by any juror or any other juror until after the deliberations can be done.

113: Casey, Bias.

Each of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we do not share them with others. We may not be fully aware of some of our other biases. Our biases are in effect when we act favorable or unfavorably towards someone.

Bias can enter our thoughts, how we remember, what we see and hear, whom we believe or disbelieve and how we make important decisions.

As jurors, you are being asked to make very important decisions in this matter. Please do not let bias, prejudice or public opinion influence your decision.

Your verdict, again, must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict as influenced by bias for or against any partner -- any party or witness.

114: Bench Conferences and Conference in Chambers.

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the presence of the jury either by having a conference at the bench, when you are present, or by calling a recess to discuss matters outside of your presence.

The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Please do not be concerned about our discussions or try to guess what is being said.

I might deny an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion about the case or my view of the evidence.

116: Why Electronic Communications and Research are Prohibited.

I know that many of us are used to communicating, perhaps even learning by electronic communication or research. However, there are good reasons why you must not electronically communicate or do any research on anything having to do with this trial or parties.

In court, jurors must make important decisions that have consequences for the parties. Those decisions must be based only on the evidence that you hear in this courtroom.

The evidence that is presented in court can be tested. It can be shown to be right or wrong by either side. It can be questioned and it can be contradicted by other evidence, which might be either right or wrong, out of date or inapplicable to this matter.

The parties can receive a fair trial only if the facts and information upon which you base your decisions are presented to you as a group with each

juror having the same opportunity to see and hear all the evidence.

Also, the trial is a public process and depends on disclosure of important facts and evidence. Using information gathered in secret by one or more jurors undermines the public process and violates the rights of the parties.

Casey 200: Obligation to Prove are Likely True or Not True.

A party must persuade by evidence presented in court that what he or she is required to prove is more likely to be true than not true. This is referred to as, quote, the burden of proof, end of quote.

After weighing all of the evidence, if you cannot decide if something is more likely to be true than not true, you must conclude that the parties did not prove it.

You should consider all the evidence no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as the one before you, the burden is to prove something, only prove that it is more likely to be true than not true.

Mr. Simons, do you have an opening statement?

MR. SIMONS: I do, your Honor.

OPENING STATEMENT BY MR. SIMONS

MR. SIMONS: Ladies and Gentlemen, Candace Conti was sexually abused repeatedly by Jonathan Kendrick when she was nine and ten years old. Mr. Kendrick gained access to Candace Conti through their years of involvement together in the North Fremont Congregation of Jehovah's Witnesses.

She, as a young girl was raised in the Jehovah's Witnesses family. Mr. Kendrick, was a trusted and respected adult member of that congregation.

Ladies and Gentlemen, what Candace Conti, her parents and the good people who were members of that congregation did not know, but what was known and documented and kept secret by a few elders of the North Congregation and by the people at the Watchtower New York Corporation that supervised and instructed and provided the rules for North Fremont Congregation.

What was known and kept secret by them was that only two years earlier, Jonathan Kendrick had sexually molested another member.

And because of the policy of secrecy that Watchtower New York had adopted and instructed it's local elders to follow, and which they did follow, that

information was not provided to your shared group, but was kept secret from the people who in that congregation could have seen and prevented the sexual abuse of young Candace.

Now, back in 1993, you will learn that it was already well-known by religious organizations and professionals of all kinds, that childhood sexual abusers used religious organizations to gain access to their victims.

The family atmosphere of the religious organization, the trust that comes with being a fellow member of a congregation were devices that sexual predators could use to gain access to their victims.

And this was well known and it was well established and it was even reflected in publications issued by Watchtower through its magazines, Awake and Watchtower Magazines.

It was known also at that time that policies were necessary to prevent child sexual abusers from using religious organizations as the vehicle to molest victims.

These policies that had been adopted by the major religions throughout the country; Methodist, National Council of Churches, the Catholic Church, they didn't always follow their policies, but the need for

policies to protect children from childhood sexual abuse was well established by that time.

And these policies were necessary and included a need that when a childhood sexual abuser was identified, as it was with Mr. Kendrick, that that individual not be given the opportunity to molest any other children within the religious organization.

There is no single more important fact to be known at that time in the prevention of childhood sexual abuse in the religious context than that an individual has previously molested a child. That was the single, most important thing to know, because when that was known, it was also known that there was a high risk that that individual would molest again.

Jonathan Kendrick had molested, in 1993, his stepdaughter, 13 year old Andrea. And this was before he ever layed a hand on Candace. And the abuse was serious, and it involved skin-to-skin contact with his hand on Andrea's breast and putting his hand under her underwear into her pelvic area.

That information, which was told to the elders, is what was kept secret in 1993 and '94 and '95 and '96, during the time that Candace was being abused.

I would like to show you a photograph of Candace at that time. And apologize if we are in the

way. Space is limited.

You will see during the trial, once technology is sorted through, that Candace as a nine and ten years old was much as she shows herself today, freckle-face red-head girl, and she was a memorable girl. She was the only child of Neal and Kathleen Conti.

She was born in Fremont, raised in Fremont. The family was of humble origins. Kathy Conti, Candace's mother, was a high school dropout, and had a variety of different jobs, one failed marriage and while working in National Semiconductor met Neal.

Neal was also on his second marriage. He met Kathy at work, and they had fallen in love and got married in 1985. That's when Candace was born, November 1985.

And Candace, by the time that she was a baby was active in the Jehovah's Witnesses religion in the North Fremont Congregation with her parents, and on occasions with an older stepbrother, Neal's son from his first marriage.

But by 1995, Candace's life was marked really by three things. One is chaos. One is her resiliency, and one is her vulnerability.

And when I say "chaos," you will learn that

Candace's mother, Kathy, had also been sexually abused as a child. And in this time period in 1994 she began to exhibit severe mental breakdown, bizarre activity, and was no longer functioning.

She was unable to care for Candace. And Neal, who was an unemotional man in many ways, not given to strong attachments.

And, in fact, you are going to learn that he has no relationship with Candace at all anymore, and really has not since she was high school age.

Emotionally distant man was not able to provide for Candace and was not able to provide for Kathleen. This was a family in chaos.

And Kathleen and Neal relied on the people in the congregation to give them some help because they were unable to take care of themselves and their family.

And when I say "resiliency," Candace, you will see when you meet her, is a person of spirit. One of the elders in a deposition in this case called her spunky.

She is a person who comes back from trouble. And would get up in the morning and even though her parents' home life was very, very difficult and unhappy in the morning, you know, Candace would start a new day.

And she was often a smiling, young child,

even with this trouble around her. And people remember that about her. And she was a child that people in the congregation loved.

That spirit of resiliency has marked, really, her entire life. And you are going to learn a little bit about what she has been through and how she has come out of it and why she is here today.

But you are also going to learn that at that time she was extremely vulnerable child. She was vulnerable because there was no parental ability to manage her, and they needed and relied on others in the Jehovah's Witnesses Congregation family to help. And people could see that in her, and Jonathan Kendrick saw that in her.

Now, Jonathan Kendrick was a big man. He was physically big. He was an iron worker. He had come to the Jehovah's Witnesses later in life. Late thirties, early forties. And he had been with the congregation for only eighteen years.

But yet, he was well-liked. He was a flamboyant man. He was a loud man. He expressed his opinions and talked and sometimes bragged a lot. And he was the kind of person that people took to.

And he rose through the Jehovah's Witnesses to become what is called a ministerial servant. And

that's a position of technical assistance, in the way of -- it is not a religious position, but it is the men who helped the elders, they pass the microphone at meetings or gather books and the magazines, the publications and pass them out.

Jonathan Kendrick had achieved that position which required not only recommendation by the local elders, but also approval by Watchtower New York.

And Jonathan Kendrick was a part -- together with his then wife, Evelyn Kendrick -- of the Jehovah's Witnesses family.

And it was a family atmosphere. They not only call each other brother and sister, but it is a family atmosphere because they spend a lot of time together.

There are usually meetings at the Kingdom Hall, which is a church.

There are meetings in homes where Bible study is done.

There are the field service where Jehovah's Witnesses go out into the neighborhood to spread the word of their beliefs and their religion. And many times four and five days a week.

And part of their family situation is that the Jehovah's Witnesses did not mix much with other

faiths or other people.

Their lives centered around the congregation and their fellow members. And so because they didn't celebrate things like birthdays and Christmas as part of their beliefs, Candace and her family were much more tied into the other families of the congregation than might be seen in other situations.

And there was a trust placed in the fellow members of the congregation. And the North Fremont Congregation was not a particularly large one. Hundred members, maybe a hundred and twenty, including the children. But like in all small congregations, the people knew each other.

The Jehovah's Witnesses are not an organization that is unstructured. They are very structured. There is a group, a small group of men called the "governing body." And the governing body is at the top of the hierarchy of the Jehovah's Witnesses.

And the governing body operates, sets all the policies. It sets and instructs all of the elders throughout the country and all the congregations on what policies they follow. And it acts through a series of different corporations.

In this time, the 1990s, Watchtower New York was the principal corporation that the governing body

acted through and which directed the activities of the Jehovah's Witnesses throughout the United States.

And a number of various positions, certain overseers and et cetera, kept this hierarchy in place and allowed communications from the governing body through the Watchtower, through the bodies of elders and into the congregation itself.

And that's how instructions were disseminated and that's how policies were made and enforced from the top down.

Now, Jehovah's Witnesses is not a youth organization. It is not Campfire Girls, but it is an organization where children and adults engage in all of the activities together. They are together in the home services, they get together in the homes of members doing Bible study. They are together in the field doing service work, and they are together in many, many ways and activities.

And because of that togetherness, there is no real border, and there is no real one place that the Jehovah's Witnesses would be together. They could be in a neighborhood anywhere in the congregation. And they would go sometimes to activities in the district level, et cetera, and participate together there.

And so this family was together very much,

brothers and sisters, looked on each other as a family and felt that that was part of their responsibility. And there was a togetherness there and a trust. And that's what was abused by Jonathan Kendrick in this case.

The Jehovah's Witnesses were notified. The Fremont elders were notified by Evelyn Kendrick in November 1993 that Jonathan has sexually molested her daughter from her first marriage, Andrea.

First, the Kendricks, they tried to deal with this at home, in the family. But that wasn't successful.

And so Evelyn turns to the elders, to Elder Abrahamson and to Elder Clarke. But in particular, Elder Abrahamson, you are going to hear from, because that was the Jehovah's Witnesses' way, not to go to police or the outsiders, but to go to elders for safety, protection and guidance. And that's what she did.

And there was a family meeting with Andrea and Evelyn and Jonathan Kendrick and Elders Clarke and Abrahamson in November 1993, and a written report of that meeting was sent to Watchtower New York so that instructions could be received.

And in that meeting, Andrea and Evelyn told that there had been an argument about Andrea's

involvement with a boy, and that the argument had ended and Jonathan had given Andrea some Vicodin, and she had gone to bed and she had gone to her bedroom with her to sit and watch TV.

And when she was half asleep, he placed his hands under her bra and into her underwear. And she was aware of that and got up and went to the bathroom, cried, and then went and told her mother.

And that's what was told to the elders. That conduct was described to the elders in the family meeting.

Jonathan Kendrick did not agree with that version and claimed that it had only been a brief touch outside the clothes.

And that's the version that was reported to Watchtower New York by Elders Abrahamson and Clarke. But even that conduct was described in the report as child abuse and recognized as child sexual abuse.

Now, Jonathan Kendrick no longer served as a ministerial servant by 1995 when the abuse of Candace was ongoing, but he was still a member in good standing with the congregation.

He still went to Kingdom Hall. He was still there with all the members. He was still a trusted member. And no one was told that he had sexually

molested a child. It was kept secret.

And Jonathan Kendrick continued to do field service, and he continued to go to homes for Bible study and meetings.

And the reason no one was told was a written policy issued in 1989 by Watchtower New York. And that policy, which the elders had no discretion to depart from, that policy mandated that certain matters, including child abuse, be kept confidential, secret.

And the reason for that policy, which you will get to read -- and it is a long several-pages of policy -- but the reason stated time and again within that policy was to avoid lawsuits and financial penalties.

The governing body, through this policy, had made a determination that its own needs would be placed above protection of children and an indifference to children like Candace who were placed at risk by the presence of known sexual abusers within the congregations and the secrecy that surrounded it.

That is what this case is about.

Now, I just want to talk a little bit about the harm that Candace has suffered. She suffered in silence, abuse that occurred on many, many occasions.

It was very serious and intrusive abuse. And

it is sad to say that it involved not only skin-to-skin contact, but nudity and oral sex and the insertion of a foreign object, a pen, into her. It is the most horrific kind of abuse, and it happened on many occasions.

And these occasions would arise when Jonathan Kendrick, being the helpful person that he was, would take Candace when her parents were unable to deal with her. They were too distracted by their own problems. And he would take her for a ride or babysit her or take her rollerblading or play or take her home from a meeting and or stop by, run an errand.

Sometimes the congregation members came to the Conti house. Neal had a paint booth and they would come over and they would paint cars and they painted a car for Sister Crawford on one occasion. And all the elders helped this sister who was unable to take care of her own needs.

And so they were all used to each other, being in each other's lives. It was part of the congregation.

And this abuse that she kept silent was because there was no one who was safe for her to share it with.

Soon after, 1996, after a year,

year-and-a-half of the abuse, Candace's parents separated and divorced.

And Candace was placed in family therapy, primarily for herself, with a woman named Laura Fraser, a family therapist.

And Laura Fraser is now down in San Diego. She is going to appear in this case by videotape deposition. And so we know what her evidence will be because we have all been down there and heard.

And she described Candace's vulnerability at that time. That Candace was a girl who was not getting the love of her father, she was competing with Jehovah's Witnesses, and her mother was unable to care for her.

In fact, Candace was really the caretaker, in many ways, of the family. Candace was living, as Laura Fraser will testify, in a family that really had three children in it.

And there was no safe place for her to go. She could not go to her mother. She could not go to her father. And she went nowhere, and suffered this in silence for some years.

And that is not unusual in child sexual abuse victims. You are going to hear something called the "Child Sexual Abuse Accommodation Syndrome" what professionals call "Delayed Disclosure." Children don't

tell. Some do -- Andrea did -- if they feel they have a safe place to go. And many do not. And Candace did not. So she suffered this in silence.

And she did not tell anyone until -- the first person she told was when she was 16 years old. She was battling depression, and she told a doctor that she saw on one occasion, Dr. Afruma, Bay Valley Medical Group about it. That's the first reporting of it that she told anyone.

2003, when she was 18, she told her parents separately. Her mother was moving out of state and was really of no support to her. Her father, then on his fourth marriage, indifferent. Didn't get involved at all.

And Candace turned, during her high school years, to self-medicating for treating her trauma and treating her own feelings that she couldn't share with anyone.

She self-medicated with drugs. And she self-medicated with a very bad drug, methamphetamine. And she took it for some time. For years she was using on and off.

And she hid from the trauma. But over time she began to be able to face what had happened to her and to face her trauma.

She suffers from a post-traumatic stress disorder. She has gone through depression. She has gone through some dark times.

But that resilient Candace Conti has now been sober for two years and is on the track to become a veterinary tech, to become a productive member of society, to become the good person that has been inside of her all of this time.

She will need therapy. She will need a lot of help over the years. And there will be times when she is again vulnerable to the emotional harm resulting from this abuse. But she is a resilient person, and she does have the ability to stand up.

And when she met with the elders in Fremont to tell them about her abuse, in 2009, she told them the very same thing that you will learn as to why we are here, and that's to make sure that children are protected.

I appreciate your attention and I appreciate your service. And on behalf of Ms. Conti and myself, thank you.

THE COURT: All right. Mr. McCabe, do you have an opening statement on behalf of North Congregation Jehovah's Witnesses, Fremont, California.

MR. McCABE: I do, your Honor.

OPENING STATEMENT BY MR. McCABE

MR. McCABE: Thank you all for your patience and your endurance to getting to this point. It is very important in our system of justice that you are here to serve. And this is a very important trial. It's important for Ms. Conti, as her attorney has just outlined for you. She is a young woman who has been through an ordeal and suffered a lot. And she is trying to heal. So it is an important case for her.

But this case is also about some very good, hard-working, everyday, ordinary, common people. And I want to tell you what the evidence is going to show about that.

My clients, they are -- as Mr. Simons pointed out a hundred or hundred and twenty or so people who associate together at the Fremont Congregation.

Their official title is Fremont Congregation of Jehovah's Witnesses, the North Unit. But that is a big mouthful to get out. So I'm just going to call them the Fremont Congregation.

This is a civil lawsuit. No filters. You file a lawsuit, and unless prior to, you settle, it comes before a court or a jury like this.

In this case, Ms. Conti and her lawyers are suing the Fremont Congregation for negligence. But I

think the evidence will show that no one in the congregation, no elder, no member, no one, saw Mr. Kendrick ever act inappropriately with Ms. Conti.

Not only did no member see it, but Ms. Conti's own parents did not see anything inappropriate.

The evidence will show you that, and Mr. Simons has pointed out, that Ms. Conti didn't tell the anyone in the congregation until 12 years after the abuse had stopped.

It goes without saying, I think, based on all the experiences we have had together the past few days through the juror questionnaire and the conversations you have had with the jurors that child abuse is always tragic. It is horrible.

This lawsuit, though, isn't just about child abuse. It is what the congregation knew and when they knew it.

The evidence will show that the Fremont Congregation was a small group of people, about a hundred, hundred twenty, it varies over the year depending on economic situation, people moving in and out of the area.

And presiding over the congregation is not a priest or one minister or a religious leader, but it is an elder.

And in the congregation of Jehovah's Witnesses, it is not just one elder, but it is what they call the body of elders, made up of three, maybe as many as ten, twelve, depending upon the circumstance of the congregation.

And this case is important to them. They spend a good lot of time caring for the congregation. But it is also important to members of the congregation, as you will see.

And I think it is important for members of the congregation regardless of what their religious denomination is.

It is important for associations like Little League or Oakland Soccer Club or any organization that involves families.

It is important because the allegations here essentially say the organization, any organization can be held responsible for what a rank and file member of the organization does, even when the behavior doesn't have anything to do with the organization, doesn't happen within the organization, doesn't happen on the organization's activities.

Now, the evidence will show that Ms. Conti and her attorneys are claiming that my client, the Congregation, represented by the elders, is responsible

for the horrendous actions of someone who simply attended the church.

Now, it is not a case where the pastor or clergy or religious leader perpetrated some of this. It was a rank and file member. It is not a case where the abuse happened at church or in church activities.

It is not a case where the pastor, the religious leaders saw something happening and didn't do anything about it. It is not that kind of case.

That's why we are here. That's why I stand up for some good people and try to present to you what they knew and when they knew it. People did not know or did not have a way of knowing that Ms. Conti was being abused.

And you will see testimony from the members and the elders from the Fremont Congregation. They will tell you about themselves.

The evidence will show they are people just like everyone else. They are like your neighbors, like the people you work with, friends.

The evidence will show that they're mothers, fathers, they're grandfathers, grandmothers. I even have one great-grandmother who will testify.

And we will present to you and having them testify what they saw, or more importantly what they

didn't see and didn't hear.

I would like to take a few minutes just to outline the case, just for the purpose of giving you a thread to weave through the testimony that you are going to hear in the next few days. So at the end of the case you will be able to use that thread and kind of tie it all together and deliberate to a just conclusion.

First, I would like to talk just a little bit about Jehovah's Witnesses, who they are and what they believe.

And next I would like to talk about what happens with Mr. Kendrick with his 15-year-old stepdaughter. And you have heard a lot about that already. But we will talk about that just a little bit.

But keep in mind this lawsuit is not about what happened between Jonathan Kendrick, his wife Evelyn, and Jonathan Kendrick's stepdaughter, 15-year-old Andrea. This case is about the abuse of Ms. Conti.

And you will see that the congregation didn't know about it until years after Mr. Kendrick had moved away, Ms. Conti had moved away, and they brought the abuse to their attention.

Now, the evidence will show that Jehovah's Witnesses are pretty normal in some ways and pretty

unique in others.

You will see that they base their beliefs and practices on the Bible as they understand it. They have two meetings a week currently in a church that they call Kingdom Hall. I guess because they talk about God's kingdom.

And you will see that, like other congregations, we would expect if we took a microscope and looked into their religious services, they open their meetings with where they all stand up sing a song, have a prayer, and then they discuss the Bible in various ways. They end the meeting same way. Sing a song, say a prayer.

And the instruction, the sermons, if you will, is usually provided by the elders who are the teachers, the shepherds, the religious leaders in the congregation.

That all seems ordinary and common. But what is really unique about Jehovah's Witnesses is they don't have Sunday school. They don't have church camp. They don't have Vacation Bible School. They don't offer any programs that separate children from their parents. The religion is family-based.

You will hear that they all meet together. You will see a picture of the auditorium where they all

meet together. No separation of children from their parents.

And this is important because the parents are the main source of instruction, guidance and protection from their children.

I think when you hear the elders testify, you will see that they are very ordinary men. They don't wear special garb or clothing, they don't wear collars or anything. They are not paid for the 10 to 20 hours that they spend serving the congregation each week of their lives. They are all peers.

They work to prepare meetings of instruction. They visit the sick. They respond when somebody in the congregation has a problem.

They do what most ministers or pastors do in any religious congregation regardless of the denomination. Pretty ordinary. They help guide and teach those that attend the church.

But they also support themselves and their families, because most are, like I said, married, and have children or grandchildren of their own. They support themselves working in the community.

For example, the elders that will, I believe, testify in this case, Michael Clarke, does clerical work for a parts company.

Gary Abrahamson is a janitor, works nights cleaning offices.

Larry Lamerdin, a pool cleaner, been doing that for a number of years, just humble hard-working men trying to take care of their families, support their families, live in the community and worship God with their congregation.

They are a little bit unusual too. I think everybody here on this jury panel raised their hand and said Jehovah's Witnesses had called on them and some of us here were irritated with it. Some weren't.

But if that's all we know about Jehovah's Witnesses, it is not enough. There is a whole lot more. They are just normal people. Church, their religious mission is part of their life, but there is more to them. They are human beings with jobs. They live in typical neighborhoods. They have typical neighbors, typical friends.

You know, it is kind of funny, but I wouldn't say this probably, wouldn't have to say this about anybody else, but they go to public school. They go to high school. They get trades.

We wouldn't have to say that about Lutherans, Methodists or Atheists, but Jehovah's Witnesses are just typical people.

The bottom line is, they're just like Jewish people. They're just like Buddhists. They're just like any denomination. They are like Atheists too. They are people.

But the elders are a little different. They meet some scriptural qualifications. They get to preside, teach in the congregation. That is only difference there is.

The thing is, they are not therapists, they are not social scientists, they are not medical doctors, they have no special training in law enforcement or psychology. They are simply men who study the Bible and associate with the congregation in Fremont. That is the background. They take the lead, provide spiritual encouragement.

That's what Mr. Clarke and Mr. Abrahamson did on November the 11, 1993. They were invited to the Jonathan Kendrick home by Mr. Kendrick because, as he put it when he talked to Michael Clarke, he inadvertently touched his 15-year-old stepdaughter.

The Kendricks invited the elders to come to their home and provide spiritual encouragement. You'll hear testimony how they arrived with Bibles in hand, sat at the kitchen table, offered prayer, and they listened. They listened to what Kendricks had to say.

And I don't think anybody will testify that knows exactly what was said verbatim in that meeting, almost 20 years ago.

But the elders will tell you what they heard, how they responded. They knew immediately from talking to Evelyn, Andrea and Jonathan this was no inadvertent touching. This was a sexual touching. And they knew right away that Jonathan Kendrick needed to be removed as a ministerial servant.

And that's what they did. They went back and they met with the rest of the body of elders. And Mr. Simons talked about it and he also mentioned about the type of worship service worker, or someone who assists them to -- passes the microphone when people make comments or seats latecomers, takes care of the parking lot, things like that. Well, Mr. Kendrick no longer qualified for even that position in the organization.

And after the elders met together as a body and discussed what Mr. Kendrick told them, Mrs. Kendrick told them, Andrea told them, they announced to the congregation that he had been removed as a ministerial servant.

And remember when the event took place, the meeting with the two elders, Mr. Abrahamson and Mr. Clarke, the event that is being discussed, that

happened four months earlier. The family was still together. They wanted it to be that way. They hadn't gone to the police. They were choosing not to do that and keep the matter confidential and within the family.

And that's what Mr. Clarke and Mr. Abrahamson allowed them to do, didn't try to force them to go to the police and didn't want to make it public.

But you will hear that when Mr. Kendrick was removed as a ministerial servant, that's a significant event, it doesn't happen every day, that's a signal that something is wrong.

But from that point on, after admonishing Mr. Kendrick, in that meeting with his wife and stepdaughter, from the scriptures about how inappropriate his conduct was, you will hear testimony from the elders that they watched him. They observed him. They counseled him to stay away from children. Avoid being with them. And when he was at the church, Kingdom Hall or related functions, they observed him.

The Kendrick family, of course, continued to have problems. There were no more reports of any inappropriate activity between Jonathan Kendrick and his stepdaughter, Andrea.

But eventually Mrs. Kendrick and her daughter decided to make a report to the police. So a meeting

took place with the elders in November 1993, but the police in Fremont were notified in February of 1994, and Mr. Kendrick was prosecuted, dealt with.

What you will find is, as we go through the testimony of various witnesses, is the Kendricks eventually separated about August, September, October 1996, and they divorced sometime after that.

You will also hear testimony that Mr. Kendrick took a job in San Diego following the separation, and then moved in with another family in the Fremont congregation, a family of father, Rod Francis, his wife Claudia, and two teenage boys. You will hear the family cared for Jonathan. Never suspected he was abusing anyone.

Eventually, Jonathan moved away in the year 1997. The entire time that Jonathan Kendrick was attending the congregation meetings in North Fremont, no one heard anything about the abuse of Candace Conti. No one saw anything that made them suspicious and reported it to the elders. No one made any allegations.

Like I said, no one reported anything going on between Jonathan Kendrick and Candace Conti or any other child.

You can imagine the shock when the lawsuit comes to the congregation.

Mr. Simons mentioned that you will hear testimony about policy. It is kind of hard to pinpoint policy sometimes, but policy, in this particular organization, comes from the governing body in the form of letters to the bodies of elders.

It also comes in the form of magazines that they distribute publically and they use in their congregation at the worship services. It is called the Watchtower Magazine and Awake Magazine.

And one of the letters that you will see as evidence, and you will have an opportunity to look at it and to scrutinize it was a July 1, 1989 letter to all bodies of elders.

It was a letter about confidentiality and about the responsibility of elders who receive personal and confidential information about people that they are shepherding and caring for in the congregation needs to be kept confidential.

And you will see the letter explaining why. Lawsuits results from defamation, child custody matters, divorce proceedings. Lawyers can get embroiled in these things through subpoenas or other techniques where people want to have an elder or minister come in and testify he said/she said in divorce proceedings.

You will see by the letter. No policy and

secrecy there. Just common sense, confidentiality, maintained by lawyers and their clients, doctors and their patients, ministers and their congregants in every religion.

Now, the elders were finally informed about the abuse of Ms. Conti from Ms. Conti herself. They met with her. They did what they did before to prepare for the meeting to try to comfort and encourage her. And that's what you would expect for a member who was dearly loved as a child.

So why are my clients being sued? Well, Candace will tell you, Ms. Conti will tell you that the elders should have known what was going on, and they should have known what was happening to her, and they should have protected her. But there was no evidence that anyone saw any of the activity that she will testify about.

Certainly no one reported to the elders that something was going on with Jonathan Kendrick and Candace Conti.

They will tell you that -- we will bring them in, the mothers and grandmothers that were there and in tune, and they were in tune to this issue because they had policy information that was given to them from the Watchtower organization in the form of their magazines.

But they will tell you that they never saw Candace Conti sitting on Jonathan Kendrick's lap. They will tell you they never her giving big bear hugs to Jonathan Kendrick. It would be inappropriate.

And they will never tell you that they saw her leaving week after week with Jonathan Kendrick alone from the Kingdom Hall.

The evidence will tell you that this isn't an easy case. It is a difficult case. We all feel for someone who comes from a troubled family background like Candace Conti did. I think everyone who testifies feels horrible that anything bad would happen to Candace Conti.

We find it tragic what she's been through. Eight years of methamphetamine abuse, troubled thoughts, the nightmares.

But I think we can all agree, we are all grateful to see that she is on the right track now. Clean and sober. She has made a lot of progress.

We can certainly testify, as Mr. Simons did, as to her resilience, that she is glad she has her life together, career plans, education plans.

Now, you will hear a lot of evidence and you will see articles themselves, will be put up on the screen here what Watchtower has published in the form of

information about the child abuse. And I think you will be impressed.

The evidence will show that they have been publishing for over 30 years about this subject. They are not an organization that puts their head in the sand and say it doesn't exist.

And what they have done, you will see in the evidence is, they educate the parents. First line of defense. The parents. The ones that guide, direct, teach, and protect their children.

Some might argue, well, if they published all those materials, it certainly must be a problem unique to Jehovah's Witnesses. No it's not. It is a societal problem.

And the fact that Jehovah's Witnesses write about it indicates that they are trying to address a societal problem for their membership, like they would alcohol abuse and drug abuse and any other plague in society today.

This problem is not a unique problem to the Catholics or the Jehovah's Witnesses or the Boy Scouts, it is a societal problem. That is what the evidence will show.

Now the matters with Andrea, the 15-year-old stepdaughter of Jonathan Kendrick, that took place

sometime during the summer of 1994, it is going to be disputed what was said at that meeting, evidently from what Mr. Simons has outlined.

My clients didn't hear anything about Vicodin. They didn't hear anything about going below the belt. They didn't hear that.

And they made a report immediately after that, which they had no motivation to fabricate, and send to the Watchtower. You will hear about that too.

But you know, looking back, which every account you will find most credible, listening to the witnesses, that account, or that abuse of the 15-year-old stepdaughter today gives us the vantage point of hindsight. And you know what they say about hindsight, it is 20/20.

But as you hear the testimony, try to listen to the evidence in terms of what Mr. Clarke and Mr. Abrahamson knew, what they were told by the family, and how they were working on it.

Now, clearly, they weren't fooled by Mr. Kendrick saying it was an inadvertent touch. It was clearly wrong behavior. And they acted accordingly and removed him from his minor position in the congregation.

Everyone's demeanor and everyone's conversation that day in November 1993 was that the

family had worked out the problem, they were working it out. They didn't want to go to the police. But they eventually did. Didn't change anything. Wouldn't change anything the elders would do.

But for a minute just try to put the situation with Andrea in a little box. Let's focus on the claims of Candace Conti.

This case is not about Andrea. And the evidence will show this. It is about what the elders thought, heard, did, and when they did it and when they knew it.

I think the evidence will show you that they didn't see or hear anything. Because no one reported it to them. They didn't hear it from the parents, Neal and Kathleen Conti.

So I want to make sure that we don't make any mistake here. There is a villain in this case. It is Mr. Kendrick. It is not Gary Abrahamson, Michael Clarke or Larry Lamerdin.

The questions that you will have to decide at the end of the trial is: Were my clients negligent? Michael Clarke, Gary Abrahamson, Larry Lamerdin? The people in the Fremont Congregation, were they so oblivious and so uncaring and so unconcerned that they let something important happen right in front of their

eyes? I think the evidence will show that they weren't.

Essentially, the Plaintiff, even though no one heard or saw anything -- and that includes not only Neal and Kathleen Conti, but Laura Fraser who was doing weekly therapy with Candace Conti, apparently, during the time that some of this abuse was allegedly going on.

It wasn't apparent to her school counselor. It wasn't apparent to her grandmother, Neal's mother, who she lived with.

So that is what this case is about, what the elders knew and saw, when they knew it.

I want to thank you for going through the screening process. And it was important that we do that. It might have been a little burdensome, and we had, maybe, some confusing questions in there.

And we did that because there is some delicate things that are going to be talked about in this case, and there are some serious questions that are going to be raised. And we wanted people who could do it dispassionately and objectively by weighing the evidence. And I am confident you are that group of people. Mr. Simons is too.

I think you will see as the evidence develops the elders had nothing to hide, they had nothing to conceal. They did their job to the best of their

ability.

And sitting here today in 2012 with 20/20 vision, hindsight, we all wish Candace Conti could have been spared the scurge of child abuse, the plague of the earth.

In a perfect world, every child should be loved and cherished by a mother and father that cares for her. Candace Conti didn't live in a perfect world. And we don't either. Her family was quite troubled. She suffered.

But I think when you look at all the evidence and sum it all up, you will see that the elders in the congregation didn't do it.

I think you will see from the evidence at the end of this trial that the blame for Candace Conti's problems needs to be put where it properly belongs, and that's on the broad shoulders of this perpetrator, Jonathan Kendrick.

THE COURT: Do you have an opening statement on behalf of the Watchtower Bible and Tract Society, Inc.?

MR. SCHNACK: I do, your Honor.

THE COURT: All right.

Let's take a 15-minute break, and we will have opening statement for Bible and Tract Society of

New York.

(Break taken)

(Whereupon, the following proceedings were heard outside the presence of jurors)

MR. SIMONS: One of the jurors was having a chat with Mr. Clarke. Mr. McCabe had a chance to talk to him.

MR. McCABE: I inquired of Mr. Clarke and he said there was some more conversation than that.

THE COURT: Referring to this department?

MR. SIMONS: Yes.

THE COURT: Okay. I will admonish the jurors once again.

MR. McCABE: I have told Mr. Clarke not to talk to them.

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: All right. If I can remind the jurors that no conversations whatsoever with lawyers, parties, or witnesses. I can't say that enough. Like I said, let your conscience lead your conduct.

So even if I don't reference it every session, you are under a continuing duty to observe that order as to no-contact discussions. Certainly a good warning is appropriate. Anything beyond that, though,

could be looked askance by this court with appropriate action taken.

All right. Mr. Schnack.

MR. SCHNACK: Thank you, your Honor.

OPENING STATEMENT BY MR. SCHNACK

MR. SCHNACK: Ladies and Gentlemen, I too, like Mr. Simons, want to thank you for your service. We appreciate your patience in getting though this process this far. We appreciate that you are giving this matter your attention.

I represent Watchtower Bible and Tract Society of New York. As Mr. Simons referred to several times, it is a corporation and that's technically correct.

What Watchtower Society basically is, is the national church entity. It is a New York corporation, it is a religious non-profit corporation that was set up so that the Jehovah's Witnesses faith could practice their faith in the United States like other religious corporations, like other denominations do.

Let's turn to what the case is really about. What Ms. Conti is claiming here is that Jonathan Kendrick criminally and sexually assaulted her for, perhaps, two to three years, starting sometime in '94 or

'96 to '97, when she was age nine to 11. And she wants Mr. Kendrick to pay her for that.

And, indeed, if Mr. Kendrick did that, I don't think that there is any dispute from Watchtower or even from North Congregation, that if Mr. Kendrick criminally and sexually assaulted her for that time period, he should obviously pay for it.

But that's not why Mr. McCabe and why I am here today. Ms. Conti, as you are aware, is also suing the North Congregation and Watchtower. She is suing the church, the national church. And she wants the congregation and the entire church to pay her for Mr. Kendrick's criminal conduct.

And that's why we are here today, Mr. McCabe and I, to talk about our clients' involvement or their lack of involvement in this matter.

So specifically, what do Ms. Conti's claims really involve? This starts in November of '93. And as Mr. Simons explained, partially correctly, and Mr. McCabe has referenced, Jonathan Kendrick went to the elders in the North Fremont Congregation to tell them that back in July of '93, he had in a single time inappropriately touched his stepdaughter. That's Evelyn Kendrick's daughter, Andrea.

Andrea was 14 or 15 years old at the time,

and they tried to deal with it within the family, and then Mr. Kendrick went to the elders in early November, I think it was November 10.

And in the very next day in the afternoon, two elders -- consistent with their religious practices, two of them went to the Kendrick household to meet with Mr. Kendrick, with Evelyn, and with Andrea.

It was at that meeting first of all, like Mr. McCabe stated, they took their Bibles, they started with a prayer. And then Mr. Kendrick confessed to what he called an inadvertent touching.

But again, you will see in the letter that was sent, they still labeled that as child molestation. They weren't fooled by Mr. Kendrick that it had been merely an inadvertent touching.

They also talked with family that day, they offered them some spiritual counseling. But the elders also told Evelyn and Andrea that if they wanted to go to police, they could. That was their option.

And, indeed, what Mr. Simons didn't tell you, that within a couple months, they did go to the police. They went to the police, they reported it. The police and Child Protective Services conducted an investigation. That happened in mid-February.

You will probably hear from the police

officer that conducted that investigation as to what was said.

With respect to the Vicodin issue, Andrea told the police that she had a bad back, she took the Vicodin, and that later these things happened.

Again, there is going to be some disputes as to what was said there.

But nonetheless, after that meeting with Mr. Kendrick and his family in November 1993, the local elders removed Mr. Kendrick from his position as a ministerial servant.

You have heard a brief description of what a ministerial servant does. There is two appointed positions within a local congregation. There is an elder, and there is a ministerial servant.

A ministerial servant, essentially, is a church assistant, is a church helper. They will get the literature ready for the sermon. They will get the microphones set up for the services, kind of like what Mr. Martin did last week, when we were getting the microphones set up.

If latecomers show up to the service, the ministerial servants will help them find their seats. They will help in the parking lot, things like that.

Ministerial servants don't give sermons, they

don't conduct Bible studies, and, again, they function as helping the church elders.

Again, I don't think we can repeat this enough, that once Mr. Kendrick confessed to the elders on November 11, 1993, he was removed from his position as ministerial servant.

That is an appointed position. Once again, there is only two appointed positions within each congregation, elders and ministerial servants. But he was removed, and there was an announcement made to the congregation that he no longer held that position, that he had been removed.

He never again served in any appointed position in the church. And that's up to the present time. Mr. Kendrick still lives in Alameda County. He still works in the county.

For whatever reason, he has chosen not to come here and defend himself today, but nonetheless, Mr. Kendrick never served in any appointed position within any congregation, including the North Fremont Congregation after he was removed as a result of that November 1993 incident.

Now, again the elders, on November 11, 1993, told Evelyn and Andrea and, indeed, Mr. Kendrick, that it was their choice as to whether to report it to the

police.

Now, the judge will instruct you later that as of 1993, clergy, including ministers, elders, rabbis, pastors, whatever, are not what we call mandated reporters under California law.

That means that if someone is a mandated reporter, such as therapist or a doctor, someone like that, receives a report of the child abuse, they have to go to authorities.

Clergy were not included within that, under state law, as of January 1, 1997. So the fact that the elders did not go to police at that point can't be held against them because, again, they weren't required to.

But they did tell the family they had a right to report the matter to the police. And, indeed, within a couple months they did go to the police. And Evelyn and Andrea went to the police.

And you will see the police report in evidence here. The police conducted a thorough investigation. They talked to Andrea, they talked to Evelyn, they talked to Jonathan Kendrick. They were told that the story had been told to the elders.

But the police never let the elders know that they were conducting an investigation. The police did not talk to the elders. Andrea and Evelyn did not tell

the elders that they had gone to the police.

But nonetheless, the police did their investigation, Child Protective Services was involved in the investigation, a report was made to the district attorney. The district attorney charged Mr. Kendrick in this, and there was a conviction.

So this was all prior to the time that Candace will tell you that Jonathan Kendrick abused her.

Let me now turn, again, just to repeat a couple key factors here, because I think a lot of focus from Mr. Simons' part is going to be on this report about Andrea, and indeed that did happen? No one disputes it.

There is going to be some discussion about what was said at that November 11th meeting, but again the elders were not fooled by Jonathan Kendrick's contention that it was inadvertent.

You will see in the report they sent to Watchtower back in New York that they called it a child molestation.

So again, Mr. Kendrick, at the time that Candace alleges he abused her, again in '94 to '96 or '97, he was not in a position of authority with the church. He was simply a rank and file member of the North Congregation.

Two, as Mr. McCabe mentioned, from that point forward, from November '93 forward, the elders were watching him at the Kingdom Hall. Candace will testify as she testified earlier in her deposition that at the Kingdom Hall, Mr. Kendrick would bear hug her. She would squirm to get away. But he held her inappropriately on his lap.

The elders were watching. You'll hear the elders will testify that they never saw any such conduct at the Kingdom Hall.

You will hear from other members of the congregation at the time, from mothers and grandmothers, from others, that they also did not see any such conduct like that at the Kingdom Hall. And indeed Ms. Conti's own parents will tell you they never saw that at the Kingdom Hall.

The bottom line in this regard, is that no one in the church saw Mr. Kendrick do anything inappropriate with Candace or the children at the Kingdom Hall.

Indeed it wasn't until sometime in 2009 or thereabouts that anyone with the North Fremont Congregation or even Watchtower, back in New York, had heard or saw anything that signaled that Mr. Kendrick had abused Candace.

The other folks have covered some of this. I will just page through and save us some time.

You will learn in this case about the Jehovah's Witnesses's faith, that like many other Christian religions, they hold church services on Sunday.

They hold these at the Kingdom Hall. And again, the Kingdom Hall is like the church that the Jehovah's Witnesses use. It is no different than the Catholic, calling their church a cathedral, the Jewish religion calling their house of worship a synagogue. The Kingdom Hall is just a name for their physical church for the building.

They hold Sunday services at the church. One night during the week they will have Bible studies there. There was a period of time where those Bible studies were held at elder's houses. And you will hear some testimony about that.

But you will also hear something that is very unique to the Jehovah's Witnesses' faith that is unlike a lot of other religions.

The Jehovah's Witnesses, they do not offer or sponsor any services or programs that separate children from their parents. That is unlike a lot of other churches.

Let me say that again. The Jehovah's Witnesses do not sponsor any program or any activity where they separate children from their parents.

So what does that mean? Unlike the church I attend, there aren't any Sunday School classes for children. Those of you who are familiar with Sunday School classes, the children are separated in a separate room, they are taught by a teacher. The parents aren't involved in that. The Jehovah's Witnesses faith does not separate children from their parents that way.

Also, different from the church I attend, there is not a teen fellowship group that might meet on a Thursday nights with a youth pastor.

The Jehovah's Witnesses don't segregate teenagers. They don't segregate children separately for services, like a youth fellowship group.

Also, unlike my church, there is no Vacation Bible School classes in the summer. A lot of churches will do that, where the kids are out of school for the summer, they set up a week where there is Vacation Bible School classes. The Jehovah's Witnesses don't have that type of class setup where the children are separated from there their parents.

They also don't operate a summer camp where children attend for a week where the parents drop them

off with camp counselors maybe older teenagers, people in their twenties. The Jehovah's Witnesses don't have summer camps like that.

So what does this mean? This means that adults within the congregation don't have any special or unique access to children, like, for example, Boy Scouts might do, where a scout master will take some scouts out on an overnight camp.

There aren't, like, youth sports programs. You have soccer. You have baseball, Little League, basketball. Parents drop off their kids at these practices. The coach works with them for an hour, hour and a half or whatever and the parents pick them up afterwards.

The Jehovah's Witnesses faith doesn't have any kind of activities like that where the children are separated from their parents.

So in that sense, the Jehovah's Witnesses are a different from a lot of churches, they are different from Boy Scouts, they are different from public schools.

It is, again, not a situation where the children are separated, such as someone like Kendrick would have unique access to Candace or any other children.

If you ask the Jehovah's Witnesses why they

do that, why do they function this way, it is because they consider they are worshiping a family activity. It not only brings families closer to God, but closer to each other.

And they view it as a scriptural responsibility for parents to educate their children about their religion. And that's why again, the children aren't separated from their parents in all the activities.

So keep that in mind when you hear it. Because Mr. Kendrick, again, was just a rank and file member of church at the time Candace said that he abused her. He didn't have any type of unique access to her. He didn't have unrestricted as access to her either as Sunday school teacher or out in field service or anything like that. They simply do not separate their children from their parents.

Some other evidence you are going to hear includes that Candace Conti's parents -- and you heard a little bit about Kathleen and Neal Conti, they will each testify that Candace never went to the Kingdom Hall unless one or both of them were in attendance.

She was never sent there with a friend. If Candace was at the Kingdom Hall, she went with her parents, one or both of them.

Both Neal and Kathy Conti will testify that they never allowed Candace to leave the Kingdom Hall alone with Jonathan Kendrick.

Candace will testify that for several times a month, over a two or three-year period, that she was allowed to leave the Kingdom Hall with Jonathan Kendrick, that he would take her to his home and from there, he would sexually abuse her.

The parents are going to tell you that never happened on their watch. And again they are going to tell you that she was never at the Kingdom Hall unless one or both of them was there.

You are going to hear from other persons in the North Fremont Congregation, the mothers and grandmothers, they will testify that they never saw Kendrick bear hug Candace at the Kingdom Hall.

They never saw Kendrick have Candace on his lap, they never saw her trying to squirm to get away from him, because they just didn't see that happen.

Let me shift gears here just a little bit. Mr. Simons referred to policy of secrecy and Mr. McCabe addressed that briefly. There is going to be testimony about that. And there was no policy of secrecy here. There will be evidence to the effect through the witnesses.

There has also been some mention about Watchtower and Awake Magazines. For over 30 years Watchtower has published educational articles that go out to all of the parents in the congregation, they go out to all the members of the congregation. They are available at the kingdom halls. They go to the elders. The elders use the publications within their sermons, within their Bible studies.

And this is all part of the educational services that Watchtower provides to its members, to the parents, and indeed to people outside the church as well.

The first one we have up here is from a June 22nd, 1982 Awake.

And again, as I mentioned, they have been doing this for about 30 years.

You will hear some testimony that the Jehovah's Witnesses were indeed in the forefront of publishing these types of materials and putting this information into the hands of parents.

The next one is a January 22, 1985 article. You have got another one that has come up on October 8, 1991. And then a final one, October 8th, 1993.

This is just a rough sample of the types of things that Watchtower was putting into the hands of its

members. Educating parents.

You will even read one of these articles from 1985 that tells parents to be alert to your own religious leaders, that you might think twice before you leave your children with your elders, with your ministers. That was the type of information that was being disseminated to the congregation.

And as Mr. McCabe mentioned, they didn't publish these articles, they didn't put this information into the hands of the parents and the members of the congregation because they had a unique or serious problem any more than any other organization, it is simply because the church acknowledges at the time, and correctly so, that there was a societal problem.

Churches don't operate like that. They function within society as a whole. And the Jehovah's Witnesses acknowledged this and decided to put this information out there so that the parents could get it, the parents could be educated, the elders could have it to work with, they could incorporate it into their sermons, whatever needed to be done.

It is somewhat ironic that plaintiff appears -- you know, if they hadn't published these materials and put this information out there, I'm sure Mr. Simons would say Watchtower was negligent and that

the congregation was negligent.

Now, the fact that these materials are put out there, that they do educate parents about their own responsibilities, they equip the elders with this information, that is negligent too. It is something, you just can't have it both ways.

Let me just sum up a few things that I think the evidence will show in this case, going back again to November 11,1993. Mr. Kendrick confessed to the two elders in the North Fremont Congregation that back in July, he had inappropriately and sexually touched Andrea, his 15-year old stepdaughter.

Secondly, the elders provided scriptural guidance to the family, and told the family that they could, indeed, report it to the police. That's not a policy of secrecy, telling them that they could report it to the police.

Third, the elders removed Mr. Kendrick right away after receiving this confession from this one-time incident.

They removed him from his position as a ministerial servant, and they announced that fact to the congregation.

And after that, the elders also monitored Mr. Kendrick when he was at the Kingdom Hall performing any

church-related activities.

And fourth, Andrea and Evelyn Kendrick did report this to the police. And as I have mentioned, the police investigated, they conducted the investigation, they interviewed the people involved. It was reported to the district attorney. Child Protective Services got involved. And there was a criminal prosecution of Mr. Kendrick. And this was all in 1994.

And then fifth, the Jehovah's Witnesses do not separate the children from the parents -- I have gone over that several times -- so there was no unrestricted access that Mr. Kendrick had to either Candace or any other child at the time.

Without question, child sex abuse is a horrendous societal problem. I don't think anybody disputes that. Unfortunately, pedophiles have learned to hide their behaviors quite well.

In this case, if Jonathan Kendrick criminally and sexually abused Candace, he should pay for it. There is no dispute about that. He should pay for it financially or criminally because of the damage he has caused her.

But Watchtower should not be responsible for things that they did not know or could not know. They also should not be held responsible simply because they

are a religious corporation, to use Mr. Simons' words.

Whatever criminal and sexual abuse Jonathan Kendrick perpetrated against Candace, he should be responsible for. And, again, he is the villain here. It is not the church. It is not the congregation.

Like all organizations, whether they are churches or youth organizations, when there is a member who commits abuse against another member, it just wrong to hold the organization liable.

Again, Mr. Kendrick wasn't an elder. He wasn't like a scout master. He wasn't like a priest. He wasn't like a school teacher. He wasn't a coach, where he had unique and truly unfettered and unrestricted access to kids for a period of time.

Holding the organization responsible for the criminal misconduct of someone like Kendrick is just wrong, and it shouldn't be done here.

MR. SIMONS: Object, your Honor. This is argumentative.

THE COURT: Strike the last comment.

MR. SCHNACK: Thank you, your Honor.

Finally, in closing, I am asking that you place the blame in this case where it really lies. It should go on Jonathan Kendrick. He should have to pay for what he did, and by returning your verdict, you can

tell him that.

Find that Jonathan Kendrick was responsible for whatever abuse he perpetrated against Candace. But the blame does not fall on Watchtower. It does not fall on the congregation.

Again, like the other attorneys, I appreciate your time and attention. Thank you.

THE COURT: All right. Thank you.

Mr. Simons, do you have a witness for us?

MR. SIMONS: Yes, your Honor. Pursuant to Evidence Code 776, we call Mr. Gary Abrahamson.

THE COURT: All right. Under 776, the plaintiff is calling Mr. Abrahamson as a so-called adverse witness. He is obviously appearing on behalf of the congregation this morning. But I wanted to alert, he is being called under a specific evidentiary section as an adverse witness.

GARY ABRAHAMSON,

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state and spell your first and last name for the record?

THE WITNESS: My name is Gary Abrahamson.

G-A-R-Y, A-B-R-A-H-A-M-S-O-N.

THE COURT: All right. Mr. Simons.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Thank you, your Honor. Mr. Abrahamson, we have met on several occasions including two sessions of your deposition. Correct?

A. Correct.

Q. And you are an elder at the North Fremont Congregation?

A. Yes, I am.

Q. And you have been an elder for many years there. When did you start as an elder in Fremont?

A. In Fremont, 1986.

Q. And is it correct that before Fremont you had served as an elder at a different location?

A. Yes.

Q. When did you first become an elder anywhere?

A. 1982, I believe.

Q. Is it correct that there are no paid clergy within Jehovah's Witnesses?

A. That is correct.

Q. And so the persons who have administrative responsibility for each congregation are the elders?

A. Correct.

Q. And the elders -- I use the word "plural" because there is more than one elder in each congregation, typically.

A. Typically, correct.

Q. And in Fremont, there may be somewhere between maybe six or eight or ten elders at any given time?

A. That's true.

Q. And those elders, when they meet together, that's called the body of elders?

A. Yes, correct.

Q. And the congregation itself, even though people may come and may leave, generally speaking it is about a hundred -- hundred and twenty people?

A. That would be a good estimate.

Q. And that includes both adults and children. Correct?

A. That includes adults and children that are actually publishing the "Good News."

Q. And by "publishing," that means children who are going out into the neighborhoods to promote the Jehovah's Witnesses beliefs?

A. Yes, correct.

Q. And some of those publishers are baptized?

A. Some of them are.

Q. And some are not?

A. They are called unbaptized publishers.

Q. And some of the -- in your experience at least -- some of the baptized publishers may be as young as six years old?

A. That is rare, but that could be true, very serious six-year old person with parental training.

Q. And there are a number of different meetings, if you will, that go on within the Jehovah's Witnesses congregations, including Fremont?

A. Correct.

Q. There will be meetings at, for example, the Kingdom Hall?

A. Correct.

Q. And those meetings involve both children and adults together?

A. Yes. We don't separate our children.

Q. Now, we have heard a little that it is always parents and children, but isn't it true, Mr. Abrahamson, that there are children who will become involved in these congregations whose parents are not involved?

A. Again, it is probably rare.

Q. But it happens?

A. And by children, we are thinking what age

group?

Q. Eight? Ten? Twelve? Fourteen?

A. A little older where they can -- obviously it is with the parents' permission that they would come.

Q. But there are children who are involved without their parents?

A. That could happen, yes.

Q. And sometimes there is children who are involved, but for different reasons their parents may not be able to attend a particular event. Isn't that something that you experienced?

A. That's true.

Q. Now, the Fremont Congregation itself, we called it a congregation, and that's how we all referred to it, but it is actually a corporation?

A. That would be true.

Q. And the directors and officers of this corporation are taken from the elders within the congregation?

A. Correct.

Q. And as elders, isn't it correct that you are required to follow any instructions or policies that are provided to you from Watchtower New York?

A. Yes. We follow those policies, but they are always scriptural-based and they are always within the

law.

Q. And do you have any ability to create exceptions to the policies that are provided to you by Watchtower New York?

A. Well, I don't know what you mean by -- what area of exceptions. For example, they may say conduct a meeting, but they may not tell you what date. So you are at liberty to choose the date to conduct the meeting.

Is that what you mean?

Q. No. I mean, do you depart or deviate from the policies that are provided to you by Watchtower New York?

A. No. Like I said, they are scripturally based. They're within the realm of the law. They're legal. So I would want to follow them.

Q. Is it accurate to say that there are often five or more meetings a week within the Jehovah's Witnesses congregations?

A. That's what we have. Five days a week.

Q. Some of these meetings occur in people's homes -- the homes of members?

A. Back at that time they did. Yes. Now they all occur at the Kingdom Hall.

Q. And back then, some of the meetings might

occur in the Kingdom Hall, of course?

A. Correct.

Q. And the door-to-door work, the field service, that would occur in neighborhoods throughout -- in the case of this congregation, at least -- Fremont?

A. The public canvassing, that would be correct. Generally, our meetings for field service is also done at the Kingdom Hall.

Q. And then the groups would go out from there to neighborhoods. Correct?

A. Yes.

Q. And that service would be a brief service before publishers go out to the neighborhoods?

A. Correct.

Q. And all of these activities are engaged in with adults and children together?

A. Yes.

Q. Usually the parents, but sometimes not?

A. It would be rare, again, but usually with the parents, absolutely.

Q. But sometimes not?

A. It would be rare. And if it got to be the practice of the parent, then I would talk to the parent, "You need to be out with your child."

Q. All right. Did you ever talk to Kathleen

Conti about being present more at Jehovah's Witnesses congregations with Candace?

A. If her husband, Neal, were there, that would be all right. But I never saw Candace without either her parents or -- well, either her mom or dad.

Q. Actually, you have no recollection whatsoever of Candace; isn't that true?

A. Well, at the deposition you did show me a photograph of her, and I thought, boy, I can't picture her. But as soon as I saw her today I knew it was Candace.

Q. But when you testified in this matter before on the occasion of your deposition, you told us you had absolutely no recollection whatsoever of Candace Conti?

A. Well, I don't believe I stated that. If I stated that, that's not what I meant.

Q. Well, let's take a look at your testimony at page 67 of the deposition from lines 3 through 19.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. When did you first meet Candace Conti?

A. My recollection of Candace Conti is that she was Neal Conti's daughter from a previous marriage. And so occasionally she would come with Neal and his new wife to the meetings. You have pictures there. I don't

even know. I can't recall what she even looks like.

Q. All right. And that was going to be, actually, the purpose of these pictures. Let me just show you a photograph marked as Exhibit 11, because we have some other documents there that we have not yet attended to but which I have marked 1 through 10, and ask if seeing that photograph refreshes your recollection as to Candace Conti?

A. I'm sorry it does not. No.

(Whereupon, the video recording was stopped)

BY MR. SIMONS:

Q. Now, you have since learned that Candace Conti is not the stepdaughter of Neal Conti from a prior marriage. Correct?

A. Correct.

Q. And your recollection of her from seeing her today is not the basis that you are telling us that she was always there with Neal Conti, is it?

A. Obviously not, no.

Q. So you are telling us that, although you don't really remember her, you remember that whenever she was at the meetings, she was always there with her father -- her stepfather, you thought?

A. Yes. If she wasn't with her parents, one parent, then it would be, "Where did she come from?"

I would have noticed her more at that point and tried to find out her circumstances.

Q. Well, you were aware, Mr. Abrahamson, that sometimes the parents might not attend and that, if they didn't, that usually they would make arrangements for their child, if she was going to attend something, to get transportation with somebody else from the congregation; isn't that true?

A. You kind of lost me in that whole dialogue.

Could you rephrase the question please and repeat it?

Q. Yeah. You testified that if the parents weren't able to bring the child to some of the Jehovah's Witnesses activities, that undoubtedly the parents would arrange transportation with another congregation member at times?

A. At times, correct.

Q. And so back in the 1990s, you knew that there were times that arrangements would be made by parents to have another congregation member transport their child to Jehovah's Witnesses events?

A. That could be true.

Q. Did you use the word "undoubtedly" in your testimony?

A. Probably. I do that from time to time, yes.

Q. Do you still stand by that?

A. Undoubtedly? On rare occasions, sure.

Q. Do you remember Jonathan Kendrick?

A. Yes, I do.

Q. How did you first meet him?

A. He came to the Kingdom Hall.

Q. And did he come alone?

A. I don't have a recollection if he came alone or not. I assume that he did.

Q. Did you like him when you met him?

A. He was a likeable fellow, yes.

Q. How would you describe him -- his personality?

A. Well, he was, as you mentioned, an iron worker, so he was kind of gruff. And he kind of came across that way too. He appeared gruff and he seemed gruff too.

Q. Was he loud?

A. Yes.

Q. But is it fair to say that he, in a somewhat short time, became fairly popular within the congregation?

A. Well, we always like it when someone comes in and changes their personality.

Q. And he become active in the congregation?

A. He was active in the congregation, true.

Q. And you recommended him soon after his baptism to Watchtower New York to be accepted as a ministerial servant?

A. He was making good progress, yes.

Q. Now, we have heard about ministerial servants. Is a ministerial servant, as Mr. Schnack told us, a person who helps out at the services, in the parking lot, with microphones and books and literature?

A. Right. That would be his duty.

Q. Not a religious position.

A. It would be more of an assistant position as was mentioned.

Q. What was the duties that Mr. Kendrick had as a ministerial servant?

A. He would distribute literature to friends and would keep account of that.

Q. Did he do a good job of that?

A. He did an adequate job, good job, sure.

Q. If a ministerial servant did not do a good job with providing books, for example, was irregular in their attendance, or had some other reasons, personality or otherwise, would they be subject to being removed from that position?

A. They could be removed for that.

Q. So the fact that a person is removed as a ministerial servant does not necessarily tell anyone that that person has committed an act of child abuse?

A. Well, you first have to realize that they would have been trained to -- if there was some reason they weren't able to fulfill their job, then that comes on us. Why didn't they have the training? So we would train him properly.

And if it lack of meetings, then you know the friends that are attending, and so you can have an assistant that can help you. But if neither of you can be here, you have to make arrangements and you have to try to be here.

Q. Back to my question, the fact that a person is removed as a ministerial servant could be for many, many reasons. Correct?

A. Yes.

Q. And it does not tell anyone that because a person has been removed as a ministerial servant that they have committed some kind of child sexual abuse?

A. It would not be limited to that, no.

Q. Was Mr. Kendrick ever reproved for loud and boisterous conduct?

A. No.

Q. Now, do you recall back in November of 1993

being contacted by Evelyn Kendrick concerning Jonathan?

A. Yes. I was at that meeting. They actually contacted by Michael Clarke and then he and I went to their house.

Q. Did you receive a phone call first from Evelyn Kendrick?

A. Not to my knowledge. I think it was Mike Clarke that received that phone call.

Q. Did you have a relationship with Evelyn Kendrick?

A. Yes.

Q. And how would you describe that relationship?

A. As a shepherd to a sheep?

Q. And was she eligible to be a ministerial servant or elder?

A. Women are not allowed to be ministerial servants or elders.

Q. Did you socialize, you and your family, in any way, with Mr. and Mrs. Kendrick?

A. We had meals together.

Q. And how often would you estimate that you would have social interactions with the Kendricks?

A. Well, we are all so busy that most of our social interacting, besides meals, takes place at the Kingdom Hall. But we would do other things on the side,

occasionally, with other members -- not just with them, but other members of the congregation as well.

Q. Approximately how many families were involved in this congregation?

A. Well, a hundred and twenty. Probably that would represent, maybe 60, 50 families, I'm thinking.

Q. Some of the families have children?

A. That's what I was thinking as families. Most of them with children, yes.

Q. I think there were four people in your family at that time?

A. Four children. Correct.

Q. Yes.

A. But myself and my wife, that would be six.

Q. And some of the families were as large as your family, or maybe two or three children?

A. Yes.

Q. So is it fair to say there may be two dozen families or so in that congregation at that time?

A. I'm not very good at doing the math in my head, but that sounds reasonable.

Q. And you would socialize, not just with the Kendricks, but with many of the other families as well?

A. Correct.

Q. And the same would be true for the other

elders?

A. That would be true.

Q. Is that part of your responsibility as an elder is to become acquainted with the families and learn who they are as people?

A. Right. And we usually do that on shepherding visits.

Q. And does that mean that you go to their home?

A. Correct.

Q. So you had been to the Kendrick home?

A. Yes.

Q. And you had been to the Conti home?

A. Uh, yes.

Q. And is it true that within -- at least from your experience within the congregation, that families will socialize with each other to a certain extent in the ways that you described?

A. Yes.

Q. Even if there is not an elder involved?

A. That's true.

Q. Do you recall Mr. Conti having a paint booth out in his garage?

A. When you mentioned that, a vague memory of that came across my mind. But I'm not much of a painter. I wasn't involved in that project with the

Crawford car.

Q. But you remember the project?

A. I remember that it was done. I don't remember where it was done.

Q. Now, when you had that family meeting, Evelyn Kendrick was there. Correct?

A. Correct.

Q. And Andrea was there?

A. Correct.

Q. Do you remember if she was there for the whole meeting or came in partly through?

A. From my recollection, I would think she was there for the whole meeting. They knew we were coming, and I'm sure, hopefully, she was there for the whole meeting.

Q. And Jonathan Kendrick was there?

A. Yes.

Q. Yourself and Elder Clarke?

A. Yes.

Q. Had you already spoken to Jonathan Kendrick at that time about what the meeting was going to be about?

A. Michael told me -- informed me what the meeting was going to be about prior to us going to the meeting.

Q. Had you spoken to Jonathan Kendrick at all?

A. Michael had spoken to Jonathan about it.

Q. What did you understand, when you went to the meeting, that the meeting was going to be about?

A. Abuse of Andrea. Sexually abusing Andrea.

Q. And what did Jonathan Kendrick say in this meeting that he had done to Andrea?

A. He had said that the house was dark. She was sleeping on the couch. He walked in. And he used the word "inadvertently" touched her breast. But it was more deliberate than that.

Q. And how did you determine in your own mind that it was more deliberate than that?

A. Well, it had occurred four months before. And now he's saying that it is bothering his conscious. And if you raised your hand and inadvertently hit a woman's breast, you would say, "Excuse me. I'm sorry." And I don't think four months later you worry about it, and you would say, Oh, this is keeping me awake at night because I inadvertently touched a woman's breast.

Q. Let's look at the report. You remember that a written report was prepared after this. Correct?

Can we see Exhibit 9?

Now, are you able to see that there where you are, Mr. Abrahamson?

A. Not clearly, no.

Q. First of all, your Honor, Exhibit 9 is in evidence, I believe.

THE COURT: So Number 9 is evidence by agreement.

BY MR. SIMONS:

Q. Now, this is a letter that yourself and Mr. Clarke sent to Watchtower New York on November 15, of 1993. Correct?

A. Yes.

Q. And it was sent after the meeting had been held in the Kendrick family home?

A. Correct.

Q. And you did, as you said, recognized that the subject matter was, was a case of child abuse?

A. Yes.

Q. Why were you reporting this to Watchtower New York?

A. To get direction.

Q. And in all of your work as an elder that involves anything in this type of matter, you would get your direction and instruction from New York. Correct?

A. In a lot of these cases that legal matters are involved, we are always encouraged to call the Legal Department because how could we know all the laws. And

the laws change from state to state, but our Legal Department could help us through this.

Q. And you used the word "encouraged" but actually you are required to call New York?

A. You might put it that way. Yes.

Q. I did put it that way. Do you agree?

A. I agree you put it that way.

Q. Do you agree that you were required to call New York?

A. Yes.

Q. Now, the confession that you refer to in the next paragraph:

> "We met on November 11 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15-year-old step-daughter."

Did that occur in the meeting with Andrea and Evelyn, and yourself and Elder Clarke all present?

A. That is what we are referring to. Correct.

Q. And it says:

> "And he confessed to touching the breast of his stepdaughter while she was sleeping. She awoke, et cetera, et cetera."

You did not put in the letter, the word "inadvertent." Is that true?

A. Mike actually composed the letter. And my recollection of the letter, I don't know if it was used or not.

Q. You signed the letter. If we see page 2, you signed the letter.

MR. McCABE: Objection; the document speaks for itself.

THE COURT: Let's let the witness take a look at the document.

THE WITNESS: Michael Clarke signed the letter.

BY MR. SIMONS:

Q. Did you review the letter before it was sent?

A. I don't have a recollection that I reviewed it, but I'm sure I did.

Q. So your recollection is that Mr. Kendrick said "inadvertent." The report does not refer to that. Do you have a specific recollection as you sit here today, many years later, that Mr. Kendrick said that this was an inadvertent touching?

A. Yes. That was the impression that I got during the meeting many years later.

Q. And your impression of that, is that, based on a specific recollection, that that is what he told you?

A. Yes.

Q. Even after this time, you recall that he told you that it was inadvertent?

A. That's what I recall.

Q. And so you knew that he had lied to you about that?

A. He did not divulge the full truth. That's true.

Q. Is that another word for "lie"?

A. It probably is.

Q. Reading here:

"Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders."

Did you think that was a lie?

A. That -- I believe that's the way he explained it to Mike. That's the way he felt.

Q. Do you recall him saying that with you present?

A. I don't think that became an issue because he had already confessed to Mike.

Q. More to the focus of my question, which I apologize for being unclear about, but did you think he lied when he said that he was sorry?

A. I believed him when he said he was sorry.

Q. It says that:

"He said that his conscience continued to bother him."

And I think you have already told us that you did not believe that.

A. Well, it didn't line up with what the circumstances were. It seemed more was involved.

Q. And so you knew that was a lie as well?

A. That he was not being completely truthful. Correct.

Q. And we call that a lie?

A. You could. You could call it not being truthful and trying to protect himself.

Q. All right. Thank you.

Did you report to Watchtower New York that Mr. Kendrick had not been truthful with you?

A. We did not address that issue, no.

Q. Why not?

A. Well, we felt that it wasn't -- wasn't -- probably, we had the idea that it wasn't necessary at that time.

Q. Do you recall specifically why you did not report that Mr. Kendrick was not being truthful with you to Watchtower New York?

A. No.

Q. Did you feel some degree of sympathy for your friend, Mr. Kendrick?

A. No. If he is a child abuser, he should be dealt with, without a doubt.

Q. What did Andrea tell you had happened?

A. Andrea agreed with the situation that Jonathan -- I think we encouraged Andrea to come, and she did not contradict anything that was said between either Evelyn, Jonathan or Andrea. They agreed.

Q. Do you recall Andrea saying anything?

A. I can't recall any specific thing that she said.

Q. But your general recollection is that she agreed with everything that Jonathan Kendrick said?

A. Yeah. If there was anything out of the ordinary, I would have remembered that she said, "Hey, that's not the way that it happened."

Q. Was Andrea a quiet girl?

A. Probably. Around me, she was quiet.

Q. Isn't it true that Andrea told you that Mr. Kendrick had given her some Vicodin that night?

A. No. That never came up in that meeting.

Q. Isn't it true that she told you that this abuse happened in her bed and not on the couch?

A. No, that didn't happen.

Q. Isn't it true that she said that Jonathan Kendrick was watching TV next to her?

A. They never brought that up.

Q. Isn't it true that Andrea told you in this meeting, and Elder Clarke, that Jonathan Kendrick had touched her breast skin-to-skin?

A. He didn't say that.

Q. Did she say that?

A. She didn't say that.

Q. And isn't it true that she said that he had put his hand into her underwear?

A. No. That never came up.

Q. What did Evelyn say in this meeting?

A. She corroborated the story. There was never any objection that we fielded on her part or Andrea's part.

Q. Isn't it true that Evelyn told you that shortly after the abuse occurred that Andrea had come out of the bathroom crying and told her mother what had happened?

A. I don't remember that during the meeting. I think Evelyn was asleep, the impression I'm getting, and I don't know when she found out about it. Maybe she went in and woke her up.

Q. Did Evelyn disagree with anything that Mr. Kendrick said?

A. Not to my recollection.

Q. Did you feel that it was important for you to get to the truth of what had happened?

A. Yes.

Q. And did you talk to Andrea separately from Jonathan Kendrick?

A. No, we did not.

Q. Did you talk to Evelyn separately from Jonathan Kendrick?

A. No, we did not.

Q. Now, as we have already heard, you had received, over the years, quite a bit of information from Awake and Watchtower Magazines on the subject of child and sexual abuse. Correct?

A. Yes.

Q. And if we could look at Exhibit 17. Before we show it. Exhibit 17 is in evidence as well, from January 22, '85?

Do you have any objection --

MR. SCHNACK: No.

MR. SIMONS: -- to showing it.

THE COURT: Mr. Simons, is it for identification only?

MR. SIMONS: Well, it is more of admission, and if there is an objection, I will have to do foundation.

MR. McCABE: There is no objection, your Honor.

MR. SIMONS: May it be admitted?

MR. McCABE: It may be.

THE COURT: 17 is now in.

(Whereupon, Defendant's Exhibit Number 17 was admitted into evidence)

BY MR. SIMONS:

Q. During the time that you were an elder, would you read every Awake?

A. I would try to.

Q. It is part of your obligation as an elder, isn't it?

A. Yes.

Q. And part of the weekly Bible studies and the studies that you do is to study the Awake and the articles in it?

A. To read them over, yes.

Q. So you would have read and been familiar with this 1985 Awake issue. Correct?

A. Correct.

Q. And if we could look at page 4. Do you have

page 4?

A. I do.

Q. Down at the bottom it says:

"Sue was molested by a man who was running a church group. He ran a youth club. Everybody agreed that he was very pleasant. But he sexually abused Sue and other girls."

You knew, in 1993, when you went to the Kendrick home, that persons in religious groups can use the religious group as a way to get children for sexual molestation.

A. Yes.

Q. And sad as it is, that is a fact of life, that you knew long before the meeting in the Kendrick house?

A. Yes.

Q. And you knew these people can be very pleasant, like Mr. Kendrick?

A. Yes.

Q. And you knew that --

Let's look at page 5.

At the top of page 5 in that first column, you knew that, in most cases, children were molested by people they know and trust. Correct?

A. That's what research shows, yes.

Q. And you knew back in '85 and from then on that that made protecting children more difficult.

A. Yes.

Q. And you also knew that sexual abuse may be described as playful or affectionate conduct. Correct?

A. Correct.

Q. Did Jonathan Kendrick ever have playful or affectionate conduct with other children in the congregation?

A. No. Not that I was aware of.

Q. Something you never observed?

A. Right.

Q. You did try, after this meeting at the Conti house, to observe him closely?

A. Yes.

Q. But that's not something that you ever observed?

A. Correct.

Q. Let's look at page 8. In this part that says: If the Worst Should Happen.

You knew in 1985 and thereafter that:

"First, the child and other children too must be protected from any further abuse. This must be done whatever the cost."

You were aware of that.

A. Yes.

Q. What did you do to protect Andrea from further abuse?

A. We removed Jonathan as a ministerial servant. And at that meeting, we tried to comfort Andrea and let her know that she was simply a victim. She wasn't at fault. She wasn't the reason. But we are very sad that she had become a victim of child abuse.

Q. Because this abuse occurred in the home of a congregation member and members, how would removing Mr. Kendrick as a ministerial servant have protected Andrea from further abuse?

A. Well, we hoped that our meeting protected Andrea from further abuse.

Q. Did you provide any advice to Evelyn Kendrick in how to keep Andrea safe in the future?

A. I can't -- it is hard to remember everything way back there. But I would assume that I told her that it is important to set propriety in the house, rules of conduct, and that it would be inappropriate for Jonathan to be in a room alone with Andrea.

But I can't remember saying that. But I hope I would have.

Q. Did you tell Evelyn Kendrick at that meeting that this was her fault?

A. No.

Q. Did you tell her any words to the effect that it was partly her fault?

A. No.

Q. Let us look at the October -- before we bring it up, the October 8, 1993 Awake Magazine, that is Exhibit 37.

Is that stipulated into evidence?

MR. McCABE: So stipulated, your Honor.

THE COURT: All right. Thirty-seven is in.

(Whereupon, Plaintiff's Exhibit Number 37 was admitted into evidence)

BY MR. SIMONS:

Q. This issue of Awake is dated October 8, 1993. Correct?

A. Correct.

Q. And you would have received it and reviewed it?

A. Yes.

Q. Studied it?

A. Yes.

Q. Tried to do what is taught in there?

A. Correct.

Q. And this was just about a month before your meeting at the Kendrick household?

A. Correct.

Q. And if we could look at page 4.

You knew looking down on page 4 here on the second paragraph that:

"Adult society often unwittingly corroborates with child abusers. How so? By refusing to be aware of this danger and by fostering a hush-hush attitude about it."

You knew that. Right?

A. Yes.

Q. And did you tell anyone in the congregation, the parents in the congregation who have an obligation to protect their children, that Jonathan Kendrick had sexually molested a child?

A. There was no need to. If we, upon observing Jonathan Kendrick, we saw him isolating a child, we saw him getting close to a child, then we would inform the parents.

Q. Well, you didn't see anything with regards to how Jonathan Kendrick had abused Andrea. Correct?

A. Yes.

Q. And you knew from these publications that child abusers operate in secret. Correct?

A. Correct.

Q. And you knew that they don't usually have

witnesses to child sex abuse. Correct?

A. Correct.

Q. And you knew that Jonathan Kendrick was continuing to be active in the congregation. Right?

A. He was removed as a ministerial servant.

Q. But he was still a member in good standing?

A. After he was removed, he was placed on restrictions.

Q. Was he a member in good standing?

A. No, not at that time.

Q. Did the congregation know that he was on restrictions?

A. They probably were aware of it because he would be restricted from commenting. They probably noticed that.

Q. Were they aware of the fact that he posed a threat to children of sexual abuse?

A. We didn't see that he posed a threat to children.

Q. And you, therefore, kept a hush-hush attitude about his sexual abuse of Andrea?

MR. McCABE: Objection; argumentative.

THE COURT: Overruled.

THE WITNESS: Well, you are trying to use the "hush-hush attitude" as if we were a secret society, but

we are the ones that published this. And it --

Let me get back to my thought.

It --

Could you repeat your last thought? I lost my thought.

BY MR. SIMONS:

Q. Let me just withdraw it.

Let's look at the last sentence of this paragraph we are looking at:

"Ignorance and misinformation and silence give safe haven to abusers, not their victims."

You knew that. Correct?

A. Yes.

Q. Now, we have heard that the parents are the primary protectors of their children in Jehovah's Witnesses. Correct?

A. Correct.

Q. And to do that, parents need to know what risks they are going to protect their children against?

A. Correct.

Q. But they did not know in this congregation that one of the risks to protect their children against was that Jonathan Kendrick had already sexually molested one child?

A. They do know this material that we are referring to, and they should have studied this and been aware. And if they saw any danger in the congregation, that this would alert them to the danger.

Q. Well, we know that these child sexual abusers -- and we knew in 1993 from the article in the Awake that these child sexual abusers don't necessarily give out clues. They operate in secret.

Didn't we know that?

A. Yes.

Q. And so the best way to allow parents to protect their children in the congregation is to identify for them the individuals who are positively identified already as having sexually molested a child.

Don't you agree?

A. How about identifying the traits of individuals. And you can look at a person, and if he shows those traits, and then you have a suspicion, don't let your child go with that. If you have a suspicion, you are under no obligation to let your child go with that person.

Q. Well, from the last Awake Magazine that we looked at, we know that one of those traits might be they are a pleasant, well-liked church group leader?

A. That's true. That has happened.

Q. Wouldn't it have been much more helpful to the parents in the congregation to know what to look for with Jonathan Kendrick and to protect their own children if they knew that he had sexually molested a child?

A. I think this information gives them good ammunition to look at individuals to see how they line up to these situations, and if they would want to trust their children with them. And they can make a call on that.

Q. Let's look up the next part of page 4.

Sexually Molested.

This references:

"The Catholic Conference of Bishops concluded that it was a general conspiracy of silence that allowed gross child abuse to persist among the Catholic clergy for decades."

And you knew that in 1993 of October. Correct?

A. Correct.

Q. That's all for that exhibit. Thank you.

Did you know in 1993 that sexual molestation of a child was a secular crime?

A. Yes.

Q. And did you know -- I think it was said

earlier that you offered to the Kendricks -- Evelyn and Andrea -- that they could go to the police if they chose. Correct?

A. Correct.

Q. Did you encourage them to go to the police?

A. We didn't encourage them; we didn't discourage them. It was up to them.

Q. If the police had contacted you regarding what was admitted by Jonathan Kendrick in this meeting, would you have told them?

A. I would first call Legal.

Q. Now, Mr. Abrahamson, in fairness to you, all of your instruction and training and education in how to address child sexual abuse when it came to your congregation came to you through Watchtower New York?

A. Correct.

Q. And it is true that this was not the first instance of child sexual abuse that you had been called upon to look into?

A. I believe it may have been one of the first.

Q. All right. Let's see if your deposition at page 130, line 3 through 7?

MR. McCABE: Can we have a minute before that is shown, your Honor.

THE COURT: Sure.

MR. McCABE: What line it is, counsel?

MR. SIMONS: Three through seven.

MR. McCABE: 130?

MR. SIMONS: Yes. Page 130. Am I on the right page? Sexual abuse.

MR. McCABE: I don't seem to have it. Sexual abuse.

Your Honor, I'm going to object. Can we approach the bench?

THE COURT: You may.

(Sidebar discussion at the bench)

(Whereupon, video recording was played)

BY MR. SIMONS:

Q. All right. Had there been other investigations that you had participated in, in your years of service as an elder, which involved allegations of sexual abuse of a child?

A. Yes.

(Whereupon, video recording was stopped)

BY MR. SIMONS:

Q. After this meeting in the Kendrick home, did Jonathan Kendrick continue to go into field service?

A. Yes, he did.

Q. And he would go into field service with other members of the congregation?

A. Yes.

Q. And on occasions, that would include children?

A. No.

Q. Never?

A. Never.

Q. And was Jonathan Kendrick continued to be called "brother" within the Jehovah's Witnesses?

A. Yes.

Q. And he continued to go to homes of people for Bible study?

A. Yes.

Q. And he continued to go to Kingdom Hall, of course?

A. Yes.

Q. Let's talk about the Conti family a little bit, Mr. Abrahamson. You were aware that problems had developed in their marriage?

A. Yes.

Q. And, in fact, Kathleen had stopped coming to activities almost completely in the last year or so of their marriage. Correct?

A. Yes.

Q. And you knew that she was having serious mental health problems? Correct?

A. Correct.

Q. You had observed, yourself, what we might call certain bizarre activity by her?

A. Yes.

Q. What can you describe for us that you had observed?

A. I had observed her not attending the meetings.

Q. And when you did observe her, did you observe activity by her or actions by her or hear words by her, anything that you observed in her that made you feel that she was a person with mental health problems?

A. I can't think of any specifics, no.

Q. Do you have a general impression that her behavior was -- I will use a very lay term, flakey.

A. Well, with Candace's testimony, she did have a difficult time, and apparently she was not a very good mother.

Q. What did you observe in that respect?

A. I just basically observed them when they were at the Kingdom Hall. And she maybe cried or had an emotional upset at times, and perhaps ran out of the Kingdom Hall. I can't even absolutely say I remember that, it happening like that, but it could have happened. It does happen.

Q. So it is fair to say that these many years later -- 17 years later -- you don't really have a recollection of Candace Conti's mother being unable to care for her?

A. Not a serious -- something serious that would prevent her from caring for her daughter.

Q. But you knew that she had stopped coming to the meetings?

A. Yes.

Q. And that was probably for a year or so before the couple divorced?

A. Yes.

Q. So you knew that Candace Conti's mother had stopped coming, not only to meetings, but to field service?

A. Yes.

Q. And to Bible study groups?

A. Right.

Q. And to people's homes for the meetings?

A. Right.

Q. And to social events. Correct?

A. Yes. She apparently did not want to be one of the Jehovah's Witnesses.

Q. And so you knew that she was in no position to be able to protect her daughter from sexual abuse by

from someone like Jonathan Kendrick?

MR. McCABE: Objection; calls for a conclusion; speculation.

THE COURT: Sustained.

BY MR. SIMONS:

Q. Now, Neal Conti still continued to come to Jehovah's Witnesses events and meetings and publishings. Correct?

A. Yes.

Q. Do you recall that there were times that he was unable to do so because he had to stay home with Kathy?

A. It probably happened. I didn't hear maybe why he was missing. But he was missing, I'm sure.

Q. And on those occasions, Candace would sometimes be there by herself?

A. I don't recall that.

Q. Did you pay any particular attention to Candace Conti as an at-risk child within the congregation who someone like Jonathan Kendrick might try to take advantage of?

A. I wouldn't single her out as one that -- she was a happy fun-loving child as I recall.

MR. SIMONS: Nothing further, your Honor. Thank you.

THE COURT: Mr. McCabe?

MR. McCABE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Mr. Abrahamson, where do you live?

A. I live in Fremont.

Q. What kind of dwelling do you live in? Apartment complex? Single-family dwelling?

A. In a single family dwelling.

Q. How many houses are on your particular street or block?

A. Our block is short. It's probably just 25 houses. Twelve on each side.

Q. Do you know your neighbors?

A. Yeah, for the most part.

Q. Do they know you?

A. Yeah.

Q. Are you married?

A. I am.

Q. What is your wife's name?

A. Leslie.

Q. Do you have any children?

A. We have four children.

Q. Do you still have them?

A. Yeah, we do. They are not at home, but we still have them.

Q. How old are they?

A. Thirty-six down to 27.

Q. Are your children married?

A. Three of them are married; one is not.

Q. Where did you go to high school?

A. I went to high school in Palo Alto High School.

Q. Did you participate in any sports or any activities in high school?

A. A little bit of basketball.

Q. And when did you graduate?

A. In the Class of '72.

Or, no.

Yes, it was the Class of '72.

Q. 1972?

A. Or '70. Might be '70. I'm sorry.

Q. Well, we won't hold you to that. So sometime in the seventies you graduated from high school?

A. Yeah. I'm trying to think of what class it was.

Q. Did you go to any other educational institution after you graduated from Palo Alto High School?

A. No, I did not.

Q. Are you employed?

A. Yes, I am.

Q. What do you do for employment?

A. I do janitorial.

Q. What kind of janitorial work do you do?

A. Office buildings.

Q. When do you do your work?

A. In the evening, generally.

Q. How long have you been doing that?

A. About 40 years.

Q. Has that been your principle occupation since you left high school?

A. Yes.

Q. And you own your own business?

A. Yes.

Q. Mr. Simons asked you some details about your being an elder. Tell us, when were you baptized into the Jehovah's Witnesses?

A. I was baptized in 1970.

Q. How old were you?

A. I was 17.

Q. And where did you attend meetings at that time?

A. At that time, we were in the Palo Alto

Congregation.

Q. When did you move to the North Fremont Congregation?

A. We moved in 1986.

Q. And when you moved in 1986, had you already been appointed an elder in the Palo Alto?

A. Yes.

Q. And tell us how you get to be an elder?

A. Well, there are scriptural qualifications that are outlined in scriptures such as First Timothy, Chapter 3. And these qualifications must be met before an individual like myself would be recommended as an elder.

Q. And who recommends you to be an elder?

A. The body of elders.

Q. So the already existing elders?

A. It's already existing.

Q. Who do they make the recommendation to?

A. They make the recommendation to the Watchtower Society.

Q. How much time do you spend currently in your duties as an elder in the North Fremont Congregation?

A. I spend about 20 hours a week.

Q. And was that true back in the mid-1990s when the details of this case occurred?

A. Yes.

Q. Does it vary from time to time?

A. Oh, yeah.

Q. Do you sometimes spend more time?

A. Yes.

Q. Are you paid for your work as an elder?

A. No.

Q. So your work is voluntary in the congregation?

A. Yes.

Q. And do you get any training as an elder after you are appointed?

A. Yes. We do have schools that we go to. I just completed a week course, five days, and it was an intense Bible study. And we went through a lot of points on shepherding, teaching, evangelizing.

Q. And do you have any other training that you get from Watchtower on being an elder, other than these schools?

A. Well, we have a ministry school that we have each week at our meeting.

Q. And what does that train you to do?

A. That trains you to be a better evangelizer, better teacher, better shepherd.

Q. Okay. And you have heard some talk about

letters that the body of elders gets from the Watchtower Bible and Tract Society.

Does that provide also education instruction?

A. Absolutely.

Q. And do you read those letters?

A. Oh, yes.

Q. You have also seen some information about the Watchtower and Awake Magazines back in the '90s. How did you obtain those magazines?

A. The magazines would come through the mail by subscription.

Q. Do they still come that way?

A. Not any longer.

Q. How do you get them now?

A. At our Kingdom Hall.

Q. And back in the '90s, were members of the congregation encouraged to have a subscription of the Watchtower Magazine?

A. Yes. Most congregation members did have a subscription. So they got the magazine a little bit before the date.

Q. When you say "a little bit before the date," how in advance of the publication date would you get your subscription?

A. Probably a month before the publication date,

maybe even longer.

Q. Now, we talked, too, about your memory of what happened in November of 1993. Do you have a clear memory of going to the Kendrick home for that meeting?

A. Yes. Yes. I have a clear memory of that. I have a clear memory of where we sat in the house.

Q. Where did you sit in the house?

A. It was in the kitchen.

Q. Did you bring anything with you to that meeting?

A. Yes. I brought my Bible with me.

Q. Did Mr. Clarke bring his Bible?

A. Yes.

Q. And did you use the Bible during that meeting?

A. Absolutely.

Q. Do you recall how the meeting started?

A. I started with a prayer.

Q. Okay.

A. And knowing their circumstances, I wanted to make sure they felt relaxed and comfortable. So I do remember in my prayer I prayed that, especially, Andrea, that she could relax -- it might be embarrassing for her. It might be hard for her to tell. But we wanted to know the truth about what happened.

And then for Evelyn, that she probably felt devastated by the sexual abuse on a couple of different levels; the fact that she is a wife, and the fact that she is a mother too. So I wanted to make sure I included her in the prayer.

Q. And do you remember saying that prayer out loud?

A. Yes.

Q. And this is all sitting around the kitchen table?

A. Yes.

Q. How long did you know Evelyn Kendrick?

A. Probably, I would say about four years.

Q. Was she a quiet woman?

A. She was not as loud as her husband.

Q. Was she able to speak her mind?

A. She was. She was a strong woman that way.

Q. I would like to show you an exhibit -- Number 98. I believe it is in evidence. I believe it is your Exhibit 9.

MR. SIMONS: My Exhibit 9.

THE COURT: No objection?

MR. SIMONS: I think it is in evidence already. It is Exhibit 9. It was a dual exhibit.

THE COURT: Out of abundance of caution,

without question, it is now in.

(Whereupon, Plaintiff's Exhibit Number 9 and Defendant's Exhibit Number 98 was admitted into evidence)

BY MR. McCABE:

Q. You saw this with Mr. Simons showed it to you?

A. Correct.

Q. Did you write the letter?

A. I did not write the letter.

Q. Did you sign the letter?

A. It appears that I did not sign the letter.

Q. Were you aware of it being sent from the North Fremont Congregation in 1993 to the Watchtower?

A. Yes.

Q. Did you discuss the letter with Mr. Clarke?

A. Right.

Q. Did you have a discussion with him, an exchange back and forth about what you would put in the letter, or did you just read the letter after it was typed up.

A. My recollection's not real clear about that. I'm not sure how that came about.

Q. Does the letter mention anything about Vicodin?

A. Anything about what?

Q. Vicodin.

A. Vicodin? No. It never was mentioned.

Q. Why was it not mentioned in the letter?

A. Because we did not hear that when we went on the call.

Q. So Andrea did not bring up that she had taken a Vicodin when you visited the Kendrick home in November of 1993?

A. Not at all.

Q. Did Evelyn bring anything up about a Vicodin when you were there?

A. No.

Q. Was there any discussion between yourself, Mr. Clarke, and the Kendricks, about the extent of the abuse of Andrea Kendrick, other than the touching of her breasts?

A. That was it.

Q. How large is the congregation in North Fremont?

A. It is about a hundred and twelve publishers currently.

Q. What do you mean by "publishers"?

A. The ones that are publishing the Good News. They're active witnesses. You might see them in your

neighborhood going door-to-door. So they are a publisher with their book bag and talking to the neighbors.

Q. And that is a practice that you have engaged in since you have been a Witness?

A. Yes.

Q. And most Witnesses do the same thing?

A. Yes.

Q. What is your position on the body of elders?

A. I am a service overseer.

Q. Could you tell the jury what that means to be service overseer?

A. Okay. We refer to our work as evangelizers as field service. We go from door-to-door. We go out into the field. And it probably is an offshoot from going out and harvesting.

That jesus said, "Our harvest is the world."

And the field is a world. So we go out and try to Witness, door and door, to all that we can.

Q. Okay. And what are your responsibilities as a service overseer on the body of elders?

A. As service overseers, things that are related to the field ministry, such as make sure we have literature so that they can use it in the ministry.

Make sure that we have territory that we can

go to, and we won't be going to one territory until we complete the other territories. So we do it in a systematic way, so people don't feel overwhelmed, like we are coming too often, to try to only come after we complete one territory.

And any other matters that are related to the ministry field service. So I would be the service overseer taking care of those things.

Q. Before people in your congregation go out to neighborhoods, do they have a meeting somewhere to discuss what they are going to do?

A. Yes. We call that a meeting for field service.

Q. And where is that meeting held?

A. Generally, it is held at the Kingdom Hall.

Q. Okay. Do you preside over that meeting from time to time?

A. Yes.

Q. How often?

A. I preside over that meeting, probably, twice a week.

Q. Okay. Was that true back in 1993?

A. It might have been more often, but that would be a good guess. Probably twice a week.

Q. How about '94 and '95?

A. At least twice a week, probably more.

Q. And in that meeting that you preside over as a field service overseer, do you arrange groups for people? Do you assign partners? How do you do it?

A. Yes, we assign partners. Let's say the jury was my group. So maybe the first four would go together, the second four would go together, and the last six might go together, and the couple, we can split up.

Not that they were a couple. We wouldn't split up families, but he would go with the first group, she would go with the second group.

Q. Do people ever come to that meeting for field service who already have partners?

A. Oh, yes.

Q. Would you ever assign back in the 1990s a single male to work with a single female in a car to go alone?

A. No. That would not be appropriate.

Q. Would you ever assign someone's child to work with another adult member of the congregation, let's say a member of the opposite sex, back in the 1990s?

A. No.

Q. Why not?

A. It wouldn't be appropriate. And articles

like this, there is always that possibility of child molestation. So we want to protect our children. We love our children.

Q. And when you say "articles like this," what are you referring to?

A. The article on molestation -- child molestation, and the fact that you can protect your children.

Q. Did you ever have an occasion back in the 1990s where parents would drop off a child or children to go out in the field of ministry and not accompany them themselves?

A. It was rare. And if it happened, then we would talk to the parent to help them to appreciate that the children are their responsibility. They come out with their children. They don't drop them off for someone else to care for.

Q. Did you ever assign Jonathan Kendrick to conduct one of these meetings for field service?

A. No.

Q. Did you ever assign Jonathan Kendrick to work with Candace Conti in the field ministry?

A. No.

Q. Did you ever see Jonathan Kendrick working in the field ministry with Candace Conti?

A. No.

Q. Now, you mentioned that there was five meetings a week?

A. Correct.

Q. A meeting every day of the week or what?

A. Okay. We have two meetings that we consider on Sunday, and then the three meetings are on a date during the mid-week.

Q. So, really, you only have two dates from which you conduct all five meetings?

A. Correct.

Q. And how long -- when you have the three meetings, how long does that last?

A. It lasts about an hour and a half.

Q. And the two meetings?

A. About an hour and a half as well.

Q. What are the two meetings that you have on Sunday?

A. The two meetings on Sunday are:

(1) we have a discussion of the Watchtower Magazine that is an hour. And prior to that, we have a public talk. Talks designed for people that would come into the congregation. They would get a good understanding of what the Bible says on a particular subject.

Q. And when you say a "Watchtower discussion," what do you mean by that?

A. That we receive a study issue of our Watchtower Magazine, and then we study this magazine and prepare ourselves each week to come to the meeting. And we can offer comments on that issue of the Watchtower that we are studying.

For example, last week, it just happened to be "Don't look at the things behind."

And it referenced Lot's wife, who turned into a pillar of salt, if you might remember, because she did look at the things behind. And how can we apply that to today? How can we not have that attitude of looking behind. And it was an enjoyable study.

Q. How is it conducted?

A. There is a Watchtower study conductor. And so he asks the questions, and then the audience is allowed to give comments. And then we have a reader that reads each paragraph before it is discussed.

Q. So can children answer in that discussion?

A. We have a lot of our children answering that discussion.

Q. How many children do you have presently in the North Fremont Congregation?

A. We have, probably, 30 that are under twelve.

Q. Is that in addition to the hundred members?

A. Yeah. Most of those would not be publishers, yeah.

Q. So what would be your attendance at a typical Sunday meeting?

A. Our attendance would usually be over a hundred, a hundred and twelve or fifteen.

Q. Let's talk about the Conti family for a minute. Did you know them in 1994?

A. Yes, I did.

Q. Who did the family consist of?

A. It consisted of Kathy, the mother; Candace, the daughter; and Neal, the father.

Q. Were there any other children ever in attendance at the meetings with the Conti's?

A. Yes. They had a -- Neal had a son from another marriage, and I believe his name was Ricky.

Q. Did he attend meetings with the Conti family too?

A. When he was with the Conti family, they came to the meetings and they brought him with them as well.

Q. Was there ever a time that you observed Candace Conti at a meeting in the Kingdom Hall on a Sunday by herself, without one of her parents?

A. I never observed her alone.

Q. Did you ever observe her on a weeknight meeting at the Kingdom Hall without one of her parents being present?

A. No. And if I did, I would wonder how did she get here.

Q. Did you ever observe her being dropped off at the Kingdom Hall by one or both of her parents for a meeting for field service?

A. No.

Q. Now, during this meeting with the Kendrick family, did you end it with prayer?

A. Yes.

Q. Before you ended, did you give any scriptural admonitions to Mr. Kendrick about his behavior?

A. Yes.

Q. And did you do that in front of Andrea and in front of Evelyn Kendrick?

A. Yes.

Q. Do you recall what any of that admonition was?

A. Well, specifically, I can't remember what scriptures we used. But it might have been scriptures such as those that practice the works of the flesh, which include fornication, uncleanness, lude conduct will not inherit God's kingdom.

So Jonathan was in store for not inheriting God's kingdom if he were to continued with the abuse.

Q. Did he tell you whether or not he intended to continue the abuse?

A. He said that he was not going to, that he was ashamed of what he had done, and he would not continue, he would absolutely not do the abuse to anyone.

Q. Did you believe him when he said he was ashamed of what he had done?

A. I did believe him.

Q. Is that what led you to conclude that his touching of Andrea had been more than inadvertent?

A. Yes.

Q. Did he provide any other details of what he had done?

A. Not to my recollection.

Q. He didn't tell you that this touching took place in Andrea's bedroom while she was asleep?

A. No. He said it was on the couch, that she was on the couch.

Q. After this meeting, did you meet back at the Kingdom Hall with the body of elders at some time?

A. Yes.

Q. Did you personally partake in that meeting?

A. Yes.

Q. Did you personally inform the elders of what you learned at that meeting with the Kendrick family?

A. Correct.

Q. What did you tell them?

A. We told them what Jonathan told us, that Andrea was asleep on the couch, and he came in and touched her breasts and she woke up.

Q. Did the elders come to any conclusion after you informed them of this fact?

A. Yes. They concluded that no longer was he qualified to serve as a ministerial servant.

Q. And was he then removed at that time?

A. Yes.

Q. And when a person is removed as a ministerial servant, how often does that happen in your experience in the years that you have been in the North Fremont Congregation of Jehovah's Witnesses?

A. It is rare. Offhand, I can't think of anyone else, but I know there is. There is others, but nobody comes to my mind. So that is rare.

Q. Announcing someone is no longer serving as a ministerial servant in the congregation can be a significant announcement?

A. It is a big deal.

Q. Do you recall after this meeting that -- did

the Kendrick family stay together?

A. They did stay together.

Q. Do you know for how long?

A. I think it was a couple years after this meeting that they separated and divorced.

Q. Did you ever learn, personally, after the meeting at the Kendrick home that Evelyn and Andrea reported the matter to the police?

A. I did not know at the time that they did.

Q. A couple years later you found out?

A. Yes. A couple of years later I found out.

Q. Do you know when?

A. I do know when we wrote a letter to the Oakley Congregation. I knew at that time.

Q. Do you recall when that was?

A. 1998.

Q. But you didn't know it in 1994?

A. No.

Q. The Fremont Police never contacted you in the 1994?

A. No.

Q. District Attorney's office never contacted you?

A. No.

Q. What about the Child Protective Services?

A. No.

Q. How about the Alameda County Probation offices?

A. No.

Q. Do you recall how you learned that they had gone to the police?

A. That they had gone to the police?

Q. Yes. How did you learn?

A. We wrote a letter of introduction to the Oakley Congregation. In that letter we stated that they did go to the police. And I think it is one of the other elders that came by that knowledge, because I did not come by that knowledge until after the meeting.

Q. So Evelyn never kept you informed?

A. Didn't inform me personally, no.

Q. Was Evelyn a member of the congregation in North Fremont at the time of this meeting?

A. I think she probably would have been. She wasn't actively coming to the meetings at that time.

Q. What about Andrea?

A. Andrea -- I don't think that Andrea was attending the meetings either at that time.

Q. Do you recall when it was that the Kendrick family broke up? When did Jonathan and Evelyn separate?

A. I would think it would be around '95, '96.

Q. So you are not sure when?

A. I'm not sure when.

Q. But it was a significant time after your visit with Mr. Clarke to the Kendrick home?

A. Yes.

Q. Do you know where Jonathan lived after the separation?

I'm speaking of Jonathan Kendrick.

A. Jonathan Kendrick. I believe that he lived in the garage of the Francis home, the Francis family.

Q. And who is the Francis family?

A. They were a member of our congregation at that time.

Q. And who is it?

A. Rod Francis, Claudia Francis, and they had two sons.

Q. And Rod would be the father and husband?

A. Yes.

Q. Was he a member of the body of elders in 1993?

A. In 1993, I believe that he was.

Q. Do you know how long he had been with the body of elders of the North Fremont Congregation in 1993?

A. I don't think it was too long. It was a

short time -- months -- years -- a few years.

Q. Do you know how long Mr. Kendrick resided in the garage of the Francis family?

A. I don't know exactly.

Q. After this meeting with the Kendrick family in November of 1993, did you ever observe Candace Conti sitting on Jonathan Kendrick's lap at the Kingdom Hall?

A. No.

Q. Did you ever observe Candace Conti sitting on his lap during a meeting at the Kingdom Hall?

A. Absolutely not.

Q. Did you ever observe her sitting on his lap before or after?

A. No.

Q. During the same time period, did you ever observe Jonathan Kendrick giving Candace Conti a big bear hug in the Kingdom Hall?

A. No.

Q. You never saw anything like that?

A. No.

Q. Did you ever observe Jonathan Kendrick leaving the Kingdom Hall property with Candace Conti alone in his vehicle?

A. No. Absolutely not.

MR. McCABE: Your Honor, might this be a good

time to take a break?

THE COURT: It is. We will take a break. We will take our lunch break. I will see everybody back here promptly at 1:30.

And counsel, let me also tell you that this coming Friday, I'm going to be performing a number of additional functions in this particular matter. So Friday is on me.

I will be working on this case listening to things and having decisions. You will have the day off. We will keep on our same time frame that I have given to you relative to when the case will be over.

Remember, the following Thursday and Friday I'm in Sacramento with judicial responsibilities also. But I'm not changing anything I told you as to the expected date. We want this to go to your consideration for decision, but I do want to tell you about this Friday.

So we will see everybody at 1:30.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: There is a differences in the books I want to get cleaned up.

MR. SIMONS: Yes. On the Awakes, you are right. My apologies.

THE COURT: No apology necessary. I just want to make sure my record is in good order.

MR. SIMONS: Yes. No. It's 17 and 37 are the defense numbers.

THE COURT: And I agree. I just want to make sure we cleaned up the record.

Now, in the same vein, I have quite a lunch hour. I do want to make a decision I need to make in terms of getting witnesses this afternoon. It was originally referenced in Plaintiff's Number 10. There is a letter. First of all, I want to find it, so I can take a look at it during my so-called lunch hour.

It is the Defense 99. Do we agree, Mr. Simons?

MR. SIMONS: Yes.

THE COURT: All right. So I will take a look at Defense 99. And I will come back and greet you all at 1:15, so I can do whatever we need to do.

(Lunch recess)

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: Back on the record in the matter of the Candace Conti versus The Watchtower Bible and Tract Society of New York Inc., et al. I am getting better relative to the joint presentation here.

Regarding, I believe, the letter that counsel is wishing to address -- I could be wrong. But it seems to me it could be the filter I used was Defendant's 99.

And then according to the joint exhibit book that is Plaintiff's 10. So Plaintiff's 10 and Defendant's 99. Can we at least agree on that? Can I hear a symphony of yes?

MR. SIMONS: Yes, your Honor.

THE COURT: I had the same problem we had a little bit earlier today. The one layer I'm looking at has a significant redaction already superimposed.

Does that lead me to believe that you would agree, at least, to redacting that portion which starts apparently after the word quote uncleanness, end of quote, and then goes down to the trust above.

Is that an agreed upon redaction?

MR. SIMONS: Yes.

THE COURT: Now, what would you like me to do? What is the nature of the argument? Because not having seen the unredacted letter, I'm not sure what the debate is about.

MR. SIMONS: The debate -- let's all get on the same page here.

THE COURT: Mr. McCabe?

MR. McCABE: Yes, your Honor. The two

unredacted paragraphs we would like to see redacted are the second and third letter and they are talking about the religious discipline to be imposed by the congregation or not to be imposed by the congregation.

THE COURT: It may be that again -- and I may be repeating myself -- the letter I'm looking at already has that. I don't have another version.

MR. McCABE: I'm sorry, your Honor. I have two here.

THE COURT: All right. I see. And actually I don't have any thoroughly unredacted version. But defense counsel just gave me that same letter, December 3.

The only thing redacted from that is paragraph 4 after, quote, in the future, end of quote.

Now whose presentation is that? Is that Plaintiff's?

MR. SIMMONS: As to the fourth paragraph, your Honor?

THE COURT: Yes.

MR. SIMMONS: The deleted paragraph is by agreement.

THE COURT: That's by agreement. All right. Now on the bottom of the principle, I'm going to bounce back again. So we have got paragraph 4 by agreement,

and then the debate goes as to paragraphs 2 and 3. Correct?

MR. SIMMONS: Correct.

MR. McCABE: Correct.

THE COURT: All right. Let's go to defense counsel.

MR. McCABE: Your Honor, both of these paragraphs, to me, speak of the disciplinary procedures that the religion would take based upon the definition of the sin, and what he confessed to.

And in previous rulings, we were going to leave out anything to do with judicial and duty to disfellowship and/or recruiting, which these two paragraphs don't specifically state that that's what they're talking about.

THE COURT: Mr. Simons, to you.

MR. SIMMONS: Your Honor, I think, as to paragraph 2, the language has the language of the confession in it, and then --

THE COURT: I'm not troubled by that.

MR. SIMMONS: -- and then since this incident is known by outside members of the family, I would agree -- I think that from where it is appropriate forward from the rest of the sentence, I have no problem redacting.

But "since the incident is known by outside members of the family" is a significant fact, particularly if we are going to be mentioning defamation in the suits and that sort of thing in the opening statement as we did.

THE COURT: Okay. And then what is your view of the next paragraph?

MR. SIMMONS: The third paragraph -- you know, my original take was it not be redacted, but as I look at it again, I feel it should.

THE COURT: Thank you. Because that was my opinion on the first read.

So let's go back. I'm going to redact the third paragraph. I think it is in the nature of --

"Essentially, since this incident is known by outside members of the family."

Whose family are we talking about? Are we talking about the occasional family or the immediate family?

MR. McCABE: We are talking about the Kendrick family, and we are talking about Toi Register.

THE COURT: I don't know whom we are talking about. Do you agree with that conceptually?

MR. SIMONS: I don't know about the Toi Register, but it certainly says it is known by outside

members of the family, and that, to me, seems to imply that we are talking about the Kendricks and not members of another family.

THE COURT: Give me a moment.

Yeah. I think is quite susceptible to any number of interpretations. Here is what is going to be deleted.

"It's only your repetition and confession to what had happened:"

Starting with the sentence:

"incidence is known by outside members of the family," forward is deleted through the following paragraph.

And then "by your agreement -- "

(Interruption)

All right. So paragraph 4 is in, by your agreement, is deleted, and those will be my orders.

Now, it is going to help me in terms of you, so we don't have to keep doing this: If it is a jointly agreed upon admissible exhibit -- because of the way you set this binder up, dual reference -- Mr. Simons, if it is going to be a jointly-admitted exhibit, just read Plaintiff's 11 and Defendant's 100, or something, so we have a clean record and we don't have all these juxtapositions.

Is that fair?

MR. SIMMONS: Very much so.

THE COURT: All right. The record should reflect, and I will confirm it, my orders as to -- what was that exhibit number? Mr. Simons?

MR. SIMMONS: Yes. It was the one we just discussed earlier that was 10/99.

THE COURT: Okay. I just want something so I can make a record after we discussed it.

MR. SIMMONS: That was 14/101 that we just looked at.

THE COURT: All right. Forgive me. Mr. Simons. Back to you.

Strike that.

Mr. McCabe?

MR. McCABE: I have no more questions, your Honor.

MR. SCHNACK: Your Honor, I will pass the witness.

THE COURT: Anything further of this witness?

MR. SIMMONS: Just briefly, yes.

REDIRECT EXAMINATION

BY MR. SIMMONS:

Q. Mr. Abrahamson, we talked a lot today with

both counsel about all of the different things you did with regard to the congregation and Mr. Kendrick, et cetera. All of the things we talked about today have been things that you did within your scope of your duties as an elder. Correct?

A. Correct.

Q. You mentioned in your cross-examination that you believed that Mr. Kendrick was sincere in his repentance; is that correct?

A. Yes.

Q. But you knew that he had lied to you about other things?

A. Shaded the truth. Correct.

Q. And weren't you of the understanding that child molesters always say that they are sincere in their repentance?

A. Yes.

Q. And you mentioned Elder Francis, who was an elder during that time. Did Elder Francis have some health issues during this time in the '90s?

A. He currently has some health issues. I don't know if it was during the mid-nineties.

Q. Was there a time, if you recall, back in the mid-nineties, that you recall he was unable to attend to his duties as an elder?

A. Yes, that is true. But it wasn't for health.

Q. But for whatever reasons, which we don't need to hear about, there was a period of time in the mid-90s, '94, '95, '96, in particular that Elder Francis was unable to attend to his duties?

A. Since you are being specific with dates, I would just have to say, I don't know. I'm not sure.

MR. SIMMONS: Thank you. That's all that I have on Redirect.

THE COURT: Mr. McCabe?

MR. McCABE: Nothing.

THE COURT: Mr. Schnack?

MR. SCHNACK: Nothing.

THE COURT: Thank you, sir. You may step down.

MR. SIMMONS: Your Honor, before we call the next witness, there are three requests for admissions that I'm going to introduce, I assume, by reading?

THE COURT: Yes.

MR. SIMMONS: These requests for admissions are responses are dated December 8th of 2011. They are verified by Gregory Allen on behalf of the Watchtower Bible and Tract Society of New York, Inc., and they are Set 3, commencing with Request for Admission, Number 3.

And I direct you to Watchtower Bible Tract

Society, Number 3:

"Do you admit that during the time he performed services as an elder at the North Congregation Fremont, between January 1st, 1993 and December 31, 1998, Gary Abrahamson was acting as an agent of Watchtower Bible and Tract Society of New York, Inc."

And response is:

"Defendant admits that between January 1, 1993 and December 31, 1998, while Gary Abrahamson was acting within the course and scope of his duties as an elder in the North Congregation Fremont California, he was acting as an agent of Watchtower Bible and Tract Society of New York, Inc."

As to Number 4:

"Do you admit that during the time he performed services as an elder at the North Congregation Fremont, between January 1st, 1993 and December 31st, 1998, Michael Clarke was acting as an agent of Watchtower Bible and Tract Society of New York, Inc."

And the response:

"Defendant admits that between January 1st, 1993 and December 31, 1998, while

Michael Clarke is acting within the course and scope of his duties as an elder in the North Congregation Fremont, California he was acting as an agent of Watchtower Bible and Tract Society of New York, Inc."

And our next witness, your Honor, pursuant to Evidence Code 776, would be Mr. Clarke.

THE CLERK: All right, Mr. Clarke. Again, you are being called as an adverse witness under the Evidence Code.

MICHAEL CLARKE,

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: Michael Clarke. M-I-C-H-A-E-L. Clarke. C-L-A-R-K-E.

THE COURT: And, Mr. Clarke if you need water at any time, just let us know.

DIRECT EXAMINATION

BY MR. SIMMONS:

Q. Good afternoon, Mr. Clarke.

A. Good morning, Mr. Simons.

Q. And you have served and continue to serve as an elder at the North Congregation in Fremont?

A. Yes.

Q. When did you first become an elder in the North Fremont Congregation?

A. 1989.

Q. And had you served as an elder anywhere before that?

A. Yes, in Hayward.

Q. And when did you first become an elder?

A. 1977.

Q. Before serving as an elder, did you serve as a ministerial servant?

A. Yes.

Q. And when did you first commence your service in that capacity?

A. Probably 1974, '75, somewhere around there.

Q. You continue to be an elder today?

A. Yes.

Q. And at North Fremont?

A. Yes.

Q. There, back in the 1990s, were meetings held regularly in the congregation and among the congregation for many purposes. Correct?

A. Meetings held?

Q. Yes.

A. Yes.

Q. And some of these meetings were to study the Bible or to study the teachings of Awake or Watchtower?

A. Yes.

Q. And these meetings would be held in homes. Correct?

A. Yes.

Q. And many of the homes they would be held in would be homes of congregation members other than elders?

A. Yes.

Q. Would you go to all of the meetings, yourself?

A. No.

Q. Would there be one meeting for all of the congregation or would the congregation be broken up into smaller groups for these meetings?

A. Well, the meeting you are referring to would be called a Congregation Bible Study, and it was held in private homes. At the time, we may have had six or seven locations. Most of them held in the homes of elders.

And we had, generally, maybe 15 to 20 that would attend the small groups, 10, 15 total. They were

held once a week, generally had one meeting, for an hour.

But the other meetings that you might be referring to were at the Kingdom Hall.

Q. The meetings that were held in the homes, is it correct that an elder would always be present?

A. Yes.

Q. But it would not necessarily be correct that more than one elder would be present?

A. No.

Q. Because there weren't enough elders for all the meetings. Correct?

A. Correct.

Q. And in these different meetings that would be held, the elder would have a lot of responsibilities for example, to chair and conduct the meeting?

A. Yes, he would.

Q. And he would have to make the arrangements for where the meeting was going to be each week?

A. No. It was usually in the same home, usually his home.

Q. What about when the meetings were held in other people's homes -- the congregation member's home?

A. Was there a question there?

Q. Yes. Would an elder have to make the

arrangements for those meetings?

A. No. It is pre-arranged. Sometimes it would be there for years.

Q. Who would decide which homes the Bible study meetings would be held in?

A. The body of elders.

Q. Were the Bible study meetings ever held in the Kendrick home?

A. No.

Q. Were they ever held in the Conti home?

A. No.

Q. So for any such meetings that Mr. Kendrick would have attended, he would have had to go someone else's house?

A. Yes.

Q. And the same with Candace Conti?

A. Yes.

Q. Now, do you recall being contacted concerning Jonathan Kendrick having committed some sort of misconduct with his stepdaughter?

A. Yes.

Q. And how did you receive your very first contact on the subject?

A. I believe it was a phone call.

Q. And do you recall who it was from?

A. Mr. Kendrick.

Q. What were you told?

A. That he needed to talk with us about a serious matter.

Q. And did he tell you what the matter was?

A. I think he said inappropriate touching of his stepdaughter, or he might have said just a serious matter. I don't recall exactly. It was just a quick phone call and we set up a meeting.

Q. How long between the phone call and the meeting?

A. We met the same week.

Q. And where did the meeting occur?

A. At the Kendrick home.

Q. Did you know Jonathan Kendrick before you were an elder in Fremont?

A. No.

Q. Was Jonathan Kendrick already a member of the congregation when you came to Fremont?

A. I believe so. Yes. I came in '89, and I think he was already there.

Q. And do you recall, when you first met Mr. Kendrick, what your impression of him was?

A. Just a quiet man. Outgoing, friendly.

Q. Did you like him?

A. Pretty much, yes.

Q. And you call him "quiet." When you say he was a quiet man, what did you mean?

A. He didn't speak a lot. He wasn't a talker, anything like that. Just a quiet man.

Q. In the context of outside of the meetings, did you have some relationship with Mr. Kendrick?

A. No.

Q. Did you, for example, ever go to his home for any reason, other than this meeting after the phone call?

A. Probably a shepherding visit, as we call it. Probably just to get to know the family better. I don't recall if it was myself that went or I went with someone else. It was our practice, then, as it is now to make home visits. That's about the extent of it.

Q. Did you ever have any social contact with Mr. Kendrick?

A. No, I don't think so. I don't recall.

Q. For example, did you and anyone from your family have a dinner, share a meal with Mr. Kendrick and Evelyn Kendrick?

A. I don't recall. I don't think so.

Q. Did you ever meet him at some social occasion at some location other than his house, for example,

maybe at the garage of the Conti house?

A. I don't think so. I don't recall. It is a long time ago.

Q. You remember the Conti family?

A. Yes.

Q. And do you remember Candace as a child?

A. Yes.

Q. What do you remember about her?

A. Just a happy little girl.

Q. Do you recall her being a spunky child?

A. I don't know if she'd want me to call her spunky, but she was happy.

Q. And what do you recall about her mother, Kathleen?

A. Not too much. She was a good mother, and she really loved her daughter and still does, I'm sure. I don't have too much of a recollection of her. I know she had a lot of emotional things that she was dealing with that we tried to help her with.

Q. And do you recall at some point in the mid-nineties that those emotional difficulties became overwhelming to her?

A. Yes. We made several visits trying help their marriage.

Q. And what did you observe, if anything, in

Mrs. Conti -- Kathleen, in terms of her conduct or demeanor that you felt evidenced her emotional problems?

A. At times she was happy, and at times she was sad. She had quite a few highs and lows. Some of our visits, she was more positive than at other times.

Q. When you say happy and sad, do you mean outside the range that we might consider to be kind of normal, happy or sad for people?

A. I would say, it's a long road. I just remember our concern for her and for the family and trying to help her through this emotional time.

Q. Did you ever have a concern that she was dysfunctional, unable to care for herself or her family?

A. I don't believe I had a concern like that, no.

Q. What about Neal Conti? Were you friends with him?

A. Yes.

Q. And did you do social events of any kind with Mr. Conti?

A. I don't recall social events. But we spoke at each meeting.

Q. Does that mean the nature of greeting or a more serious or in-depth discussion?

A. Mostly a greeting. How are you today? How

has your week been? What happened at work? Have you had any positive experiences in the door-to-door ministry? Things like that.

Q. Would you describe the relationship you had with Mr. Conti as something deeper than just a relationship?

A. No. Not deeper, no.

Q. Let's go back to the meeting at the Kendrick home. Who do you recall being present?

A. Gary Abrahamson, Mr. Kendrick, Mrs. Kendrick, stepdaughter, Andrea, and myself.

Q. And what do you recall being the first thing that happened at the meeting?

A. Well, our pattern -- our habit is to open with a prayer. So I would have had Gary Abrahamson open with a prayer.

Q. What was the next thing that happened?

A. Then we normally will read a scripture or two, trying to set a spiritual tone, and then we invited Mr. Kendrick to tell us why he had us come over.

Q. Now, as you sit here today, even though many years have passed, you still have a recollection of that meeting, don't you?

A. Yes. I reviewed my letter that you have a copy of.

Q. And that helped refresh your recollection?

A. To a degree, yes.

Q. But you also remember sitting in the house?

A. Yes, I remember the chair I sat in. It faced the window.

Q. And do you remember the room it was in?

A. In the kitchen or dinette area.

Q. Do you remember seeing these people in your mind's eye during that meeting?

A. Yes. Very vividly. It's not something you forget.

Q. And would it be fair to say that you have been to hundreds and hundreds of such meetings with different families that may have had some trouble -- not necessarily childhood sexual issues, but some kind of problems over the years?

A. Yes.

Q. And in these hundreds and hundreds of meetings, this one stands out to you vividly.

Why is that?

A. Because it dealt with child abuse.

Q. And you knew, in 1993, at the time of this meeting, that that was a very serious subject?

A. Yes, sir.

Q. And what did Mr. Kendrick say when you

invited him to speak?

A. He admitted to touching his daughter's chest while she was sleeping on the couch. He claims it was inadvertent, but, nonetheless, he said it happened three or four months previous, and it had been bothering his conscience, even though the family talked about it.

He asked his stepdaughter and his wife for forgiveness. They acknowledged that they had given their forgiveness, and they wanted to move on. And so he confessed to this one-time touching.

Q. You used the word "inadvertent."

Was that Mr. Kendricks's word?

A. Yes. It was his words. Also, the daughter confirmed it.

Q. When you say "the daughter," do you mean Andrea, the stepdaughter?

A. Andrea, the stepdaughter, yes.

Q. And when you say she confirmed it, what do you mean?

A. She acknowledged that in her mind it was inadvertent. I think she used the word "accident." The room was dark, he claims, when he walked in the room, and she was lying on the couch.

Q. Did you believe that Mr. Kendrick was telling you the truth when he said it was inadvertent?

A. No.

Q. Why not?

A. I don't think you can inadvertently do something like that and not know that you are doing it. And that's why we immediately classified this as child abuse and took appropriate steps.

Q. If we could, let's look at your letter of November 15, 1993, which is Exhibit 9/98.

All right. Let's look at page 2 of the letter.

Do you see your signature at the bottom?

A. Yes.

Q. Is it normal that this type of letter to Watchtower New York be signed by two elders?

A. It is now. Back there, one signature was sufficient. But I did talk with Mr. Abrahamson before we mailed it off and made sure I didn't leave anything out.

Q. In your talking with Mr. Abrahamson, did you actually show him the letter?

A. No. I read it to him over the phone.

Q. Okay. So he knew what was in it before it went?

A. Yes.

Q. And did he disagree with you as to any of the

proposed language in the letter?

A. I don't recall any disagreement or I would change it.

Q. Did you have to make any changes?

A. No.

Q. Let's go back to page 1.

Now, you told us a few minutes ago that you did not believe Mr. Kendrick when he said it was inadvertent.

Did you inform Watchtower New York that Mr. Kendrick had not been truthful to you?

A. Well, we stated in the letter that we were recommending his deletion as a ministerial servant.

And we also stated in the letter that he had committed child abuse. So we felt that was coincidental.

Q. But did you tell Watchtower New York in your letter that Mr. Kendrick had not been truthful to you?

A. No. Not in those words, no.

Q. Did you see the words "inadvertent" or "accidental" anywhere in the letter?

A. No.

Q. So was it important to you, at the time of the meeting, that Mr. Kendrick had not been candid with you about the full extent of what had happened?

A. It was important, yes, and that's why we stated in the letter that we were recommending his deletion -- no longer qualified. He had committed child abuse. It was clear to us.

Q. But in your letter, you chose not to tell Watchtower New York that he had lied to you in the addition to the conduct that he had committed that he did report?

THE WITNESS: Rephrase that again, please.

I'm not sure what you are asking.

BY MR. SIMMONS:

Q. You chose not to tell Watchtower New York that Mr. Kendrick had not been truthful with you?

A. I don't know if I chose. I just didn't put it in the letter. We felt that what we had in the letter was sufficient.

Q. Did Mr. Kendrick express his repentance to you?

A. Yes.

Q. And did you believe him?

A. Yes.

Q. And you knew from Awake Magazines and other education that you had received that child sexual abusers often give false statements of repentance.

A. Yes.

Q. So you knew he had lied to you, and you knew child sex abusers give false statements of repentance.

Did you feel that Mr. Kendrick had given you a false statement of repentance?

A. We believed him.

Q. Had Mr. Kendrick, in the past, exhibited problems with his temper that you were aware of?

A. Yes.

Q. In what way?

A. Well, outbursts with his wife, Evelyn. They argued a lot.

Q. And were you able to talk to Andrea separately from the room that Mr. Kendrick was in?

A. No.

Q. Did you talk to Evelyn separately?

A. No. We all stayed at the kitchen table.

Q. Did you have the thought at that time that perhaps you should talk to Andrea separately when Mr. Kendrick, who you knew to have violent outbursts, was not present?

A. No.

Q. Was Mr. Kendrick ever --

I will rephrase.

Did he ever exhibit that temper in any of the Jehovah's Witnesses activities?

A. Not that I recall, no.

Q. So in all of the various meetings and field service and everything else that you saw him in over the course of several years, you have no recollection of him ever exhibiting an outburst of temper?

A. No. Just what he had told us and his wife had said had happened in the privacy of their home, married couples arguing.

Q. Were you concerned that there was something more to Mr. Kendrick, in terms of hiding that outburst of temper that he was prone to at home, that he was not all that he claimed to be, if you will, or all that he presented to be, was the exact phrase, in the meetings?

A. I can't recall if I thought that or not. It is so long ago.

Q. Back when Mr. Kendrick was recommended for the position of ministerial servant, were you one of the elders who supported that recommendation?

A. Yes.

Q. And is it true that in 1993, until this report was received, you were considering him for the position, and recommending him for the position of elder?

A. We always look at ministerial servants and hoping they will progress, develop in qualities needed

to be an overseer or elder. But we never recommended him, no.

Q. But you did have the thought in mind, at least until this meeting, that Mr. Kendrick was a candidate for elder?

A. I don't know if I would go that far. Because we have already mentioned that he was having marital problems and arguments with his wife. So one of the qualifications of being an elder is that they have to preside over the family in a fine manner. And he was having problems with his stepdaughter. He was not following the rules.

Q. Did Andrea Kendrick tell you in this meeting that Mr. Kendrick had touched her breast under the clothes?

A. No.

Q. Did she tell you in this meeting that he had placed his hand down into her pelvic area, again, under her clothes?

A. No, sir.

Q. Did she tell you that he had given her Vicodin before any of the touching had occurred?

A. Absolutely not, no.

Q. The congregation was never told that Mr. Kendrick had committed an act of child sexual abuse.

Correct?

A. Correct.

Q. And parents -- as opposed to children might be present -- but parents were not separately warned that he had committed an act of child sex abuse?

A. No. We don't do that.

Q. And you don't do that because there is a policy that Watchtower New York has provided to you and provided to you before this that says that information is not to be divulged to the congregations?

A. Yes. It is confidential, just like if a person committed adultery and came to us and confessed to adultery, and he was repentful or she was repentful, we wouldn't get up at the next meeting and announce that Mr. Smith has committed adultery.

That's confidential. That's privileged information.

Q. You used the example of adultery. Is there any difference in your mind between adultery between consenting adults and childhood sexual abuse?

A. Oh, yes. Child abuse is abhored, a horrible act. And they are both sins in God's eyes. But on a level -- you can't put them on the same level.

Q. Adults who may engage in an illicit relationships, at least can make their own decisions and

enter into those relationships, whether they are sinful or not, on their own.

A. Sure, yes. They are free agents, yes.

Q. But you knew that children are often unable to protect themselves against childhood sexual abusers?

A. Yes.

Q. The policy that you refer to, which you call confidential, that was a policy given to you as an elder and the body of elders for the North Congregation in Fremont in a letter from Watchtower New York. Correct?

A. Yes. It would come to us in the form of a letter, yes.

Q. And if we were to look at Plaintiff's Exhibit 1, which is Defendant's 026 --

First of all, before we look at it, may it be admitted into evidence?

MR. McCABE: We would agree with that, your Honor.

MR. SCHNACK: Yes.

THE COURT: All right. Plaintiff's 1 is admitted into evidence.

(Whereupon, Plaintiff's Exhibit Number 1 and Defendant's Exhibit Number 26 was admitted into evidence)

MR. SIMMONS: And for your copy, sir.

THE WITNESS: I'm not going to be able to see that.

MR. SIMMONS: No, you are not.

BY MR. SIMMONS:

Q. Do you recognize this as a policy letter, if you will, the body of elder letter with regard to confidentiality?

A. Yes. It says on it "confidential."

Q. Now, this particular body of elder letter, do you recall actually receiving it back in 1989?

A. Oh, yes.

Q. And it was discussed at that time within the body of elders?

A. Yes. The whole body of elders was brought together. It was read and discussed and filed.

Q. And when we are talking about the body of elders, we are talking about the Fremont North Congregation body of elders?

A. Yes.

Q. But you know from your own experience that this directive of July 1, 1989 went out to every body of elders in the entire country?

A. Yes.

Q. Let's go to the very last page.

Do you see the signature line?

A. Where it says "Your Brothers"?

Q. Yes.

A. Yes. Watchtower Bible and Tract Society?

Q. The document is signed, actually, by what we will call, I guess, a corporate signature. Correct?

A. Sure.

Q. And that was typical of all of the communications that you received from Watchtower New York?

A. Correct.

Q. Whether they were bodies of elder letters or whether they were individual letters having something to do with a specific matter within your congregation, if it came from New York, it was always signed by Watchtower Bible and Tract Society New York, Inc.?

A. Yes.

Q. Did you ever know who the particular individuals were who were sending you the letters?

A. No.

Q. Now, let's look at the first page of this.

And let's go down to the third paragraph.

I have highlighted a section. Perhaps we can enlarge it.

"Improper use of the tongue by an elder can result in serious legal problems for

the individual, the congregation and even the society."

You knew back in 1989 and throughout the time that this policy has been in effect, that the primary purpose of this policy was to avoid serious legal problems.

A. And to protect confidentiality of people. Everybody wants to have their confidential matters protected. So, yes, that is the purpose of the letter. We don't want people suing us.

Q. And when you say, "We don't want people suing us," are you talking about people who are suing you for disclosing confidential information?

A. Yes.

Q. Is that the only kind of lawsuits that people were worried about as you understood and talked about this letter in 1989?

A. I don't recall. I don't recall what conclusions we came to, other than what the letter talks about. It talks about divulging information that could lead to legal problems.

Q. But you knew that Mr. Kendrick's abuse of Andrea was no longer confidential?

A. It is still confidential. She told us -- they told us in confidence. And Evelyn --

Mrs. Kendrick -- and both -- her stepdaughter said -- they wanted to keep it confidential. We respected that.

Q. They told you that in a meeting in which there were five people?

A. Yes.

Q. And it is your recollection that Andrea and Evelyn are the ones that asked for confidence?

A. Yes. My recollection, yes.

Q. Not Jonathan?

A. No. He was very quiet after he confessed.

Q. Okay. So the confidentiality that you needed to protect was that of the victim, not of the perpetrator?

A. Of course.

Q. So there was nothing about confidentiality that would have been violated by telling the congregation that Jonathan Kendrick had sexually abused a child?

A. Anything that is discussed in a meeting like this is confidential. It cannot be revealed. We can only follow the law, and we can only follow these procedures. If we go any further, we are opening ourselves up to liability.

MR. SIMMONS: May I approach, your Honor?

THE COURT: You may.

(Sidebar discussion)

BY MR. SIMMONS:

Q. The next paragraph down:

"Worldly persons are quick to resort to lawsuits if they feel their rights have been violated. Some who oppose the kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress."

Do you see that?

A. Yes.

Q. And do you understand that to be referring to Andrea and Evelyn Kendrick?

A. No. It's referring to persons who are not Jehovah's Witnesses.

Q. And so this basis for this policy is not rooted solely in Jehovah's Witnesses, it's rooted in people who are not Jehovah's Witnesses and the fact they may bring lawsuits?

A. It is rooted in everyone, both Witnesses and non-Witnesses. Even Witnesses may bring lawsuits.

Q. And it is rooted in a concern for lawsuits because there would not be any confidential information that you would obtain from non-Jehovah's Witnesses?

A. I don't understand your question.

Q. Thank you. It is a very bad question. I'll rephrase it.

You are not receiving confidential information from persons outside the faith?

A. We might in some circumstances. I can't recall a case where we have ever received confidential matters from outside sources. But it doesn't preclude it could happen.

Q. And let's keep going a little bit. Let's go on to page 2.

And let's look at the first highlighted section.

> "The spirit of the world has sensitized people regarding their "legal rights" and the legal means by which they can expect punishment if such rights are violated. Hence, a growing number of vindictive or disgruntled ones as well as opposers have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the society. Many of these lawsuits are the result of the misuse of the tongue."

And did you understand in 1989 that this was talking about child sexual abuse?

A. No. I don't think it was precisely talking

about that. It's talking about all types of abuse of the tongue and protecting confidentiality.

Q. And did you understand that persons who had been abused as children -- sexually abused as children -- in Jehovah's Witnesses, by someone who was known to the Jehovah's Witnesses to have committed sexual abuse before might bring such a lawsuit as this?

A. If I understand your question, yes, that could definitely happen, yes.

Q. So the mandate of July 1, 1989, and when I say "mandate," you had no discretion as an elder to depart from this policy. Correct?

A. Correct.

Q. It was not up to you as an elder in North Fremont to decide when to apply this policy and when not to apply?

A. Correct.

Q. If there was any doubt in your mind, all of the instructions came from New York?

A. Yes.

Q. And so it was your understanding then, and remains your understanding now, that reports of childhood sexual abuse within the congregation must be kept secret, according to this policy?

A. Well, you used the word "secret." It is kept

confidential. We don't announce those things, but the body of elders would become aware of it. They would all be informed. So that's what we mean by keeping it confidential. We didn't publicly make it known, but just known to the body of elders.

Q. And the reason was to avoid lawsuits.

A. And also to protect confidentiality. Why would anybody come to us with their problems if they knew that as soon as they came to us we were going to announce it? Why would anybody confess to a Catholic priest if they knew that after they confessed it was going to be announced at mass next week. It is ludicrous.

So these were put in place so that the friends would feel comfortable coming to us and we could keep confidence.

Q. And all of your understanding of what had to be kept in confidence, all of your understanding came from Watchtower New York?

A. Yes. They gave us the guidelines.

Q. You, yourself, are -- no legal training. Correct?

A. No.

Q. You do not presume to be passing on what is or isn't confidential. Correct?

A. Excuse me?

Q. You weren't passing yourself on what is or what isn't?

A. No. We weren't interpreting. Is that what you meant?

Q. Yes. All of the decisions came from New York?

A. Yes.

Q. And looking at page 3 at the top of the correspondence, the body of elder letter, July 1, 1989, the subject matters included in this were, among other things, child abuse?

A. Child abuse, search warrants, subpoenas, you name it, all sorts of parameters that confidentiality has to be maintained.

MR. SIMMONS: No further questions. Thank you.

THE COURT: Mr. McCabe?

MR. McCABE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Mr. Clarke, where do you live?

A. Fremont.

Q. How long have you lived in Fremont?

A. Thirty-five years.

Q. And where did you live before that?

A. San Leandro.

Q. Where did you go to high school?

A. Hayward -- a high school called Tennyson, called Tennyson High School?

Q. Did you graduate from there?

A. Barely, yes.

Q. What year did you graduate?

A. Sixty-eight.

Q. Were you involved in any extracurricular activities at the school?

A. Yeah. A little baseball.

Q. Did you play baseball?

A. Yeah, varsity ball, yes.

Q. Are you still a baseball fan?

A. Oh, yeah. Go A's.

Q. Do you ever get out to the park and attend the games?

A. Oh, yeah, about three times a year, and I watch it on TV all the time.

Q. Are you married, Mr. Clarke?

A. Yes.

Q. How long have you married?

A. Over 40 years.

Q. Okay.

A. Same woman too.

Q. What is your wife's name?

A. Catherine.

Q. Do you have children?

A. Three.

Q. How old are they?

A. My son is 40. I have two daughters, 38 and 36.

Q. What is your occupation?

A. I work for an electrical contractor, and I'm a purchasing agent.

Q. And how long have you been there?

A. Sixteen years.

Q. And you were first appointed an elder before you came to the North Fremont Congregation. Correct?

A. Yes.

Q. And what year was that?

A. I believe it was '77, '78.

Q. How does one get to be an elder in the congregation of Jehovah's Witnesses?

A. First of all, they have to become a member, a baptized member. And then they have to meet certain scriptural qualifications that are in the Bible.

Things like presiding over their household in

a fine manner, having self-control. Then they develop an art of teaching. So there is a whole list of requirements there. And eventually, if you meet those requirements, you would be recommended.

Q. And who would make the recommendation?

A. The body of elders that you are serving with.

Q. That would be in the congregation?

A. Yes. The congregation of body of elders.

Q. What congregation were you in when you were recommended to be an elder?

A. San Leandro.

Q. And the recommendation goes to Watchtower?

A. Yes.

Q. And if they approve -- so now it's the congregation --

A. Yes.

Q. Do you get any training as an elder?

A. Yes. We go to schools, we receive letters and we receive the Watchtower and the Awake, which has a lot of training for elders.

Q. How large is the congregation in Fremont?

A. If you put all the members and children together, I think it is probably a hundred and forty.

Q. How many children currently attend, say, under the age of 12?

A. It's probably 25 or 30.

Q. Was that true back in the 1990s?

A. I don't think we had quite that many children back then. We have had quite a production of children in the past few years.

Q. When you go to a meeting at the Kingdom Hall, can tell us -- for instance for a Sunday, what happens?

A. Our meeting starts at 10:00. So about 9:30, the members start driving in to attend, visiting in the parking lot. And there is a lot of talking going on. There is a lot of visiting. A lot of noise. Sometimes you can't hear yourself think, especially with 25 kids running around. There is music playing. Eventually the chairman will call to order, and we will open with a song.

Q. Is that followed by a prayer?

A. Yes. Song and opening prayer. And then on Sunday, we have a talk that is given for 30 minutes. And we refer to it as a public talk, because some of the subjects deal with things that benefit both Witnesses and the public. But mostly it is geared towards the public. We hope new ones will come.

And then following that, we actually study the Bible using our journal called the Watchtower. It is questions and answers, and the whole audience can

participate by raising their hand, and we will give them the microphone.

Q. And you also have another meeting that's held during the week at the Kingdom Hall?

A. Yes. Ours is held on Wednesday. We actually have three meetings that night that are each 30 minutes long.

The first one is a Congregation Bible Study. I think the term we referred to is it used to be held in homes, but now is held at the Kingdom Hall. So that's for 30 minutes.

And then after that, we actually have a theocratic ministry school. We call it the school, but anyone can be enrolled in it. And I've been giving little talks in that since I was ten. And boys and girls, men and women, they participate in it.

And then a third meeting is a called a service meeting, which is designed to train us in techniques to use in our door-to-door ministries.

So when we meet people at the door, we can engage in conversations, tell them all about the questions, share about the scripture. It is just designed to help us to be more conversational.

Q. You also talked about another meeting that was held in private homes for a time? When did that

meeting stop?

A. A couple, three years ago they made it in the Kingdom Hall. We no longer have it in private homes. It is called a Congregation Bible Study.

Q. Back in the mid-1990s, you had some of those meetings in private homes?

A. Yes.

Q. Would you also have a similar meeting like that in the Kingdom Hall?

A. Yes. And we didn't have enough locations to go around, so we would sometimes have that at the -- they called it Congregation Bible Study, we had at the Kingdom Hall. Mostly it was held in homes.

Q. And the meeting would be conducted by one of the elders in the congregation. Is that correct?

A. Correct.

Q. Do you recall the Conti family being in the congregation when you moved to North Fremont?

A. Yes. I think they were there. I can't say for sure if they came after that -- I came in '89. They might have come a year or so after or a year or so before. It is not precise in my mind.

Q. Do you have a clear recollection of who was in the family?

A. Who was in it?

Q. Yes.

A. Mr. Conti -- Neal; Catherine Conti; Candace; and I believe they had a little Neal, or maybe it was Catherine who had a son from a previous marriage. I don't remember his name though.

Q. Did you socialize with the Conti family in the mid-1990s?

A. Other than at the meetings, I don't recall.

Q. This meeting that you had with the Kendricks at their home, that was in November of 1993?

A. Correct.

Q. And did you do anything to prepare for that meeting?

A. Yes. We would look over articles regarding abuse, and we also would look over scriptures that we thought would be encouraging.

Q. Do you recall doing that in November of 1993?

A. I don't specifically recall, but it was my habit. You just don't go to a meeting unprepared. So he gave us the nature of what he was going to talk to us about, even though he didn't give us specifics over the phone. So we would go into our volumes, our index, and look for articles that could help us in our deliberation.

Q. Mr. Simons directed you to Plaintiff's Number

64, Defense Exhibit Number 37.

I think you have it there in front of you.

If I may approach, your Honor?

THE COURT: You may.

BY MR. McCABE:

Q. Do you see the date of publication of Exhibit Number 37?

A. The date is October '93.

Q. October what?

A. Eighth. October 8.

Q. Do you recall in 1993 how you came in possession of that magazine, if you did?

A. I would have had a subscription. Because at that time, the Awake was mailed to the homes of Jehovah's Witnesses. I was the subscriber for years.

Q. And during that time period, do you recall, would you get the magazine on the date of its publication or when would you receive it?

A. It usually came out a month -- or at least a month ahead of time. So I probably got it early September, late August.

Q. What was your custom and habit when you received a magazine from Watchtower in the mail?

A. Well, read it immediately. We always looked forward to receiving a new magazine, so I would

thoroughly read it.

Q. So as you sit here today, do you believe that you read this magazine before you met with the Kendricks in November of 1993?

A. Oh, no doubt. I have three children. In those years my children were young, so this article would be definitely be one we would read.

Q. And was the magazine also made available at the Kingdom Hall?

A. Yes. For those that didn't subscribe, we always had extra copies. And we also distributed these to the public then and now, and so the public in our community would get this magazine so they could protect their children.

Q. When you met with the Kendricks, you testified for Mr. Simons, Mr. Abrahamson opened with a prayer, you have got your Bible.

Was there any dispute among the Kendricks about what had taken place between Jonathan and Andrea?

A. None whatsoever. Once he confessed, he was quiet and the discussion went on.

Q. Did Evelyn engage in the discussion? Did she speak?

A. Yes, she did.

Q. Can you tell me what kind of personality

Evelyn had? Was she a quiet, mousy woman, or what would you think?

A. No. She was very, very vocal. She could express herself quite well.

Q. You mentioned that -- was it previous to this, there had been some problems between the Kendricks that came to your attention as marital difficulties that they had been having?

A. Yes. They had violence, yelling. And they asked us to come over to help them with that.

Q. On those occasions -- did you respond to those calls?

A. Yes.

Q. And on those occasions, did Evelyn Kendrick have any problem expressing herself?

A. Oh, no. No. She was much more vocal than Mr. Kendrick.

Q. Now, you indicated that Mr. Kendrick called his touching of his stepdaughter "inadvertent."

But you didn't believe that, did you?

A. No.

Q. What did you believe?

A. That he purposely touched her breasts.

Q. Was that clear from the conversation you had around the kitchen table?

A. Yes.

Q. And because of that, you took certain actions afterwards?

A. Yes. We advised our branch office and told them our decision was to remove him as a ministerial servant. And they immediately responded. They confirmed our assessment. And it was announced that he was no longer a ministerial servant.

Q. Now, during the course of the conversation does anything about making a police report come up?

A. You mean about making a police report?

We told Evelyn and the stepdaughter that they could make a police report.

Q. Did they indicate to you whether they wanted to or not?

A. They said no.

Q. I would like to call your attention to page 9 of this exhibit.

Okay. The bottom here. I don't know if you can see it on the copy in front of you. Page 9 of the exhibit.

What is the indication from Watchtower here about reporting incidents of sexual child abuse?

A. Are you referring to that (indicating)?

Which part?

Q. Referring to the highlight here.

A. This is all blacked out here.

Q. Well, can you read it on the screen as it is?

A. It says:

"Some legal experts advised to report the abuse to the authorities as soon as possible. In some lands, the legal system may require this."

Q. Okay. Is that your understanding of the situation in 1993, that individuals could report it to the police if they wanted to?

A. Well, of course. Yeah. We would never tell them not to report it.

Q. Is that what you communicated to Evelyn Kendrick on this occasion of your meeting with her and her daughter and Mr. Abrahamson and Mr. Kendrick?

A. Most assuredly, yes.

Q. Did you consider the matter of this meeting, the subject matter of it, to be confidential?

A. Yes.

Q. Is there any religious reasons why you considered it to be confidential?

MR. SIMMONS: Objection.

THE COURT: Overruled.

THE WITNESS: Could you repeat the question?

BY MR. McCABE:

Q. Yes. Were there any scriptural or religious reasons why you considered the meeting at the Kendrick home to be confidential?

A. Well, because it is a privileged conversation between a member of the church and a minister; therefore, it is confidential.

Q. And you felt, personally, that you should keep the information confidential; is that correct?

A. I felt personal, based on my training and also Evelyn -- Mrs. Kendricks's request.

Q. She asked you to keep it confidential?

A. Yes. She said it was a private matter. She said that they had gotten beyond it. They had forgiven Mr. Kendrick. It happened four months previous. It was a one-time touching, and that he promised not to do it again.

But we still considered it child abuse. So that's why we took the action that we did. And that's why the whole body of elders was made aware of this action.

Q. Well, if they were made aware of it, how was it confidential?

A. Because they are trained not to reveal confidential matters, not even to their wives.

Q. So the matters that you learn of in your role as an elder, confidential matters, you understand that you can share it with other elders?

A. Only other elders, yes.

Q. Was that done in this case after the meeting at the Kendrick home?

A. Yes. We would, as a body of elders, after we got confirmation back from the branch that we were removing him as a ministerial servant, we met as a body of elders and it would have been explained why we were removing Mr. Kendrick.

Q. And then that's exactly what happened to Mr. Kendrick?

A. Exactly, yes.

Q. How long after the meeting at the Kendrick home it was announced at the congregation that Mr. Kendrick was no longer a ministerial servant, that he had been removed?

A. I guess within -- we got the notice back within 30 days. So I'm sure it was within 30 days. I'm not quite sure of the exact date, but that is a fair guess.

Q. Was the reason for the removal announced?

A. No. We don't announce the removal.

Q. Why not?

A. Confidential. We can't divulge such details. Like I mentioned earlier, if somebody had committed adultery, and they were an elder or a ministerial servant, we would not announce the reason we were doing it. We would only announce that they had been removed. That, in and of itself, puts the congregation on notice. It doesn't happen very often.

Q. When you say it doesn't happen very often, how many years had you been in North Fremont congregation?

A. Oh, twenty years since 1989.

Q. How many announcements of deletions of ministerial servants in your congregation have been made?

A. Oh, just maybe three. Two, three, four at the most.

Q. Over a 20-year period?

A. Yes. That's not very many. It just doesn't happen very often.

Q. Now, after you finished the meeting with the body of elders, you authored the letter that went to Watchtower; is that correct?

A. Excuse me?

Q. You authored a letter that was sent to Watchtower from the body of elders; is that correct?

A. The 1993 letter?

Q. Yes. That's what I'm referring to.

A. That letter was sent immediately after we talked to Kendrick.

Is that the letter you are referring to?

Q. I am referring to Exhibit 098 for the Defense and 9 for the Plaintiff.

Do you have that letter in front of you?

A. What's the number again?

Q. It's going to be Number 9 in that book?

A. All the way to the front.

And is that the one on the screen?

Q. Yes.

A. Yes, that letter was authored the very next day after we met with the Kendricks, withing the next day or so.

Q. Let me ask you this: Before you authored this letter, did you call the Legal Department at Watchtower?

A. That morning. We met with the Kendricks that evening. The next morning we called the branch. And after that meeting we authored the letter. We didn't sit on it.

Q. Is this letter a response to -- or further follow-up with a phone call you made to Watchtower?

A. Yes. They asked us to put it in writing.

Q. What was the purpose of sending this letter to Watchtower?

A. They asked for it to be written, confirming in writing what we told them on the phone and what we were requesting. And that's why we put it in writing.

Q. What was the important fact of this letter that you needed to communicate?

A. That Mr. Kendrick was guilty of child abuse.

Q. The fact that he minimized it or lied about it, the extent or the nature of it, was that an important fact that you needed to communicate to the Watchtower?

A. We felt the most important thing was that he admitted to child abuse, that he touched his stepdaughter in a sexual way.

Q. And you communicated that?

A. In a letter, yes.

Q. And Watchtower did respond to the letter and he was removed as a ministerial servant?

A. Correct. And we announced that.

Q. Did you consider Jonathan Kendrick, then, to be a child molester after this meeting with the family in 1993?

A. Child molester?

Q. Yes.

A. Well, he abused his daughter. So, yes, he is a child molester.

Q. And after removing him as a ministerial servant to the congregation, did you take any other action with regard to Mr. Kendrick and his activities in the congregation?

A. Well, we informed, like I said, the body of elders. So now we have,instead of two sets of eyes watching him, we have twelve, thirteen sets of eyes watching him.

Q. What do you mean "watching him"?

A. Well, when we had our congregation meetings, when he turns up to go out to the door-to-door evangelizing work, we are aware of what he has done and we are watching him. We make sure that he doesn't get too friendly to children. We make sure that he doesn't show any affection to children, that he is not going to come close to abusing a child again.

Q. In regards to the field ministry, did you observe Mr. Kendrick go out into the door-to-door activity following this November 1993 meeting?

A. Yes.

Q. To your knowledge, was he ever assigned to work with a child?

A. Oh, absolutely not. That would be suicidal, no.

Q. Who would he be assigned to work with?

A. He would work with another elder, another adult.

Q. Did you ever see Mr. Kendrick, after this November 1993 meeting, meet for field service and then go out and accompany children?

A. No, sir.

Q. Would you have allowed it?

A. Absolutely not.

Q. Now, in regards to his activity in the congregation, did you ever see Jonathan Kendrick, after this November of 1993 meeting, being overly-friendly to the children of the congregation?

A. No, sir. He would come to the meetings, very quiet now, as he was before, and he would generally always sit up against the aisleway against the wall.

Q. Did you ever see him hold Candace Conti on his lap before a meeting?

A. No, I did not.

Q. Did you ever see him do that after a meeting?

A. No, sir.

Q. Did you ever see him do that during a meeting?

A. No, I did not.

Q. Did you ever personally notice Mr. Kendrick at the meetings at the Kingdom Hall?

A. Personally notice him?

Q. Yes.

A. Yes, I kept my eye on him.

Q. How about during the actual conduct of the meetings, say, when the public talks would be?

A. Oh, yes, I would sometimes see him if I was walking down the hall.

Q. What would you see with regards to Mr. Kendrick?

A. Again, sitting by himself, because at that time his wife Evelyn and stepdaughter weren't coming with him. And he would pretty much sit by himself and stay to himself.

Q. And this is what year?

A. '94, '95.

Q. Was Evelyn Kendrick a member of the congregation in 1993?

A. Yes.

Q. And do you know how long she had been a member of the congregation?

A. I can't say how long she was a member.

Q. Did you ever counsel Mr. Kendrick after this

November 1993 meeting about his conduct with children, again, in the future?

A. No. Nothing every showed up that alerted us.

Q. Did you counsel him with his wife and his stepdaughter Andrea present when you had the meeting?

A. The '93 meeting?

Q. Yes.

A. Yes, we were all there.

Q. What did you tell him?

A. We told him limitations as to what he could and couldn't do.

He could not, like I said, show affection to children, put children on his lap, work with them out in the door-to-door ministry, work with children in the Kingdom Hall.

And we made it clear to him that we were going to be watching him. And we did, all, the whole body of elders.

Q. What about counsel regarding his stepdaughter Andrea when you had the meeting? Did you give any counsel there?

A. Counsel to the daughter?

Q. No. With Mr. Kendrick about his conduct with his stepdaughter, Andrea.

A. It would be all encompassing, we would have

counseled him regarding children in general, that he needed to not put his stepdaughter on his lap if that was the custom. He was not to show affection, and he was to treat her with dignity.

Q. After that meeting, did you have any doubt about the protection and safety of Andrea in the Kendrick home?

A. No.

Q. Do you feel her mother, being aware of the situation, was a good protection for her?

A. Oh, yeah. She was a protector and she was the first line of defense.

Q. And how old was Andrea at the time of this 1993 meeting, if you recall?

A. Oh, she was a teenager. I want to say 15.

Q. Did you later learn that a police report was made about this 1993 incident?

A. We found out about it years later. It wasn't months later, but years later we found out that a police report had been made. We assumed it had been made by Mrs. Kendrick.

Q. How did you find that out?

A. I don't really recall. I just remember in some document that we noted that.

Q. Did you know what happened as a result of the

police report?

A. There was something about him being put on probation.

Q. Were you ever contacted by the Fremont Police in connection with this case?

A. No.

Q. Were you contacted by Child Protective Services of Alameda County regarding Mr. Kendrick?

A. No, sir.

Q. How about the Probation Department?

A. No. No contact at all from the authorities.

Q. Now, do you recall when Mr. Kendrick separated from Mrs. Kendrick?

A. Not exactly. I would be giving you a guess.

Q. Was it real close in proximity to the meeting that you had with the family in November 1993?

A. No. It was a couple years later. Maybe a year-and-a-half later. I couldn't give you the exact month.

Q. Do you know if, after they separated, who stayed in the home in Fremont that they occupied together?

A. I don't know who stayed or even if they kept the home.

Q. Do you know where Mr. Kendrick next lived?

A. Where Mr. Kendrick lived?

Q. Yes.

A. I believe he was offered to stay in the Francis home.

Q. Do you recall when that was?

A. I don't recall when, no.

Q. Do you know how long he lived there?

A. It was just a few months, if I'm not mistaken. I don't think it was very long.

Q. Do you ever recall, after this 1993 meeting at the Kendrick home, Candace Conti being given a big bear hug by Jonathan Kendrick?

A. I never witnessed anything like that -- and no one ever reported it.

Q. Do you ever recall seeing that happen out in the parking lot of the Kingdom Hall?

A. No.

Q. Do you recall seeing that anywhere?

A. No, sir.

Q. And following this 1993 meeting, did you ever see Candace Conti leave the Kingdom Hall premises with Jonathan Kendrick?

A. By themselves? No.

Q. Did you ever see him leaving with somebody else?

A. No.

Q. Did anyone ever report that to you that they saw Jonathan Kendrick with Candace Conti alone in a vehicle?

A. No, sir.

Q. Do you know what kind of vehicle Jonathan Kendrick had in 1993, 1994, 1995?

A. Some kind of a truck.

Q. Was it a pickup truck or a van or what?

A. No. It was a pickup truck. He was an iron worker.

Q. Why do you have a confidentiality among the body of elders in the congregation matters?

A. Well, as I mentioned earlier, they have to be comfortable coming to us to talk with us about their problems so we can offer them scriptural help, spiritual guidance. If they feel that we are going to blab it to our wifes or to announce it from the platform, we wouldn't get too many people coming to us. So confidentiality is important for a minister.

Q. Do you think there is any scriptural basis for your maintaining confidentiality of certain matters?

MR. SIMMONS: Objection; that asks for expert opinion.

THE COURT: Sustained.

BY MR. McCABE:

Q. I want to direct your attention to Plaintiff's Exhibit 1, Defendant's Exhibit 26, which is in front of you, I think it is Number 1.

A. Number 1?

Q. The July 1, 1989 letter.

THE COURT: Okay. Counsel, I thought you said Plaintiff's 1 and Defendant's 26.

MR. McCABE: That's what I thought, your Honor.

THE COURT: And what I'm looking at in my book is twelve bodies of elders in the United States, July 1, '89.

MR. McCABE: Correct.

THE COURT: Is that what you want?

MR. McCABE: Yes, sir.

THE COURT: Okay.

BY MR. McCABE:

Q. You told Mr. Simons you recall this letter?

A. Yes.

Q. What is the subject matter of this letter?

A. The maintaining of confidentiality.

Q. How much of this letter has to do with child abuse?

A. I believe it's just one small paragraph,

paragraph B on page 3.

Q. I would like to direct your attention to that paragraph B on page 3.

Do you have that in front of you?

A. Yes, sir.

Q. Okay. And what is the direction and policy that is given by Watchtower in connection with child abuse in this letter?

A. It says that when elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately.

Q. What other direction does it give bodies of elders in this paragraph?

A. It says that they should see this Awake article January 22, 1985.

Q. Anything else?

A. Victims of such abuse need to be protected from further danger. So, yes, we have to take quick action to protect.

Q. And is that something you agreed with back in 1983?

A. Of course, yes.

Q. And through 1995, '96 and '97?

A. Right up to today, yes.

Q. It also mentions a lot of other situations on

this six-page letter having to do with lawsuits.

Do you recall what was going on during the late 1880s (sic) in society that prompted this letter?

THE WITNESS: I think the letter mentioned in the opening that there was a proliferation of lawsuits popping up everywhere.

THE COURT: You said the "1880s."

MR. McCABE: I'm sorry. Sir, I meant 1980s.

BY MR. McCABE:

Q. I notice in the first page of the second paragraph, there are two scriptures cited; is that correct?

A. First page.

Q. First page, second paragraph.

A. July 1st, 1989?

Q. That's correct.

A. How about the third paragraph?

Q. No. I'm thinking of the second paragraph.

A. "Jesus commanded that what you hear whispered, preach from the housetops."

Q. Yes. That's scripture, isn't it?

A. Yes.

Q. And there's another scripture, Acts 4:20 in the same paragraph.

A. "We cannot stop speaking about the things we

have seen and heard."

Q. And then the third paragraph, there is a reference to Ecclesiastes 3:7. Do you know what that says?

A. It says, "There is a time to keep quiet and there is a time to speak."

Q. And, in fact, in every paragraph on this page there is scriptures; is that correct?

A. Oh, yes.

Q. And the reference on page 3 to child abuse, it references you to the Awake Magazine of January 22, 1985.

A. Yes.

Q. That has previously been admitted as Plaintiff's Number 59 and Defense Number 17.

Do you recall that issue of the Awake Magazine?

A. If I ever get there, I might, if I read it.

Q. Okay. You probably have it in front of you. But we can put it on the screen too. It would be Exhibit Number 17 in that book. It is on the screen now.

A. Yes. "Child molester: You can protect your child."

But I don't have it here in this book.

MR. McCABE: May I approach, your Honor?

THE COURT: Why don't you go another five minutes.

BY MR. McCABE:

Q. Let's go to page 3 of this exhibit. And you see the section that is highlighted under the sub-heading there?

A. If he makes it bigger, I might.

Yes, I see it now.

Q. What does the Watchtower Bible and Tract Society acknowledge in this paragraph about the plague of child abuse?

A. That it is everywhere, it's widespread, yes.

Q. And this was in 1985?

A. Yes.

Q. And if you go over to the next page, "Child molesting. Who would do such a thing?"

Who were the people that are described as being perpetrators of child abuse in this article?

A. Well, in that second paragraph it says that this woman, Sue, was molested by a man who was running a church group.

So it could be someone in a church group, a youth group. It could be a boy scout leader. It could be anyone.

Q. And you knew that?

A. Yes.

Q. And that helped you protect your children when you ponder those things?

A. Yes, these magazines have been invaluable for years to my family and others.

Q. I'd like to go to the next page.

And where it says "Molester at work here."

Do you recall the information that is in this about the techniques that child molesters will use?

A. Yes. Several of the articles have mentioned that molesters, many times, will offer, like, a present or something to the child to get their affection or to make the child feel comfortable around them.

Other times, they will tell the child, "Let's have a secret together. It will just be our secret."

And sometimes they use actual fear tactics where they threaten the child.

So these articles would help put myself and other parents on alert what to look for.

Q. And as an elder back in 1993, after Mr. Kendrick confessed to sexually touching his stepdaughter, were you looking for these kind of activities with Mr. Kendrick?

A. Oh, yes. We discussed those with the body of

elders and went over this article, the '93 article, it would help all the elders to be on alert to look for things.

Q. And after November of 1993, did you see Mr. Kendrick exhibit any of these characteristics of a child molester in the congregation of Jehovah's Witnesses?

A. No, I did not.

Q. Okay. Let's go to one more page. And that's the next page.

"Child molesting: You can protect your child."

In the Jehovah's Witnesses faith, in your congregation, who was this information directed to?

A. Excuse me?

Q. Who was this information directed to here?

A. It is directed to parents as to -- it is to forewarn the parents.

Q. And is that who you believe had the responsibility for protecting their children?

A. Well, they are the first line of defense. If we can help the parents to know what to look for and what situation not to put their children in, that goes a long way in protecting the children.

Q. And just so we are clear, you are not the only -- the elders are not the only ones who get these

magazines in the mail. You can pick them up at the Kingdom Hall?

A. Everybody gets these. Every member of every congregation gets them. We distribute them to the public as a community service. We want the children protected, both inside our congregation and outside our congregation.

MR. McCABE: Would this be an appropriate place to adjourn?

THE COURT: I think so.

All right. We will start again in the morning promptly at 8:30.

To the members of the jury, thank you for your patience, your diligence.

I'm presuming they know where their abode is?

COURT ATTENDANT: That's correct, your Honor.

THE COURT: All right. What do you think?

Okay. And then again, I'm going to ask you and reiterate several things. One, I'm making rulings consistently throughout this trial because of the nature of the circumstances. So please do not come in the courtroom until, let's say, 8:25. I will be -- I'm sure -- huddling with the counsel starting at 8:00 o'clock.

Please, other than the collegial "good

morning" or "good afternoon" or "good -- I'm not sure we will get to "good evening," please do not discuss this matter with anyone.

And further, certainly -- let's see, internet, LinkedIn, Facebook, Twitter, handheld device, nothing about the case.

Thank you, as always, for your attention and your commitment to this matter. See you tomorrow morning at 8:30.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: To the extent we have any further redaction-type issues or whatnot, please email me. But I probably won't see them until 6:30 tomorrow morning.

I do want to get on the record, we were a little informal about that one document where I made a ruling as to Number 4, 5, essentially being religious activity and discipline.

And, again, I'm having a bit -- although I'm getting pretty much on board with your joint exhibit binder, I wanted to take care of that on the record and anything else you wanted to take care of on the record at 8:00 o'clock tomorrow morning.

MR. McCABE: May we inquire of Mr. Simons who he intends to call tomorrow morning?

THE COURT: Yes. Mr. Simons in terms of the rules of court of this department, whom are you calling tomorrow?

MR. SIMMONS: We are going to finish with Mr. Clarke. We hope.

And then we have Evelyn Kendrick and Andrea Becerra, Claudia Francis, Kathleen Conti, Dorothy Conti and, hopefully, we will get to Cliff Williams and Mr. Lamerdin, but that might be somewhat --

THE COURT: Well, I made a series of rulings as to some of those folks, not all of them. Seems like it is going to be an active day in Department 22, and it is what it is. Just be ready to go. I'll be ready to go, and we will go.

(Proceedings were adjourned at 2:58 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD, CSR No. 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

JUNE 14, 2012

DAY 10

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A605EC5

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: kellyk@fjslaw.com

Email: rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

JACKSON LEWIS, LLP
BY: ROBERT SCHNACK, ESQ.
801 K Street, Suite 2300
Sacramento, CA 95814
Tel: (916) 341-0404
Fax: (916) 341-0141
Email: Schnackr@jacksonlewis.com

--oOo--

INDEX OF EXAMINATIONS:

	PAGE
JURY INSTRUCTIONS BY: THE COURT	12
CLOSING ARGUMENT BY: MR. SIMONS	14
CLOSING ARGUMENT BY: MR. SCHNACK	19
REBUTTAL ARGUMENT BY: MR. SIMONS	24

--oOo--

INDEX OF EXHIBITS:

NUMBER ADMITTED

(NO EXHIBITS WERE ADMITTED)

--oOo--

JUNE 14, 2012 10:17 A.M.

PROCEEDINGS

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: Back on the record in the matter of the Candace Conti versus The Watchtower Bible and Tract Society of New York, Inc.

The record should reflect that the jury returned a verdict yesterday; that the issue of punitive damages was bifurcated; that they determined, pursuant to special verdict that was agreed upon, that The Watchtower Bible and Tract Society of New York, Inc. did act with malice.

Relative to the proceedings this morning, and that may occur in this fashion at this time, based upon prior court orders that I made pretrial in terms of amendment of Complaint, timing and disclosure of financial information.

Regarding financial information, by agreement, the Court is going to first read to the jury this morning something that I will tell them is a stipulated fact. And that stipulation is as follows:

"It is hereby stipulated to the Defendant, Watchtower Bible and Tract Society of New York, Inc. and Plaintiff, that

Watchtower has current assets of $30 million in cash, and real property estimated to be valued at approximately $1 billion."

It is so stipulated.

To Defense counsel, Mr. Schnack, and to Plaintiff's counsel, Mr. Simons. Correct? I am allowed to read that one stipulated fact to the jury?

MR. McCABE: Correct, your Honor.

MR. SIMONS: Correct, your Honor.

THE COURT: Okay. Moving on. Mr. Simons presented to the Defense, Casey 3949, Punitive Damages Corporate Defendants, Second Phase.

The Defense, appropriately in the Court's opinion under the Gagnon case felt that the Casey instruction was deficient relative to what the jury must consider, vis-a-vis, the current draft of Casey that basically said in quotes.

"Is there a reasonable relationship between the amount of punitive damages and Plaintiff's harm?"

After discussion -- multi-level discussions between Court and counsel, I believe that the parties have agreed that this instruction, as modified, may be read as the instruction given to the jury this morning.

I am going to put it in the record -- so there can be no question about it -- as amended as

follows:

"You must now decide the amount, if any, that you should award punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the Plaintiff and to discourage similar conduct in the future.

There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. Any amount of punitive damages that you award must bear a reasonable relationship to Candace Conti's harm.

If you decide to award punitive damages, you should consider all of the following factors separately in determining the amount.

(A) How reprehensible was Defendant, Watchtower Bible and Tract Society Inc.'s conduct?

In deciding however reprehensible a Defendant's conduct was, you may consider, among other factors:

(1) whether the conduct caused physical harm;

(2) whether the Defendant disregarded the health or safety of others;

(3) whether the Defendant's conduct involved a pattern or practice;

(4) whether the Defendant acted with trickery or deceit.

(B) In view of Watchtower Bible and Tract Society Inc.'s financial condition, what amount is necessary to punish it and discourage future wrongful conduct?

You may not increase the punitive damage award above an amount that is otherwise appropriate merely because Defendant has substantial financial resources.

And the award you impose may not exceed that Defendant's ability to pay. Punitive damages must not be used to punish a defendant for the impact of its alleged misconduct on persons other than Candace Conti."

As read, counsel agreed to, relative to the discussion of the Court and yourself?

Mr. Simons?

MR. SIMONS: Yes.

THE COURT: Mr. Schnack?

MR. SCHNACK: Subject to our prior motions and that to withdraw punitive damages from the jury, we do agree with this.

THE COURT: Subject to prior motions it involves.

All right. Do we have everybody with us?

(Break taken)

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: First of all to the jury, thank you, as always, for your incredible commitment to this case. I'm going to address this now. I noted, when I read the jury verdict yesterday that -- and I told you you would have to do a little bit more jury work, otherwise known as judging, I gave you an instruction. And I think you have a sense of what I told the lawyers. I don't pretend to be omniscient up here.

I don't think it is any mystery to you, I have been making a lot of decisions in this case outside of your purview. And I'm going to talk about that when the dust settles on the next decision you are going to make.

But when I read the instruction, it said it would be decided later. And I didn't make that instruction. That's the instruction the courts give

throughout the State of California. And then when I noticed in the body of the language read back, and when I went home last night and I read that, I realized it doesn't say by whom.

Although I didn't like it, I'm going to take responsibility for it, I'm going to get better about that communication to a jury because I never thought about it before. They spent eight years trying to get these instructions right. Always remember, whether you are a lawyer, whether you are doing business otherwise, the art of communication often carries the day.

So I want to be very clear, when I tried to walk in your shoes, I realized it didn't say decided later by whom. So I just wanted to say that as you start this morning.

Let me explain the process so you can just get a sense. In a moment I'm going to read to you a stipulated fact. It is going to be about three sentences long. I am then going to read an instruction that we can work out this morning. One instruction. Then counsel are going to argue their respective positions.

Mr. Simons, for Plaintiff, will start first, Mr. Schnack, for The Watchtower Bible and Tract Society will then respond, and then Mr. Simons will have time

for a rebuttal argument. After which you will convene again to deliberate, the question is going to be asked of you.

Once you have done that and after listening to this judge, a little bit after that, you will be through with your jury service and commitment to this case.

And I look forward to addressing you when it is done for many good reasons, including the obvious commitment of time and interest and dealing with the issues presented.

JURY INSTRUCTION

THE COURT: So, that being the case, let me read to you the stipulated fact:

It is hereby stipulated between Defendant, Watchtower Bible and Tract Society of New York, Inc. and Plaintiff, that Watchtower has current assets of $30 million in cash and real property estimated to be valued at approximately $1 billion. It is so stipulated.

That is the evidence by stipulation. That is a stipulated fact. That is the evidence you are to consider this morning within your deliberations contextually and concurrently with the following

instruction:

Casey 3949 Punitive Damages Corporate Defendant Second Phase as amended by agreement:

You must decide the amount, if any, that you should award in punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct it harmed the Plaintiff and to discourage similar conduct in the future.

There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. Any amount of punitive damages you award must bear a reasonable relationship to Candace Conti's harm.

If you decide to award punitive damages, you should consider all of the following factors separately in determining the amount:

(A) How reprehensible was Defendant, Watchtower Bible and Tract Society Inc.'s conduct?

In deciding how reprehensible a defendant's conduct was, you may consider, among other factors:

(1) whether the conduct caused physical harm;

(2) whether the Defendant disregarded the health or safety of others;

(3) whether the Defendant's conduct involved a pattern or practice;

(4) whether the Defendant acted with trickery or deceit.

(B) In view of Watchtower Bible and Tract Society, Inc.'s financial condition, what amount is necessary to punish it and discourage future wrongful conduct?

You may not increase the punitive damages award above an amount that is otherwise appropriate merely because Defendant has substantial financial resources. Any award you impose may not exceed that defendant's ability to pay.

Punitive damages may not be used to punish a defendant for the impact of its alleged misconduct of persons other than Candace Conti.

Mr. Simons.

CLOSING ARGUMENT BY MR. SIMONS

MR. SIMONS: Ladies and Gentlemen, thank you all once again for your dedication and your service and the seriousness of which you have approached your tasks in this case.

And we do have the one remaining issue for us to discuss and for you to determine, and that is the question, as his Honor has put forth in the instruction, of punitive damages to discourage future conduct in the

future that would be similar to what harmed Candace Conti in this case.

And if you believe, from all you have seen and heard, that Watchtower New York and its managing agents, the governing body, fully appreciate and understand that the policy of secrecy which allows for an identified child sex offender to strike again is wrong and that it was wrong in 1983 and it remains wrong today, then there is no need for further damages of a punitive nature.

But if you find from all you have seen and heard that the understanding and acceptance of the need to change that policy are not there, then the law authorizes you and gives you the power, through the use of punitive damages, to provide an incentive to provide discouragement, if you will, of future repetitions of the type that we have learned about here.

And if we could look at the instructions very briefly:

> "The purposes of the punitive damages are to punish for the conduct that harmed Candace Conti and to discourage similar conduct in the future."

Let's look at the criteria that we are going to be considering. There are a number of factors the

instruction has laid out for consideration, including:

"How reprehensible was the Defendant's conduct?"

This was the question that you previously decided with regard to what is despicable conduct, deliberate indifference.

And, specifically, we look at whether the conduct caused physical harm. We know that it did.

We look at whether the Defendant disregarded the health and safety of others. And that has been your finding. That is what the policy's root and the information that we saw in the earlier part of the trial established by clear and convincing evidence.

"Whether the conduct involved a pattern and practice."

And we know that it did because the Body of Elder Letter must be followed by every elder in every congregation throughout the country with no power, no discretion to deviate whatsoever.

And so, even though you have found that the Watchtower's fault was 27 percent of what caused Candace Conti's harm, they are 100 percent responsible for this policy and its enforcement. And that is what this particular part of the issue that you are now going to address concerns.

"Whether the Defendants acted with deceit or trickery."

And I would submit to you, Ladies and Gentlemen, that allowing a known child sex offender to sit in the congregation and to go out into field service and to hide who he is from the parents and from the others in the congregation who could act to protect children is deceit. And that is the root of the problem of this policy.

The second category that is listed is whether or not, in view of the financial condition, there is an appropriate amount to discourage future wrongful conduct.

You may not increase the punitive damage award above an amount that is otherwise appropriate merely because this Defendant is a billion-dollar plus organization.

We do not punish that -- well, that is not the purpose of the punitive damages. However, it is appropriate to consider it in determining the amount of punitive damages just for two reasons.

First of all, we cannot exceed the Defendant's ability to pay. That, I don't think is a relevant factor, given the amount of assets that are here.

And, secondly, the fact that they have substantial resources is not a reason to increase the award above what is appropriate.

But turning that around is also not appropriate to award less than what is necessary to accomplish the goal here. And that is to change this policy, discourage it from being conducted in the future. That is the mission that Candace Conti set out on three years ago.

Can we go back to the beginning?

There is a rule you must follow. And that is that the amount of punitive damages, if you so choose to award, must bear a reasonable relationship to Candace Conti's harm.

You have found that to be in a dollar amount. And there was really not contrary evidence or argument as to that amount.

And so we must find: What is a reasonable relationship if you choose to award these kinds of damages to the harm?

And some people may view that as a one-to-one ratio, that the amount of the damages necessary to discourage the conduct in the future is equal to the amount of the damages of the harm that Candace Conti suffered.

Some people may feel that this is childhood sexual abuse, and it has been found to be despicable conduct, and that amount should be ten times the amount of harm that Candace Conti has suffered.

I would submit to you that in the law, we have a principle called Treble damages. And it assesses a punishment where a party was found to have acted in a manner that requires and is appropriate to administer punishment by awarding three times the amount of the actual harm that is measured in compensable damages. And I would submit to you, Ladies and Gentlemen, that that is the appropriate measure here.

I would like to say, on behalf of Candace Conti, that you we trust in your judgment and we will accept it. Thank you.

THE COURT: Mr. Schnack.

CLOSING ARGUMENT BY MR. SCHNACK

MR. SCHNACK: Ladies and Gentlemen of the jury, the judge has instructed you that it is your choice to award or not to award punitive damages. You have been read the instruction and you have seen it there.

Does Watchtower need to be punished? The policies of Watchtower continue to evolve. You heard

Monica Applewhite testify that Watchtower has published articles and educational materials for parents, for its church members starting in the 1970s and into the '80s and it continues up to the present day.

Those materials were in the forefront of educational materials for parents and for members in this regard.

Plaintiff's counsel has made a lot of the July 1, 1989 letter. Indeed, that's what he referred here to today. However, you also heard Mr. Shuster testify that that was never the last word. It wasn't the be-all end-all on policies.

So let me just briefly go through a few of the other All Bodies of Elders Letters that were in evidence before you today.

Remember the March 23, 1992 letter? Several references there that the elders in the congregation should be conscious of victims of abuse, treat them with thoroughness and kindness, that you should be tenderly compassionate to them.

It also says in that same letter:

> "If a current case of child abuse comes to light in the congregation, the elders should do what they can to protect the children from further abuse. These policies

are evolving as we go forward."

In evidence was the August 1, 1995 letter. There it says:

> "Steps should be taken to protect the child or other children from further sexual abuse once abuse became apparent."

The elders, too, wanted to act -- should act in a way that demonstrates their protective care since the word "overseer" as that's used within the church, carries the thought of one who watches over in guarding and shepherding the flock.

In that same letter, the August 1, 1995 letter that you had in evidence and that you had in the room with you, it also says on the first page that:

> "It would be appropriate to talk very frankly with the abuser that he should never be in the presence of a child without another adult being present."

And just one last one here this morning. The March 14, 1997 All Bodies of Elders Letter that was before you. That addressed the issue of when a member moves from one congregation to another. And if that member is known to be a child molester, that letter directed the elders in the local congregations to:

> "Outline his background, including

any needs for cautions that should be provided to the body of elders."

That letter would be presented to the congregation to which that person would move. And so, again, that's taking steps to help prevent child abuse.

Mr. Shuster also testified, when he was up on the stand, that the church has a long history, since he has been an elder, since '79, that child abusers cannot be appointed to serve as elders, as ministerial servants or pioneers.

That was reiterated in the March 14, 1997 that I just referenced.

The policy of Watchtower has continued to emerge on a case-by-case basis in which the Service Department elders sent letters to the local congregations, to the local elders to strongly warn, if they have a known child abuser within their congregation, that he should not be alone with children, and how the elders can deal with that if the member that is an abuser violates those instructions.

Now, I have no doubt that your verdict yesterday has already sent a message to Watchtower, and we will soon see another All Bodies of Elders Letter addressing the very issues that were raised.

One thing I would ask you to keep in mind.

The Jehovah's Witnesses Church is not the Catholic Church, that it has had verdict after verdict after verdict over the years. It's been in the press. We are all aware of it. This is the first verdict that the Jehovah's Witnesses church has faced. So, again, it is not the Catholic Church with multitudes of cases over a couple of decades.

We have been on the telephone, both last night and early this morning, speaking with the managing directors of Watchtower and the elders in the --

MR. SIMONS: I'm going to object, your Honor. It is not evidence.

THE COURT: Well, it is argument. But, counsel, why don't you go forward for a minute to make sure it is legit.

MR. SCHNACK: Your Honor, I didn't interrupt his argument.

THE COURT: Understood.

MR. SCHNACK: As I mentioned, we were on the phone to managing directors of Watchtower and to the elders in the Service Department. And I can tell you they are stunned by the verdict. Again, I mentioned, it is the first one. And it's, indeed, the first one we are all aware of that has ever found liability on a congregation in a church based on a congregation member

causing harm to the child of another member.

However, I sincerely believe, and I put this to you, that Watchtower does not need to be punished by another monetary award.

Why is that?

Ms. Conti said she wanted to change policies. That's why she brought this suit. And we feel bad for Ms. Conti. But I can assure you, and I can assure her, that Watchtower's policies continue to evolve. And I can safely say that, with her verdict yesterday, Ms. Conti has succeeded. I encourage you to award no punitive damages in this case.

Again, I thank you for your service, for your time and your attention.

Thank you, your Honor.

THE COURT: Any rebuttal, Mr. Simons?

MR. SIMONS: Yes.

REBUTTAL ARGUMENT BY MR. SIMONS

BY MR. SIMONS:

Q. I am sad to say that I did not hear that the policy will be changed.

I am sad to hear that the governing body has not sent a person to this evidentiary phase of the trial to so testify.

I am sad to hear that we are still talking about Dr. Applewhite, who said great education program for parents. I'm not saying a thing about the child sex abuse prevention program.

I am sad to hear from counsel's comments that we have representations but no evidence.

We have no way to believe that this policy will be changed in any manner other than from the outside, by the power that the law gives to you.

And, therefore, I ask you to exercise it.

Thank you.

THE COURT: Okay. All right. Mr. Bailiff, would you be kind enough to put the jury -- I believe they are in Department 21.

You have been the most mobile jury I have had. So, again, thank you for your consideration, patience and mobility.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. Counsel, I will hand you the instruction. I want you to all take a look at it again as modified and the special verdict form before I give it to the jury.

So, I'll start with Mr. Simons and then to Mr. Schnack.

MR. SIMONS: To Chance?

THE COURT: No. Ms. Eckert.

MR. SCHNACK: These are both fine, Judge.

MR. SIMONS: Yes, they are.

THE COURT: Counsel's, each and all, have reviewed the special verdict form and the Casey instruction as revised by agreement which will now be given to the jury for their consideration during deliberations.

All right. And the court will stand in recess, pending --

Oh, let's talk a little bit -- I, of course will do the same thing I have done with you. I would like to have you a little closer. And if you need a room, I will try to find one for you. But you are welcome to hang around the courtroom. Or if you need another place, I will try to find one for you.

(Break taken)

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: All right. The record should reflect that Ms. Kraetsch is here with us by agreement with Ms. Conti. Mr. Simons' partner is here, Mr. Jaspovice is sitting in for him at this time. Correct, Ms. Conti?

MS. CONTI: Correct.

THE COURT: Do we have a verdict?

MR. FOREPERSON: We do, your Honor.

THE COURT: All right. Madam Clerk, if you would be kind enough to read the verdict.

THE CLERK: Ladies and Gentlemen of the jury, you will now listen to the reading of the verdict omitting the title of court and cause.

Special Verdict, Phase 2: We, the jury in the above-entitled action, answer the question submitted to us as follows:

Question 1: Did you award punitive damages against The Watchtower Bible and Tract Society of New York, Incorporated?

Answer: Yes.

If your answer to Number 1 is yes, what amount of punitive damages do you award?

Answer: $21,000,001. Dated June 14, 2012, Presiding Juror, Hugh Huey.

THE COURT: Mr. Huey, is that the jury's verdict?

MR. FOREPERSON: Yes, your Honor.

THE COURT: All right. Would you like the jury polled?

MR. SCHNACK: Yes, your Honor.

THE COURT: All right. May I have the verdict form?

First of all, you were asked a question:

Do you award punitive damages against The Watchtower Bible and Tract Society of New York, Inc.?

The answer is yes.

How many voted yes?

(Jurors raised hands)

THE COURT: All right. The record may reflect ten jurors voted yes.

All right. And then having answered the question "yes," the amount of punitive damages awarded is $21,000,001.

How many jurors voted that punitive damages be awarded in this matter against Watchtower Bible and Tract Society of New York, Inc. in the amount of $21,000,001?

(Jurors raised hands)

THE COURT: The record may reflect -- let me make sure I got the accounting right.

(Jurors raised hands)

THE COURT: Nine jurors voted for that verdict.

That being the case, the jury having been polled, this portion of the verdict is now entered.

Several weeks ago I invited you into my courtroom, and I said, "Welcome to judging." And I also told you that the only thing about judges is when they make tough decisions. I think we all agree this has been a very difficult case.

I told the lawyers early on outside of your presence, this is a case that is tough on this judge, tough on the professionals involved, and tough on the jurors.

And I don't think there is any mystery why that is the case. The subject matter, its nature, its evolution, its fundamental violation of trust -- and let's be clear, that most decent human beings would prefer to have trust in their lives, whether it's their friends, their coaches or whatnot.

And clearly and equally the circumstance, I don't think anyone of good character would wish or would have any support relative at all to the nature of the circumstance and conduct.

This case was further complicated by the passage of time in terms of all that has gone on. And throughout, and life judging, people can have very different opinions, as you did, in terms of your discussions as to what the result should be.

This was a tough case. And I told you when

we started that my preference is not to do a lot of sidebars. And, again, as I sit here, I made a number of decisions about what evidence you could hear. That's what judges do. And there was a lot of complexity in terms of the time and the nature and circumstance as to both sides.

My goal -- and perhaps other's goals -- which I made -- was to try to fashion it so that any prejudice any of us had would not be visited upon your deliberation. I made in limine instructions in this case. I did it because I thought it was the right thing to do as a judge.

I will say to each of you, how you carried out your tasks -- and, candidly, I don't say this in every case -- it is not about money, it's not about the nature, and with the verdict as a matter of money -- each of you could -- I had an alternate around here for the last seven and a half days -- may I say that that is an unusual circumstance. It is. But how you went about your task was quite impressive.

Certainly, I think early on you understood the solemnity of what this case was about and what your task is as jurors. And how you did it without any tinge of what certainly I or anyone else in this courtroom agrees with your verdict, how you went about it, the

decency you showed of the fundamental understanding of the importance of what you considered was obvious, certainly to me, and I would hope to all parties involved in this case.

This is serious stuff. And as a society, the challenge -- your challenge as jurors is to sit in judgment.

But the challenge is: How can everyone get better in terms of recognition, dealing and whatnot? And there is no magic ball to that.

But what is heartening is that each of you could take the substantial challenge here for the amount of days involved in your everyday lives and render as diligent a judgment collectively as you did.

Mr. Huey, I can say this: You had a number of questions. Each of those questions was thoughtful, well-paced, in terms of the time of deliberations up to that point, and insightful, including Table A. So we knew.

But, again, we can all have disagreements as to what has gone here and the result and whatnot, but anybody objectively observing knew that you were very serious about what you were doing. And, for that, I will, I do, I have thanked you before, but I thank you as deeply from this position as I can. Because,

again --

I actually had one of my sons say, "Dad, your hair seems to have gotten a little whiter."

The honest answer is: I didn't know it could get any whiter. And it perhaps did.

But the respect you showed everyone, the amount of time you dedicated to the task, how you went about it is -- I told you when we first met each other -- it is what distinguishes this country from all others.

I am hopeful -- and please understand in terms of the management of this case as a judicial officer, in terms of the interruptions, in terms of the timing. Now, a lot of this, as a matter of law, is what we will call a case of first impression. Okay. Because, again, as society evolves its understanding of the kind of response to these sorts of issues, the law is catching up also.

And honestly, because I have said it outside of you, the quality of professional lawyering in this case was as good as it gets for these lawyers in terms of their professional integrity, their skills and whatnot. This is not the type of case where you are going to see inexperienced lawyers.

And I said to them, as I will say to you,

that, as difficult a case as this is, and was, on all and each of us, my job was considerably aided by the professionalism and skills of all lawyers involved in this proceeding. I don't say that in many cases either. But this is a case, as a matter of professionalism, needs good lawyers.

So, again, I want to thank you. In a moment, you will be free to go. You can choose, as is your election, to speak to a counsel or not.

Again, once I excuse you -- I'm going to take a look at my parting instruction so I don't forget anything.

You are free to go. I think we all agree that you have done your service. And I wish I could say to you, because of the quality of the service, it is attainable, that you won't hear from the system for several years because you have earned your time.

As I told you this morning, I like to always judge myself in terms of how I deal with juries, and I will spend my experience in, literally my lifetime, in the courtroom. I'm going to be better, in terms of communication and be sensitive in a bifurcated trial as to that instruction as to whose judgment it is.

A lot of what I did was designed not to tilt the wheel on behalf of either party here. And it was a

very -- candidly, I tried to be very careful in everything I did. But what I did, when I was a trial lawyer, after every trial, I assessed what worked, what didn't, and how I could have been better. And I tell you, in a case like this, and in terms of not only in its nature and because of it, but in terms of how the process evolved.

I do the same thing as the judge. And there are a couple things that I have learned dealing with you in this case and the quality of lawyers I have here that I will do differently the next time.

So give me a minute. I want to make sure I have covered everything. That was hardly a written speech. Let me take a look at my parting instructions. Otherwise, at which time I will dismiss you.

All right. Again, I'm going to dismiss you. You are free to --

Madame Clerk, you may record the verdict.

I will now dismiss you. Again, you may speak with counsel if that is your wish. Otherwise, you have no obligation to do so. Enjoy the evening, and thank you for your service.

(Proceedings were concluded at 4:23 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD,CSR 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

May 30, 2012

DAY 2

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A604CB9

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: kellyk@fjslaw.com

Email: rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF

JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY

OF NEW YORK, INC.

JACKSON LEWIS, LLP

BY: ROBERT SCHNACK, ESQ.

801 K Street, Suite 2300

Sacramento, CA 95814

Tel: (916) 341-0404

Fax: (916) 341-0141

Email: Schnackr@jacksonlewis.com

--oOo--

INDEX OF EXAMINATIONS:

	PAGE
WITNESSES FOR THE PLAINTIFF:	
WITNESS: MICHAEL CLARKE	
(continued) CROSS-EXAMINATION BY: MR. McCABE	15
CROSS-EXAMINATION BY: MR. SCHNACK	21
REDIRECT EXAMINATION BY: MR. SIMONS	25
CROSS-EXAMINATION BY: MR. McCABE	33
CROSS-EXAMINATION BY: MR. SCHNACK	34
WITNESS: EVELYN KENDRICK	
DIRECT EXAMINATION BY: MR. SIMONS	36
CROSS EXAMINATION BY: MR. SCHNACK	44
REDIRECT EXAMINATION BY: MR. SIMONS	57
CROSS-EXAMINATION BY: MR. SCHNACK	59
REDIRECT EXAMINATION BY: MR. SIMONS	63
CROSS-EXAMINATION BY: MR. SCHNACK	64
WITNESS: CLAUDIA FRANCIS	
DIRECT EXAMINATION BY: MR. SIMONS	65
CROSS-EXAMINATION BY: MR. McCABE	82
CROSS-EXAMINATION BY: MR. SCHNACK	91
REDIRECT EXAMINATION BY: MR. SIMONS	91

(CONTINUED)

INDEX OF EXAMINATIONS (CONTINUED)

	PAGE
WITNESSES FOR PLAINTIFF:	
WITNESS: ANDREA SYLVIA	
DIRECT EXAMINATION BY: MR. SIMONS	93
CROSS-EXAMINATION BY: MR. SCHNACK	100
WITNESS: KATHLEEN CONTI	
DIRECT EXAMINATION BY: MR. SIMONS	103
CROSS-EXAMINATION BY: MR. SCHNACK	118
WITNESS: DOROTHY CONTI	
DIRECT EXAMINATION BY: MR. SIMONS	131
CROSS-EXAMINATION BY: MR. SCHNACK	139
EVIDENCE CODE 776 ADVERSE WITNESSES FOR THE PLAINTIFF	
WITNESS: CLIFFORD WILLIAMS	
DIRECT EXAMINATION BY: MR. SIMONS	146
WITNESS: LAWRENCE LAMERDIN	
DIRECT EXAMINATION BY: MR. SIMONS	160
CROSS-EXAMINATION BY: MR. McCABE	175
REDIRECT EXAMINATION BY: MR. SIMONS	196
CROSS-EXAMINATION BY: MR. McCABE	206

INDEX OF EXHIBITS:

NUMBER	ADMITTED
Plaintiff's 27	18
Plaintiff's 18, Defendant's 106	31
Plaintiff's 2	138
Plaintiff's 3	138
Plaintiff's 19	152
Plaintiff's 4	161
Plaintiff's 27, Defendant's 132	176

(EXHIBITS NOT ATTACHED)

--oOo--

MAY 30, 2012 8:20 A.M.

PROCEEDINGS

THE COURT: Relative to the January 10, 2000 letter, and redacted, I'm going to -- the letter is going to go in unfiltered.

I have told counsel that regarding the alleged black bra/grooming incident, I will allow it in only as to liability case as to Mr. Kendrick.

I will reserve as to any other evidence and/or any knowledge of the Jehovah's Witnesses, defendant is established as to either the rollerblade, so-called rollerblading incident, that Ms. Francis would testify to allegedly, and the black bra incident, that I'm considering a limiting liability instruction as to those incidents and potential liability of Jehovah's Witnesses pending any laying foundation that they were aware of either or both.

Counsel for plaintiff has raised concerns about a whole slew of defense witnesses coming in saying, in effect, they had not reviewed any incidents at the local Kingdom Hall or the assembly hall. I'm not sure those two places are different, by the way. But they are referred to differently in the letter.

And I have indicated I am going to listen first to Ms. Conti's testimony as to the number of

incidents and the place and the timing prior to ruling upon by objection of plaintiff as to whether there is any relevancy to their testimony.

For instance, if Ms. Conti testifies about a specific date of a specific function and a defense witness stands up, comes up and says, "I was there. I had my eyes on Mr. Kendrick the entire time and I did not observe it," that's fine.

And, again, depending on the foundation laid by Ms. Conti, I would have to go witness-by-witness as to whether what they testify in defense is relative to the alleged incident and place and timing.

MR. SCHNACK: Mr. Simons has suggested Mr. Bowen might decline to grace us with his presence on Friday, and also that Mr. Lewis might not be available on Friday. So from a defense side, maybe we should just go forward with the trial, unless Mr. Simons has a motion --

MR. SIMONS: Two separate problems. One is that Mr. Bowen said if we are not going to be able to entertain his opinions with regard to theocratic warfare, disfellowshipping and the two witness rule, that he really doesn't see any particular validity to this proceeding.

And so I think he will not --

THE COURT: Please convey to Mr. Bowen that it is not personal in any way. It is just a concern the Court had as to --

And I would agree with him, I'm only a civil court and a humble public servant representing government. I'm not going to get into either the politics or the breadth of any of that. But that's okay. Mr. Lewis, I'm just going to put into Box 2.

I did -- and again, this is just -- I took care of Mr. McCabe on Friday. What are you doing with your back, Mr. Simons?

MR. SIMONS: I cannot get into the doctor, Dr. Prinsky, until next week. So I don't have a medical appointment on Friday. I had hoped to be there sometime during the day, but he can't get me.

THE COURT: Well, I took some actions, based upon what I told the jury yesterday. And most of the time I wouldn't do it, but I have a number of very intense cases. And I'm going to say we will poll the jury.

And forgive me on that, but it just tends to be what I'm dealing with right now, because I am booked the whole day on Friday, again based on what I told that jury, with stuff that is very time oriented. So I will be consistent with what I told the jury.

But I was -- I would promote -- why don't you tell the doctor, he is under judicial order to get you an appointment on Friday.

Now, Mr. McCabe, do you have your own mic, and it works?

MR. SIMONS: The last subject is we had sidebar during Mr. Clarke's cross-examination conducted as direct with regard to the testimony that I felt was covered under Motion in Limine Number 6, but it was offered anyway.

And I understand from our sidebar discussion that the Court is, at least, entertaining some sort of communication to the jury to the conclusion of Mr. Clarke's testimony.

THE COURT: I haven't figured out exactly what it is going to be because -- and it largely goes in my view to the resolution of a duty issue. Okay.

I allowed the testimony to go on effectively from both sides. There is a policy that is in evidence. I quickly and surely sustained the objection to get into the spiritual aspects. I was very close in my listing as to whether anybody said "privileged." Okay. I didn't hear the word "privileged" but I will check that out with the reporter.

I allowed testimony as to why people did

certain things. Part of it is an explanation of the policy. But -- and I'm going to consider all of this contextually in terms of the time of instructions.

Most times I do not tell juries with what legal decisions I have made, and clearly there is no reference. And everybody has got a professional here. There is no reference in duty to warn, because the issue is, of course, from the defense, is whether there is any duty at all and if there is by nature of the duty. Okay.

There has been a concern and an argument, that say, duty to warn within the context of the special instructions by the plaintiff, is a duty to protect.

The first question, of course is going to be: Is there a duty?

And then secondly what the nature of that duty is.

All of which I'm going to reserve for context and instruction for the duty, but before we submit it to the jury.

I have previously ruled that it is not, as a matter in the evidence code, these communications are not protected privileges. And I have made that part in my motion in limine ruling.

I was also very clear that there wasn't going

to be any reference to or argument regarding the spiritual privilege.

Having said that, I did allow inquiry by both into the policy and the implementation of it and the reasons why. But I will assess the quality and the nature of the evidence and figure out exactly how I approach and we approached that pending what we submit to the jury.

But I can certainly say to the defense that you argue -- if you argue that effectively it was privileged, well that gets something from the judge.

MR. SIMONS: So I'm a little unclear where that ends up. Are we going to say something after the conclusion of Mr. Clarke's testimony?

THE COURT: Well, I'm going to determine -- and I'm not going to do it after Mr. Clarke's testimony. I'm going to do it in the context before jury instructions. Just like I'm going to do an in limine instruction, depending on where the evidence sits in this case.

And I think one of the things that have been a little more challenging in this particular case are the nuances that I almost have, motions in limine are tied to evidence that is argued about, should not be decided until evidence is produced because of the

difficulty for the judge in deciding yay or nay. And I haven't having heard all the evidence.

But what I did say to you is that I confirmed my pretrial ruling that there is no privilege that applies, either spiritual or penitent, and that's not going to change. I'm going to have to assess when the dust settles exactly what, if anything, needs to be said to the jury to allow them to frame a legitimate decision.

MR. SCHNACK: Then one last question from our side. Evelyn Kendrick is going to testify today, and we did have a motion in limine on the hearsay issue of her testimony. You definitively ruled on it. Do we need to re-raise that at the time she is called to preserve it for appeal or not?

THE COURT: Good question. Now, I'm going to be very specific that -- but, again, it suffers the same as some of these other --

It is my understanding that Ms. Kendrick is going to give a demonstratively different version of what was said to the -- I was going to call it investigators for a minute -- as to what Mr. Kendrick had done under what circumstances.

And I have effectively ruled that they are not necessarily hearsay at all contextually in terms of

what is going on in this case, as to notice and duty and all kinds of things.

I believe they also can come in -- or a portion -- let me see if I can find quickly what motion in limine was entered -- Evelyn Kendrick, Number 3, Plaintiff -- strike that.

Defendant. All right. Specific limine in motion Number 3. Page 3. This is Evelyn about what Andrea told the elders. Kendrick had drugged her with Vicodin, went into her bedroom and fondled her breasts and genitals under her clothes.

Okay. And again, I have ruled as to that form of testimony, number 1, it could be offered for the non-hearsay purpose as to notice.

And secondly, could arguably come in as a prior and inconsistent statement of the hearsay exception. And I believe when I made the ruling I gave a third reason, which escapes me for a minute.

But the answer is she may testify as to what Andrea told the elders at the time of their meeting with her, her version of what Andrea told them.

MR. SCHNACK: Then we don't need to re-assert those objections again, your Honor?

THE COURT: No. Why don't we bring the jury in.

(Whereupon the following proceedings were heard in the presence of jurors)

THE COURT: All right. Members of the jury, welcome and thank you. As I relayed to you yesterday, Mr. Simons has been dealing with some back issues. I gave Mr. McCabe a microphone this morning. He has some voice issues. This Court generally has voice issues because of the nature of this department, but for Mr. McCabe, if it is his wish, any time he wants to use a microphone, I'm going to allow him to do it for the reason related.

All right. And then we will see what pops up tomorrow morning.

Mr. Simons, next witness.

MR. SIMONS: I don't think we finished with Mr. Clarke.

THE COURT: Forgive me. Mr. Clarke, once again, I will remind you that you are under oath.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Good morning, Mr. Clarke.

A. Good morning.

Q. Yesterday, we talked to you a little bit about Exhibit -- Plaintiff's Exhibit 1, Defense Exhibit

26?

THE COURT: Now, Mr. McCabe, you can come closer if you want. It is up to you, I would do the same for anyone. If you want to be closer, you can.

MR. McCABE: I think this is good, your Honor.

BY MR. McCABE:

Q. Do you recall that exhibit, sir?

A. No. Can we look at it, please?

Q. Yes. Plaintiff's Exhibit 1, Defense 26. It is the July 1, 1989 letter to the body of elders --

A. Yes, I remember that.

Q. -- from the Watchtower Bible and Tract.

A. Yes.

Q. And do you remember getting that letter to the congregation in North Fremont?

A. Yes, I do.

Q. Did you review it with the rest of the members of the body of elders?

A. Yes.

Q. What was your understanding as to the main thrust of that letter?

A. To keep confidentiality, private matters.

Q. How much of that letter was devoted to Watchtower's policy regarding child abuse?

A. There is just one paragraph, I believe it is -- page 3, a few lines.

Q. Page 3, Item B. Is that the paragraph?

A. That is the paragraph, yes.

Q. Was this the last statement of policy from Watchtower Bible and Tract regarding child abuse?

A. No. We have gotten subsequent articles in our Awake and Watchtower Magazines. And we have had instructions in the form of schools regarding child abuse.

Q. And how to deal with it?

A. How to deal with it, yes.

Q. I want to show you what we have marked as Plaintiff's Exhibit 27, Defense Exhibit 32.

And I ask if this may be admitted into evidence.

MR. SIMONS: No objection.

THE COURT: And, counsel, what is it specifically?

MR. McCABE: It is a letter, March 23rd, 1992 from Watchtower to all bodies of elders.

THE COURT: And that's fine. What exhibit is it?

MR. McCABE: Plaintiff's Exhibit 27.

THE COURT: Plaintiff's Exhibit 27 by

agreement is in. Thank you.

(Whereupon, Plaintiff's Exhibit Number 27 was admitted into evidence)

MR. McCABE: May I approach?

THE COURT: You may.

BY MR. McCABE:

Q. Mr. Clarke, do you recognize that exhibit?

A. Yes, I do.

Q. What is it?

A. It is a letter to all bodies of elders regarding helping victims of child abuse.

Q. Is there an attachment to that letter?

A. Yes, yes. It is entitled: "What only you can say to abuse victims."

Q. Did you read that letter and the attachment at the time you received it in the congregation?

A. Yes, many times.

Q. I would like to direct your attention to 2009. When did you first hear about the allegations of child abuse brought by Candace Conti?

A. That would be when she called me on the telephone and requested me to call the elders.

Q. Do you remember when that was?

A. Did you say when that was?

Q. Yes.

A. 2009. I don't recall what part of the year that was.

Q. And was that the phone call the first time that you knew about allegations of child abuse involving Candace Conti and Jonathan Kendrick?

A. Which time was that?

Q. Did she tell you in that phone conversation that Mr. Kendrick was the perpetrator of her abuse?

A. She did mention his name, and she wanted to talk to us about him.

Q. Did you subsequently have a further discussion with her?

A. Yes, we immediately invited her to the Kingdom Hall. And within a few days, we met with her at the Kingdom Hall, myself and Larry Lamerdin.

Q. Did you do anything to prepare for that meeting?

A. Well, one thing, we reviewed this letter. We reviewed this paragraph on what we could say and do. We wanted to provide comfort and let her know how much we valued her, and we wanted to help her in any way we could scripturally and spiritually.

Q. What took place at the meeting?

A. Well, we opened with prayer, read a scripture, probably one of these noted here, and then we

listened. We listened a lot as she expressed what she alleged.

Q. How long did the meeting last?

A. It was probably an hour.

Q. Did you do anything after the meeting to address her complaints?

A. We compiled a letter with the details of what she had told us. We located where Jonathan Kendrick was now attending meetings, and we forwarded that letter to that body of elders.

Q. Did you have any other meetings after that with Candace Conti?

A. I did make several phone calls. She called me back and we tried to schedule another meeting. Some of those fell through. She couldn't make that. And eventually she said she didn't want to meet anymore.

Q. Did you initiate any meetings with members of her family?

A. Yes. We met with her father, Neal Conti. And we encouraged him to really reach out to his daughter, because I believe she was living in Southern California and he was living up here. And so we encouraged him to reach out to his daughter, that she needed his fatherly attention.

Q. Did you have any contact with Candace's

mother, Kathleen Conti?

A. She called me, and she was familiar with this allegation, she and Candace had spoke about it. And we gave her the same advice. "Please, you know, reach out to your daughter. She needs your attention."

MR. McCABE: Thank you, your Honor. I have no further questions.

THE COURT: Mr. Schnack.

MR. SCHNACK: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Good morning, Mr. Clarke.

A. Good morning.

Q. I have a few questions for you. Within the body of elders at the North Fremont Congregation, do you hold any position, like a coordinating elder or any other type of thing?

A. Yes. I'm referred to as the coordinator, yes.

Q. And what do those duties involve?

A. It means to coordinate activities, schedule meetings, those sort of things. Nothing beyond that.

Q. And did you hold that back in the '90s as well, or is it more recent?

A. In 1992, '93, somewhere around there.

Q. And you have been doing it since then?

A. Yes.

Q. Okay. Now, with respect to how the church services are held at the North Fremont Congregation, do you hold Sunday School classes there where children are separated from their parents?

A. No. Children are always sitting with their parents.

Q. And is that the same in all church-sponsored activities at the North Fremont Congregation that the children are not separated from their parents?

A. Correct.

Q. Now, with respect to Plaintiff's Exhibit --

Or I'm sorry. Defense Exhibit 26, Plaintiff's Number 1, we have the July 1st, 1989 letter put up. Mr. McCabe just asked about that.

MR. SCHNACK: May I approach, your Honor?

THE COURT: You may.

BY MR. SCHNACK:

Q. And you are familiar with this letter; is that correct?

A. Correct, yes.

Q. And it is dated July 1 of '89. Correct?

A. Correct.

Q. And how long have you been an elder again?
A. Since the mid-70's, '77, '78.
Q. Okay. And you said you were in Hayward when you were an elder?
A. San Leandro.
Q. Okay. And then you later moved to Fremont and have been an elder there ever since. Correct?
A. Correct.
Q. Has the policy that is referenced in that July 1 of 1989 letter, was that a new policy on July 1 of '89?
A. No.
Q. What was the policy with respect to the confidentiality, as you described it, at the time you became an elder in the '70s?
A. It was the same thing. Maintain confidentiality. It is a scriptural requirement. We don't divulge private information.
Q. And what is the basis for that policy that has been in effect since the '70s?
A. It is based on the scriptures. The Bible tells us not to reveal confidential matters.
Q. Let's turn to the second page.
And do you see the second full paragraph? It is highlighted here.

If you could read that into the record there from the letter you have.

Do you see that? It starts with:

"The need for elders to maintain certain confidentiality has been repeatedly stressed."

Do you see that?

A. Yes.

Q. Why don't you just read that paragraph into the record for us, please.

A. It says:

"Please see the Watchtower of April 1, 1971, pages 222 through 224. And the September 1, 1987, pages 12 through 15. The September 1977 archives, service, page 6 paragraph 36, and the KSW textbook, page 65, also provide helpful direction and counsel that material strongly emphasized the elder's responsibility to avoid revealing confidential information to those not entitled to it."

Q. So at least according to that paragraph, the policy of confidentiality has been in play since at least 1971. Is that how you read that?

A. Oh, yes.

Q. And to follow up on that, then. So the

second paragraph that references the confidentiality obligation, that came up before any child abuse issues came up within the church.

Is that fair to say?

A. It is fair to say, yes.

MR. SCHNACK: That's all the questions I have, your Honor. Thank you.

THE COURT: Mr. Simons?

MR. SIMONS: Yes. Thank you, your Honor. Very briefly.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Sir, you described some of the meetings at the Kingdom Hall, and you said that before they begin there is a lot of kids running around and a lot of distractions and a lot of things for the elders to have to look after and microphones and parking and all that sort of thing.

Do you remember that testimony from yesterday?

A. Yes.

Q. And that's a pretty accurate description of what is going on during the times before or after these meetings. There is people visiting. People want to

talk to you. People you want to talk to. The elders, themselves, may be having little discussions among themselves. There is a lot going on at these meetings. Correct?

A. To a degree, yes.

Q. Now, you mentioned that you and Mr. Abrahamson and the other elders were going to keep a close eye on Jonathan Kendrick, after you learned in 1993, of his abuse of his stepdaughter. Correct?

A. Correct.

Q. And you took it upon yourselves to protect other children in the congregation from further abuse by Mr. Kendrick?

A. I don't think that is a fair statement.

Q. Okay. You don't agree with that?

A. No. We don't just take it upon ourselves. We educate the families. They have to be aware too.

Q. Did you educate the families, or at least the parents, to be aware of Jonathan Kendrick as a specific individual who had already committed an act of child sexual abuse?

A. I answered that yesterday. We won't reveal that. Confidential information. But we make them aware through information in these articles in the Awake and Watchtower.

The announcement that Mr. Kendrick was no longer serving as a ministerial servant is a warning in itself.

Q. You mentioned that maybe two, three, four ministerial servants had been deleted during your years with the North Fremont Congregation.

A. Uh-huh.

Q. Is that correct?

A. Correct.

Q. Had any of the other ministerial servants been deleted for committing child sexual abuse?

A. No.

Q. So the fact that a ministerial servant has been deleted or removed doesn't tell the congregation anything about the reason why?

A. Correct.

Q. And it certainly does not tell them Jonathan Kendrick had sexually abused a child?

A. Corrected.

Q. Looking back -- I hope you still have it in front of you, Exhibit 1, the July 1989 policy, we looked at the section on child abuse. And the section on child abuse actually is the shortest section in the entire document, is it not?

A. Correct. It wasn't written to address child

abuse, it was written to address confidentiality.

Q. All right. Well, we will go through that in a second.

What it tells you is contact the Society's Legal Department immediately.

A. And also to review the January 22nd Awake.

Q. Which we have done with Mr. Abrahamson in your absence, so I won't go back through that with you. But let's talk about what it has. It talks about specific cases. And it lists -- looks like, six, seven -- seven separate cases or situations.

One is unrelated to our specific matters involving judicial committees. That's internal affairs involving the church itself. Correct?

A. Correct.

Q. And then it talks about child abuse, search warrants.

Follow along with me let me make sure I'm not getting this wrong.

Crimes. You knew that child sexual abuse was a crime. Correct?

A. Correct.

Q. When servants and publishers moved.

And I think you mentioned that had some applicability of Mr. Kendrick because he had moved.

A. Yes.

Q. When lawsuits are threatened. Child custody.

A. Uh-huh.

Q. Correct?

A. Yes.

Q. So the range of materials that are subject to this policy statement are the ones that we have just gone through, those seven?

A. Yes. But as mentioned in paragraph 3, this is based on scriptures, this is based on keeping confidentiality.

Q. But it all assumes that reports of childhood sexual abuse -- and it assumes for this specific report of child sexual abuse by Jonathan Kendrick within the North Fremont Congregation -- was confidential?

A. Was that a question?

Q. Yes. Doesn't it assume that?

A. That the abuse is confidential?

Q. Correct.

A. Yes, it is confidential.

Q. And when you say, "Yes, it is confidential."

A. To the body of elders.

Q. You are telling me that because that's what the policy coming from New York tells you?

A. And that's what the scriptures tell us too.

We don't reveal confidential information.

Q. Right.

A. Just like we said yesterday, a priest would not reveal confidential information.

Q. Let's not go round and round. What you are telling me is when the Legal Department in New York says it is confidential, it is confidential, to you?

MR. SCHNACK: Objection, your Honor. This exhibit doesn't come from the Legal Department.

THE COURT: I will sustain it on that basis.

BY MR. SIMONS:

Q. What you are telling us is when Watchtower New York tells you it is confidential, then you deem it confidential?

A. Until we talk to them.

Q. You don't independently have any experience or training that allows you to determine what is confidential within the law and what is not?

A. True. And I'm happy to defer to Watchtower and to contact Watchtower so that we are all in agreement. It would make no sense for me to make an independent decision, based on what I think is right. I mean, it might appear to be the right decision but it might cause other complications I haven't fully thought out. So I'm more than willing to check. I will check.

Q. So in this particular case, all of your understanding came from the instructions you got from Watchtower New York as to the what was or was not confidential?

A. Yes. And not based just on this letter, based on the entire period I served as an overseer or as an elder.

Q. All right. Looking, then, at Plaintiff's 18 in your binder, and Defendant 106. Is that in evidence? And if not, may it be received?

MR. SCHNACK: What is the number?

MR. SIMONS: 18/106.

THE COURT: That's a December 20, 2009 letter.

MR. SCHNACK: No objection, your Honor.

THE COURT: All right. Plaintiff's 18 -- letters in reference to Plaintiff's 18, Defendant's 106 is in.

(Whereupon, Plaintiff's Exhibit Number 18 and Defendant's Exhibit Number 106 was admitted into evidence)

BY MR. SIMONS:

Q. And this is the letter you wrote in 2009 after meeting with Candace?

A. Correct.

Q. And it was not just yourself, it was also with Elder Larry Lamerdin?

A. Correct.

Q. And let's go to page 2.

And that's your signature at the bottom. Correct?

A. Yes, sir.

Q. You met with Neal Conti after meeting with Candace. Correct?

A. Correct.

Q. Could we blow this paragraph up, please?

Did he offer you any help or insight?

A. Based on that paragraph, he didn't give us much insight.

Q. Did he give you help for his daughter?

A. We encouraged him to reach out to his daughter. He said he would, and we later heard he made attempts to talk with her.

Q. He said he would try?

A. Yes. That's all he could do is try.

Q. And as far as you know, he did?

A. Yes.

Q. And that's based on what he told you?

A. His conversation, yes, later on.

Not expressed in this letter, but weeks

later.

Q. But he did tell you the family was very troubled back then, and that Candace was asked to shoulder too big a load for a young girl?

A. Yes. We knew that.

Q. And let's go back to the first page. And you did learn that the Conti family and Jonathan Kendrick were close friends and spent time together?

A. Yes.

Q. And Kathy was having alcohol and emotional problems?

A. Yes.

Q. And they relied on Jonathan Kendrick more than they should have?

A. That's what it says in the letter.

Q. And that's your letter?

A. Yes.

MR. SIMONS: Thank you. Nothing further, your Honor.

THE COURT: Mr. McCabe?

CROSS-EXAMINATION

BY MR. McCABE:

Q. Will you look at the second page of Plaintiff's 18 and Defendant's 106.

A. Okay.

Q. Mr. Clarke, during this meeting with Neal Conti, did you ask him if he suspected that his daughter, Candace, had been abused by Jonathan Kendrick?

A. Yes, we did.

Q. And what was his response?

A. He said he never suspected that.

MR. McCABE: No further questions.

THE COURT: Mr. Schnack.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Mr. Clarke, Mr. Simons asked you about removal. When a ministerial servant is removed, you said that is rare occurrence. Correct? That was about three or four times in twenty years?

A. Correct.

Q. And when that is announced to the congregation, does the congregation --

In your experience, how does the congregation interpret that?

MR. SIMONS: Objection. Calls for speculation.

THE COURT: Sustained.

BY MR. SCHNACK:

Q. With respect to removal again, it is a

serious thing, in your experience?

A. Very serious, yes.

Q. And with respect to the instructions again. We are back to the Exhibit 1 that is in front of you. It is the July 1, 1989 letter. What is the basis for those instructions?

A. It is scriptural. Based on the Bible.

MR. McCABE: No further questions, your Honor.

MR. SIMONS: Nothing further.

THE COURT: Mr. Clarke. Thank you for your time. You are now excused.

MR. SIMONS: We call Evelyn Kendrick, who I believe is out by the elevators.

EVELYN KENDRICK

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: Evelyn Ruth Kendrick. E-V-E-L-Y-N, Kendrick, K-E-N-D-R-I-C-K.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Ms. Kendrick, tell us what your occupation is.

A. I work for a hospital. I have been there 23 years. And I work in the foundation department, and we do fundraising for the hospital.

Q. And what is the nature of your particular job?

A. I'm executive assistant in the foundation department.

Q. And where do you live?

A. I live in Mountain House, California.

Q. And who do you reside with?

A. My daughter, Andrea, and her family.

Q. You said Andrea.

Do people who know her call her Andraya (phonetic)?

A. Andrea.

Q. Andrea. Not Andraya (phonetic)?

A. Right.

Q. A person who would call her Andraya (phonetic) would not be acquainted with her particularly well?

A. Probably so.

Q. Now, were you married to Jonathan Kendrick?

A. Yes.

Q. And when did you first meet Mr. Kendrick?

A. I believe we met in either '86 or '87 because we -- by the time, when we new each other to the time we got married, we had known each other between a year and year-and-a-half. So between '86 and '87.

Q. How old was Andrea at that time?

A. At the time I met him, she was seven and a half, eight.

Q. And where did you and Mr. Kendrick live?

A. We both lived in Fremont.

Q. And did you move in together at some point?

A. Right before the marriage.

Q. When were you married?

A. May 21st, 1988.

Q. Was there a time that you and Mr. Kendrick became involved in Jehovah's Witnesses?

A. Yes.

Q. When was that?

A. Maybe six months before we got married.

Q. What were the circumstances that caused you to become involved with Jehovah's Witnesses?

A. Well, I had been brought up a Protestant my whole life and my dad was a minister. But when I moved out at 18, I stopped going to church, and so all those

years up to the time I married Jonathan, I really wasn't involved in any church, going or anything. So at that point, when he brought Jehovah's Witnesses up to me, I told him I would go to see how I felt about the religion, and so I decided to go with him.

Q. Whose idea was it, initially?

A. His. His grandmother was a Jehovah's Witnesses, and so he wanted to try it out.

Q. And did you then become involved in the North Congregation in Fremont?

A. Yes.

Q. So did Jonathan Kendrick?

A. Yes.

Q. What was the level of his involvement?

A. He was baptized first before I was, and he became a ministerial servant. I think. I remember that is what it is called.

Q. Was part of your social life also involving the Jehovah's Witnesses North Congregation community?

A. Yes.

Q. In what way?

A. We went out in door-to-door service, and we socialized by going out to dinners with different people and having people over to our house for dinner, that sort of thing.

Q. Were you acquainted in a social basis with some of the elders?

A. Yes.

Q. In what way?

A. Same thing, dinners and door-to-door service, that sort of thing.

Q. How much a part of your life during this time was the Jehovah's Witnesses congregation and community?

A. How much were we involved?

Q. Yeah, how much a part of your life was it?

A. A big part.

Q. And describe what you mean by that?

A. Well, we only socialized with people of that congregation. We were kind of -- well, not told outright, but that we should only associate with people of that religion and not of any other religion because they could be a bad influence.

Q. Now, with regard to Mr. Kendrick at the time that you were first married to him, did he manifest an interest in some fashion in what I will call a little girl type of sexuality?

A. With me, he did.

Q. And in what way?

A. Well, for instance, the day we were married, on our honeymoon the next day, I put on a little summer

outfit, a little short skirt. And he would tell me things like "Come and sit on my lap, little girl."

And at the time I was, like, 110 pounds. And he would always tell me I was too fat for my height -- 110 was too fat for me, and I should be weighing about 80 pounds.

And I thought, 80 pounds? That's a child. But he always called me a little girl and always wanted me to sit on his lap. I just thought he was being affectionate.

Q. Did there come a time when you learned that he had sexually abused your daughter?

A. Yes, I did. She told me when it happened.

Q. And was there, after that time, a meeting that was held with some of the elders?

A. Yes, I called them because I felt they could help us out and they would protect us -- they would protect me and my daughter somehow. So, yes, I did.

Q. Why did you call the elders and not the police?

A. We were kind of a close knit group. So I figured they were the ones to tell, and they were the ones to help us, and somehow help Jonathan with whatever he was going through.

Q. Do you remember specifically which elder you

called?

A. I believe I called Gary Abrahamson.

Q. And then there was a meeting at your house?

A. Yes.

Q. And Elders Abrahamson and Clarke were there?

A. Yes, they were both there.

Q. Yourself?

A. Yes.

Q. And Jonathan?

A. And Jonathan.

Q. And Andrea?

A. I don't remember Andrea being there. She may have come in toward the end of the meeting, but I don't recall her sitting there during the whole meeting. I don't recall her being there the whole time.

Q. At some point, Andrea came in and told the elders what had happened; is that correct?

A. I believe so.

Q. And do you have a recollection of what she told the elders in that meeting at your house?

A. I would say she told them exactly what had happened, exactly what she told me, that he had inappropriately touched her in a few places while she was sleeping.

Q. Did she say where those places were?

A. Yes. She said one was underneath her blouse, underneath her bra, and then he tried to get underneath her underwear.

And at the time she told me -- I didn't realize -- he had given her drugs to make her sleepy. He had given her Vicodin and he was the only one who had Vicodin in the house. So he gave her two Vicodins. And I was real upset about that, him giving her drugs like that. And now I assume that he was doing that so she could be sleepy and she wouldn't realize what he was doing.

Q. Did you tell -- I'm sorry.

Did Andrea tell the elders about the Vicodin?

A. I believe she did.

Q. And when you say you believe she did, do you have a recollection of the Vicodin being discussed in that meeting?

A. Yes, I do. I believe she said that "He gave me two Vicodins to take because I had a headache." Yes.

Q. Now, what response did you get from the elders when this report was made?

A. They didn't seem to be overly concerned about it. And they more or less said that it was my fault because I had stopped sleeping -- I had stopped sharing a bed with my husband at that time.

Q. Do you recall whether or not -- do you recall the exact words that they used?

A. I believe they said something to the effect that it was my fault that he did that to Andrea because I wasn't performing my wifely duties.

Q. Was there some discussion in that meeting in which you or Andrea asked the elders to keep this private?

A. Oh, no. No, I don't believe so.

Q. And at any time did it come up between yourself and the elders that you or Andrea were asking that what Jonathan did be kept private?

A. No.

Q. Was that important to you at that time?

A. Well, I believe that they should have done something to stop it. I mean, I thought it might have been an isolated incident, but I called them so that they could help and I -- I wanted them to do something so I wouldn't have said keep it quiet, because eventually we did call the police.

Q. And that was a couple months later?

A. Yes. I didn't do it right away because I thought I was going to fix everything. I didn't want my marriage to dissolve.

And like I said, I thought it was an isolated

incident, and I was going to try to fix things myself. And it didn't work that way.

Q. Did the elders ever speak to you apart from Jonathan being in the room?

A. I don't believe so.

Q. On this subject, I'm talking about?

A. No.

Q. Did they ever talk separate to Andrea?

A. No.

MR. SIMONS: Nothing further, your Honor.

MR. SCHNACK: I'll go first, your Honor, because of Mr. McCabe's voice.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Mrs. Kendrick, my name is Bob Schnack. I have some questions for you. You mentioned you married Jonathan Kendrick on May 21, 1988; is that correct?

A. Yes.

Q. And your daughter, Andrea, was from a prior marriage, a prior relationship?

A. Yes.

Q. When was Andrea born?

A. I was first married at the age of 18, and she was born when I was 25. So I was married seven years or

so.

Q. So was she born July of '78 or July '79?

A. '79.

Q. And then did Andrea live with you and Mr. Kendrick after you married him?

A. Yes.

Q. And did Andrea live with you and Mr. Kendrick the entire time you were together?

A. No. No. She stayed with my mother until we actually got married, and then she moved in.

Q. Okay. So Andrea moved in with you in roughly May of 1988 when you married Jonathan?

A. Yes.

Q. When you married Jonathan?

A. Right.

Q. Now, your marriage to Jonathan Kendrick eventually ended in a divorce. Correct?

A. Yes.

Q. And the divorce itself was entered in 1998; is that correct?

A. Correct.

Q. But you had separated in October of 1996; is that correct?

A. Yes, about two years, right.

Q. Is the October time frame correct?

A. Yes.

Q. And indeed the divorce papers show that you were separated on October 11 of 1996; do you recall that?

A. That sounds about right.

Q. Okay. And up until -- so from the time you married Jonathan May 21, 1988 up until October 11, 1996, did you and Jonathan live together?

A. Yes, in separate rooms.

Q. In separate rooms, but you lived together in the same house?

A. Yes.

Q. And Andrea lived with you during that entire time as well?

A. Yes.

Q. And then in October -- back in October 11 of '96, you moved out of the family home; is that correct?

A. Yes, I did. Andrea and I did.

Q. And where did you move then?

A. We moved into a condominium in Newark.

Q. Okay. And that's a condominium that Jonathan helped find for you at that point?

A. No. I found it. But he helped me with a little bit of money.

Q. Okay.

A. But I found it.

Q. Okay. So Jonathan stayed in the house you lived in?

A. He stayed in it until they were foreclosing it, and then he had to get out.

Q. And that was just what, three or four weeks later after you had moved out. Correct?

A. I don't recall, because I really wasn't keeping in contact with him anymore.

Q. Were you aware that in either late October of '96 or early November of '96 that Jonathan Kendrick moved into the Francis house?

A. I wasn't aware of that.

Q. Okay. But you do confirm that you separated from him in October 11 of '96?

A. Yes.

Q. And prior to that, you and Andrea had been living in the same house with Jonathan Kendrick?

A. Yes.

Q. Let's now turn to the incident of sexual abuse by Jonathan Kendrick of Andrea. You said that your daughter had reported that to you when that happened?

A. Yes. Within five or ten minutes.

Q. And that was back in July of 1993; is that

correct?

A. I believe that's about the right time frame.

Q. It was right around the time of her birthday. Wasn't that correct? Andrea? Do you recall that?

A. Honestly, I don't recall the exact date.

Q. And you said you did not report it to the police when she told you?

A. Not initially.

Q. Okay. Why not?

A. I thought it was an isolated incident. I thought maybe because he had been drinking. I wanted to try to save my marriage. And so I called the elders instead thinking that they could help us out.

Q. Did you call the elders in July of '93 or did you wait until November?

A. I think I might have waited a bit.

Q. And, again, you were trying to deal with it within the family?

A. Yes.

Q. Is that a fair statement?

A. Yes. I was actually a little embarrassed to call anybody, but, yes, I thought I was going to try to fix it.

Q. Were you aware of any other incidents of sex abuse between Jonathan and Andrea?

A. No. This was a complete shock.
Q. And there were no incidents after?
A. Not that I know of. Not with her. No. Not with her. I was very watchful after that with her.
Q. So in November 1993, the two elders came to your house? Correct?
A. Yes.
Q. Where did you sit in the house when the elders came?
A. In the kitchen. Dining, kitchen.
Q. And you sounded somewhat ambivalent as to whether Andrea was there the entire time. Do you specifically remember that she walked in, or is it just a vague memory?
A. It is kind of vague, but I think I have a small recollection that she walked in toward the end, maybe the last few minutes.
Q. But the two elders have already testified that she was there the entire time, and they described sitting around the table as you did.
A. We did sit around the table. I don't recall my daughter being there the whole time.
Q. But you said that's a vague memory?
A. Yes.
Q. And did the elders come with their Bibles?

A. Yes. They always have their Bibles.
Q. Did they say a prayer to start the meeting?
A. I believe so.
Q. And then did they ask Jonathan Kendrick what had happened?
A. Yes.
Q. And did he confess to at least touching Andrea's breasts?
A. Yes.
Q. Did he say it was inadvertent?
A. He didn't.
Q. He didn't? You didn't hear that?
A. No.
Q. Did the elders tell you during that meeting that you could report it to the police?
A. I don't recall.
Q. But you are not sure one way or the other?
A. No.
Q. But you did, in fact, report it to the police in 1994. Correct?
A. Yes.
Q. Were you interviewed by the police?
A. I believe we were both.
Yeah. We were both.
Q. But you were interviewed separately from

Jonathan. Correct?

A. Yes.

Q. And you were interviewed separately from Andrea. Correct?

A. I believe it was Andrea and I both together.

Q. And do you have a recall of that? Because the police report says otherwise.

A. Maybe it was separately. I don't remember for sure. I thought it was both of us together.

Q. Do you recall telling the police that Andrea had taken Vicodin for her back problem?

A. Yes, and she didn't have a back problem.

Q. You don't recall telling the police that?

A. No. She said that her head was hurting, and her back was hurting from her headache, and that's why he said he gave her the Vicodin.

Q. So are you telling me you did not tell the police that Andrea had taken Vicodin for her back problem?

A. No. I don't recall saying that.

MR. SCHNACK: Okay. Let's go ahead and --

Your Honor, it is Plaintiff's 5 and Defendant's 94. It is the Fremont Police report. I think we discussed that with counsel.

MR. SIMONS: I think it is for identification

only, though. Here is the document.

MR. McCABE: Are you objecting?

MR. SIMONS: Yes, to the document. Yes. Not to the substance.

THE COURT: Certainly, at this juncture, I will allow reference to it for identification purposes only.

In a moment I will get the entire report.

MR. SCHNACK: I would like to use it, your Honor, to refresh the witness' recollection, if I may.

THE COURT: Okay. You may start with that. He is going to present it to you, ma'am, for a moment, to see if you can take a look at it to see if it refreshes your recollection first. But also, it is for identification purposes only. But first to refresh and then we can go from there.

MR. SCHNACK: May I approach, your Honor?

THE COURT: You may.

BY MR. SCHNACK:

Q. Ms. Kendrick, I'm going to stand alongside you here.

Have you seen this police report before?

A. That was many years ago.

Q. Did you read through it, at the time when you saw it?

A. Yes, I certainly did.

Q. Now, here on this page, it shows that, it says that CPS case worker Nicole Radford, and the police officer, Mr. Davila, interviewed the victim and interviewed her at the hospital. Do you see that?

Do you recall that Andrea was interviewed at the hospital by the police and the CPS person?

A. Yes, I do.

Q. Okay. And it says here, the victim told us her stepfather and mother found out that she was sexually active with her boyfriend. She took one Vicodin for her back problem --

MR. SIMONS: Your Honor, if it is going to refresh the witness' recollection, she should read it to herself and --

THE COURT: I agree. Why don't you show it to her, counsel, and let her read it to see if it refreshes her recollection?

MR. SCHNACK: I would ask you to read the highlighted sections.

THE WITNESS: Out loud?

MR. SCHNACK: No. To yourself.

THE WITNESS: Just that portion (indication).

BY MR. SCHNACK:

Q. You can stop there.

So does that refresh your recollection as to whether Andrea took the Vicodin herself?

A. She didn't take it herself. He gave it to her, and he gave her two.

Q. Okay. Do you recall telling the police that, indeed, she had taken the Vicodin herself?

A. I don't recall that part.

Q. Okay. Why don't you read this page. This is where they --

A. (Witness complies).

Q. So doesn't that refresh your recollection that you had told the police that when Jonathan went into the bedroom Andrea was in bed because she had taken Vicodin earlier for her back pain?

A. It must be true because it is written in there.

Q. That is what you told the police then?

A. I must have.

Q. And was it true when you told the police that?

A. Yes. After Andrea had told me that he had given her the Vicodin, and she took it.

Q. But you told the police she had taken it?

A. I must have. It is in there.

Q. And you told the police that she had taken it

for her back pain. Correct?

A. Correct.

Q. And wouldn't your memory have been better back in February of 1994 than it was some 18 years later?

A. Maybe.

Q. So the incident was fresh in your mind back then. Right?

A. Yes. You try to forget all those things, you know, during the years.

Q. Do you recall that Mr. Kendrick was charged with a misdemeanor as a result of that conduct?

A. Yes.

Q. Was he convicted?

A. Yes.

Q. Did you ever tell the elders that you had gone to the police?

A. I don't recall.

Q. Do you know if the police ever talked to the elders about their investigation of Mr. Kendrick in that 1993 incident?

A. Not to my knowledge.

Q. Do you know if the district attorney ever talked to the elders about that 1993 incident and the investigation?

A. I don't know.

Q. You don't know if the elders knew whether Mr. Kendrick had been convicted related to that --

A. I'm sure they knew, but I don't remember when they talked to them.

Q. How did you know that they knew?

A. I think I just assumed.

Q. But you don't know one way or the other. Correct?

A. No.

THE COURT: Well, a little bit of the old business of the old double negative. So when you never or you don't know, and the answer is no, then the effect of a double negative. And it has happened several occasions during the course of this trial. So let's not get into the double negative. Why don't you rephrase it.

MR. SCHNACK: I appreciate it, your Honor. It is a bad question.

THE COURT: I'm not being judgmental. I just wanted to make sure that the jury understands as a matter of the use of the language, when you say "don't" and "no" or "never" and "no," the effect of that answer is when you use double negatives. It is like physics, you now have a positive.

So back to you for a moment counsel.

MR. SCHNACK: I appreciate it, your Honor.

BY MR. SCHNACK:

Q. You have no knowledge that the elders were informed of Mr. Kendrick's conviction for the July 1993 incident?

A. No.

Q. And to go back, you lived with Mr. Kendrick from the time you married him, May 21st of 1988 until you moved out on October 11, 1996. Correct?

A. Yes.

Q. And Andrea lived with you and him during that same time period?

A. Right.

MR. SCHNACK: Thank you. Nothing further.

MR. SIMONS: I have a couple of redirect questions.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. So by the time you called the elders some months later, it is because you realized you can't deal with this in a family situation anymore.

Is that fair?

A. Right.

Q. Counsel asked you about the house. Were there times that Mr. Kendrick would have the house all to himself?

A. Yes. Many times. Andrea and I would take off for the weekend because it was unbearable there at times. He would fight with us and physically hurt us and so forth. And she wasn't comfortable with him there. And so yes -- and he would often pick fights and then we would leave for the weekend, and so he was there alone quite a bit.

Q. And when you say he would pick fights, Mr. Kendrick would initiate some kind of a fight that would drive you and Andrea out of the house?

A. Yes. He knew which button to push to get me upset, and we would start arguing, and then I would say, "Okay. I have got to get out of here." And then we would leave.

Q. So he would have the house all to himself for days at a time on frequent occasions?

A. Yes.

Q. On the question of the Vicodin, when you say she took it herself, does that mean that Andrea had her own prescription for Vicodin?

A. No. He gave it to her, and she took it. And he didn't put it in her mouth, he put it in her hand,

and she took it.

Q. So when you say she took it, you are not referring to the fact that it was her Vicodin.

A. No. No, I am not. It was his. He often had Vicodin in the medicine cabinet.

Q. Do you know whether or not at the time the criminal conviction we mentioned was held, whether or not Mr. Kendrick was still a very active member within the congregation?

A. He was. I was surprised that -- you know, what they do is when someone does wrong, they disfellowship them, and they move away.

MR. SIMONS: Hold on. I'm sorry to interrupt you.

THE COURT: Let's strike any reference to "disfellowship" and move on.

MR. SIMONS: And I have no further questions on redirect.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Ms. Kendrick, you said you worked at the same job for 23 years?

A. Yes.

Q. Is that a 40-hour a week job?

A. Yes.

Q. What was your work schedule in the '94 to '96 time frame?

A. It has always been 8:00 to 4:30.

Q. Monday through Friday?

A. Yes.

Q. And you said that you and Andrea would take off on weekends?

A. Uh-huh.

Q. And let me back up on that. You had marital problems prior to July of 1993 with Mr. Kendrick, did you not?

A. Yes.

Q. And you called the elders occasionally because you and he would get into yelling circumstances, shall we say?

A. A little more than yelling. He was violent.

Q. And reports are that you are not a shrinking violet either, that you would yell back at him?

A. I would yell, but I never struck him ever.

Q. Okay.

A. Ever.

Q. Fair enough. And when did the marital problems begin? In the early '90s, late '80s?

A. Actually, right after we got married, he started telling me I was too fat for him. At the time I

was very small and thin. And he constantly nagged me about my weight, about my weight. And that started pushing me away, and I started distancing myself from him.

And after you are told over and over that you are not good enough or you are too fat, I started gaining weight and I started moving away from him. I didn't want to be around him because I didn't want him looking at me anymore in a sexual way because he said I didn't please him.

Q. When did you start taking off for weekends that you described?

A. It was after the incident.

Q. After this July '93 incident?

A. Yes.

Q. Where did you go with Andrea?

A. A couple times we went to Mendocino. A couple times we went to Monterey.

Q. When did you leave?

A. We would leave either on a Friday evening or early Saturday morning, and we returned Sunday evening, because I had to go to work.

Q. And how many times did you do that, say, during 1994, those types of trips?

A. Maybe three or four.

Q. Three or four during the entire year?
A. Uh-huh.
Q. Is that yes?
A. Yes.
Q. But all the other weekends, then, you would have been at home or in the area?
A. We would have been in the area, but we probably would go out and do things. But, yes, we would come back home the same day. We tried to get out of the house as much as possible.
Q. Okay. But, again, by getting out of the house on those types of things, you would be out for a few hours and then come back?
A. Yes. Correct.
Q. So during '94, you did three or four of those trips where you were gone the entire weekend?
How about '95? What is your best memory as to how many of those trips you took where you were away for the entire weekend?
A. We probably did that in '95, well, maybe two or three times.
Q. Two or three times in '95 when you were gone for the entire weekend?
A. I believe so.
Q. And how about 1996 up until you separated in

October?

A. Maybe once or twice.

Q. Once or twice. Okay. So in '94, '95 and '96 until you separated, my math has it, you know, six to perhaps eight times that you spent weekends away from the house?

A. Yes.

Q. Is that accurate?

A. Yes.

Q. But otherwise, during that time, you and Andrea were in the area, would be at the house on Sundays, for example?

A. Yes.

MR. SCHNACK: No other questions, your Honor.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Even if you were staying at the house, were there frequent occasions because Mr. Kendrick would be there or might be there, you would get out of the house for as long as possible?

A. Oh, of course. We were always trying to get away from him. He wasn't very pleasant to be around.

Q. And he had the house to himself most of the time?

A. Yes.

MR. SIMONS: Nothing further.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Ms. Kendrick, are you changing your story then? You just said you would be out of the house on Sundays for a couple of hours and then come back.

A. That's what I said.

MR. SCHNACK: Okay. Nothing further.

MR. SIMONS: May this witness be excused?

THE COURT: Mr. Kendrick, thank you for your time. You are now excused.

MR. SIMONS: May she remain in the courtroom?

THE COURT: She may.

MR. SIMONS: There has been a change in witnesses.

(Sidebar discussion)

CLAUDIA FRANCIS

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: Claudia Francis.

C-L-A-U-D-I-A, F-R-A-N-C-I S.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Ms. Francis, in what city do you currently live?

A. Fremont.

Q. Are you involved in a Jehovah's Witnesses organization?

A. Yes, I am.

Q. Which one?

A. I am in the Mountain View French Congregation.

Q. Before that, were you a member of the North Fremont congregation?

A. Yes.

Q. And was your husband an elder in that congregation?

A. Yes.

Q. What years were you involved in North Fremont?

A. We were there from 1989 until about 2006.

Q. And while in the time period of '89 to '06, was your husband an elder there for the entire period?

A. No.

Q. When did he cease his duties as an elder?
A. I don't remember the exact time. I know that he was an elder for about five years or more. I would say in the year 1998 is when he stepped down, no longer being an elder.
Q. And from your deposition, we know that there are some health issues with him?
A. Yes.
Q. Did you, in the time that you were in the North Fremont Congregation, become acquainted with Jonathan Kendrick?
A. Yes.
Q. And how did you meet Mr. Kendrick?
A. I met Mr. Kendrick because he was my husband's very good friend.
Q. Where did your husband and Mr. Kendrick first meet?
A. They met at the Kingdom Hall in North Fremont.
Q. Do you recall, when you came to the congregation, whether Mr. Kendrick was already a member?
A. He was not.
Q. So do you have an estimate as to the time frame after you joined the North Fremont Congregation that Mr. Kendrick became a member?

A. He would have been baptized and been a member, so to speak, in 1991.

Q. And what was it about Mr. Kendrick and your husband that sort of led to their becoming good friends?

A. They were both interested in sports a lot. And they were just -- they just got along. My husband is very chatty and so was Jonathan.

Q. You used the word "chatty."

Can you tell us a little bit more of what you observed at that time of Mr. Kendrick's personality?

A. He was kind of a bigger than life personality. He could be outrageous. He was opinionated, rough around the edges.

Q. Would you say he was an extrovert?

A. Extrovert, yes.

Q. And colorful?

A. Very colorful, yes.

Q. Would you describe him as quiet?

A. No.

Q. We have heard a description of him as a quiet person. Does that in any way reflect Jonathan Kendrick?

A. Not the Jonathan I knew, no.

Q. Did he become a regular visitor at your home?

A. Yes.

Q. When we say regular visitor, how frequently

would he have been there?

A. Well, over the years he frequented the house more and more because he and my husband were very good friends. And he became very fond of my sons, and they spent time together.

So initially, when they first got to know each other, maybe once every few Mondays or so. And then after the years wore on, he would be over sometimes five days a week.

Q. Did you learn that the marriage between Mr. Kendrick and Evelyn was not working well?

A. Yes.

Q. And was there a sort of a -- what I will call a symmetry between the frequency that he was at your house and the decline in his own home life?

A. I can't really relate those two instances together specifically.

Q. But you knew, certainly by 1993 or '94 that his marriage was no longer working?

A. It was in decline, yes.

Q. And you saw that he was at your house more and more?

A. Yes.

Q. Were you ever friends with Evelyn Kendrick?

A. No. We were acquainted, but never friends,

really, in the definition of friendship.

Q. Were there times that Mr. Kendrick displayed anger to you, or in your presence?

A. Not to me. He could get angry and forceful about his feelings on subjects and on matters, but there was no physical violence ever displayed in any of our presence.

Q. Did you feel from your own observations of him that he had an anger problem?

A. I believe so, yes.

Q. You mentioned that Mr. Kendrick was removed as a ministerial servant. Did you know why at the time?

A. No.

Q. Did you have any idea that it was because he had sexually abused a child?

A. No.

Q. Did you understand at that time or within the years that you knew him that he was a risk to sexually abuse a child?

A. No.

Q. Did he display to you in his conversation, what I will call an excessive interest in sexual issues?

A. Yes.

Q. How did that manifest itself?

A. He would talk about his past before becoming

a Jehovah's Witness, which we are required to live a moral life. And he would talk about his past and his sexual activity, which was a lot.

Q. Did he brag about it?

A. Yes. It seemed to me that he was bragging.

Q. And was this not just in your presence, but in the presence of your husband?

A. I don't recall specific instances. I don't recall. Specifically, I could not relate one or two instances, really.

Q. Did you understand that your husband was aware of this sexual interest on his part?

A. I believe, yes.

Q. And why was that?

A. Because Jonathan was opinionated and he was out there. He did not hold back from giving his opinion on anything or going into his past.

But from my husband's perspective, their relationship was not based on his interest in sex, it was all sports. Guy stuff.

Q. You mentioned he expressed things in sexual interest and history. Did he talk about what I will call unusual sexual relationships he had had?

A. I will only answer that by saying the frequency and the fact that he, quote, did a woman his

mother's age and he, quote, did a paraplegic.

Q. Did you know the Conti family?

A. Yes.

Q. When do you recall meeting them?

A. I would have met them shortly after we came to Fremont North, which would be 1989, '90.

Q. Do you remember Candace?

A. Yes.

Q. And she would have been, maybe, five or six when you first became acquainted with her?

A. Yes.

Q. What do you remember about her?

A. She was an adorable little red-headed girl with freckles, kind of quiet. Well behaved.

Q. Do you remember her giving you a hug regularly?

A. Yes, yes.

Q. Whenever you would see her?

A. Well, yes. Mainly I would see her with her father at the Kingdom Hall. And we would visit with each other before and after. It is not like the traditional church service. So children sit with their parents. So, yes, after a meeting, we would often visit and she would routinely come up to me and give me a hug.

Q. She was an affectionate child?

A. Yes.

Q. And did she seem to be seeking affection from others as well?

A. I don't recall that.

Q. Did you ever see her father hug her?

A. No. Not necessarily. If there was physical contact, he would have had his arm around her shoulder, in a general sense.

Q. But never a hug?

A. I don't recall that, no.

Q. You became acquainted with Mrs. Conti as well?

A. Yes.

Q. And in what way did you first meet her?

A. I met her in the context of the Kingdom Hall setting.

Q. And what did you observe about her?

A. Nothing outstanding. But as the years wore on, her behavior, I had the opinion of, that she was mentally unbalanced.

Q. And what was it that led you to seeing this change in her in forming the opinion you have just given us?

A. I can't remember the specific occasion and what it was. But she was into childcare. And initially

I began that. And an incident happened that had to do with childcare that -- where we crossed paths in that regard. And I remember feeling, "She is unbalanced here. Something is not right. I'm not getting into childcare."

But honestly, specifically, I don't remember in detail what that incident was.

Q. But after that first incident that started your thinking this way, did you see on other occasions things that made you think she was flakey?

A. No. Not really. I know that she did not attend the Kingdom Hall regularly at all.

Q. Was there a point where she stopped coming at all?

A. I would say yes.

Q. In your deposition, you called Ms. Conti a flake.

Do you remember that?

A. Yes.

Q. That was based on more than just the one occasion?

A. It would have been, yes.

Q. And did you feel that this was something that was pretty obvious to you --

Let me backtrack a second.

You are not a trained mental health care professional?

A. No, I am not.

Q. The things you saw were obvious to a person who would interact with Mrs. Conti?

A. I did not see her regularly, but people do form perceptions when they are with others, and the way they relate to each other and so forth.

Q. Were there times that you observed Jonathan Kendrick and Candace Conti together outside of the Kingdom Hall setting?

A. Only once.

Q. What do you remember?

A. That he bought her a pair of roller blades and he was rollerblading with her in the neighborhood and they came over to our house and they were together.

Q. And Candace was about nine?

A. Nine or ten.

Q. And Mr. Kendrick, obviously, much older?

A. In his forties.

Q. Did you think that was odd?

A. Yes, I did.

Q. And did you share the observation that you had with your husband?

A. No, I don't believe I did.

Q. What did you think was odd about it?
A. Well, I thought it was odd that a guy in his forties with no children would be buying a pair of roller blades for, you know, a young girl and rollerblading with her. If he would have bought the roller blades as a gift, that's one thing. But rollerblading with her, I felt was odd.
Q. Did Jonathan Kendrick make comments about his feelings towards Candace?
A. Yes.
Q. What would he say?
A. He would say, "I love Candace."
Q. Did he say other things along that line?
A. "Candace is my favorite."
Q. Anything else that you can remember?
A. No.
Q. Do you recall him saying things like, "She is my Number 1"?
A. I don't recall that expression.
Q. Now, Mr. Kendrick, in addition to becoming friends with your husband, was at least acquainted with your sons. Correct?
A. Yes.
Q. Did you have a son who was the same age as Candace?

A. Yes.

Q. And then an older boy as well?

A. Yes.

Q. And he is, I think, what, three years older?

A. Five and a half years older.

Q. And did Mr. Kendrick, to your recollection, take the boys out for a shopping spree?

You said he bought roller blades for Candace. Did he do something for them?

A. Yes, he did.

Q. And how did you learn about that?

A. Well, he bought my son, my older boy a very expensive guitar and located a guitar teacher and paid for his lessons, would come over and pick up my son Justin, take him to his lessons every single week, and maybe they would hang out afterwards, and so he was instrumental in that.

He bought my younger son a drum set and told my younger son in the middle of fifth grade, if you bring your grades up and you can prove yourself, there will be a nice gift for you.

And so he did at the end of the year, he brought his grades up, and he surprised him with a drum set.

Q. Did he also take your sons on a shopping trip

and buy them a skill saw?

A. Yes.

Q. And to your knowledge, did someone else go along on that shopping trip?

A. Yes.

Q. Who was that?

A. I originally thought, in remembering the certain child, that it was Candace. But it is the same possibility that I made a mistake and it was another young girl, that she would have known in our congregation.

Q. Was it Brianna Decker?

A. Brianna Becker, yes.

Q. And she was also about ten years old at that time?

A. She was more like 13. Twelve or 13.

Q. And did you see the receipt --

A. Yes.

Q. -- from the purchase that he made for her?

A. Yes.

Q. What did he buy for her?

A. He bought her a black bra.

Q. And when you saw the receipt, did you ask Mr. Kendrick about it.

A. Yes.

Q. And what did he tell you?

A. He said, well, every young girl needs a black bra.

Q. What did you think of that?

A. I thought it was very inappropriate.

Q. Did you think it was weird?

A. Yeah. Inappropriate.

Q. And at the time that the rollerblading with Candace and the black bra incident occurred, did you have any idea that Mr. Kendrick had sexually molested his stepdaughter?

A. That's a difficult question for me to answer, based on timing, because Jonathan did tell me that his wife, Evelyn, accused him of molesting Andrea. I don't recall that that was prior to the rollerblading. That could have been afterwards. I don't remember the sequence of events, honestly.

Q. I think in your deposition, you shared with us that the comment about Andrea, the accusation of Andrea, was made when he lived briefly at your house?

A. Yes.

Q. And so that would have been after his separation from Evelyn and the time that he lost the house?

A. That's correct.

Q. Did you also see a photograph of Jonathan Kendrick with young children?

A. Yes.

Q. What did you see?

A. I saw him outstretched on the floor with his head like this (indicating) and his legs extended, and in his underwear, with two young children sitting on the floor in front of him in their underwear.

Q. Was that a much younger Jonathan Kendrick in that photograph?

A. Yes.

Q. And did you see that photograph very late in the time that you knew Mr. Kendrick? Would that have been about the time that he was moving out of the area?

A. That's correct.

Q. Is it fair to say that you never made a connection of the conduct with Brianna and the conduct with Candace and the statements and all in anything that had happened to Andrea until sometime later when you finally learned about the molestation of Andrea?

A. That's correct.

Q. And then it all fit together for you?

A. It didn't fit together until years later. Yeah. And then in retrospect.

MR. McCABE: Your Honor, may I interpose an

objection?

THE COURT: You may.

MR. McCABE: May we approach?

THE COURT: All right. Why don't you re-ask the question, counsel.

(Sidebar Discussion)

THE COURT: All right. Why don't you re-ask the question.

BY MR. SIMONS:

Q. Was it some years later when all the information was available to you that you connected the dots, so to speak?

A. Yes.

MR. SIMONS: Thank you, your Honor.

THE COURT: All right. Let's take our break.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. I just wanted to put on the record that I assured counsel as to last question and answer as to when Ms. Francis, quote, put it together i.e., connected the dots, as to Mr. Kendrick's behavior with children, that that will be subject to any limiting instruction I give the jury ultimately.

However, I expressed on the record, absent further evidence being produced, that we might have to

consider it with whatever the appropriate instruction as to -- the testimony as to the rollerblading incident and the black bra, again, depending on the evidence produced.

MR. SCHNACK: And could we add that photograph to it as well, your Honor?

THE COURT: We could. That was a little more opaque, but the answer is sure.

MR. SCHNACK: All right. Thank you.

MR. SIMONS: Your Honor, Clarke, Evelyn, Andrea, Claudia Lamerdin, Dorothy Conti, Kathleen Conti and Cliff Williams.

MR. SCHNACK: I can show you my list, too, that doesn't have Andrea on there. So for what that's worth.

THE COURT: Okay. Counsel, I'm trying to be both collegial and whatnot. I didn't rule because I didn't have a specific memory in light of the exhaustive list.

MR. SCHNACK: Your Honor, we can bring her in. There is no objection.

THE COURT: Okay. Let's take our break.

(Break taken)

THE COURT: All right. Mr. McCabe.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Good morning, Ms. Francis. Could you tell us when you became a member of the Jehovah's Witnesses?

A. I was baptized in 1970.

Q. How old?

A. I was 18.

Q. In the 1980s and 1990s, were you a subscriber to the Watchtower Magazine?

A. Yes.

Q. I want to show you what has previously been admitted into evidence. It is Defendant's Number 17, Plaintiff's Number 59. I ask you if you recognize this magazine.

A. Yes.

Q. What is it?

A. "Child molesting, you can protect your child."

Q. And when you received the magazines in '80s and '90s by subscription, was it your custom and habit to read them?

A. Yes, on the most part.

Q. Do you recall reading this magazine when you received it?

A. I suppose I did. It was a long time ago,

yes.

Q. Okay. I want to approach you also with another exhibit. It is Plaintiff's Exhibit Number 64, Defendant's Exhibit 37, and ask you if you recognize this magazine.

A. Yes.

Q. And in the 1990s -- well, can you tell us what this magazine is?

A. Awake. "Protect your children."

Q. And the date of that magazine?

A. October 8, 1993.

Q. And did you also receive that magazine in the mail?

A. I would have, yes.

Q. Who was the publisher of that magazine?

A. Watchtower Bible and Tract Society.

Q. Do you recall reading that magazine?

A. I would have at the time. I read the journals regularly.

Q. Where do you live in Fremont?

A. I live on Capistrano Drive in a neighborhood called Cabrillo Park.

Q. In the 1990s, specifically '93 to '97, do you recall where the Conti family lived?

A. Yes.

Q. Where did they live?

A. I lived in our neighborhood on El Cajon.

Q. And how far from your house?

A. About three or four blocks.

Q. Do you recall how old Candace was when you first met Ms. Conti?

A. She would have been in kindergarten, first grade.

Q. And you testified that you had a fondness for her?

A. Yes.

Q. And you learned that her mother had some mental and emotional problems?

A. Yes.

Q. Did you see Candace Conti at the Kingdom Hall of the Jehovah's Witnesses in North Fremont?

A. Yes.

Q. How often?

A. Fairly regularly. Not every single meeting, but fairly regularly, since there were three meetings a week.

Regular, I would define regular attendance as every week, three meetings a week. I did not see her there that often. I would say she was there maybe three times a month.

Q. Did you ever see her at North Kingdom Hall without either of her parents there?

A. No.

Q. Who did she usually attend with?

A. Her father.

Q. Where would they sit?

A. Three or four rows from the front.

Q. And did they sit together?

A. Yes.

Q. Side by side?

A. Side by side.

Q. Can you describe the relationship between Candace Conti and her father, Neal, during this time period?

A. I would describe it as being very close. I felt that she loved her dad and he loved her very much.

Q. And in the mid 1990s, did your family host congregation Bible study in your home?

A. Yes.

Q. Did Jonathan Kendrick attend that study?

A. Yes.

Q. Did the Conti family?

A. No.

Q. How long did you hold that Bible study in your home?

A. Five years.

Q. And was Jonathan Kendrick in the study the whole time?

A. Yes, I believe so.

Q. At any time was the Conti family in that study?

A. No.

Q. Now, you mentioned that you observed Mr. Kendrick have some kind of anger problem. Did your family ever discuss the episodes of his anger?

A. Yes.

Q. What was the occasion?

A. The occasion was -- the situation was that his teenaged stepdaughter had a boyfriend over one evening. And when John asked the boyfriend to leave, the boyfriend would not. And his wife, Evelyn, supported the daughter, that he didn't have to leave.

And he got very angry. I believe he punched the young man in the face. And he took his foot and kicked over a large island in the kitchen, kind of bent forward off its foundation.

Q. Did Mr. Kendrick end up in jail?

A. Yes, she called the police.

Q. And is that the event that your family discussed?

A. Yes.

Q. Did that cause Mr. Kendrick to miss out on an event that you had invited him to?

A. Yes. He was jailed a day or two before my son's baptism to be one of the Jehovah's Witnesses, and he was not there.

Q. And were you disappointed he wasn't there?

A. Yes, we were. He was a big part of our family.

Q. Did you mention that to your family?

A. Yes. We were all in the car. And I remember saying how bad I felt that Jonathan wasn't there for Justin's baptism.

And I made the comment, "I love Jonathan."

And my husband said to me, "Claudia, every one in this car loves Jonathan."

Q. At any time that you knew Candace Conti as a girl, did you ever feel that she was in danger?

A. No.

Q. Did you ever feel that she was threatened by sexual child abuse?

A. No.

Q. Did you ever see anyone, including Jonathan Kendrick, act inappropriately with her?

A. No.

Q. I mentioned a number of incidents. Let's talk about the roller blades. Jonathan Kendrick bought Candace Conti some roller blades.

And would you describe Mr. Kendrick to be generous?

A. Yes.

Q. And, in fact, he bought very expensive gifts for your sons?

A. Yes.

Q. And it wasn't just a one time event, was it?

A. That's correct.

Q. Did you think it odd that Mr. Kendrick would spend money on your sons?

A. Not odd. I was touched that he cared about my sons to spend that kind of money on them. They did hang out. He loved my boys.

Q. Did you ever observe him acting inappropriately with your sons?

A. No.

Q. Regarding this incident with the roller blades, and I think they came over to your house. Jonathan Kendrick was living at your house at that time, wasn't he?

A. I believe so, yes.

Q. And Candace was still living with her mother

and father nearby?

A. Yes.

Q. Did you ever tell any member of the body of elders in North Fremont that you had observed Candace Conti and Jonathan Kendrick rollerblading together?

A. No.

Q. Now, the the shopping trip that you discovered Mr. Kendrick bought a black bra for Brianna, is that Decker?

A. Becker, with a B.

Q. How old was Brianna at that time?

A. I would say she was 12, 13. She was developed enough to wear a bra.

Q. And you thought it was odd that he would purchase such an intimate garment for her?

A. Yes.

Q. But did you ever tell any of the elders in the North Fremont Congregation about this event?

A. I never said a word. I felt that Brianna would go home and show her mother. And her mother, if she had a problem, would contact Jonathan and say, "What are you doing?" I did not take matters into my own hands.

Q. Okay. But in any event, you didn't say anything?

A. No.

Q. When was this event in relationship to the rollerblading that you described?

A. I would say in the same -- within the same year. The context of the same year.

Q. And was that also at the same time that Jonathan Kendrick was temporarily residing in your family home?

A. That's correct, yes.

Q. And that's also about the same time that you knew that he had been accused of molesting his stepdaughter, Andrea?

A. Yes.

Q. But at the time, you didn't put anything together, did you?

A. Honestly, no.

Q. Okay. So you didn't have any suspicions that Jonathan Kendrick was abusing children, did you?

A. No. Not at all.

Q. And you certainly didn't report any suspicions to any of the elders?

A. I did not.

MR. McCABE: That's all I have, your Honor. Thank you.

THE COURT: Mr. Schnack?

MR. SCHNACK: Yes, your Honor. A couple questions.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Did there come a time when Jonathan Kendrick lost his home and moved into your home?

A. Yes.

Q. And there has been testimony that he separated from his wife in October of '96. Do you remember when it was that he moved from his home into your home?

A. It would be shortly after that. It would probably be in early November.

MR. SCHNACK: That's all I have. Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. You mentioned that Bible study would be held in your home. Were all of the Bible studies that you went to during those four or five years at your home?

A. The five years that we had, it was a one-hour Bible book study in our home, I would have attended them all.

Q. But would there have been other Bible studies during that same time period or other meetings, I would say, of any kind during that same time period, that you attended in other people's homes?

A. During that five years?

Q. Yes.

A. No.

Q. So all of the study groups that you participated in during that five years were held at your home?

A. Correct. There were other locations in the congregation, maybe four or five total, where small groups would get together for one hour and a half, you know, and have a study on the Bible and the topic. But during that five years it was in our home, I only attended in our home, yes.

MR. SIMONS: That's all I have. Thank you, your Honor.

MR. McCABE: Nothing further, your Honor.

THE COURT: All right. Thank you very much, Ms. Francis for your time this morning. You are now excused.

MR. SIMONS: We are now ready to go forward with Andrea Becerra.

ANDREA SYLVIA

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: My name is Andrea Sylvia. S-Y-L-V-I-A. A-N-D-R-E-A.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Ms. Sylvia, where do you now live?

A. I live in Tracy, California, with my family.

Q. Okay. And what is your family?

A. My husband and my three children.

Q. And how old are you at present?

A. I'm 32 years old.

Q. Are you a full-time mother?

A. Yes. I'm a full-time stay-at-home mother, all the time.

Q. Where did you grow up?

A. I grew up in Fremont, California, with my mother and my stepfather.

Q. And how old were you when your stepfather entered your life?

A. I was 9 years old.

Q. And for what period of time did you live with your stepfather?

A. From the ages of nine to 16.

Q. And looking back at the time period of when Mr. Kendrick first came into your home, was it originally a good relationship you had with him?

A. Yes, it was. He was my only father figure.

Q. And how long did that last?

A. I would say about three years.

Q. And then what happened?

A. Well, I endured lots of physical beatings from him. There was always constantly fighting in the household, and I started to not trust him and lose my respect.

Q. Was there an occasion when he molested you?

A. Yes, it was.

Q. And how did that series of acts begin?

A. Well, that day my mother and my stepfather had just found out that I was involved with a boy. And so we had an upsetting day, and I was very upset.

And my father, stepfather, offered me to take two Vicodins. And I trusted him, him being the only father in my life. And I took them. And I fell asleep.

And I don't even know how long I was out for. But I recall being awake somewhat in my mind, but not

physically. And I had to tell myself to wake up. And that's when I rolled over and noticed that he was fondling me.

Q. And was this in your bedroom?

A. Yes. With my door closed.

Q. And it was not on the couch?

A. No.

Q. And was the TV on?

A. Yes.

Q. And do you recall how it was that Mr. Kendrick was in your bedroom with the door closed to begin with?

A. No, I don't. I don't know why he was in there. I had went to sleep without anybody in there. And when I woke up, he had had the football game on, sitting on the rocking chair next to my bed with his hands down my pants and down in my shirt on my breast.

Q. What did you do?

A. Well, I didn't want to -- I didn't know what to do. I just rolled over and slowly started to wake. And then I got up and pretended like I didn't notice. And I went to the bathroom and I cried and splashed my face with water. And then I got the nerve to come out. And then I went to my mother's room. And then I had told her what my stepfather had done to me.

Q. Now, sometime later, there was a meeting in at your home in which your mother and stepfather and two elders from the Jehovah's Witnesses were present. Were you there for all of that meeting?

A. No.

Q. When that meeting was going on, were you there at all?

A. I don't recall being there at all.

Q. Your mother and the elders said that you were there for at least part of the meeting.

Do you recall any of that?

A. No, I did not.

Q. Did you ever tell anyone -- including what you may have said at this meeting, did you ever tell anyone a story different in any major way from what you told us just now?

A. No.

MR. SCHNACK: Your Honor, I'm going to object. She said she wasn't at the meeting.

THE COURT: She did.

Why don't you reframe the question, Mr. Simons.

BY MR. SIMONS:

Q. You don't recall the elders' meeting. My question is: In all of the different people that you

have talked to about this over your lifetime, have you ever told anyone anything that in any significant way differed from what you just told us?

A. Never.

Q. Did you ever tell anyone that you were only touched outside of your clothes and only in the breast area?

A. No.

Q. Did you ever feel that you had to lie to help cover up for Mr. Kendrick?

A. No.

Q. Did you ever feel that what you had experienced with him was something that you were unwilling to tell people about?

A. No. I wanted it out.

Q. And did you start telling people what had happened to you -- don't tell me who, just please answer this yes or no -- but had you told people what had happened, other than your mother, very soon after the event?

A. Yes.

Q. Did you ever tell anyone that you wanted this kept private?

A. No.

Q. Did you want it kept private?

A. No.

Q. After the period of --

Well, strike that. Let me rephrase that.

Was there a time that this became a court matter?

A. Yes.

Q. And after the abuse occurred, what was your relationship like with Mr. Kendrick?

A. There was no relationship with him. I feared him in every way.

Q. You continued to live in the same house with him?

A. Yes, I did.

Q. Were you present in that house on a frequent basis with Mr. Kendrick?

A. Yes, I was.

Q. And what would you do to avoid him?

A. I would either lock myself in my bedroom, close the door, pretend I was asleep, or I would take off with my friends and not come home until after 5:00, after which my mother would be home after 5:00.

Q. Would there be times when your mother and yourself were completely absent from the house?

A. Yes.

Q. And was that something that happened

frequently?

A. Yes, it was.

Q. Why was that?

A. We were always being hit. And it wasn't a very good household, and fighting, and we would just leave on the spur of a moment and take a vacation three and four days at a time.

Q. Did you have other places besides vacations you would go to get away from the house?

A. I would go to my grandmother's, which she lived three blocks away.

Q. And how about your mother? Was she often absent from the house?

A. Just when we went together.

Q. Did your mother try to avoid Jonathan Kendrick as the time went by, the years went by following this 1993 event?

A. Can you repeat the question?

Q. Yes. As the years went by after 1993, did you observe that your mother's relationship with Mr. Kendrick became far more distant?

A. Oh, definitely.

Q. And were you aware that your mother was trying to avoid being there where Mr. Kendrick could do the things that you had mentioned?

A. Yes.

Q. Would it be fair to say that Mr. Kendrick often had the house to himself?

A. Yes, he did.

Q. Again, without giving us any names, can you estimate the number of people that you have shared this experience with in the three or four months after it first happened?

A. About three.

MR. SCHNACK: Nothing further.

THE COURT: Mr. Schnack?

MR. SCHNACK: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Were you aware that after this July 1993 incident with Mr. Kendrick that your mother tried to work it out within your family?

A. That was what she did.

Q. So for several months, she tried to work it out until the elders came over?

A. Not for several months.

Q. How long, in your view, did she try to work it out in the family?

A. Maybe about four weeks.

Q. So you have no memory of meeting with the elders in November of 1993 in the kitchenette or dinette of your home?

A. No, I don't.

Q. Do you recall a report being made to the police about this July 1993 incident?

A. Yes, I do.

Q. Do you recall being interviewed by the police?

A. Yes, I do.

Q. Were you interviewed by yourself, as opposed to -- were your mother or your stepfather with you when the police interviewed you?

A. No.

Q. Do you recall telling the police that you had taken two Vicodin for your back?

A. Yes, I did.

Q. You talked about your mother and you going on vacations.

Did your mother work full time during the time period that she was married to Jonathan Kendrick?

A. Yes, she did.

Q. And she worked Monday through Friday?

A. Yes.

Q. Roughly 8:00 to 5:00 each day?

A. Yes.

Q. You said she would take vacations with you that were three or four days long?

A. Yes.

Q. How many times did you do that?

A. Periodically throughout the month. A couple times during the month when it first started. And then as it went on, it decreased.

Q. So what do you mean when it first started?

A. Well, when things got really bad.

Q. And you are talking about July of '93?

A. Yes, we were gone a lot.

Q. So you said you were gone a couple times for three or four days during first month?

A. Yes.

Q. And then it decreased after that?

A. Yes.

Q. Are you aware your mother testified you only went away a small number of times over the three years, perhaps six, eight times when you were gone for the entire weekend?

A. No, I am not.

MR. SCHNACK: No further questions, your Honor.

MR. SIMONS: Nothing further.

THE COURT: Thank you very much for your time this morning. You are now excused.

MR. SIMONS: May we confer one brief second, your Honor.

THE COURT: Sure.

(Discussion off the record)

MR. SIMONS: Our next witness would be Kathleen Conti.

KATHLEEN CONTI

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: Kathleen Conti. K-A-T-H-L-E-E-N, C-O-N-T-I.

THE COURT: All right. Ms. Conti, please be comfortable.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Ms. Conti, you are the mother of Candace?

A. Yes.

Q. And when was Candace born?

A. 11-25-85.

Q. Tell us a little bit about yourself. Where do you currently live?

A. I live in Stockton with my daughter.

Q. And at the present time are you employed?

A. No.

Q. Let's go back to your growing up years. Where did you grow up?

A. Well, I was born in Idaho, and lived in Montana briefly. And we moved to the Los Angeles area in 1969.

Q. And how old were you then?

A. Six, I believe, when we moved to Los Angeles.

Q. Did you do your schooling there?

A. Yes.

Q. Did you finish high school?

A. No. I completed until the 11th grade.

Q. And then where did you go in your life? What did you do next?

A. I got married and moved to Oceanside.

Q. And the person you married, can you describe him? By occupation?

A. Yes, he was a sergeant in the Marine Corps.

Q. That's why you were in Oceanside?

A. Yes.

Q. How long did that marriage last?

A. Three years.

Q. Where did you go after that marriage dissolved?

A. To the Bay Area, actually.

Q. And did you have any children in your first marriage?

A. No.

Q. When you came up to the Bay Area, did you work?

A. Yes, I worked as a secretary/clerical at National Semiconductor in Santa Clara.

Q. And is that where you met Neal Conti?

A. Yes. That's correct.

Q. And when you met Neal Conti, was he a member of the Jehovah's Witnesses?

A. No.

Q. Were you?

A. No.

Q. Had you been at any time in your life before that?

A. Yeah. I was raised as a Jehovah's Witness.

MR. SCHNACK: Your Honor, can we approach?

(Sidebar discussion)

BY MR. SIMONS:

Q. And when you met Mr. Conti, did he and you

strike up a relationship?

A. Yes, we did.

Q. And you were married?

A. Yes.

Q. And what year was that?

A. 1985.

Q. And where was Candace born?

A. She was born on, like I said, 11-25-1985.

Q. Had Mr. Conti been married before?

A. Yes.

Q. And did he have any children?

A. Yes, he had a son, Richard Conti.

Q. How old was Richard in relation to Candace?

A. He was just a toddler. At the time I met him, he was almost three, maybe.

Q. Was he three or four years older than Candace?

A. Four.

Q. Did Richard live with you and Neal and Candace after she was born?

A. No. No. We had visitation with Ricky.

Q. So were there times that he would be at your house?

A. Yes.

Q. Now, during the time that you were in

Fremont, did Neal Conti and yourself and Candace become active in the North Congregation?

A. Yes.

Q. And during that time did you meet Jonathan Kendrick?

A. Yes, I did.

Q. How did you meet Jonathan Kendrick?

A. At a congregation book study that was held at a member's home.

Q. And was there a book study group at a member's home that you and Jonathan Kendrick and Neal attended?

A. Yes, we did.

Q. And did Candace attend that as well?

A. Yes, she did.

Q. Do you remember whose home that was in?

A. Tom Mat. Brother Mat.

Q. And was it a period of years that you were in that group together?

A. Possibly a year. I believe that he moved his family up to Sacramento eventually and then we went to another book study.

Q. When you went to another book study, was that also the one that Mr. Kendrick and his family attended?

A. No.

Q. Did Mr. Kendrick continue his with the Conti family?

A. Yes, he did.

Q. And did you continue to see him at various North Congregation activities?

A. Yes.

Q. What kind of activities would you see Mr. Kendrick at?

A. Well, naturally, we saw them at all of the meetings that were held at the congregation. And we had social events. And also, he would come over to the home to work with Neal in his garage, since at that time it was set up as a paint booth. He painted cars in the garage.

Q. Did a friendship develop between your husband Neal and Mr. Kendrick?

A. Yes.

Q. And was Mr. Kendrick a regular visitor to your home?

A. Yeah. He was a regular visitor. I must say, though, that there was others that enjoyed working in the garage too. But he would come over, yes.

Q. Did you have occasions when you ever went to the Kendrick home?

A. I went to the Kendrick home one time.

Q. Do you recall what the occasion was?

A. You know, I know that I was with Neal and I know that it was a period of time when he was the only one in his home, and he was talking to Neal, confiding in him about his marital problems. And I can't remember -- I just know that that was a period of time that -- he confided in Neal a lot about those types of things.

Q. Was there a time that you began to develop a significant health issues? Mental health issues?

A. Yes. Around about the time that -- close to my divorce from Neal.

Q. And when you say "close to your divorce," did you examine Neal separate in the summer of 1996?

A. Yes, uh-huh.

Q. And in the couple of years before that, had there been some significant issues that you were experiencing?

A. Yes. I was trying very hard to hold it together as far as the issues that I was experiencing, emotionally, but eventually it did come to a head, unfortunately, and I had a mental breakdown, I guess you might say.

Q. And during that time period, were you able to care for Candace?

A. I had a hard time taking care of myself at that time. I feel very bad that I was not able to be there for her at that particular time, but I just was very -- it was very serious.

Q. Because of the issues that you were experiencing, was Neal required to spend extra time helping to take care of you?

A. Yes, he did have to take care of me.

Q. And did that mean that Candace was often left, sort of, on her own?

A. Yes.

Q. Did Jonathan Kendrick ever try to assist your family during this time that you were having these problems before your divorce?

A. Yeah. He tried to help a lot.

Q. In what ways?

A. Well, he always liked Candace, and always was offering to help her. To help out so that -- take her places, just be kind. I thought he was just trying to be -- I thought he was trying to be nice, that he was just trying to help out. I thought he was helping -- trying to help our family.

Q. Did you trust him as a fellow member of your congregation?

A. Yes. He seemed very theocratic. He attended

the meetings. He went to field service. He seemed very theocratic, like he was reaching out.

Q. Did you have to stop attending most of the events at the North Congregation?

A. Yes.

Q. In the last year or so of your marriage, did you go to much in the way of Jehovah's Witnesses events?

A. No, no, I didn't. I isolated myself a lot. I just didn't want to be around people.

Q. Did Candace continue to participate?

A. Yes, she did.

Q. Did Neal continue to participate?

A. Yes.

Q. Did they always participate together?

A. Well, when he went to the meetings, Candace always went to the meetings. And they went out to field service, they were together.

Q. Were there times that Candace would go to activities without him?

A. I'm sorry. What type of activities?

Q. To Jehovah's Witnesses North Congregation activities, whether it be meetings or field service or Kingdom Hall events?

A. By herself?

Q. Yes. Without Neal accompanying her?

A. I'm sorry. I'm not following you. Like social events at the hall or --

Q. Or any kind of events. Were there times that she was there without Neal?

A. What I can tell you is that most of the time that I was going through what I was going through, I wasn't aware of where she was a lot of the time. And I know that she -- being that she was with Neal -- I can't attest to if she was alone with someone. I don't know exactly if she -- I can't say for sure. I can't say for sure. I just know that she was out with him.

Q. Is it accurate to say that you had lost, by that time, the ability to keep track of what was going on with Candace in your house?

A. Yes. Absolutely.

Q. Now, you mentioned Mr. Kendrick offering to help. What do you recall him offering to do?

A. I just remember at the Kingdom Hall, he was always around her, and he always complimented her. He always said that she was -- I mean, there wasn't a meeting when I was there, and that was prior to me stopping, that he was not always focusing on her.

And I just thought that he was just being a nice person trying to -- I just thought maybe he liked kids. But he really liked Candace. And I know he

talked about taking her to go get ice cream or we needed him to do something, take her someplace or go somewhere with her while we need to do something, that type of thing.

Q. After you and Neal separated, where did Candace go for the first few months?

A. Candace was staying on the house in Montecito with her father.

Q. And after a few months, where did she go next?

A. Well, after finally, the visitation was settled, I believe, the court visitation, then she started to reside with me.

Q. And where did she spend most of her time during the week, during her junior high and high school years?

A. She spent most of her time at her nana's house, because she was in a school district. I lived in Sunol, and she didn't like the little grade school of Sunol. It wasn't where her friends were at. And so in order for her to attend those schools and be with her friends, she spent a lot of time at nana's house so that she could attend those schools.

Q. And when you say "nana," who are you referring to?

A. That would be my ex mother-in-law.

Q. Would that be Dorothy Conti?

A. Yes.

Q. Where were you living during this period of Candace's high school years?

A. Well, we lived in Sunol for a couple of years. And then Candy and I -- Candace and I moved to an apartment in Dublin for about six months. And we tried to live in -- I liked the Pleasanton area, and so again, she would come -- she would be with me, but she wanted to attend Washington High School. So she would spend a lot of time over at Dorothy's house so she could go to that school, and I wouldn't be going through the canyon.

Q. Did you eventually move out of California?

A. Yeah. I went to -- I spent a little bit of time in Maryland from about -- I think six months before she graduated. But I came back shortly after that, and right before she graduated, and went to her graduation.

Q. And then did you move again out of California?

A. Yes. In 2003, I moved to the Florida Keys and worked for a developer there.

Q. When did you return to California?

A. May 12 of 2008. I was there for five years.

Q. During those years, did you see Candace other than on an occasional basis?

A. She flew out, actually, probably four times to see me. I visited her a couple of times. You know, of course, I would have loved to have her be with me as much as possible, but she had a life going on.

Q. During her junior high and high school years, how was Candace's relationship with her father?

A. She didn't have much of a relationship with her father.

Q. Had he been a demonstratively affectionate man in her younger years when you were still married?

A. No.

Q. Did you learn at some point that Candace had been abused by Mr. Kendrick?

A. Yes, in 2003.

Q. And how did you learn that?

A. She told me.

Q. Was that the first indication that you had that she had been abused by Kendrick?

A. Yes, absolutely.

Q. Back in the time that you were struggling with the difficulties that you shared with us, did you have any idea that that was going on?

A. The time I was going through my -- no.

Q. Let me go back, though, to the time period just before your separation from Neal.

Did you see something between Mr. Kendrick and Candace Conti that you objected to?

A. Yes, I did.

Q. What did you see?

A. There was one evening when he was over with Neal sanding a car, painting a car, and Candace had opened the door and had stepped in. And Jonathan had grabbed her and held on to her arm like, to pull her in. And it was hurting her. And I got her out of the garage, and she came into the house. And she said "Mommy, he is hurting me." And I didn't understand what she meant until now. The way she really meant.

Q. I'm going to ask you in that same time period just before you separated whether Mr. Kendrick had any sort of physical interaction with you?

A. Yes. Around the same time we were in the front room, and, although I can attribute this to maybe -- he seemed to change when he had a few drinks, he seemed to be more physical. And he was very strong. And we were all talking in the front room, and they were talking about their wives not being good or something like that. And he grabbed me and started -- he put me over his knee and started spanking me.

Q. As if you were a child?

A. As if -- yeah. And --

Q. Let me move on to one other thing.

In your relationship with your daughter, first of all, do you now consider it to be a good relationship?

A. Yeah, yes, I do. I love my daughter very much, and I support her a hundred percent, and I'm here for her.

Q. And is your relationship now with her better than it was all during her growing up years in terms of at least from when you began to have your difficulties at her age, eight or nine?

A. Yes, it is very good. Although shortly after I had these problems, we have had some very nice times, even when she was growing up in school.

Q. Did you learn that she was using drugs?

A. Yes.

Q. And how did you learn that?

A. Our conversations with Dorothy.

Q. And is she using anymore?

A. No.

Q. How long has she been sober?

A. Since June 22 of 2010.

Q. Just one last thing. Please just answer this

question yes or no.

Were you subjected to sexual abuse as a child?

A. Yes.

Q. And please answer this question yes or no as well.

Was that something you had shared with Candace before the divorce?

A. Before the divorce?

Q. Before you were separated from her? Excuse me. Before you were separated from Neal?

A. Yes. I -- we went for a drive, and I told her. Maybe I shouldn't have, but I did.

MR. SIMONS: Nothing further.

THE COURT: Okay. Let's take a pause in the questions for a minute.

All right. Any questions for defense counsel?

MR. SCHNACK: Yes, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Good morning, Ms. Conti.

Do you recall that you, Candace and Neal saw a therapist shortly after your separation in July of 1996? Is that correct?

A. Uh-huh. Yes, we did.

Q. And that relationship went on 16, 17 months or so, from roughly August of '96 until April 1st, 1998? Do you remember that?

A. I don't remember. I just remember going a few times. I don't remember much about it.

Q. Would it surprise you that Ms. Fraser's records don't portray you in a very flattering light?

A. I know I was going through -- I was suffering a lot. I was suffering and I was unfortunately using alcohol to suppress my own pain.

Q. Were you abusing some antidepressants and other drugs at the time as well? That's referenced in the records. Do you recall that?

A. I think that I was taking something for anxiety. I was taking something for anxiety.

Q. Do you recall overdosing on antidepressants in July '96 and having to be hospitalized?

A. I remember going to my doctor and talking to her about the prescription, and that I -- we felt like I might be in trouble. But I don't -- I'm sorry if I can't remember that particular thing.

Q. That's fine. Do you know what your emotional illness has been diagnosed as?

A. Well, I know that most of it is the effects

of the abuse that I went through. That's what I know.

Q. But you would agree that you have abused alcohol, you have abused drugs in your life?

A. During that period, yes, I have.

Q. And would you agree that you have been diagnosed with certain disorders as well?

A. I have heard a lot of disorders. I mean, it is not like -- I do know that -- I understand that better. I have learned quite a bit about it. I have done a lot of research on my own to get a better understanding about it. I know that children, when they are going through severe abuse, they cannot, freeze a moment in time, because they can't deal with it, and it never goes away. And in your adult life you have to deal with it then.

I know that much. It is a coping mechanism that children have when they are going through abuse that they cannot deal with. I understand that.

Q. Do you recall a time period after you and Neal separated, the first six months or so, from July of '96 forward? Do you have a clear memory of that time period?

A. 1996.

Q. You separated from Neal Conti in July of '96. Do you recall that?

A. Yes, that's right.

Q. And do you have a clear memory of the next six months or so, that time period?

A. No. I don't know. I can patch things together, but...

Q. Do you recall that you had a boyfriend, Steve, move into your house shortly after the separation?

A. Yes, I recall that.

Q. Do you recall that you would walk around the house naked in front of Candace and her friends?

A. No, I don't recall.

Q. Do you have any memory that Candace told her therapist that?

Were you aware that she had told Laura Fraser that you had done that and that really embarrassed her?

A. No, but if she did, she had every right to do that.

Q. So you attended meetings at the North Fremont Kingdom Hall during that time period; is that correct?

A. During what time period?

Q. There was a time you attended meetings at the Kingdom Hall?

A. Yes.

Q. Were those meetings held on Sundays?

A. Well, there was five days a week that we attended.

Q. What days did you attend those?

A. Well, up to the point where I stopped attending, I attended all of them.

Q. And my question is: What days of the week? There has been testimony --

A. Sunday. Sunday is the Watchtower public talk.

Tuesdays was our congregation book studies.

Thursdays was the -- school and service meeting.

Q. So in those three days, there was five meetings you are talking about?

A. Yes, that's right.

Q. Okay. And you mentioned the book study that was at a member's home.

And did you attend that book study, yourself? The Bible study?

A. Yes. Yes, I did.

Q. And did Neal come to that with you as well?

A. Yes.

Q. And did Candace go with you to that Bible study?

A. Yes. If we went to the meetings, she was

with us.

Q. And there was never a time where you just dropped Candace off to attend the Bible study? She only went if you attended. Correct?

A. I would never have dropped Candace off. Either -- if one parent missed the meeting, then she would be in the car or the vehicle with that parent who goes to the meeting. There would be no need for her to be dropped off without a parent.

Q. Okay. So Candace never attended unless either you or Neal or both of you were there; is that correct?

A. Yes.

Q. Do you have any knowledge that Neal ever sent Candace to any meeting at the Kingdom Hall by herself?

A. There was quite a long period of time when I didn't have Candace, and I have no idea what Neal was doing. And I knew that he was still attending meetings, but I didn't know what was going on with Candace, because I didn't have visitation with her, because the Court hadn't finalized it, so I didn't have anything.

Q. So again, to answer my question: Do you know whether Neal ever sent Candace alone to the Kingdom Hall?

A. No.

Q. And that would be unusual for a parent to send a child alone to the Kingdom Hall. Is that true?

A. Well, it would seem so. I would imagine it seems so.

Q. So when you were at the Kingdom Hall, did you ever see Jonathan Kendrick hold Candace on his lap where she was squirming to get away?

A. No. I don't remember that. I just remember him being around her and giving her a lot of attention and talking with her.

I don't remember. I can't say that -- I honestly can't say that I recall her on his lap. I don't remember that, myself.

Q. Did you ever see Jonathan Kendrick give Candace a bear hug at the Kingdom Hall?

A. I can remember him leaning down and just giving her a hug. I don't know -- it wasn't anything at that point in time that would make me set off alarms at that point in time.

Q. So it was just a simple hug. It wasn't what you would call a bear hug; is that right?

A. At that time, yes, that's my impression, at that time.

Q. Did you ever allow Candace to go alone to Mr. Kendrick's house?

A. No, I did not.

Q. How often did Mr. Kendrick come over to your house, to your and Neal's house?

A. Well, towards the -- towards the time when right before the divorce -- it was probably about a year, he came over quite a bit because he likes to work in the garage on a weekend night, or even maybe a week night, he would come over.

Q. Do you recall when we took your deposition, I asked you that question how often Mr. Kendrick would come to your house, and you told me at most every other month, and maybe seven times a year, maximum?

Do you recall that testimony?

A. I remember we were discussing the number of times that it was more than one. There was an elder that would come over, a Brother Inman that would come over. And there were other brothers that would come over because they were painting Sister Crawford's Volkswagen.

I mean, there was a lot of numbers that we were talking. I have got times that people were coming over.

Like, I know that he was coming over. I can't place a number. I know that there was around -- it took about seven days for them to complete the

painting of that Volkswagen, if that's what you are talking about.

Q. No. I asked you over a period of time how often Mr. Kendrick came to your house. And you told us in a deposition that it was -- it wasn't once a week, it wasn't once a month, it wasn't that often. You placed a number on it of approximately seven times a year at most.

Do you recall that testimony?

A. I must have been thinking about another event that was happening as far as painting the car or other people.

I remember that it took about seven days to paint Sister Crawford's car. I don't -- I didn't remember that in a relationship with how many times he came over.

Is that what you are talking about?

Q. Well, that's the question I asked you in deposition, yes. It just sounds like you are not sure.

A. Well, I'm not sure about which -- you might have asked me something. And I thought you were talking about -- because there was a lot of times when brothers would come over to the garage, because they loved coming over there working on the garage.

And then there was times that he was there,

with Neal.

And then there was the amount of time it took to complete Sister Crawford's Volkswagen.

I mean, it is hard for me to get how many times -- I'm sorry if I answered that question to you wrong.

Q. That's all right. That was a bad time for you, it sounds like, in relation to how your condition was.

So let me move on. I understand that Candace lived with you full time when she was in seventh grade; is that correct?

A. She lived with me in Sunol, yes.

Q. And then during eighth grade, she lived with Neal's mother, Dorothy; is that correct?

A. She stayed there during the week so that she could attend the school she liked in Fremont, Centerville, and in high school, which is Washington.

Q. And then during ninth grade, again, Candace lived with you full time; is that correct?

A. Yeah. In fact, again, I wanted her to go to the -- I wanted her to go to Foothill High School in Pleasanton, because I thought that was a really nice school. But again, she felt like she wanted to be -- it is important for kids that age to be with their friends.

It is hard for them to be pulled away from their friends, so she went back to Washington.

Q. And then during the 10th, 11th and 12th grades, Candace lived either with you or Neal's mother; is that correct?

A. Yes.

Q. And you testified during your deposition that Candace was a good student in junior high school and that she got her best grades in high school. Do you recall that?

A. Well, she might have gotten good grades in seventh and eighth grade, but I know that I can definitely remember her grades in high school, they were very good.

Q. Okay. And you saw Candace a lot during the years she was in high school? Is that correct?

A. Yes. I saw her -- on the weekends, we did a lot together. We did a lot together. We went -- we went on ski vacations together. We went to a working ranch in Montana together, because she had a love of horses. She was leasing a horse out of Arriba Vista, and she did that on a continuous basis. There was a lot of activities that Candace was doing that I was a part of.

Q. And that was during her high school years.

Correct?

A. She might have started -- the -- she could have started in eighth grade. But I do know that she got to the point where she got to Hunter Jumper, and it got a little expensive.

Q. So having spent a lot of time with her during those years, did you see any evidence of drug use by Candace?

A. No, I did not.

Q. And she didn't disclose to you about Kendrick having abused her until 2003; is that correct?

A. That's correct.

Q. And that was just shortly before you moved to Florida?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Okay. And was one of the reasons you were moving to Florida, was to try to reconnect with your first husband?

A. Yes, that's right. He had a business, a surveying company in Florida Keys, and I had a chance to work.

Q. So in 2003, did you tell Candace she should report Kendrick to the police?

A. No.

Q. Why not?

A. I didn't think that anyone --

Q. She was what, 17 at the time; is that correct?

A. Yes.

Q. So she was still a minor?

A. Yes.

MR. SCHNACK: Nothing further, your Honor.

THE COURT: Anything further?

MR. SIMONS: No, your Honor.

THE COURT: All right. Thank you very much for your time. You are now excused.

Dorothy Conti.

DOROTHY CONTI

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: Dorothy Conti. D-O-R-O-T-H-Y, C-O-N-T-I.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Ms. Conti, where do you live?

A. Fremont.

Q. And what is your relationship to Candace Conti?

A. She is my granddaughter. My son is her father.

Q. And your son is Neal?

A. Correct.

Q. Are you now retired?

A. Yes.

Q. Were you married?

A. Forty-seven years.

Q. And your husband is passed away?

A. Yes.

Q. What year did that occur?

A. 1994.

Q. When he was still with us, what was Candace's relationship with your husband, her grandfather?

A. Very good. They were very close.

Q. In what ways? How would you describe that?

A. Well, he treated her like his own as far as doing things with her, and sit down and have little tea parties with her when she would come over and visit and

they kind of palled around together. So they were very close.

Q. And during that time, how far away did Candace live from where you and your husband lived?

A. I would say like three or four miles.

Q. They were also in Fremont?

A. Yes.

Q. After your husband passed away in that same period, 1994, did you begin to see some changes in Candace's mother?

A. Yes. And even before that.

Q. What did you see?

A. She was very sickly. She was always having some kind of problem. And I know she was under a doctor's care.

Q. Did you hear from your son, Neal, that this was causing stresses within the family?

A. No.

Q. Were you aware of some of the things that were going on between Neal and Kathy at that time in their marriage?

A. No.

Q. Did you see Candace more often during that time period of, say, from when Kathy first started to show these problems to the time that they separated?

A. Probably. We did see more of her, take care of her a little bit more. She would come over and stay a night or something like that.

Q. You were raised in the Catholic faith, yourself?

A. Yes.

Q. And how about Neal?

A. All the children were baptized Catholic.

Q. Do you remember there was a time when he became a member of the Jehovah's Witnesses?

A. I didn't know that he had become a Jehovah's Witness.

Q. How did you come to find out?

A. It was later in their marriage, after the first couple of years in their marriage that we found out that he was in the witnesses, and that Kathy was in the witnesses and brought him into it.

Q. Did you ever participate in the Jehovah's Witnesses?

A. No.

Q. How have you and Neal taken his involvement in Jehovah's Witnesses into your relationship together?

A. Well, it was okay up until the point he remarried, after he was divorced from Kathy. And his wife was a Witness -- his new wife was a Witness. And

they wanted Candace to get back into the Witness organization or whatever, and she didn't want to get back into it.

And so that caused problems between them. And she didn't want to live there with this woman and her two daughters who were in the Witnesses. And the girls didn't get along together at all.

Q. Well, did you make your home available to Candace at that time?

A. Yes. Yes, I did. And then she went with Kathy too. Between the two of us.

Q. How much in her junior high and high school years, how much time was she spending in your home?

A. I had her through her high school years and after that.

Q. When you say --

A. Off and on, a little bit in junior high.

Q. Did she live in your house?

A. Yes.

Q. And was she there more often than she was with either of her parents?

A. Yes.

Q. Did her relationship with her father, for all practical purposes, come to an end when she was at that age group?

A. Practically, yes.

Q. And did you make any effort to try to repair that relationship?

A. I tried to get them together to talk. They did, but it just got into a crying session, and that's as far as it ever got.

Q. Now, were there some times that, before Neal and Kathy separated, that Neal had a medical issue?

A. He had what?

Q. A medical issue? Do you recall him being in the hospital?

A. He went in for some kind of surgery. I don't remember what it was.

Q. And who took care of Candace during that time?

A. She was still with Kathy. They were still all together at that time.

Q. Now, when Candace was living with you in her high school years and after, did you have any idea that she was using any kind of drugs?

A. No.

Q. And did you talk to her about any kind of drug use?

A. No.

Q. And how would you describe your role in

Candace's life during these years that she was living with you primarily?

A. Well, I wasn't trying to replace her mother or father. I was just sort of trying to set her on the right track and take care of her financially, put a roof over her head, feed her, you know, pay for everything, and try to teach her things.

But teenagers at that time aren't interested in learning how to sew or to cook or how to balance a checkbook, that type of thing, they are more interested in their freedom, and, you know, having fun.

So it was -- at some times we butted heads. But more or less, it was there, and once she got out of school, it got a little easier.

Q. Did you consider yourself to be the stabilizing force in her life?

A. Yeah. I had to be. Not that I wanted to be, but yes.

Q. There was no one else?

A. Not really, no.

Q. For example, would you take her sometimes to the counseling visits that she went to after her parents' divorce?

A. Yes, I had to take her, yes.

Q. So you knew that she was going through that,

at least?

A. Yes.

Q. Did you know during the time that she lived with you that she had been abused by Mr. Kendrick?

A. No.

Q. And when did you learn that?

A. She was having -- she wasn't sleeping well. She wasn't -- she was agitated, and she said she wanted to go live with her mother. And she wanted to get help.

So then I kind of -- you know, "What kind of help are you talking about?"

And she told me that she had been on drugs.

Q. And when did she share the abuse that she had experienced?

A. It was after that time.

Q. In the last year or two?

A. Yeah. It was the last -- maybe two, two to three years ago.

MR. SIMONS: Is there any objection to Exhibits 2 and 3?

MR. SCHNACK: No.

THE COURT: All right. Plaintiff's 2 and Plaintiff's 3 each and both are in.

(Whereupon, Plaintiff's Exhibit Number 2 and Plaintiff's Exhibit Number 3 were admitted into evidence)

BY MR. SIMONS:

Q. Ms. Conti, do you remember Candace as a child?

A. Yes.

Q. And what about her appearance do you remember the most?

A. About her appearance?

Q. Yeah, about how she looked?

A. In what way? Did she look healthy?

Q. Tell us everything you can think of about how she looked as a child?

A. She looked fine.

Q. Was she kind of a happy child, it seemed?

A. Yeah, she was. She was very happy.

Q. And how would you describe her, her personality as an 8, 9 and 10 year old.

A. Well, she was very outgoing with people, seemed very, you know, very happy. She got along in school, grammar school. And never, you know, showed any kind of problems at that time.

Q. How about during the time that her parents were having their difficulties? Did she show any

problems to you at that time?

A. No.

Q. Let's look at the next exhibit, 3.

Do you recognize this picture?

A. Yeah. She finally made it out of school.

Q. Were you very proud?

A. Oh, yes.

MR. SIMONS: Thank you. No further questions.

MR. SCHNACK: Just a couple questions, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Mrs. Conti, you mentioned that sometimes you would take Candace to see the therapist during the time that Neal and Kathy were separating and divorcing?

Do you recall that?

A. Yes. But I was never in the room.

Q. Would it surprise you that Candace told that therapist that she was very close to you?

A. No. I have heard that from different people.

Q. Okay. And would it surprise you that she also told the therapist that she felt very safe with Neal during that time period?

A. She felt unsafe with --

Q. She felt safe with Neal?

Would that surprise you that Candace told the therapist in this same time frame that she felt very safe with Neal?

A. I can imagine she could at that time, yes.

MR. SCHNACK: Okay. Nothing further, your Honor.

MR. McCABE: No questions.

MR. SIMONS: Nothing further?

THE COURT: Thank you. You are excused.

THE WITNESS: I can leave to go home?

MR. SIMONS: Your Honor, I don't think we have anyone else before lunch. I think our next witness is scheduled for 1:15.

THE COURT: Since we are breaking a little early -- I am hoping that there is a nice day out there. I will see you at 1:15 and we will continue going forward. As always, thank you for your patience and attention. And again, no chats, no internet, no conversations, no writings, until you deliberate. Thank you, again.

(Whereupon, the following proceedings were heard outside the presence of jurors)

MR. SIMONS: Your Honor, we have several

videotaped depositions, one of which is Laura Fraser but perhaps -- we seem to be moving quicker than I anticipated. And therefore, I would suggest that maybe Ms. Fraser's deposition would be timely shown.

MR. SCHNACK: We will discuss it.

THE COURT: Okay. You guys discuss it.

MR. SIMONS: There is one question of significance. I have a pretty lengthy videotaped deposition for Mr. Shuster who is standing behind me today.

THE COURT: His dedication is noted for the record.

MR. SIMONS: Who was taken as PMQ for Watchtower. And I have excerpts designating him before the trial that we would like to show of that deposition.

Counsel, had a, perhaps, different view?

MR. SCHNACK: I think he should testify live. He is here. It's not like he is not unavailable.

THE COURT: I thought I dealt with that.

MR. SCHNACK: It was for a different witness but same issue.

MR. SIMONS: That was for Mr. Williams, but this deposition was for managing PMQ.

THE COURT: I have dealt with it. He is live. We will see if you have to use the video. Except

for impeachment, he is here.

MR. SIMONS: If I may without trespassing on the Court's patience. But I believe I'm entitled to use the PMQ deposition for purpose. And that was entitled to show for purpose of availability or unavailability notwithstanding.

THE COURT: Your reply.

MR. SCHNACK: I have to look at it.

THE COURT: I have will look at it during the lunch.

MR. SIMONS: Thank you.

(Lunch recess)

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: Let's go back on the record. The question was made at this morning's session to have the person most knowledgeable. I ruled on this 2025.6.0. Provides as follows:

That at (B) -- and this was the trick in terms of my recollection, listening to Mr. Schnack, a managing agent was my focus, and with the regards to the managing agent for purposes of the application statute.

Having said the same and noting just as a full backup, that a request for admission was already read to the jury as to his having been an agent of the

New York, Inc.

The statute specifically provides as follows:

"An adverse party may use for any purpose in deposition of a party to the action or of anyone at the time of taking the deposition was an officer, director managing agent, employee, agent or designee under section 2025.230 of a party. It is not grounds for objection that use of the deposition would fall under the subdivision by an adverse party that the deponent is available to testify, has testified, or will testify at trial."

If anyone wants anything further, subject to review and research, if you want to respond?

All right. Ruling as follows: You may use the deposition you took.

MR. SCHNACK: Again, just subject to other pretrial rulings, there is a lot of deposition concerned church discipline issues.

MR. SIMONS: Yes. We are going to have to meet and confer and edit it, because I'm sure there is materials in there.

THE COURT: Okay. Are you going to use it this afternoon?

MR. SIMONS: Because of that, no, we are looking actually at some Kaiser depos instead.

THE COURT: And I might say -- and I certainly don't want to recant this. It has been a pleasure dealing with all counsel here, because I wouldn't let anything get shown without having had an editing process going forward.

MR. SIMONS: Yeah, I mean, I gave them a big designation, but it was before the Court's pretrial ruling.

THE COURT: Actually, I do not want it to be misconstrued that the way all counsel handled these rulings and the professionalism shown is noted for the record.

But that is my ruling specifically as to the reading of the depo.

MR. SIMONS: It was actually a video.

THE COURT: I'm sorry. The video.

MR. SIMONS: Your Honor, if I may as well, briefly, Carl Lewis who was not available Friday is available tomorrow morning at 8:00. And so we discussed, perhaps, doing a 402 hearing with him and then having him testify and leave in the morning, assuming there is some testimony to be gotten.

MR. SCHNACK: That's fine, your Honor.

THE COURT: Okay. At 8:00 tomorrow morning.

MR. SCHNACK: And that should be -- I can't envision that would be a long process.

THE COURT: Okay. The report is the jury can't wait to get back into this courtroom. Which I think is a compliment also. So let's see what we can do to get them back in here.

(Whereupon, the following proceedings were heard in the presence of jurors)

MR. SIMONS: Pursuant to Evidence Code 776, we would call Mr. Cliff Williams.

THE COURT: All right. Mr. Williams, please come up, if you would, and reminding the jury having declared the ruling under 776, he is perceived to be an adverse witness according to the code, the evidence code.

CLIFFORD WILLIAMS

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: CLIFFORD WILLIAMS. CLIFFORD, C-L-I-F-F-O-R-D. WILLIAMS, W-I-L-L-I-A-M-S.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Mr. Williams, what city do you live in?

A. Downey, California.

Q. And are you an elder within the Jehovah's Witnesses?

A. Yes.

Q. How long have you held the position of elder?

A. For about 32 years now.

Q. Do you also hold a position as a circuit overseer?

A. I am a substitute circuit overseer.

Q. Why don't you describe for us what a circuit overseer is? We haven't heard that one.

A. A circuit overseer, he visits congregations and he builds them up, encourages the brothers and sisters in the organization.

Q. Does a circuit overseer have duties in more than one congregation?

A. No.

Q. Is the circuit overseer one of the members of the body of elders?

A. Not in a given congregation, no.

Q. How many different congregations have you served as an elder in?

A. About five different congregations.

Q. And how long have you been at Downey?

A. I was there up until last March.

Q. And did you assume these new duties as temporary circuit overseer?

A. No.

Q. Are you at a new congregation?

A. Yes.

Q. When we say a circuit overseer, what is the circuit that is referred to?

A. A circuit can represent anywhere from 18 to 25 congregations that a circuit overseer visits in a given area.

Q. And in your position as a temporary circuit overseer, are you acting in the same capacity that a circuit overseer would act if there was a permanent person assigned to that position?

A. Yes.

Q. So you are going from, maybe, 18 to 20 congregations, approximately?

A. Yes.

Q. Is that true?

A. Yes.

Q. And what is the geographical area that you are involved with as a temporary circuit overseer?

A. There is none. I have served as far as Victorville, East Los Angeles, Tahachapi, Ridgecrest, California.

Q. Who does the circuit overseer or temporary circuit overseer report to as the person higher than them, next above them, in the hierarchy of the Jehovah's Witnesses organization?

A. That would be the branch.

Q. And when you used the term "branch," what do you refer to?

A. That's the structural organization back in Patterson, New Jersey.

Q. And is that currently a corporation, the Christian Congregation of Jehovah's Witnesses?

A. Yes.

Q. But before 2001, it was the Watchtower New York?

A. Yes.

Q. When you perform your duties as a temporary circuit overseer, from whom do you get your instructions as to what specific tasks you should do?

A. That would be the branch.

Q. And do you receive training for this position?

A. Yes.

Q. What kind of training do you receive?

A. You go with a regular circuit overseer for a two-week period of time. You observe him. And then the second week, you do what he would do when he visits that congregations.

Q. In a position as a temporary circuit overseer, can you give us a general description of the range of duties that you hold?

A. You conduct a meeting for field service. You give talks Tuesday, Thursday, Sunday. You meet with the full-time preachers of the congregation, and then you meet with the body of elders.

Q. In terms of your position currently as a temporary circuit overseer, are there various publications that provide you information on how you should perform your duties?

A. Yes.

Q. And what are the different kinds of publications that you refer to for how to perform your duty?

A. We have a publication that is for elders. It is called a shepherding book.

Q. Is there a textbook? A Kingdom textbook?

A. No.

Q. Going back to the training you received in

your capacity as elder, who performs the training for you in terms of performing duties as an elder?

A. We have various classes, seminars and things of that nature, every maybe three or four years.

Q. And is there a textbook for elders?

A. Yes. It is that shepherding book.

Q. Who conducts the various classes that you go to as an elder for your training?

A. Most cases, it is a circuit overseer, a district overseer.

Q. And are the materials that you referred to, are those provided to you by New York?

A. Yes.

Q. And again before '01, it was Watchtower?

A. Yes.

Q. Now it is Christian Congregation?

A. Yes.

Q. Back in late 2009 and early 2010, were you serving as an elder at Downey?

A. Yes, I was.

Q. And in that capacity, did you become acquainted with Candace Conti?

A. Yes.

Q. Do you see her here today in the courtroom?

A. Yes, I do.

Q. And is it correct to say that you had two phone conversations with her?

A. Yes.

Q. And then an in-person meeting?

A. Yes.

Q. And in the in-person meeting, there was not just yourself, there was a second elder?

A. Yes.

Q. Do you know the name of that elder?

A. Nef Beltran.

Q. And there was a written report prepared after the meeting that you had in person with Ms. Conti?

A. Yes.

Q. And you were a signatory to that?

A. Yes.

Q. And was that report prepared for any particular purpose?

Let me just ask you the other way: What was the purpose of preparing the report?

A. Just to document what had been discussed at that meeting.

MR. SIMONS: Your Honor, we have Exhibit 19, a letter of January 14, 2010.

May that be admitted into evidence?

MR. McCABE: No objection.

MR. SCHNACK: No objection.

THE COURT: It may be admitted.

(Whereupon, Plaintiff's Exhibit Number 19 was admitted into evidence)

THE COURT: So Plaintiff's 19 only is in.

BY MR. SIMONS:

Q. Now, it was in your meeting with Candace Conti that she reported to you some sexual abuse that she stated she had been victimized by Jonathan Kendrick. Correct?

A. Yes.

Q. Before the meeting, had she mentioned that to you in the phone conversations?

A. The first conversation, yes.

Q. Tell us how the first conversation, what was said back and forth?

A. The first phone conversation had to do with a doctrinal matter about celebrating birthdays. And then about 15 minutes into the conversation, once we kind of got past the doctrinal matter, the doctrinal question, then she brought up the alleged abuse by Jonathan Kendrick.

Q. And when she brought up that, do you recall how she first brought the subject to your attention?

A. She just brought it to our attention that she

had allegedly been abused by Jonathan.

Q. In your letter, you refer to him as Jonathan Hendricks with an H. Do you know now it is Jonathan Kendrick?

A. Yes.

Q. And at the time that you had your first telephone conversation, you mentioned a doctrinal question.

What does that mean?

A. It has to do with something that a person wants to do, but the Bible states otherwise.

Q. And do you recall what the specific issue that that discussion concerned?

A. It had to do with celebrating birthdays.

Q. Was there a specific birthday in mind, do you remember?

A. Yes. It was her grandmother's.

Q. And after that telephone conversation, did you do anything in follow-up with this very first telephone conversation?

A. No, I did not.

Q. Did you notify anyone in New York?

A. No, I did not.

Q. Did you bring the matter up to the attention of any other bodies of elders in any other congregation?

A. No, I did not.

Q. Did you prepare any kind of written report after that telephone conversation?

A. No, I did not.

Q. Is it correct that the telephone conversation was the first actual communication you had from Candace Conti alleging sexual abuse as a child?

A. Yes.

Q. How long was it until you had a second conversation?

A. You know, I do not remember.

Q. Do you remember a ballpark for us? For example, was it a year?

A. Maybe three or four weeks later.

Q. When you ended the first conversation, did you make any arrangements with Ms. Conti to have a second conversation?

A. No, I did not.

Q. Did you have an expectation in your own mind at the end of the first conversation that you were going to be speaking with her on the subject again?

A. No, I did not.

Q. So the way it was left after the first conversation was you had received a report of sexual abuse in another congregation, and you had provided some

consolation, if you will, some solace to the victim? Correct?

A. Yes.

Q. And you had not reported it to any other congregation or to Watchtower New York?

A. No, I did not.

Q. Then in the second conversation, what was discussed?

A. She was concerned that this did not happen to anybody else. So I explained to her the protocol that was in place since it was established that Jonathan was a sex offender, that if Jonathan ever moved to another congregation, this would always follow him, and the congregation elders, they would be notified that Jonathan was a convicted sex offender.

Q. Did Ms. Conti express to you that she was satisfied with that protocol?

A. No, she did not.

MR. McCABE: Your Honor, could we approach?

(Sidebar discussion)

THE COURT: Okay. To the jury, we are going to take exactly a five-minute break. Have a break outside, and we will get you back in in five minutes.

(Break taken)

THE COURT: All right. Mr. Simons.

BY MR. SIMONS:

Q. Mr. Williams, let me go back now to that second phone call. Is it your best recollection that that second phone call was about, maybe, four months after the first?

A. It could be.

Q. And in your deposition that was your estimate, that's kind of your best recollection?

A. Yes.

Q. It was certainly more than a week or two?

A. Yes.

Q. And four months, is it fair, it might have been three, might have been five?

A. Yes.

Q. In that second phone conversation, did Ms. Conti reiterate some of the details that she had shared with you the first conversation about the nature of the abuse that she experienced?

A. No, she did not.

Q. Did she give you any details?

A. No.

Q. But she did reiterate to you that she had been sexually molested by Mr. Kendrick?

A. Yes.

Q. Did you make a report to Watchtower New York

after the second telephone conversation?

A. No, I did not.

Q. Did you notify any other congregation?

A. I talked to the elders in the Oakley Congregation.

Q. And did you make any writing, any written report whatsoever?

A. Yes, sir, I did.

Q. And that was after the second telephone conversation?

A. No. That would be after a conversation that we had when she came to Downey.

Q. Okay. I may have confused you. I'm talking about after the second telephone conversation, did you notify any of the congregation?

A. No.

Q. So you had two telephone conversations over the period of about three or four or five months in which this person had told you on two separate occasions she had been sexually abused by Jonathan Kendrick?

A. Yes.

Q. And you had not yet made any report even after the second call concerning that to Watchtower of New York?

A. No.

Q. And you had not made any report at that time to any of the other congregations?

A. No.

Q. Then is it accurate to say that it was probably seven or eight months after that that you had the next face-to-face meeting?

A. Yes.

Q. So you were aware of Ms. Conti's sexual abuse, at least her claim of sexual abuse by Jonathan Kendrick in the North Fremont Congregation, because she did share the congregation with you where it happened?

A. Yes.

Q. You were aware of that for about a year before you reported it to anyone?

A. Yes.

Q. And was there a point where you felt a change in Ms. Conti's emotional attitude toward the discussion that you and she were having?

A. Yes.

Q. And is it accurate to say that you felt that change was over her feeling that protocols were not enough?

A. Yes.

Q. And these are the same protocols that had been in place for all of the years, at least, that you

had been an elder?

A. Yes.

MR. SIMONS: Thank you. Nothing further.

MR. McCABE: I have no questions, your Honor.

MR. SCHNACK: No questions, your Honor.

THE COURT: Are you finished with Mr. Williams?

MR. SIMONS: Yes, sir.

THE COURT: You are now excused, Mr. Williams.

(Break taken)

MR. SIMONS: Pursuant to Evidence Code 776, we would call Lawrence Lamerdin.

THE COURT: Mr. Lamerdin, come on up.

LAWRENCE LAMERDIN

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record?

THE WITNESS: First and last?

Lawrence Lamerdin.

L-A-W-R-E-N-C-E, L-A-M-E-R-D-I-N.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Mr. Lamerdin, good afternoon.

You are an elder at the North Congregation in Fremont?

A. Yes.

Q. For how many years?

A. Let's see. 20 years, I believe. Since '91.

Q. And before that, did you have service as an elder in any other congregation?

A. In Mountain View.

Q. And how long did you serve there?

A. Just a short time, about six months.

Q. Did you serve as ministerial servant?

A. Yes.

Q. That was in Mountain View?

A. Yes.

Q. How long from the time you became an ministerial servant until you became an elder?

A. Let's see. Five, six years.

Q. Do you remember, when you were at Fremont, a man named Jonathan?

A. Yes, I do.

Q. Were you acquainted with him?

A. Yes.

Q. And when did you come to meet him?
A. When he moved to the congregation.
Q. Was he a ministerial servant when you first came to the congregation?
A. I can't recall.
Q. You do recall that he was a ministerial servant for a time?
A. Yes.
Q. And his time as a ministerial servant overlapped with some of your time as an elder?
A. Yes.
MR. SIMONS: Your Honor, may Plaintiff's Exhibit 4 be admitted into evidence?
THE COURT: It will be admitted.
(Whereupon, Plaintiff's Exhibit Number 4 was admitted into evidence)
BY MR. SIMONS:
Q. Do you recognize Jonathan Kendrick?
A. Looks like him. Looks a little bit older than last time I saw him.
Q. Do you recall the specific role that Mr. Kendrick had during the time that he was a ministerial servant?
A. Specific role? I don't recall, no.
Q. In the congregation at North Fremont during

that time in the 1991 to '93 period, how many ministerial servants were there?

A. I would have to take a guess. I don't remember. Maybe three to six. I can't recall.

Q. And recognizing it is an estimate, what were the different job assignments that the ministerial servants carried out back in that time period in the congregation?

A. Ministerial servants would be a great help. They would help out in the literature and distribution as far as providing it to the congregation, roving mics, carrying microphones to the stage. Things like that.

Q. Did each of the ministerial servants have a specific job to do?

A. At times they did. At times one would be assigned to help out to take care of the stage microphones. And at other times removal and take care of literature, for example.

Q. And focusing on Mr. Kendrick, would he have fulfilled more than one of these different assignments that you have described for us?

A. Maybe not.

Q. When a ministerial servant gets an assignment, would it be fair to say that is the assignment he usually performs until such time as he

becomes an elder or ceases to be a ministerial servant?

A. No, not really. If they do a great job, I mean if it is easy for them to accomplish that, they can stick with it. Usually, it is a great benefit to the congregation.

Q. Did Mr. Kendrick, to your understanding, have any duties and responsibilities with regard to literature?

A. I can't recall.

Q. Do you recall ever having him dealing with traffic, for example, in the parking area?

A. I can't recall. I can't recall. No doubt, though, as a servant, he had helped us in some ways.

Q. Did you ever give Mr. Kendrick any specific instructions on how to perform his duties?

A. Again, I don't remember what duties he was assigned, so I don't know.

Q. Do you remember giving him any training or instructions at all?

A. Myself? I don't know. It would be usually the training would come through in the articles we were discussing at the meetings.

Q. You heard a report at some point that Mr. Kendrick had sexually abused a girl?

A. Yes.

Q. And do you recall, first of all, hearing of that report specifically? Do you recall learning about the report?

A. Do I recall when I learned of the report?

Q. No. Do you have a recollection of hearing that report?

A. I have a recollection of hearing the report.

Q. As you sit here today, have you done something since your deposition back in November of 2011 to sort of refresh your recollection as to that report?

A. Not really, no.

Q. Is it -- I will say as clear in your mind today -- I know this was some years ago, but is it as clear in your mind today of hearing that report as it was back in November when we took your deposition?

A. It is about the same.

Q. Is it correct at the time we took your deposition, I asked you if you recall hearing a report that there was some inappropriate touching between Kendrick and Andrea, and you don't recall that?

A. That's correct. That's correct. I do not recall that.

Q. What do you recall about that incident?

A. I recall there was abuse that was confessed to.

Q. Do you recall when you first heard of the report?

A. Of the abuse?

Q. Yes. When did you first hear of the report of Kendrick abusing his stepdaughter?

A. At our elders meeting.

Q. Do you recall in your deposition when we asked the time frame within which you learned of that report you had no recollection?

A. I do recall saying that, yes. So I would say you are correct from recalling at the deposition and things that you asked me that I recalled, I remember a little more clearly. I would say it would be more correct in that.

Q. At the time of your deposition, did you even recall whether Mr. Kendrick was still a member of the congregation when you learned of that report?

A. I can't recall.

Q. You were not involved, yourself, in any of the discussions about whether Mr. Kendrick should continue his duties as a ministerial servant?

A. No, I was not.

Q. How many elders, approximately, were there back in the time period of 1993 when the events that we are talking about occurred?

A. I would say about the same today. Maybe about twelve -- ten to 13, somewhere around there.

Q. And were you regular in your attendance to the elders meetings?

A. Yes.

Q. In fact, over your many years, you have been very conscious just in that respect, have you not?

A. Yes, I have.

Q. So you didn't miss elders meetings in 1993?

A. I certainly tried not to. Because of sickness at times.

Q. When you learned that Mr. Kendrick had sexually abused his stepdaughter, did you take it upon yourself to do any additional supervision of him with regard to his participation in activities at the congregation?

A. Absolutely. Absolutely. Particularly myself and my responsibility as a shepherd, as we are called, as we try to care for the needs of the congregation, our children are very important. And particularly after hearing that, I was even more observant.

Q. And did you observe Mr. Kendrick in the Kingdom Hall with children around him or present?

A. Not any more than any other congregation member.

Q. So you saw Mr. Kendrick in participating in Kingdom Hall activities with children around him just like any other?

A. No. Not in that aspect. As one who would draw children to him at that point, no. And we would make sure that would not happen after hearing of that.

Q. I think you said no more than any other congregant?

A. I did say that. And I want it clarified and to make sure I clarified you understood what I meant by that. As we meet together, we all meet together and mingle before the meetings. As he would come in, as in any other congregation member, it would be passing family or passing children and whatnot.

As if he was standing by himself, if he was standing by another male with him that I could see, it wasn't something that he had the position of pulling children around or encouraging children to come next to him at all, and we made sure that was watched.

Q. Was he allowed to sit anywhere within the Kingdom Hall?

A. For the most part, yes.

Q. So there was nothing to prevent him from sitting next to families with children?

A. Oh, yes, there was. We were the ones

responsible for that, making sure that didn't happen.

Q. So your recollection is that Mr. Kendrick was never allowed to sit with children?

A. To the best of our ability, we made sure of that.

Q. And how did you make sure of that?

A. Just keeping our eyes out and making sure that there was no one-on-one contact.

Q. Did you ever have to get up and tell Mr. Kendrick to move, he was too close to a child?

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

Q. Do you recall seeing any other elder ever requiring Mr. Kendrick to move because he was sitting next to a child?

A. I don't recall that, no.

Q. Do you recall anyone ever discussing in the elder's conferences or meetings that he was sitting in the Kingdom Hall sitting in the seats, and there were children sitting next to him?

A. I don't recall that.

Q. After the discussion in terms of Mr. Kendrick being removed, following that time period, was there ever another discussion at the Body of Elder meetings about supervising Mr. Kendrick?

A. Can you repeat that, please?

Q. Yeah. After this report was received, was there ever another meeting in which Mr. Kendrick was discussed?

A. I can't recall.

Q. Do you recall any discussion after November of 1993, when the report first came up, in which it was talked about in the body of elders in the Fremont North Congregation that, "Hey, are we keeping an eye on. Mr. Kendrick?"

A. I can't recall. It is something we would strive do regularly, and as articles come up, remind them of these things.

Q. But your best testimony is that it was never discussed again?

A. No. That's not my testimony. I don't recall. It may have, but I don't recall.

Q. Now, is it fair to say that over the last 20 years or so that maybe three or four ministerial servants had been removed from their positions at the North Fremont Congregation?

A. That would be at the most, and normally that's because they move.

Q. And is that considered to be a big deal?

A. Oh, yeah. It is. Of course not removed, but many times it is because of them having some spiritual

difficulties, not keeping up with or applying certain spiritual qualifications.

Q. So you would agree that the fact that a ministerial servant is removed from that position does not tell the congregation that he has a record of sexually abusing a child?

A. No.

Q. Do you agree?

A. Repeat that, please.

Q. Do you agree that the removal of a ministerial servant does not convey to anyone the information that he had sexually abused a child?

A. No. It does not convey that.

Q. In 1998, you completed a form that had some information concerning Mr. Kendrick.

THE COURT: It may be admitted into evidence as written.

BY MR. SIMONS:

Q. First of all, do you see your signature at the bottom of this page?

A. Yes.

Q. Do you recall meeting with Mr. Clarke and Mr. Abrahamson to complete this form?

A. Yes.

Q. And this was information that was provided

back to Watchtower New York concerning Jonathan Kendrick; is that correct?

A. Yes.

Q. And in that information, there is a Number 4. Can we highlight Number 4 here?

"Legal authorities contacted. Police report made. No action taken by courts."

Do you recall where you got the information that went into filling out this portion of the form?

A. This was from Mr. Clarke and Mr. Abrahamson.

Q. And was there any discussion at that time as to whether it should be checked to see whether it was accurate?

A. Whether those statements are accurate?

Q. Yes. Whether that statement was accurate?

A. Definitely.

Q. And do you have any information as to what was done to make sure the information was accurate?

A. I had their assurance that it was accurate.

Q. So Mr. Abrahamson and Mr. Clarke told you that they had checked, and the legal authorities had been contacted concerning this 1993 incident, but there had been no action by the courts?

A. That's what I was told.

Q. Was it important to you that the information

on this form be accurate?

A. Yes.

Q. And did you want Watchtower New York, when you sent this form, to have complete information on the individual that was the subject of this report?

A. Yes.

Q. Going back to your deposition, you advised me at the time when I asked you, had you ever seen Jonathan Kendrick with children after the 1993 report was received, and your answer was "not alone."

Do you recall that?

A. I think so.

Q. Let me, if we may, page 28 of the deposition line 17 through 20. Let me see if we can refresh you here?

A. That's all right. I trust you.

Q. Let's take a look at it.

MR. SCHNACK: If you are going to refresh, I'm not sure you should show it to the jury, your Honor.

THE COURT: Forgetting your trust of Mr. Simons, do you recall that having been your answer, sir?

THE WITNESS: Could you give me that question again, so I can answer it clearly?

MR. SIMONS: Yes.

May we approach, your Honor?

(Sidebar discussion)

BY MR. SIMONS:

Q. Notwithstanding your comment, I would like to show you your question and answer on the page and line I just indicated and ask you about it.

(Whereupon, video recording was played)

BY MR. SIMONS:

Q. Ever see Jonathan Kendrick present with children at Kingdom Hall after you learned of this report?

A. Never alone.

(Whereupon, video recording was stopped)

BY MR. SIMONS:

Q. So let's split some hairs. You never saw Jonathan Kendrick alone with a child at Kingdom Hall?

A. Exactly, yes.

Q. Of course if he was alone with a child, you wouldn't have seen him because he would have been alone. Correct?

MR. McCABE: Objection. Argumentative.

BY MR. SIMONS:

Q. Let me rephrase.

The Kingdom Hall has got a series of small rooms and then there is a large room?

A. Yes.

Q. And within that large room, there is a number of chairs and seating. Correct?

A. Yes.

Q. As well as there is things along the wall where you might store things, that sort of thing?

A. Uh-huh. In the back. In the back of the auditorium.

Q. So when you said "never alone," isn't it correct that you did see Mr. Kendrick with children after 1993 in the Kingdom Hall, just that you never saw him alone with a child?

A. I'm not sure where you are going with this question, but what I meant to say -- not meant to say -- what I did say before was he would be along with the rest of the congregation attending a meeting, and as we come together it is not women and children on this side and men on this side.

As we come in, we all come in together mingling. However, not alone in that circumstance.

If he would be walking in, he might be walking in to find a seat, whatever it might be in that situation.

MR. SIMONS: Thank you, sir. Nothing further.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Mr. Lamerdin, how many hours a week do you spend performing your duties and services as an elder in the North Fremont Congregation?

A. Somewhere between 15 and 20 hours, I would say.

Q. And the other elders that have testified said they don't get paid. Is that true?

A. No.

Q. Why do you do it?

A. It is a privilege. It is an honor to be able to take care of the congregation.

They have a trust and a reliance on us to help them out, and it is a privilege working along with them teaching.

Q. I would like to see if we can have Exhibit 132, Defense only, into evidence.

It is a series of three photographs.

MR. SIMONS: There is no objection, your Honor.

THE COURT: So Defense 132?

MR. McCABE: Yes. 132.

THE COURT: By agreement, Plaintiff's Exhibit Number 27 and Defendant's Exhibit Number 132 is now

admitted.

(Whereupon, Plaintiff's Exhibit Number 27 and Defendant's Exhibit Number 132 was admitted into evidence)

BY MR. McCABE:

Q. Have you seen this photo?

A. That's the front entrance to our Kingdom Hall.

Q. Okay. And that's located on what street?

A. 1660 Peralta Boulevard in Fremont.

Q. And what is this? Number 132? Can you tell us what that is?

A. That's the entrance to the front of the Kingdom Hall.

Q. And as you go away from the photograph, it looks like there is some shrubbery?

A. Yes.

Q. And blacktop?

A. Yes. All the way back. It goes back maybe five or six rows of parking in a rectangle, back behind you.

Q. So that's the parking lot?

A. Parking lot.

Q. And if we could go back to the last photograph, the entry to the Kingdom Hall?

What are we looking at here besides the Kingdom Hall sign?

A. As you go in the driveway, you will see a gate with a post coming up right there, and going straight back, you see a dusty spot there. That's where the parking starts and goes right behind that building. And right in the back there is where the parking is, the blacktop and the front door that you saw the other way around.

Q. So what is this right here?

A. That is the back, if you will, of the Kingdom Hall that's all closed off right there.

Q. All right. Go to the next photograph.

A. That's the opposite side of what you just pointed to.

Q. The opposite side?

A. The opposite side of what you just pointed to.

Q. All right. Let's go to the next paragraph.

What are we talking at here?

A. That's right inside the front door, in the back corner of the tan spot in the back there. Looks like a little archway. Those are the doors you just looked at going in. That's the entrance. That's where they come in. And that's the congregation singing

before the meeting.

Q. Is this the entire size of the auditorium?

A. Yeah. That's pretty much it, that angle there, yeah. And right next to you over your shoulder right there, if you turned around and looked at that direction, that's where the stage is with the platform. Not really high. It is about just right here, two steps.

Q. How many seats are in the auditorium?

A. 220, I think.

Q. What is your normal Sunday attendance?

A. Normal is about a hundred. It goes between 95 and 110, maybe, somewhere in there.

Q. Was that true in 1994, '95 and '96?

A. Yeah. We averaged right around there. Sometimes it went higher, maybe 115 or 120, somewhere in there.

Q. And in 1993, would you agree that's what you heard about the molestation of Andrea Kendrick?

A. Yes.

Q. Did you consider Jonathan Kendrick to be a child abuser at that point in time?

A. Child abuser? Yes.

Q. Did you ever -- while he was still associated with the congregation, ever hear him being involved in

another act of child abuse?

A. No, I did not.

Q. Did you consider Mr. Kendrick, in 1993 until he left the congregation, to be a danger to children in your congregation?

A. No. As a matter of fact, we kept an eye on him to make sure that everything was fine, and there was no issue that came up after that that warranted anything to lead us to think that way.

Q. This document you just went over with Mr. Simons indicated there had been a court action. When did you hear about the court action in connection with the events with Andrea?

A. I'm sorry?

Q. Sorry, it is my voice.

In the letter that you just looked at from your congregation, signed by you and Mr. Clarke and Mr. Abrahamson, indicated there was some type of report made; is that correct?

A. Right. Right.

Q. And it indicated that there was no court action taken?

A. There was no court action taken, yes.

Q. And you subsequently learned that that was inaccurate?

A. Yes.

Q. Was that an important fact to you, when you wrote that letter, whether or not court action was taken?

A. Was it an important fact for me?

Q. Was it?

A. That no action was taken?

I'm sorry. It is hard for me to hear.

Q. I'm sorry. The fact that there was or was not court action taken, was that a very salient fact or important fact of that communication to Watchtower?

A. Yes.

Q. And the fact that there wasn't communicated correctly on that form, was that an important fact?

A. Yes.

Q. Why wasn't it correctly put on the form?

A. We had no idea, we had no knowledge of it.

Q. How did you know it was reported to the police?

A. I was begin that information by Mr. Clarke and Mr. Abrahamson.

Q. Have you since learned that Jonathan Kendrick was convicted of a misdemeanor?

A. Yes.

Q. When did you learn that?

A. I'm sorry, I can't recall.

Q. Do you know if the Fremont police ever contacted your congregation in connection with this report that was made to them about Andrea?

A. No one ever contacted the congregation.

Q. How about the District Attorney's office?

A. No.

Q. How about Child Protective Services?

A. No.

Q. How about the probation department?

A. No.

Q. Do you recall that Jonathan Kendrick and his wife Evelyn separated?

A. Vaguely, I do.

Q. Do you recall the year?

A. I don't recall the year that they did.

Q. Do you recall where Jonathan Kendrick went to live shortly after the separation?

A. I believe he went to his friend's house, the Francis home.

Q. And that was another family in the congregation?

A. Right.

Q. After the report was made to your body of elders about Jonathan Kendrick abusing his stepdaughter,

Andrea, did you ever see Candace Conti sitting on Jonathan Kendrick's lap at the Kingdom Hall?

A. Absolutely not.

Q. Was that something you were watching for?

A. Oh, definitely. For any child.

Q. Albeit, Mr. Kendrick being removed as a ministerial servant, as part of that process, was he given any instructions by the body of elders about contact with children?

A. Yes.

Q. What were some of those instructions?

A. Not allowed to be around them, to work in the ministry with them, to have contact with them or indirect contact at all. Not to be around them.

Q. Do you ever see Mr. Kendrick violate those directions?

A. No.

Q. Did you ever see Mr. Kendrick giving bear hugs to Candace Conti in the Kingdom Hall before the meeting, during the meeting or after the meeting?

A. No, I never saw that.

Q. Did you ever see Candace Conti leaving the Kingdom Hall out the driveway from the parking lot with Jonathan Kendrick in a vehicle alone?

A. Absolutely not. If I had seen that, I would

have run out there and stopped the truck and said, "What is going on here? That is not allowed."

Q. And why was it not allowed?

A. That is just not right. It is not right for someone else to take someone else's child alone, one-on-one like that. And even -- it is just not right.

Q. Do you have children, Mr. Lamerdin?

A. Yes, I do. I have a boy and a girl, 14 and 16.

Q. And what about Mr. Kendrick working in the house-to-house ministry we were talking about with Candace alone?

A. I'm sorry.

Q. With Mr. Kendrick, after 1993, did he ever work in the house-to-house work, alone with Candace Conti?

A. No.

Q. Did you ever see that happen after 1993?

A. No. Not at all.

Q. Did Jonathan Kendrick ever lead a meeting that you had at the Kingdom Hall before your people go out and do door-to-door ministry?

A. No.

Q. Did you ever do that before November of 1993?

A. I don't recall that.

Q. But after November of 1993, your testimony is --

A. Absolutely not. No.

Q. Let's talk for a minute about confidentiality and the congregation.

Why do you have confidentiality in the congregation of reports that are made to you?

A. Confidentiality is vital. It is a scriptural direction that we have. We base it on the scriptures, Proverbs 29 highlights not to reveal confidential talk of another. It could even lead to slander.

It is a vital aspect of a minister in the congregation that the congregation can come to those that can help them spiritually to build them up spiritually and have confidence and trust that they are not going to be spreading or talking to others about this.

Maybe they deal with depression, maybe they deal with a personal issue, or whatever it might be, or something more serious. It is a vital thing. And it is scripturally based, we guide ourselves accordingly with that.

Q. From time to time, does the body of elders get policies from Watchtower in how to conduct various aspects of the congregation?

A. Sure.

Q. Do those instructions come in the form of letters from the Watchtower organization?

A. Yes, letters.

Q. I would like to show you Plaintiff's 1, Defense Number 26, and ask you if you recognize this document.

A. Yes, I do.

Q. What is it?

A. It is a letter to all bodies of elders in the United States regarding confidentiality in various aspects of conducting ourselves as elders in different matters that we deal with.

Q. And what is confidentiality based on in this letter?

A. Scriptures. It is based on scriptural direction. For example, one is highlighted here in Matthew: "What you hear whispered, preach from the housetops."

But that's not the things. It says we cannot stop speaking about the things aired here.

That is the preaching activity. That is something that we engage in. That is very important.

Yet when it comes to confidential matters, Ecclesiastes says keep quiet. It is a confidential

matter. Not revealing confidential talk of one another.

Q. Was this July 1st, 1989 letter to all bodies of elders of the United States also a policy statement on child abuse?

A. Oh, I'm sorry. Also, in addition?

Q. Yes.

A. It has a paragraph on that, yes.

Q. Which paragraph is it?

A. On page 3, I think, B. Right at the top of the page.

Q. And how long is this entire letter?

A. Six pages.

Q. And how long is the article -- or the section on child abuse?

A. One paragraph.

Q. And what is the direction that is given by Watchtower in that paragraph regarding child abuse?

A. If there is ever an accusation, to immediately call the Legal Department of the Watchtower.

Q. Anything else?

A. For direction. And, of course, look up -- and articles that can help us to help those that have brought this up, this accusation up.

Q. And does it refer to such an article?

A. Yeah. It refers to the Awake of January 22,

of 1985, "If the worst should happen."

Q. I would like to show you what has been marked as Plaintiff's Number 17 -- excuse me. Plaintiff's Number 9. Defendant's Number 17. It has been admitted, I believe.

Do you recognize that document, sir?

A. Yes, I do.

Q. What is it?

A. This is how I, or how we can protect our children. And the highlight of the article with the primary subject of the article is regarding child molesting.

Q. Is that article the one that's referred to in the July 1, 1989 letter dealing with child abuse?

A. Yes, it is. And particularly on page 8. That's what the letter primarily refers to.

Q. What is contained on page 8?

A. It refers to a box there, "If the worst should happen," and how to care for the individual.

Q. Do you recall -- you were with us in 1985?

A. Yes.

Q. Do you recall, yourself, getting this magazine?

A. Yes.

Q. Do you recall how you got it?

A. Yes. Getting a subscription in the mail in the mail box.

Q. Was it your custom at that time to read magazines like this when they came?

A. Oh, yeah, definitely.

Q. Was that magazine available just to elders in the congregation?

A. No. To everybody in the congregation that wanted a copy. Actually, everybody had a subscription. And if they use these -- normally this is what we use out in the ministry, we share this with people knocking on their doors, sharing this information.

It is something that it is so sad to see, this is something infiltrating society. This is what we want people to be aware and how they can help.

Q. Getting back to the July 1, 1989 letter and the paragraph dealing with child abuse, was that the end of the policy begin to you by Watchtower Bible and Tract Society in dealing with the matters of child abuse?

A. The end of the policy? No.

Q. What else was provided to you?

A. Well, we are continuing our instructed, whether it is through articles in the magazines or letters from the Watchtower, to continue to be aware of situations and make us aware of how we can continue to

be vigilant in caring for the congregation.

Q. I would like to approach you with Defendant's Exhibit 32, and Defendant's Exhibit 27, which has been admitted into evidence, and ask you if you recognize this document.

A. Yes, I do.

Q. Is that a continuation of the development of the policy of Watchtower on child abuse?

A. Yes.

Q. Is there an attachment to that March 23, 1992 letter?

A. Yes, there is.

Q. Okay.

A. That attachment says or states at the heading of it is what elders can say to abused victims.

Q. Now, I want to call your attention to a time when you first heard about Jonathan Kendrick abusing Candace Conti.

Do you recall that time period?

A. Yes.

Q. What time period? What year was it?

A. It was about a year ago. I'm blank on the date.

Q. Does 2009 sound about right?

A. December, I think it was, 2009. Somewhere

around there. Yes, 2009.

Q. Do you remember what month?

A. I think it was December.

Q. How did you first hear about Candace Conti's allegations of abuse by Jonathan Kendrick?

A. At that meeting, when we met with her at the Kingdom Hall.

Q. How did you know to meet her at the Kingdom Hall?

A. She had called Mr. Clarke, I believe, and requested that both of us meet with her at the Kingdom Hall and she wanted to inform us regarding some type of abuse.

Q. And you knew the subject was going to be sexual child abuse?

A. That was what I understood it to be.

Q. And how did you understand it?

You knew from Mr. Clarke?

A. Yes, from the conversation he had with her.

Q. What, if anything, did you do prior to learning about the meeting to prepare for the meeting that you were going to have with Ms. Conti?

A. Right away, I looked up what I could on the subject. And as a matter of fact, this is one of the letters I looked up.

Q. And that is a March 23, 1992 letter?
A. March 23, 1992 letter.
Q. With the attachment?
A. With the attachment, yes, along with some Awake articles and how we can help.
Q. Why did you do that?
A. Just hearing of that just cut me to the heart. You hear about it all the time in the media, and it is going on constantly. And then hearing of that, it hurt. And I wanted to make sure that I can be of some assistance to help by my words, by using the scriptures to comfort her, to help her realize that God cares about her and wants her to be careful.
Q. Prior to the meeting, did you do any looking into your files for anything about Jonathan Kendrick?
A. Prior to that? No, I didn't know who was involved.
Q. Where did the meeting take place with Candace Conti?
A. At the Kingdom Hall.
Q. How did the meeting begin?
A. We sat down and asked her, well, what happened? What is happening?
Q. Did you start the meeting with a prayer?
A. I believe so.

Q. Did Candace join you in that prayer?
A. I would hope so.
Q. Did you bring anything to the meeting to use in your discussions with her?
A. The Bible.
Q. How long did the meeting last?
A. I can't recall. I think it was maybe about an hour. Maybe less than that, half hour. I can't recall.
Q. What did Ms. Conti tell you about what had happened to her as a child?
A. She said that she was abused by Jonathan Kendrick.
Q. Did she provide you any more details?
A. She said that he touched her inappropriately. And she started to break down, which really hurt, seeing her pain. She said that she couldn't continue on. She insinuated that it went beyond that.
Q. And you didn't press her on details?
A. No, not at all.
Q. Did Mr. Clarke press her on details?
A. No.
Q. And as far as you understood, Ms. Conti requested that you would be at that meeting?
A. From what I remember, yes.

Q. Did you have any discussion with Ms. Conti that she had spent time alone with Mr. Kendrick at his home?

A. Any discussion? I believe, she brought that up.

Q. Prior to that conversation, was that something that you had ever known about?

A. No. Not at all.

Q. Did she indicate anywhere else?

A. I can't recall, no. I don't believe so.

Q. Did she indicate to you whether or not she drove a vehicle with Mr. Kendrick away from the Kingdom Hall?

A. I don't think that came up in the meeting, no.

Q. Did you ever observe that?

A. Did I ever observe that? No. Absolutely not.

Q. What did you do to try to comfort and encourage Candace Conti during this meeting?

A. We certainly tried to listen and be empathetic and with heartfelt, honestly, and tried to comfort her in any way.

We shared some scriptures with her and encouraged her to reach out to her family or dad to help

her through this.

Q. Let's talk about that for a minute. Did you suggest that she reach out to her father?

A. Yes.

Q. And what was her response?

A. She just, from what I could recall, indicated it wasn't the greatest relationship. I mean, I don't want to put words in anyone's mouth, but it just appeared they weren't getting along, things like that.

Q. Body language, things like that --

A. Yeah.

Q. Let me finish my question.

A. I'm sorry.

Q. Did you reach out to Neal Conti after this meeting with Candace?

A. Yes, I think about two or three days later. After two or three days, we met with him.

Q. And was he a member of the congregation in 2009?

A. No. He was in a neighboring congregation.

Q. So how did you contact him?

A. We got ahold of him, contacted him on the phone, and then we met him at the Kingdom Hall and spoke to him.

Q. Same Kingdom Hall?

A. Same Kingdom Hall.

Q. What did you tell Mr. Conti?

A. We asked him if he was aware what was going on here. And we asked him, "Please reach out to her, and she needs your support now."

And he was pretty upset about it.

Q. And what was his response?

A. He said he would try to do whatever he could to reach out.

Q. I wanted to ask you, too, did you try to reach out to Candace's mother, Kathleen Conti?

A. No.

Q. Did you try to call her?

A. No. I don't recall.

Q. Did you know where she lived at the time?

A. No. Just, I thought she lived somewhere in Southern California. I don't remember where.

Q. How many children attend the North Fremont Congregation?

A. About 30. 20, 30, something like that.

Q. How do you feel about that?

A. They are like family. They mean a lot to us.

Q. Okay.

A. We cherish them. We care for them. We want to see them grow up with good morals, to be an asset to

the community, to grow up with spiritual guidance and to be happy and to have a great life.

Q. How many children were in the congregation back in 1994?

A. 1994? Close to the same. We are pretty -- family congregation. We have a lot of kids in our hall. Maybe between 20 and 30.

Q. Would that be true in '95, '96, '97?

A. I would say so, yes.

Q. Did you feel the same back then as you do today about those children?

A. Absolutely. Tremendously. We are like a family. We care about one another. That is part of meeting together even before the meetings. How is it going? How are you doing in school? How is everything going? We really care about one another. It is just the way we feel.

MR. McCABE: Thank you.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Mr. Lamerdin, thank you for your obvious feelings of empathy for Candace. Let me ask you a couple of other questions here.

A. Sure.

Q. Can we go back to the photographs and see photograph 132-C again, please?

Mr. Lamerdin, I'm just a little unclear. Is there an aisle that we kind of just see here in the bottom right of the photograph?

A. Yes, there is the aisle there, and then the same on the other side.

Q. So it looks like there is a seat on the bottom right of the photograph as well?

A. Yes.

Q. And there is about the same number of seats on the right side of the photograph as there is on the left?

A. Yes. On the far left, there is four seats on the wings, if you will.

Q. So what we see here is where, actually, the folks, Mr. Abrahamson and others are standing is, we see sort of the middle section of seats?

A. Yes.

Q. And then there is a section on the left with an aisle. Correct?

A. Correct.

Q. And then a section on the right with an aisle?

A. Correct.

Q. And then you mentioned, there is a little stage, a slightly elevated area in the front?

A. Yes. In the front area, yes.

Q. Where are the elders during the services?

A. All disbursed throughout.

Q. Disbursed in the audience?

A. Yes.

Q. Okay.

A. There is no, "Okay, all the elders sit right here and you sit right there." They are all...

Q. And who is up at the front facing, if anyone, facing the chairs and the people in them?

A. Like I am looking back at that?

Q. Yes.

A. There is no one looking back at that except for the one who is presenting the material from the podium.

Q. So whoever would be, either the speaker or leader of the prayer or song, that would be the person in front?

A. Yes.

Q. And does that person change during the course of the service?

A. Yes. Occasionally, yes.

Q. Does it change from service to service who

that person might be who is up at the front leading?

A. Yes. For example, for Sunday we have a public talk or talk for everybody by the way it is taught. And the one who is presenting that, once he finishes, then the chairman will come up, we have an intermission song, and then another person will come up and conduct a Watchtower study.

Q. Now, you mentioned that you did not consider Mr. Kendrick to be a danger before the molestation of his stepdaughter?

A. Right.

Q. And you did not consider him to be a danger to molest other children afterwards because you were keeping an eye on him?

A. Yes.

Q. Did you consider him to be a danger to molest children after 1993, after the stepdaughter report, at times when you, perhaps, didn't keep an eye on him?

A. I really couldn't comment on that.

Q. You knew from -- in the beginning you said that you read in the Awake and the Watchtower that child sex abusers often operate in secret?

A. Yes.

Q. And you knew that they often operate in religious organizations?

A. Yes.

Q. And you knew that they would find ways without any detection at all to get to children that were in the various religious congregations?

A. Yes.

Q. You mentioned that if you saw a child in a car of someone other than a parent that you would inquire and want to know what's going on.

Is that a fair summary of what you told us earlier?

A. Yes.

Q. Wouldn't you say that it is undoubtedly true that sometimes parents could not provide transportation to a child to a Jehovah's Witness event, and it would be done by another member of the congregation?

A. Only under the parents' supervision and that they trust.

Q. But you were aware that the parent from time to time would have their child transported by another member of the congregation?

A. The reason why I'm hesitant on that is the way you put the question. They would be transported at times with someone they would approve of, yes.

Q. Who the parents would approve of?

A. Who the parents would approve of. They have

the primary responsibility of taking care of the children.

Q. It would not be surprising to you, however, to learn that the parents had asked another member of the congregation that they trusted to take their child somewhere?

A. It would surprise me. It would surprise me at times, yeah. I would make sure I touched base with the parents and what's behind it and make sure they will be responsible and take care of the safety and welfare of the child.

MR. SIMONS: Let's take a look, your Honor, at Mr. Abrahamson's deposition at page 38, lines 11 through 23.

(Whereupon, video recording was played)

BY MR. SIMONS:

Q. Children sometimes attend meetings without parent?

A. Yes, they do. But, of course, they would have to arrange transportation to get there, so someone would take oversight of that individual to get them to a meeting and to get them home.

Q. When you said "somebody" can you tell me what kind of somebody you are thinking of?

A. The parents would arrange for somebody.

Q. A person -- another member of the congregation?

A. Yes. Undoubtedly.

(Whereupon, video recording was stopped)

BY MR. SIMONS:

Q. Do you agree with that?

A. Another member of the congregation? Yeah, as long as the parents approve it, and ...

Q. When the parents are making a decision of who they approve of, would it be beneficial for them to know if one of the members of the congregation is a -- as you said -- a known child molester?

A. Could you repeat that?

Q. Yeah. Wouldn't the parents be able to make a better decision of who to trust to take their child somewhere if they knew that one member of the congregation was a known child molester?

A. I would have to say no.

Q. You looked at the Awake Magazine from 1993, and that's Plaintiff's Exhibit 64, Defense Exhibit 037.

MR. McCABE: I don't believe he did look at it, your Honor.

MR. SIMONS: He discussed it.

Counsel, I stand corrected.

BY MR. SIMONS:

Q. You discussed having read the October 1993 Awake Magazine.

And you would diligently read all of the Awake Magazines. Correct?

A. Yes.

Q. And in particular, you were interested in information concerning child abuse because you are a father and because you are a man who cares about children, really?

A. Yes.

Q. In your heart, children are very important to you?

A. Yes.

Q. And so can we look at the exhibit, please? Page 4.

So you knew from your reading of Awake that:

> "Adult society often unwillingly cooperates with child abusers. How so? By refusing to be aware of this danger by fostering a hush-hush attitude about it."

A. Yes.

Q. Then you knew from your reading that it was the view of Awake that there was a general conspiracy of silence that allowed gross child abuse to persist among

a separate religion, the Catholic Church, for decades?

A. Yes.

Q. And you knew that, not only from your reading, but just from your general knowledge as a member of the community?

A. Yes.

Q. Now, I don't want to have a debate with you about spiritual interpretation.

Let me just ask you this question with regard to the spiritual matters that you talked about as the basis for the policy of keeping child sex abusers confidential and secret.

Your understanding of that basis comes from what you learned through your teachings and studies, from Watchtower of New York?

A. Yes.

Q. Your December '09 letter that we looked at, which is Plaintiff's 18, Defendant's 106, this is the letter that you wrote concerning Candace.

And did you notify New York in 2009 of the report you had received from Candace Conti?

A. Yes. We called Legal.

Q. And when you did that, did you follow it up with any written report?

A. I don't believe so.

Q. Other than this letter of December 20, 2009, did you notify anyone else of the report of Candace Conti concerning her abuse by Jonathan Kendrick?

A. The Oakley Congregation.

Q. That's this letter?

A. Yes.

Q. Anyone else besides -- was it telephoned to New York?

A. Yes.

Q. To Legal. And then you also wrote this letter to Oakley.

A. Yes.

Q. Anyone else you notified?

A. No.

Q. You talked with Candace about reporting it to the police?

A. We talked about that. We said, "If you want to report it, you can report it."

We left that up to her.

Q. Let's look at Exhibit 18.

The sentence says:

"She asked twice if we were going to report this to the authorities. We told her, I said twice, that if she wishes to make a report it is her right to do so."

Is that correct?

A. Yes.

Q. Did you understand when she asked you twice if you were going to report it to the authorities, that she was asking for your help to go to the authorities?

A. No. I did not understand that. It did not come through us. That's why we emphasized, "If you want to make a report, you can go ahead and do that."

Q. You knew that she was not willing to confront Mr. Kendrick because it was just too difficult for her?

A. Yes.

MR. SIMONS: Thank you. Thank you, sir.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Mr. Lamerdin, did you ever see Candace Conti at the Kingdom Hall of Jehovah's Witnesses in North Fremont without one or both of her parents present?

A. No.

MR. McCABE: Thank you. That's all.

THE COURT: Mr. Lamerdin, thank you very much for your time today. You are excused.

To the jury. Same comment. Thank you, as always, for your commitment and dedication, and diligence, based on my observation.

I will look forward to seeing everyone bright-eyed at 8:30 tomorrow morning. Thank you again.

THE COURT: Okay, counsel.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: Counsel, we will gather again at 8:00 tomorrow morning.

It is my recollection, Mr. Simons, both your offer of proof as to Mr. Lewis tomorrow, I have a recollection.

MR. SIMONS: Certainly as to Child Sexual Abuse Accommodation Syndrome, which is his regular kind of beat, if you will.

And I have to recheck -- Mr. Schnack and I were conferring about that earlier -- I know there was a couple of things he said that clearly are not going to be admissible that would not be asked about.

I kind of have in the back of my mind, there is one other subject matter that was permissible with his opinions, and I'm having trouble dredging it up.

THE COURT: And I was looking at my notes. I knew what my response was as to a very limited question. So I want, before we go through a drill and bring him in here to have the sort of discussion I am having now, so I can pinpoint a little bit letter.

MR. SCHNACK: Can I confer with Mr. McCabe just for a second?

THE COURT: You used the description dredging. I would be a little more delicate. But the answer is I was doing the same thing.

MR. SCHNACK: Your Honor, if he is just going to testify about Child Sex Abuse Accommodation Syndrome without offering any opinions as to Candace Conti's credibility, that she is an honest person in this regard, we can avoid all this. But if it goes beyond that, I want to know what the topic is.

MR. SIMONS: And I just need to re-review his depo, your Honor.

THE COURT: I guess I made my point as to my other ruling. The answer is I will look forward to seeing you at 8:00. And if it all comes to pass the right way tomorrow. I have plenty to do. Again, the door will be open. I try and open it at 7:00.

(Proceedings were adjourned at 3:07 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD, CSR No. 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

MAY 31, 2012

DAY 3

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A604CBA

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: kellyk@fjslaw.com

Email: rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

JACKSON LEWIS, LLP
BY: ROBERT SCHNACK, ESQ.
801 K Street, Suite 2300
Sacramento, CA 95814
Tel: (916) 341-0404
Fax: (916) 341-0141
Email: Schnackr@jacksonlewis.com

--oOo--

INDEX OF EXAMINATIONS:

PAGE

WITNESSES FOR THE PLAINTIFF:

WITNESS: CARL LEWIS

DIRECT EXAMINATION BY: MR. SIMONS 13

CROSS-EXAMINATION BY: MR. SCHNACK 37

REDIRECT EXAMINATION BY: MR. SIMONS 41

CROSS-EXAMINATION BY: MR. SCHNACK 42

WITNESS: NEAL CONTI

DIRECT EXAMINATION BY: MR. SIMONS 42

CROSS-EXAMINATION BY: MR. McCABE 54

REDIRECT EXAMINATION BY: MR. SIMONS 88

(VIDEOTAPED DEPOSITIONS OF:

EVIDENCE CODE 776, ADVERSE WITNESS FOR THE PLAINTIFF:

WITNESS: ALLEN SHUSTER

EXAMINATION BY: MR. SIMONS 97

WITNESS: HELENE HARMATZ

EXAMINATION BY: MS. KRAETSCH 133

EXAMINATION BY: MR. SCHNACK 149

EXAMINATION BY: MR. McCABE 150

EXAMINATION BY: MS. KRAETSCH 152

(CONTINUED)

INDEX OF VIDEOTAPED EXAMINATIONS (CONTINUED)

	PAGE
WITNESS: LAURA WALTON, M.D.	
EXAMINATION BY: MS. KRAETSCH	154
WITNESS: LAURA FRASER, M.D.	
EXAMINATION BY: MR. SIMONS	169
EXAMINATION BY: MR. SCHNACK	190

--oOo--

INDEX OF EXHIBITS:

NUMBER ADMITTED

(no exhibits were marked or admitted)

--oOo--

MAY 31, 2012 8:09 A.M.

PROCEEDINGS

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. Back on the record in the matter of the Candace Conti versus Watchtower Bible and Tract Society of New York, Inc., et al. Let's reiterate for a minute our witnesses today are:

MR. SIMONS: Carl Lewis, Neal Conti. I think we are going to then show excerpts that we had agreed on; although, there may be one last question that we have to -- I don't think the court had to address it. We just have to edit it.

And the depositions to Shuster, we are going to then go into video land -- video deposition of Laura Fraser and three treating physicians from Kaiser.

THE COURT: Okay. In terms of context and time -- and you have been certainly very good about conduct in this trial. Are we going to keep the jury here until 3:00?

MR. SIMONS: I did not calculate the running time after edits in these depositions. But Laura Fraser runs over an hour, and Mr. Shuster runs probably a solid hour. And the other three are probably an hour or so between the three of them.

THE COURT: It is what it is. And we will excuse the jury when the dust settles on it. We will be in recess tomorrow. I will be -- I have a full day already planned. But I will be all over, I'm thinking, as to the proposed jury instructions, I will need just a little bit of time tomorrow to really -- before I run through them. I just need to have enough evidence to assess what I was thinking in terms of their application. But when we come back on Monday, I guarantee I will be ready to roll on all of that.

MR. SIMONS: And I think that is important, your Honor, because I think with one of their experts Dr. Salter, I think she invades the province of some of those issues. At least the standard of care is going to be relevant to how she frames her testimony.

THE COURT: Okay. And when is Dr. Salter coming forward?

MR. SIMONS: Monday morning.

THE COURT: Okay. Well, I'm still going to do what I say and say what I did in terms of I didn't know Dr. Salter, when she was coming. But, yes, standard of care is an emotional issue here, and how it gets framed is certainly crucial to everybody.

Where are we with -- I'm not sure -- is it Mr. Lewis or Dr. Lewis?

MR. SIMONS: Mr. Lewis.

THE COURT: And I've already more than hinted what I thought. Do we need to do that 402 at this juncture? Where are we on it now?

MR. SIMONS: He is only going to testify as to the child sexual abuse accommodation syndrome in the -- I will call it generic -- with various questions about the syndrome and about considerations that may have relevance to this case, but no specific references to this case, the actual people, et cetera.

MR. SCHNACK: And with that limitation, I agree we don't need a 402 hearing. The problem I'm going to have is if Mr. Lewis engages like he did in his deposition saying that what Candace Conti said has rings of truth to it. That's a quote.

Several times during his deposition he was saying, quote, basically forced it upon a delayed report. And we really need to walk a fine line from the defense side on that. That is totally inadmissible.

MR. SIMONS: He did. And I agree, he won't.

THE COURT: Okay. And I thought -- I commented upon the professionalism as to how we all handled Mr. Williams yesterday and whatnot, and it was, I guess, noted. So I will deal with Mr. Lewis, his understanding in much of this case is the bottom line.

MR. SCHNACK: And then I assume, since the silent lambs motion in limine was reserved, that Mr. Lewis isn't going to address that in his testimony.

MR. SIMONS: Yes, you assumed correctly.

THE COURT: We are working well together. I am getting rid of the double negatives. So fair and nicely done. Good touch both. Okay.

MR. McCABE: One other thing. I have three lay witnesses -- percipient witnesses that work -- they are badgering me when, next week, they will be called. So I wonder if Mr. Simons could tell us what his intentions are Monday, Tuesday.

THE COURT: Mr. Simons, certainly Monday.

MR. SIMONS: I know where we are going here. I'm pretty sure next week, because we are getting into the Plaintiff's case so. We have Inspector Davila available Monday. We have Ann Salter, the expert we spoke about. Carolyn Martinez, assuming I can make the arrangements, will be here Monday. And I assume the Plaintiff will testify Monday.

That may or may not complete a day. I only have one witness after that, and that would be Dr. Ponton, the psychiatrist from UCSF, and she is first thing Tuesday morning. And so we might be able to rest, subject to --

MR. SCHNACK: And just so the Court and counsel is aware, Dr. Martin Williams, Ph.D., the defense IME doctor, may not be available Tuesday or Wednesday of next week to testify. We may have to video him on Friday of next week to present it on the following Monday.

THE COURT: Because remember on Thursday and Friday of week, I'm in the great city of Sacramento.

MR. SCHNACK: So, Rick, we can talk as to whether you are available Friday morning.

MR. SIMONS: We will work it out.

THE COURT: You understand my attitude about all that. Okay. All right. Good.

MR. SCHNACK: I guess one other question on the Monica Applewhite motion in limine, we will be submitting some briefing.

Can we just email that to you tomorrow?

THE COURT: Sure. Actually, I am in here a long day tomorrow. But, yes.

MR. SCHNACK: I think we will probably submit some briefing on the standard of care issue as well, just to assist the Court.

THE COURT: That's fine. Because -- I don't think this will shock anybody, but I spent last evening rereading the briefs on standard of care and how to deal

with it.

And, of course, Mr. Simons, if I get inundated with another standard of care -- that will apply to anything or any case as presented.

MR. SIMONS: I will appreciate the opportunity to also inundate. If we are through with these matters, perhaps I could confer with Mr. Lewis just to remind him of the --

THE COURT: All right. Everybody can rest easy. At 8:30 we will wrap it up.

(Whereupon the following proceedings were heard in the presence of jurors)

THE COURT: All right. Good morning tin the members of our jury. Today you will have witnesses, and then you will have some videos also in terms of people whose depositions were taken.

In terms of your scheduling, remember, we are not in session on this matter tomorrow. We will commence again first thing Monday morning and work through Wednesday.

And then I have to discharge my educational requirements Thursday and Friday in Sacramento, and you'll come back again the following week, subject to what I told you as to the estimated length of trial.

I'm very cognizant, in terms of the trial

work and all the professionalism. We are moving at a good pace each day during trial. And so we are very much in line with the estimate I originally gave you that you would get the case prior to June 15, on or about. So going from there.

So back to the case. Mr. Simons.

MR. SIMONS: Yes, Your Honor. We would call Carl Lewis.

CARL LEWIS,

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Will you please state your name and spell your first and last name for the record.

THE WITNESS: My name is Carl Lewis. Carl is C-A-R-L. Lewis is L-E-W-I-S.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Mr. Lewis, what is your occupation?

A. After retiring from a 25-year career in law enforcement, I'm now in private practice as a consultant, a trainer of child sexual abuse issues and a licensed private investigator.

Q. Can you tell the jury, please, your

experience in law enforcement?

A. Certainly. I became a sworn California Police Officer, Deputy Sheriff with the Alameda County Sheriff's Department in 1984.

I was assigned to the Santa Rita Rehabilitation Center. And after about a year and a half, I transferred to the Redwood City Police Department.

I was a police officer with the Redwood City Police Department for about three years. My family grew. I moved to the South Bay. I was a police officer with the Los Gatos Police Department from 1988 through 1995.

In 1995 I was laterally transferred to the Half Moon Bay Police Department, where I was a sergeant.

I returned to Los Gatos, then Monte Sereno, Police Department in 1996.

I served again as a police officer/detective/acting supervisor working primarily on child sexual abuse issues, child abuse issues.

And I spent the last ten and a half years of my career as a criminal investigator and senior investigator with the Santa Clara County District Attorney's office.

Q. Do you have specific experience in the

investigation of child sexual abuse?

A. Yes, I do.

Q. And can you tell the jury, please, your experience in that field?

A. Yes. I was introduced to the topic at a basic training course at the basic police academy in 1984, that level of first responder preliminary investigator. And so that was essentially a 24-hour block of instruction.

In 1992, I was selected to be the investigator of crimes against children for the Los Gatos Police Department. For that assignment, I was required by law and by the California Commission On Peace Officer Standards and Training, essentially licensing credentials by police officers in California, to complete training for newly-assigned investigators of sexual assault. I believe that was a 36-hour course at that time in 1992.

From that initial course that I was required to take, I sought out additional training on my own from a variety of sources, not just law enforcement based, but essentially multi-disciplinary, meaning all professions that work in child abuse intervention. To a point where, as I sit here today, I have logged more than 600 hours of classroom seminar workshop training in

the field of child sexual abuse, intervention and investigation.

I held that position as investigator for three years, when I transferred laterally to the Half Moon Bay Police Department as a sergeant, I also was in charge of juvenile programs which included child abuse investigation.

As I mentioned, I returned to the Los Gatos, then Monte Sereno, Los Gatos and Monte Sereno Police Department.

And at that time I also was the investigator of crimes against children for essentially a second rotation in that assignment.

In 1998, when I transferred to the District Attorney's Office as a civil police officer, but as a criminal investigator, I was assigned to the high-tech unit where I worked on cases of child sexual exploitation, that is computer child pornography, essentially.

After about eight months in that assignment, I was assigned to be the investigator on a special grant-funded program where I worked very closely with a single prosecutor on aggravated cases of child sexual abuse.

And I did that for, roughly, seven years

until I was promoted to senior criminal investigator. I stayed in my same position, but then took on supervision of other investigators who were in similar investigations.

And I held the position of supervisor within the Crimes Against Persons Unit at the DA's office until my retirement in April of 2009.

Q. Have you taught and trained other law enforcement officers in the techniques of investigation of childhood sexual abuse?

A. Yes, I have.

Q. And can you detail that for us, please?

A. Certainly. I began teaching in the field in 1995 when I taught a -- essentially, a quarterly course, a block of quarterly course for police officers who are already well into their careers and just receiving annual update by training and a block of instruction on child interview. I believe I did that for about three years.

I expanded into teaching about particular techniques for conducting investigations of child sexual abuse allegations. And then I taught a block of instruction for the California District Attorneys Association on, essentially, family dynamics in child sexual abuse cases.

For about the last ten years, I have taught a two-day course about four times a year through 2009 and then about once or twice a year since then on a particular technique for conducting forensic interviews of children who are suspected victims of abuse.

I taught courses to police officers, but also to multi-disciplinary audiences that included social workers, prosecutors, family court lawyers, judges sitting on the family court bench in other jurisdictions, a variety of people who work in the child abuse intervention field. In fact, I'm flying to Los Angeles this afternoon to teach a block of instruction there.

Q. Are you familiar with an organization called the California Professional Society on the Abuse of Children?

A. Yes, I am.

Q. And what is that organization?

A. It is a non-profit organization of which I am elected president that works on providing training to professionals and on working to shape public policy as it relates to child abuse and child sexual abuse issues.

Q. In the course of your training and experience, have you become familiar with the professional literature on the subject of interviewing

and investigating childhood sexual abuse?

A. Very much so, yes.

Q. Have you become familiar, in the course of your training and experience, with the subject of child sexual abuse accommodation syndrome?

A. Yes.

Q. And without going into detail, can you tell us the specific training you have received on the subject of child sexual abuse accommodation syndrome?

A. Certainly. Because of its nature, which I expect I will get into later, child sexual abuse accommodation syndrome has no particular course of study. So there is not a class one could take necessarily on that topic. But I was introduced to that information at that mandatory course that I took as a new investigator sexual abuse crimes in 1992 during that week-long introductory training.

The block of instruction was, I believe, four hours at that time and provided by a mental health professional.

Q. Have you previously qualified as an expert witness on the subject of child sexual abuse accommodation syndrome?

A. Yes, I have.

Q. And have you done so in the courts in

California?

A. Yes.

Q. On approximately how many occasions?

A. Since 1995, approximately 260.

MR. SIMONS: Your Honor, I would offer Mr. Lewis as an expert on child sexual abuse accommodation syndrome.

THE COURT: Would you like to ask any questions of Mr. Lewis?

MR. SCHNACK: No.

MR. McCABE: No.

THE COURT: I will find that he is an expert for the express purpose of testifying about child abuse accommodation syndrome.

BY MR. SIMONS:

Q. Mr. Lewis, can you first tell us in an overview fashion what the words or series of words "child sexual abuse accommodation syndrome" refers to?

A. Yes. It refers to the phenomenon of child sexual abuse accommodation that is intended as background information for essentially adults looking into a reported case of child sexual abuse, and it is used as an aid to understanding some of the unexpected and frequently counter-intuitive things that tend to come up in these types of cases.

Q. Is child sexual abuse accommodation syndrome -- well, let me rephrase that. Is there some debate about the term "syndrome" that is included in this long phrase?

A. There is. The term "child sexual abuse accommodation syndrome" is the name that was given to it by the person who put the information forward to the professional field and that was a Dr. Roland Summit. S-U-M-M-I-T. Dr. Summit is a psychiatrist, so a medical doctor by training. And syndrome was what he felt was the appropriate term at that time to use to describe a collection of things that tend to happen at about the same time that could be traced to a particular source. Meaning, that syndrome often is misunderstood to equal diagnosis. And in this case it is not meant as a diagnosis. The child sexual abuse accommodation syndrome is not diagnostic. It is not a condition that someone could be said to suffer from, for example.

MR. SCHNACK: Your Honor, I'm going to object. He is not a medical doctor, and he is talking about medical issues. It's outside the scope of his expertise.

THE COURT: Mr. Simons, I'm going to overrule you on that, in terms of context. But I do wish you to remain within the lines of your expertise.

BY MR. SIMONS:

Q. Amongst professionals, who you work with in your professional organization that you are now the state president of, and professionals generally based upon your experience in this specific field, is there a debate about the legitimacy of child sexual abuse accommodation syndrome?

A. Yes.

Q. And what is the debate?

A. The debate, essentially, is that it is not predicted; it is not diagnostic. It is -- which is counter to what Dr. Summit, the original author has said. He never said that it was intended to be used that way. In fact, he authored and published a subsequent article called "The Abuse of Child Sexual Abuse Accommodation Syndrome" in which he tries to clarify his selection of the word "syndrome" to describe what it is.

Q. So what is child sexual abuse accommodation syndrome?

A. Well, as I mentioned at the beginning, it is essentially background information that is intended to help adults view a reported case of child sexual abuse with the understanding that, essentially, preconceived ideas about child sexual abuse victims and the nature of

the crime don't necessarily match up to reality.

Q. How is it used in the investigation by law enforcement of reports of childhood sexual abuse?

A. Again, as background information to remind us as investigators, as mediators, not to make a decision on a reported case based solely on one of these unexpected possibly counter-intuitive things that we might not expect to see in a case.

Q. Are there categories to child sexual abuse accommodation syndrome?

A. There are. Dr. Summit, in his landmark article published in 1983, outlined essentially five categories that are used for discussion points to fill out his opinion about the child sexual abuse accommodation syndrome. They are not, again, symptoms. It is not a checklist by any means. It is just meant to be an aid to understand.

Q. How are these categories utilized by law enforcement professionals such as yourself in the investigation of child sexual abuse?

A. Well, they provide an alternative explanation for, as I said, some of the unexpected things that tend to come up in these kinds of cases.

And when I say "unexpected," sometimes there are people who have preconceived ideas about child

sexual abuse and might expect, for example, that a child would immediately report it, or might expect that a child who had suffered sexual abuse would shun the offender and want to have nothing to do with that person.

The Child Sexual Abuse Accommodation Syndrome offers a basis from observation to rely on, to say, "Well, that's not necessarily the case."

Q. How many cases would you say of child sexual abuse have you investigated in the course of your professional career?

A. My best estimate is 500 or so.

Q. In the course of these investigations, have you come to rely on Child Sexual Abuse Accommodation Syndrome as an important tool in understanding what victims reported?

A. Yes, and how they report.

Q. Are there some categories to Child Sexual Abuse Accommodation Syndrome?

A. Yes. Essentially five categories Dr. Summit talks about.

Q. Can you give us an overview of those five categories?

A. Certainly. The first is secrecy.

Number 2 is helplessness.

Number 3 is entrapment and accommodation.

Number 4 is delayed, conflicted, unconvincing disclosure.

Number 5 is retraction.

Q. And if you could, perhaps, just put these categories, as you discuss each one, up on the board so we can follow along.

Let's talk about the first category.

How does secrecy relate to this topic?

A. In this context, secrecy describes the fact that the sexual abuse of the child occurs almost exclusively when the offender is alone or somehow isolated with the child.

I say "somehow isolated" because it could occur in the public view. But in those cases, the actual molesting behavior is camouflaged by the offender in such a way that is it not readily recognizable by someone who is looking on. But most often it is done in private, in secret.

An offender might do something to either create or take advantage of an atmosphere of secrecy, maybe waiting until everybody has left the area, waiting until everybody else is asleep, if it occurs in the home, going to a secluded room and closing a door, turning up the radio or TV and masking the sound.

And the fact that the offender has to create or take advantage of this atmosphere of secrecy, as I mentioned, can send a message to a child that there must be something bad or wrong about this behavior or we wouldn't have to wait for this set of circumstances.

An offender also can do things, explicitly or implicitly, to communicate to the child that this is a secret.

Depending on the relationship between the offender and the child, the offender could strike a particular body posture or maybe affect a facial expression or a look that can communicate the seriousness of the secret.

An offender could even say something to a child such as:

"This is our secret. You can't tell."

"If you tell," for example, "you will get in trouble."

Or "If you tell, no one will believe you."

"If you tell," for example, "I," the offender "might go to jail."

"If you tell, your family will be mad."

"If you tell, you might have to move out of your house. You might have to go to a different school."

Up to and including:

"If you tell, I will kill you. I will kill myself. I will kill your dog."

Q. What does the category of helplessness refer to?

A. Helplessness, in this context, describes the fact that children under the age of 18 are essentially, dependent upon adults to make things happen in their lives. So they are helpless in that regard.

Certainly children who are closer to age 18 are less helpless, but still require adults to get certain things done.

The younger the children are, certainly, the more they require adults to make things happen in their lives.

And so that makes it that much more difficult in many cases for a child to try to bring to light something negative that is happening.

Most often, for example, the disclosure of child sexual abuse is a process and not a one-time event.

It is unlikely and far less common for a child to come forward and make a one-time and sit-down full disclosure.

What is far more common is a child who

struggles with the information, maybe lets out a little bit of information, might seem kind of innocuous, but is an attempt to let caretakers know that there is a problem.

So a child might say something like:

"I don't want to go to the store with him anymore," or "I don't want to go somewhere with him anymore."

To the child, that can be a real cry for help. But to the person hearing it, it could be disregarded, rejected, denied.

And then, if the abuse occurs again, then that can leave the child with feelings of, "Well, I tried to get help, but it didn't work," which just reinforces the sense of helplessness.

Q. Does the feeling that there is no safe person to tell about abuse, is that part of helplessness in this syndrome?

A. Well, it certainly can be. And I may have mentioned this earlier, and if not, I would like to clarify, that these categories are not symptoms, they are not indicators by any means. They are merely meant to be descriptive. And so they are often are very overlapping.

The fact that a child has no sense of a safe

person in whom to disclose could be reflected in the helplessness discussion. It could also be reflected in the entrapment and accommodation discussion and the following two categories.

Q. What does the category of entrapment and accommodation refer to?

A. When a child has suffered sexual abuse or is even carrying a secret from just a one-time event, the person is trapped by that circumstance. So that is a thing that has occurred in that child's life.

But children tend to be deemed fairly resilient, will want to go on being children. So going to school, hanging out with friends, those kind of things, and often will find a way to cope with that negative aspect of their lives. So they accommodate it. They put up with it.

Accommodation mechanisms can take on as many forms as there are children. So there is no one particular type of accommodation mechanism you should look for.

But some common ones could be: Change in school performance, change in demeanor, change in friends, change in appearance sometimes, maybe wearing additional clothing or cutting one's hair or something like that, up to and including substance abuse,

rebelliousness, promiscuity, things that could be seen as possible coping mechanisms by these kids.

But I would say that far and away, the most common accommodation mechanism, both in my experience and as referred to in the literature, is the child who tries very hard to act as if nothing is wrong.

And we can deny if somebody asks if something is wrong. If we suspect otherwise, a child may not be in a position where he or she is ready to tell yet.

Q. So in your experience, have you seen cases where a child sex abuse victim may, for an extended period of time, act as if nothing is wrong?

A. Yes.

Q. What does the next category refer to: Delayed, conflicted and unconvincing disclosure?

A. Well, we'll break it into three parts.

Delayed describes the fact that most often there is a delay from the time of the abuse until the child is finally able to say something about it.

Because these are not symptoms or indicators, there is no standard to be met for the delay in order for it to have any assistance to us here. But it could be two days, two weeks, two months, two years, two decades.

And so the fact that there is a delay before

the child is able to say something about it, should not be an automatic bar to accepting the child's complaint.

The next part is conflicted, which describes the internal conflict a child might be going through in weighing the pros and cons of disclosure.

So if a child is facing that, a child may think:

"Well, if I don't tell, I know what will happen. The abuse will continue, the promises, the gifts, the rewards, the threats will continue. But I know what that is and I have dealt with it, and so I know what that is."

"If I do tell, I don't know what will happen. Maybe some of the bad things I thought of will happen. Maybe some of the bad things the offender told me will happen, and I don't know how that is. I don't know how to quantify that. I don't know what to expect by telling."

And so that internal process just adds to the delay.

Conflicted also describes the fact that children often will make statements -- if they are in the process of disclosing, they might make statements that could appear to be in conflict with each other.

A child might say to one person in one

circumstance a particular aspect of the abuse in terms that are appropriate for that discussion, but at another time might describe more fully to another person, might describe a different aspect of the abuse to that person.

And those two statements or two or three or five statements could all appear to be in conflict with each other, when it should be considered that they could all be a part of the larger description of ongoing abuse.

And then the last part of the category is unconvincing, which describes that, when a child finally does make a disclosure of sexual abuse, it often is done at a time or in a manner that makes the child seem unbelievable. So even a delay can make the child seem unbelievable.

MR. SCHNACK: Your Honor, can we approach?

THE COURT: Sure.

(Sidebar discussion)

BY MR. SIMONS:

Q. I think perhaps another question would be appropriate at this point. Have you had experience with investigation of sexual abuse of children who are abused in the age group of 9 and 10 and 11?

A. Yes. That is a common age group for these types of crimes.

Q. And with regard to those children in that age group of abuse, are there, in your experience and your learning and training and education, issues with regard to the completeness of their recollections in terms of quantifying the amount of times that they may have been abused?

A. Yes.

Q. And can you describe that, please?

A. Certainly. In fact, the particular forensic technique I use for interviewing children does not call for asking children how many times something happened for that simple reason.

Children have a difficult time -- people have a difficult time assigning a particular number to the times of occurrences.

So particularly if something happened repeatedly, might leave a child with a sense that:

"Well, it happened every Tuesday."

"It happened every time I went to X."

"It happened every time I went to the park."

So to that child, it might seem like it happened a hundred times. Fifty times. Five hundred times.

The child might not necessarily be understanding the need for, certainly, criminal

investigators getting accurate information about the number of times.

It may, instead, assign that to the child, a seemingly large general number: "Well, about a hundred times." Or "About 500 times."

And in my experience, children have told me that it happened a lot. So it seemed like it was a hundred times.

Q. When the disclosure comes, even if it comes when the child who was abused at a younger age makes disclosures as an adult or a late teen, does this element that we are discussing of delayed disclosure, conflicting and unconvincing disclosure, still apply?

A. Very much so. I mean, I have interviewed many children and then adults, who reported abuse as children, who I noticed, and certainly from what the literature describes, the fact that children, or adults describing the abuse as children, often will tell about their feelings from that time.

And their sense, at that time was:

"It happened a lot."

"It happened every Tuesday."

"It happened every time I went to this place."

And, to them, that's a hundred times or

that's 500 times.

Q. What is the next category?

A. Retraction.

Q. And how does that play into the overall investigation in interviewing the victims of childhood sexual abuse?

A. Well, retraction is taking it back in whole or in part. And the particular value of this discussion point is to discourage an adult community looking at a reported childhood sexual abuse from washing one's hands of it after the child takes it back.

What it really is is a reminder to look at the whole circumstance, to look at the fact that there could be reasons for a child now taking it back or minimizing, which is far more common, such as pressure from outside sources, pressure from inside sources.

Or a child or adult not reporting, sensing the great attention and focus on her disclosure might want to minimize that intensity.

Might want to say:

"Well, this is getting a little uncomfortable talking about this all these times, so I want to go back to how things were before."

And to many kids, young people, an easy way to go back to how things were before is to say:

"Well, it wasn't really as bad as I first said."

Or, "It didn't really happen as many times as I said."

Or, "It didn't really happen. I just was really angry."

And, again, the message of Dr. Summit's work, and certainly what's seen in my experience, is to look for possible reasons why a child might be taking it back or minimizing, rather than just saying:

"Okay, it didn't happen. On to the next case."

Q. Are all five of these categories present in every case?

A. No. And, again, of course because they are not symptoms or indicators. I have investigated many, many cases, for example, that have no retraction. But the Child Sexual Abuse Accommodation Syndrome is not the kind of information that one uses as a checklist.

So we don't go into cases looking for these things. Rather, once you are in a reported case of child sexual abuse, this information helps you to understand some of those things.

Q. Are the factors all codependent in any way?

A. No. The only statement that Dr. Summit made

about that, for example, is that the first two categories, secrecy and helplessness, are essentially pre-conditions to abuse. Meaning that children, by their nature, their young, immature nature, are susceptible to the concepts of secrecy and helplessness.

The three following categories tend to fall in a basic pattern of the child being trapped and accommodating and so forth.

Q. In your professional experience, is the Child Sexual Abuse Accommodation Syndrome now used in the investigative techniques and interviewing techniques of law enforcement agencies throughout the state?

A. Oh, the information is very much so, and it is certainly a part of the training I provide on interviewing and investigation.

MR. SIMONS: Thank you.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Good morning, Mr. Lewis.

A. Good morning, sir.

Q. If I heard your testimony right, you said that the CSAAS is not a checklist that should be used by investigators; is that correct?

A. That's right.

Q. And you also said it's not a diagnostic tool that should be used; is that correct?

A. Correct.

Q. And did I hear you right saying that there is still a debate within the academic community about it's validity?

A. Well, there is a debate. But may I comment?

Q. There is a debate about it. You will agree with that?

A. Yes. And I asked if I may comment.

Q. We'll get to that. But there is a debate within the academic community about its validity. Is that correct? Is that what you are saying?

A. Yes. May I comment?

Q. Sure.

A. The debate in the literature has certainly subsided over the past decade or so, but the original reaction in the professional literature was that it is not empirically-based. It was not conducted in a scientific method, meaning there was no control group, for example.

Of course, it would be impossible to have a control group because you would have to have children that you saw being molested and then gauge their reaction, which we could not do but ...

Q. So does that mean it has not been peer reviewed scientifically?

A. No. It has been peer reviewed for qualification in academic journals.

Q. But there is still a debate within academia?

A. Well, as I said --

Q. Is there or is there not, sir?

You just said it was before.

A. Well, I'll say it is, again, but I would like to clarify that.

Q. Excuse me?

A. I said: I will say, yes, it is, but I would like to clarify that.

Q. But it is used in law enforcement agencies. Correct?

A. It is used by law enforcement investigators who are aware of the information, yes.

Q. And you are just testifying, generally, about CSAAS here today? You don't have any specifics as to the case we are here about today; is that correct?

A. My testimony is about Child Sexual Abuse Accommodation Syndrome as it applies generally to children as a class of people.

Q. Through your law enforcement experience. Correct? Is that correct?

A. Law enforcement and consulting experience, yes.

Q. And you have been a consultant for what, a couple years?

A. Three years.

Q. Have you ever advised churches on what they should do when they receive reports of child sex abuse?

A. No.

Q. You have a curriculum vitae. Correct?

A. Yes.

Q. And the word "religion" or "churches" doesn't show up on that at all, does it?

A. Correct.

Q. Now, would you agree with me that child sex abuse investigation techniques has evolved over time?

A. Yes.

Q. So what might have been applied in the early '90s would be different today?

A. I'm sorry. Are you relating that to the syndrome information?

Q. No. To the evolution of investigation of child sex abuse.

A. Yes.

Q. You just said that the investigation techniques have evolved over time?

A. Yes, they have.

Q. And so, from the '90s up to the present, the techniques have changed. Correct?

A. Yes.

MR. SCHNACK: Nothing further, Your Honor. Thank you.

THE COURT: Okay. Anything further, Mr. Simons?

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. You wanted to clarify your answer with regard to the debate?

A. Yes. Thank you. As I mentioned briefly, the debate has been about its use as a scientific tool. And as Dr. Summit had stated repeatedly, and I tried to make clear, the Child Sexual Abuse Accommodation information is not a scientific tool. It is not an instrument to be applied to a particular case, rather it is descriptive of the unexpected counter-intuitive conditions that tend to present themselves in these types of case.

Q. And in your experience investigating hundreds of these cases, has this doctrine or this syndrome, if you will, shown itself, in your experience, to be applicable to many of those cases?

A. Very much so. Yes.

MR. SIMONS: No further questions.

MR. SCHNACK: Just one question, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. You just testified that this is not a scientific tool that is supposed to be applied to a particular case; is that correct?

A. Correct.

Q. Thank you.

THE COURT: Mr. Lewis, thank you for your time. You are now excused.

NEAL CONTI

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Will you please state your name and spell your first and last name for the record?

THE WITNESS: Neal Richard Conti.

N-E-A-L. C-O-N-T-I.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. And, Mr. Conti, where do you live at present?

A. In Fremont, California.
Q. And you are the father of Candace?
A. Yes, I am.
Q. And can you describe your relationship with Candace at present?
A. At present?
Q. Yes.
A. We don't talk too much right now.
Q. How long has your relationship with her been strained?
A. It has been on and off. It started when she was around 12. She was having teenage, growing up issues.
Q. Candace was born of your marriage with Kathy?
A. Correct.
Q. When did you and Kathy first meet?
A. In 1984.
Q. When were you married?
A. In 1985.
Q. How long did that marriage last?
A. About 11 years.
Q. Are there any other children of that marriage besides Candace?
A. No.
Q. When Candace was a little girl, can you

describe what your relationship was with her at that time?

A. It was wonderful. She was a spunky little girl. We had fun. We would play and do things. She was just a very happy child.

Q. And as Candace got older, did problems begin to develop inside your family?

A. In the family? Yes. After Candace was born, my wife started having memories, things she felt -- she was depressed. It was hard for her. As Candace was growing, she started having memories of things she felt had happened to her in her childhood.

Q. And how did that affect her ability to function within the marriage?

A. It made things rather stressful. I had to take on a lot of responsibilities of taking care of the family, cooking and shopping, that kind of thing.

I had to spend a lot more time with Candace because her mom was basically in bed. She had a hard time sleeping. She had a hard time functioning.

Q. Did you have to spend a lot more time just doing the activities of daily living that the family required?

A. Yes.

Q. Were things like the shopping and the laundry

more and more left to you?

A. I had to pick up where Kathy could not.

Q. And in the last year or so in the marriage, did that become a much more serious problem?

A. Yes.

Q. To what level of function was she reduced during that time period?

A. Well, she had her good days and her bad days. It was just some days you knew to expect you had to get off work early and go home and take care of the family.

Q. Were there any other persons living in the household in that last year or so of your marriage?

A. Well, just right before our break up, she had invited her niece to come stay with us during the summer. My son from a previous marriage was there for the summer as well. So we had three -- Candace and two teenagers with us at the time.

Q. Was your son from the prior marriage -- and that's Rick?

A. Yes.

Q. Was he regularly in your custody during the last few years of the marriage?

A. I had shared custody. He would come visit every two weeks, alternating holidays, alternating two weeks during the summer, things like that. So he was

there fairly often.

Q. Was most of his time spent with his mother?

A. Yes.

Q. And would it be fair to say probably about 70/80 percent of Rick's time was spent with your first wife?

A. It was more along 60/40 percent, but, yes, yes, it would.

Q. Now, did you become active in the Jehovah's Witnesses during the time of your marriage to Kathy?

A. Yes, I did.

Q. And do you remain active in that?

A. I do.

Q. Are you in the North Fremont Congregation?

A. No. I'm in the Niles Congregation. We share the same Kingdom Hall. Same building, but different congregations.

Q. Are you holding any title at present?

A. A ministerial servant.

Q. Is it your hope and aspiration to become an elder?

A. Someday, yes.

Q. You are now remarried?

A. Yes.

Q. And in between your marriage to Kathy and

your marriage at present, was there another spouse?

A. Yes, there was.

Q. And who was that?

A. That was Carolyn.

Q. How long did that marriage last?

A. Four years.

Q. Did she have children from a prior marriage as well?

A. She did. She had two daughters.

Q. And was there a time that she and Candace got along very well?

A. In the very beginning, yes.

Q. How long did that last?

A. For six months.

Q. And after that did Candace not get along well with Carolyn?

A. No.

Q. Was Candace active in the Jehovah's Witnesses as a girl?

A. As a child, yes. I mean, she was not dedicated and baptized, but she would come with me to the meetings and participate in our activities, yes.

Q. What kinds of activities would she go to?

A. More, I mean, we would go throughout the ministry and talk to people, educate people about the

Bible. And so she would participate with me in that activity. She would go to meetings with me, conventions, assemblies and things like that.

Q. Did she go to field service?

A. Yes. Field service is our ministry.

Q. And did she go to meetings at Kingdom Hall?

A. Yes.

Q. And how long would those meetings last?

A. Well, there is three days base -- two days at the Kingdom Hall. It was a two-hour meeting on Tuesday night and a two-hour meeting on Sunday.

Q. And so when Candace was eight, nine years old, would she be at the Kingdom Hall for two or four hours or sometimes six hours in a week?

A. Well, it would be a maximum of four hours in a week, yes.

Q. Is it your recollection that she went to events at the Kingdom Hall on occasions when you, because of some of the family issues that were involved, were unable to go with her?

A. No. She would always be with me.

Q. Always?

A. Always.

Q. And are their occasions when she would be in field service where you, because of the other events

going on in the family, were unable to participate?

A. No. She would always go with me.

Q. Is it your best recollection that Candace never went to any Jehovah's Witness event without you? Is that true?

A. That is true. She did not go without me.

Q. Did you know Jonathan Kendrick?

A. I did.

Q. How did you meet him?

A. He came into the congregation later on, a few years after I came in.

Q. And what was your relationship with Mr. Kendrick?

A. He was an acquaintance. We attended the same meetings at the same times.

Q. Did you do the field service with Mr. Kendrick?

A. Occasionally, yes.

Q. And Bible study with Mr. Kendrick in homes?

A. I don't recall that.

Q. Did you and he share some interests, mechanical interests, for example?

A. Yeah, mechanical. He was a welder and I tinkered with welding, yeah.

Q. And were there times when he came to your

home?

A. A few times. But, again, we were not best buddies or anything like that, no.

Q. You had, as we understand it, a paint shop in your home?

A. Well, in my garage fixed up for working on cars, yes.

Q. And there were occasions when other members of the congregation would come to your garage to tinker or to work on things?

A. There was one time, one car we worked on. I was getting out of that business. So there was one time we worked on one car for a friend.

Q. Was that Sister Crawford's vehicle?

A. Yes, it was.

Q. And during that time, were there elders and other members of the congregation in your garage and in your home to work on the car?

A. There was other members of the congregation, yes.

Q. Mr. Kendrick was one?

A. He was not one of the primary people working on it. He just came over to, kind of, see what was going on.

Q. Was Mr. Kendrick a ministerial servant?

A. There was a time he was, yes.
Q. And did you become aware at some point that he was no longer a ministerial servant?
A. Yes.
Q. How did you become aware of that?
A. It was announced on a Tuesday night meeting.
Q. Is it accurate to say, Mr. Conti, that you became aware that Mr. Kendrick was no longer a ministerial servant because you happened to notice that he wasn't doing the duties anymore of that position?
A. After the announcement, yes.
Q. At your deposition we talked about this, and you told me that you learned of it because of his no longer being a ministerial servant because you saw that he wasn't doing the duties anymore?
A. Correct.
Q. You didn't mention the announcement at that time. Were you there for the announcement?
A. I don't remember it specifically.
Q. Did you know why he was no longer a --
A. No. That is not stated.
Q. Did it affect your relationship with him?
A. Again, we didn't have much of a relationship. Again, he was an acquaintance. Occasionally, we would talk and engage in the ministry, but it wasn't -- he had

his life and I had my life. It wasn't that close.

Q. Is it accurate to say that Candace helped become a caretaker for her mother?

A. Well, unfortunately, at times, yes.

Q. Would it be fair to say that she was asked to shoulder much too much of a load for an eight or nine year old?

A. She wasn't asked, per se, to do it. But she was there, and she loved her mom, and she wanted to help her mom whatever way she could.

She was a very loving, caring child at the time. She wanted her mom to feel better. It was very obvious to her that mom was not feeling well. She was depressed. And this affected Candace as well as myself.

Q. What were the circumstances of the ending of your marriage to Kathleen?

A. Kathy had come home from the hospital after a suicide attempt, and the three children were still there with me. I had taken time off from work, and I was taking care of them.

Within a few weeks after she came home, it was apparent she was very angry. She was even in more pain than she was previously.

That anger -- it was, kind of, directed at all of us. And so I just felt it was better that I

remove the children, as well as myself, from that house at that time, hoping it would give her time to continue her therapy and get herself back together again.

Q. So you moved out with the children?

A. Yes.

Q. And you moved to your mother's?

A. Right.

Q. And your mother then moved to another place, but you remained in your mother's residence for some time?

A. Right.

Q. When did you first learn from Candace that she had been abused by Mr. Kendrick?

A. She first brought it to my attention, I believe it was 2005. She came to visit and she brought it up at that time.

Q. And since then have you had discussions with her about the subject?

A. We have had a few, yes.

Q. And when was the last time?

A. It had to be somewhere around 2008 or 2009, maybe where she said she was pursuing it with the D.A.'s office. She was going to try to press charges against Jonathan for doing this.

Q. Did you offer to help?

A. I tried to be helpful for her and tried to, you know, glean more information from her, but she really wasn't giving me any details. She didn't tell me what had happened, and I didn't want to push her real hard for her own dignity.

But she told me she talked to the D.A. and they were going to be calling me and asking me questions, but I never received a call from anybody in the office.

Q. As you sit here today, do you know any details about the abuse?

A. No.

MR. SIMONS: Nothing further.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Mr. Conti, where are you employed?

A. Currently at Texas Instruments in Santa Clara.

Q. How long have you been employed there?

A. I started at National Semiconductor almost 30 years ago, and Texas Instruments purchased National Semiconductor.

Q. So you have basically have been at the same place for 30 years?

A. Yes.

Q. What do you do there?

A. I'm a certified electronic technician. I work in an engineering lab. The company makes semiconductors. I build prototypes. I build test apparatus to physically test at the facility. More recently, I build evaluation boards and test those for customers as well.

Q. So you put devices together to test semiconductors?

A. Put widgets together, yes.

Q. When you married Kathleen Conti, did you have any idea about her childhood issues that surfaced?

A. No.

Q. When you married Kathleen -- and you lived together for 11 years; is that correct?

A. Yes.

Q. Mr. Simons brought out that you separated around 1996?

A. Yes.

Q. And that was following an attempted suicide?

A. Yes.

Q. Was she hospitalized following that attempt?

A. Yes.

Q. For how long?

A. A week or so.
Q. And you took care of the children during that time?
A. Yes.
Q. And you took time off work to do that?
A. Right.
Q. What changed about Kathleen when she came home?
A. She was very angry. Her attempt, suicide attempt was not successful. She was miserable about that.
Q. How did she exhibit her anger?
A. A lot of yelling and screaming and nobody could do anything right and everybody was getting on her nerves, and every little tiff between the kids blew up into a big, bad thing. Just very painful for everybody.
Q. So is it fair to say it wasn't a very conducive environment to raise children?
A. Not at all.
Q. And is that why you went to your mother's house?
A. Yes.
Q. And about that time, did you seek any counseling for yourself or for Candace?
A. We had already started some counseling.

Kathy had been in and out of counseling for years. And at that time Candace started going to counseling as well because we were already seeing this therapist before this suicide attempt.

Q. And who was the therapist that Candace saw?

A. Her name was Laura Fraser.

Q. And did you take her to some of those therapy sessions with Laura Fraser?

A. Yes. Right after the suicide attempt, I took all three kids, and we had an emergency meeting with her. I figured she was probably the best person qualified to help all of the children and myself deal with it.

Q. And how did you find her?

A. As -- out of the phone book or?

Q. How did you locate her?

A. She was in our health plan organization. I believe it was through Palo Alto Medical Plan.

Q. And your family had been getting some services with Palo Alto Medical prior to her suicide attempt?

A. Yes.

Q. And just to be clear, the memories and the things that Kathy was dredging up and bringing up to light after the birth of Candace and continuing through

her suicide attempt had to do with some types of childhood sexual abuse that she experienced in her beginning years?

A. It wasn't -- she didn't say it was sexual, per se, in the beginning. It was just memories of dark places, black faces, you know, memories that were not pleasant, obviously. And that led to her conclusion that there was some sexual abuse somewhere along the line.

Q. Was your wife ever diagnosed with any particular disorder?

MR. SIMONS: Objection; outside scope of this witness.

THE COURT: Sustained.

BY MR. McCABE:

Q. Anyway, it was a difficult marriage; is that correct?

A. Yes.

Q. And Candace, being a loving and caring child, loved her mother; is that correct?

A. She did very much.

Q. And she loved you too?

A. She did.

Q. I would like to the show you what has been marked as Plaintiff's Exhibit 2 and ask you if you

recognize this.

We can come back to that.

Do you have any pictures from the time that Candace was 8, 9, 10, 11 years old?

A. No. When we left the house, we didn't take family pictures with us, and since then they have been misplaced. When I went back to the house, they were gone.

Q. Do you know what happened to them?

A. I really do not know.

Q. Well, let's talk about your activity with the North Fremont Congregation of Jehovah's Witnesses. When did that begin?

A. I started attending about 1986.

Q. And you weren't raised by Jehovah's Witnesses?

A. No.

Q. And we saw your mother, talked to her yesterday a little bit. She was a Catholic and then raised and educated you as a Catholic; is that correct?

A. Yes.

Q. Is that -- your becoming one of Jehovah's witnesses a source of any friction between the two of you?

A. It did in the beginning, yes.

Q. And how is it now?
A. I think she accepts it.
Q. Where did you go to high school?
A. Mission San Jose in Fremont.
Q. Any education after high school?
A. I had to -- to be a certified electronics technician, I took a year or so of training.
Q. And was your job at National Semiconductor your first job?
A. After that training, yes.
Q. And you stayed with the company ever since?
A. Yes.
Q. When you started associating with Jehovah's Witnesses, do you recall what year it was?
A. What year it was?
Q. Yes.
A. 1986.
Q. And you continued your association from that time forward?
A. Yes.
Q. Were you a regular meeting attender of congregation meetings two days a week at the Kingdom Hall --
A. Yes.
Q. -- during 1994, '95, '96?

A. As much as I could, yes.

Q. Were there occasions when you had to miss because of your wife's illness?

A. Yes.

Q. On those occasions, did you ever send Candace to the Kingdom Hall by herself?

A. No.

Q. To your knowledge, was Candace ever at the Kingdom Hall of the Jehovah's Witnesses in North Fremont without you being present?

A. No.

Q. In the meetings of Jehovah's Witnesses -- and I would like to show you what has been marked as a previous exhibit, Number 132.

Let's go to the first picture first. Do you recognize this?

A. Uh-huh.

Q. What is it?

A. That's the Kingdom Hall, yes.

Q. Has it changed much since 1993?

A. Some remodeling to it. But it's basically the same hall.

Q. Okay. So what are we looking at here with this picture?

A. This is from the street, looking down the

driveway and the hall behind the street.

Q. Okay. And let's go to the next picture. What are we looking at here?

A. This is basically the front door, which is at the back end of the Kingdom Hall.

Q. And do you recognize this photograph?

A. Yes. It is inside the Kingdom Hall.

Q. Okay. Now, I want to point out here that it looks to me like there is seats still full here. Is that true?

A. Yes.

Q. Is there anything that would be in this area where people face -- what are the people facing?

A. They are facing a podium, which is on the left side, up on a stage.

Q. How high is the stage?

A. It is about three feet.

Q. And that would be where the conductor of the meeting stands?

A. Correct.

Q. And it looks like there's two aisles; one here and one over there?

A. Yes.

Q. Do you know how many seats are on each side of those aisles up against the walls?

A. They are four wide on the side.
Q. How about the center?
A. Seven.
Q. Do you know how many seats in total there are in the hall?
A. About 200, 210, something like that.
Q. When you were attending meetings at the North Fremont Jehovah's Witnesses in the '90s, how many people were attending those meetings?
A. Roughly a hundred, hundred and ten, something like that.
Q. Would it be a little more on Sunday than the midweek meeting?
A. Sometimes Sundays it would be more.
Q. Were you usually present --
A. Yes.
Q. -- at those meetings?
A. Yes.
Q. Were there occasions that you missed?
A. Yes.
Q. And I notice this is one big auditorium. Are there any separate classrooms for children in this Kingdom Hall?
A. Not for children, no. There are separate rooms, which is a library, a secondary school. But it

is not for children. There's no -- we don't separate the children from the rest of the congregation.

Q. Okay. In all the time that you were attending meetings at the Kingdom Hall, did you ever see Candace sit on the lap of Jonathan Kendrick?

A. No, I did not.

Q. Did you ever see Candace give a big bear hug to Jonathan Kendrick?

A. No, I did not.

Q. Did you ever allow Candace to be taken from the Kingdom Hall property by Jonathan Kendrick -- taken away from a meeting before or after?

A. No, I did not.

Q. I want to direct --

MR. McCABE: May we approach, Your Honor?

(Sidebar discussion)

BY MR. McCABE:

Q. Can you tell me where in Fremont you lived when you were first married?

MR. SIMONS: Can we --

THE COURT: As an accommodation to all of us, the jury and whatnot, we could limit at this juncture questions of this witness, who through the effective scope of what Mr. Simons asked him, but that would then necessitate bringing him back on the defense side of the

case.

Because of the professionalism and the efficiencies here, Mr. McCabe will now start asking this witness questions as though he were presenting the defense side of the case.

MR. McCABE: Thank you, Your Honor.

BY MR. McCABE:

Q. Where did you live in Fremont in the 1980s?

A. In the 1980s? My home on El Cajon Street -- or Avenue.

Q. And are you familiar with the Francis family?

A. Yes.

Q. How far away did they live from your El Cajon residence?

A. A quarter mile. Five or six blocks.

Q. Do you recall what street they lived on?

A. I want to say Capistrano or something like that.

Q. I think that's what she testified to.

Did you ever attend a congregation Bible study at their home?

A. No.

Q. Were you in the 1980s, early 1990s, assigned to a congregation study or do Bible study for a midweek meeting?

A. Yes.
Q. Do you recall whose home that was at?
A. That was at the Mats' home.
Q. Okay. Was Jonathan Kendrick assigned also to the Mats' home?
A. I don't believe so.
Q. And in that group study, how big was it? How many people?
A. Fifteen, twenty people, maybe.
Q. And I understand in your religion you don't have that meeting anymore?
A. Right. Not a Thursday night meeting, no.
Q. And at the Mats' home which you attended, were there men, women and children attending?
A. Absolutely. Families, yes.
Q. Did you take Candace there?
A. Yes.
Q. Did you ever drop her off there by herself?
A. No.
Q. Did she ever go to that meeting without you being present?
A. No.
Q. I want to bring up an incident that Mrs. Francis talked about with the rollerblades. Did your daughter, Candace, enjoy rollerblading?

A. Yes, she did very much.
Q. Did you buy her a pair of rollerblades?
A. Yes.
Q. Was there an occasion where you went to a parts store with Candace to get parts for her?
A. Yes.
Q. Can you tell me about that?
A. She needed new wheels for her skates. They were slowing her down. So we went to a parts store. It was a second hand type store. They sold new stuff as well. I believe it was Saturday afternoon we went and took care of that.
Q. Did Jonathan Kendrick go with you on that?
A. Yes, he was with us.
Q. And why did he go?
A. He had rollerblades too, and he's the one that mentioned -- we had talked about repairing her skates, and so we all went together.
Q. To your knowledge, did Candace ever go rollerblading alone with Jonathan Kendrick?
A. Not to my knowledge, no.
Q. I want to also take you on the occasion that -- your family enjoyed outings to Sacramento from time to time?
A. We went once.

Q. You went once. What was that occasion?
A. We went on the train up to Old Sacramento.
Q. And what did you do there?
A. We went to the train museum and some other activities they have right there in Old Sacramento.
Q. And who was on the trip at that time?
A. It was Candace. And Jonathan actually went with us that time.
Q. And what time did you leave?
A. I think the trains leave about every two or three hours from the Fremont station. So it was probably 8:00, 9:00 in the morning, something like that.
Q. How long did you spend in Sacramento once you arrived there?
A. Maybe three hours or so.
Q. And did you return on the Amtrak train also?
A. Yes, we did.
Q. What time did you get back?
A. It was probably 7:00 or 8:00 that night.
Q. And do you recall what time of year it was?
A. It was still light, so it had to be summertime. Spring, summertime, something like that.
Q. And on that trip, did you and Jonathan Kendrick engage in the drinking of alcoholic beverages?
A. We moved into the dining car on the way back

and we had a little snack to eat and possibly had a beer at the time.

Q. Possibly? Or did you?

A. No, we did.

Q. And how many beers did you have?

A. Well, this was just an outing with my daughter, and Jonathan came along with us. So it wasn't -- it wasn't a party.

Q. Well, did you have more than one beer?

A. No.

Q. Did you get drunk?

A. No.

Q. Did you ever, on that trip, leave Candace by herself with Jonathan Kendrick?

A. No.

Q. Did you fall asleep on the train on the way back?

A. No.

Q. Did you ever see Jonathan Kendrick do anything inappropriate to Candace on that trip?

A. No.

Q. Did you ever take Candace to a movie Gone With The Wind?

A. Yes.

Q. Where was that?

A. It was over in Palo Alto, across the bay.

Q. Do you recall specifically doing that?

A. Uh-huh.

Q. Do you recall how old Candace was at the time?

A. She was 8 or 9.

Q. Just a one time? Anybody else go with you?

A. Jonathan went with us at that time as well.

Q. Seems like Jonathan is going with you and Candace quite a bit. Were you really better friends than you testified to?

MR. SIMONS: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: We just went and did things together. Towards the end, I needed to get out of the house and take my daughter and do things, and Jonathan was there. He wanted to go do it.

BY MR. McCABE:

Q. Okay. Let's go back to 1994, '95, '96.

A. Okay.

Q. How many times had you been a visitor to the Kendrick home during that time period, if you could estimate?

A. Less than a handful. I had no reason to go over to his house. We weren't that close. He had a dog

that slobbered, and hair and everything. It was just -- if you went to Jon's house, you were accosted by this messy dog. So it wasn't something I wanted to do.

Q. Did Jonathan live during that time period with anybody else besides this messy dog?

A. He was married at the time.

Q. What was his wife's name?

A. His wife's name was Evelyn.

Q. Did anybody else live in the household?

A. She had a daughter named Andrea.

Q. Can you recall, were they married the whole time that you knew them?

A. I think they came to the Hall, and they got married shortly after that.

Q. So that would have been in the late 1980s?

A. Yes.

Q. From that time forward, were they married, as far as you knew?

A. Yes.

Q. Do you know, did they ever separate or divorce?

A. Later on they did. I don't remember the exact time. It had to be close to the time that Kathy and I separated as well.

Q. Somewhere around 1996?

A. '95, '96, something like that.

Q. How often was Jonathan Kendrick a visitor in your home during the same time period, 1994, '95, '96?

A. Again, very infrequent. Maybe just a handful of times. He came over with the car one time. Sometimes we exchanged tools on the projects we were working on individually, but not very frequent at all.

Q. Let's talk about this time frame in which you talked about the car. Whose car was it that was being worked on?

A. It was just an elderly sister in the hall who had a Volkswagen that needed some repairs.

Q. And who was doing the repair work?

A. There was a couple brothers. One that was very -- he worked at a German car dealership, so he was very familiar with how to repair Volkswagens at the time.

Q. And was he doing mechanic work?

A. Yes.

Q. And was there also some painting and bodywork done?

A. At the end we decided let's throw a paint job on it real quick.

Q. And was your garage set up to paint?

A. Yes.

Q. And, in fact, had you been doing some vehicle painting in your garage before --

A. Yes.

Q. You have to let me finish the question before you answer, if you would, please.

Would you do that?

A. Sure.

Q. What did you use the garage for prior to this occasion of fixing Sister Crawford's car?

A. Right. Well, the reason, I did mechanical work and then I graduated into bodywork and painted. And then about '87, '88, I, kind of, retired. But I stopped doing that because Candace was here now and I wanted to spend more time with the family. So I, kind of, retired from that activity.

The garage was still there. I still had my tools. So when this opportunity to work on Sister Crawford's car came along, I said yeah.

Q. So this wasn't a garage where people from the North Fremont Congregation came over and over again to work on vehicles?

A. No.

Q. This was a one-time event?

A. Right.

Q. How many people from the congregation

participated in working on this vehicle?

A. There might have been five or six over the whole course of the whole week and a half, whatever it took us to do it. And I don't recall the names of the specific people.

Q. Was one of them Jonathan Kendrick?

A. Yes.

Q. Did there occur a problem between your daughter, Candace Conti, and Jonathan Kendrick during this time period?

A. Well, there was one occasion I think the garage door was open and she was out playing in the yard. And I didn't see it specifically, but she came to me and said Jonathan had pulled her hand and her arm. And she had a scratch on her arm. She showed me that.

Q. And you saw that?

A. I saw that.

Q. And did you say anything to Jonathan Kendrick?

A. I told him, you know, don't grab a hold of her. Don't hold on to her like that. That's not right.

Q. And did he respond to that?

A. He said, "Okay."

Q. Other than that, did you ever notice that Jonathan Kendrick grabbed your daughter again?

A. No.

Q. I want to talk to you about another occasion. Did you have Jonathan Kendrick and his wife to your home ever for a social event, like a dinner?

A. No.

Q. Was he ever in your home and have a confrontation or a problem with your wife, Kathy?

A. There was one time. And I'm not sure why he had come over. It might have been just to talk when his family was falling apart. I'm not sure.

Q. Do you have a sense of what year it was?

A. It had to be in the same time frame, late '95, early '96, maybe.

Q. What happened? What did Mr. Kendrick do to your wife?

A. She was, kind of, sitting on the couch -- or standing by the couch, and he just, sort of, kind of, fell into her and they both landed on the couch.

Q. Did he do anything else?

A. He was just -- it was almost like he was roughhousing with her. So I got up and walked him outside and said, "You can't do that. That's not right."

Q. And did he leave at that point?

A. Yes.

Q. How many times all together would you say, during the year -- typical year, 1995, '96 or '97 -- did Jonathan Kendrick come to your house for any reason?

A. A few times, less than a handful of times. We weren't that close. We did things. The meeting point was at the Hall. If we decided we wanted to go on the train we decided at the Hall. It wasn't, I would go to his and we did it that way.

Q. When you took Candace to Laura Fraser, did you tell her that Candace had taken on an adult role and had a heavy burden placed on her?

A. Yeah. That was a big concern.

Q. And what kind of adult role did Candace take on during this time period?

A. Just, I mean, when she was home with her mom, you know, just whatever she could for her. Just that caring, nurturing person in your life who would be your mother, Candace started exhibiting those types of activities, trying to the console her mother, trying to be there for her. But she was a child. She didn't understand the issues that Kathy was going through at the time.

Q. Did you try to be there for your daughter?

A. Absolutely.

Q. Did you think you were successful?

A. I hope I was.

Q. During this time period that you were having turmoil in your marriage leading up to the suicide attempt of your ex-wife, Kathleen, did you go to anyone for help, counsel, or comfort?

A. I would go to some of the elders in the congregation.

Q. Did you go to Jonathan Kendrick?

A. No.

Q. During this time period, did you rely on Jonathan Kendrick to help you take care of some of your responsibilities in the family?

A. No.

Q. Did you have to take time off from work frequently to take care of those responsibilities?

A. Yes.

Q. Who was it that you went to? Who was your primary go-to person during that time period when you needed help?

A. I had the opportunity to talk to one brother, in particular, Larry Lamerdin.

Q. Mr. Lamerdin?

A. Mr. Lamerdin.

Q. Who was he?

A. He was one of the elders in the North Fremont

Congregation.

Q. And did you talk to him about the problems that Kathy was experiencing?

A. Yes.

Q. Was he able to help you at all?

A. Well, he would bring scriptural information. He would help me to be more understanding and to be able to listen to her.

Because I'm a techie kind of guy. I'm a, kind of, fix-it kind of guy. So I had to back off from that trying to fix everything, and just try to listen and be more understanding of what she was going through.

Q. Because you couldn't fix Kathy's problems?

A. No.

Q. Did Mr. Lamerdin ever give you any of the literature published by Jehovah's Witnesses?

A. Yeah. The society publishes many different publications, and one of those is the Awake Magazine. And it focused on world events, but it was also articles on families.

You know, you might have articles on butterflies, so you could talk to your children and show them nature.

Other times it was more serious things. With all that Kathy was going through, it was encouraging to

see some articles about child abuse, and so we talked about that as well.

Q. And did he direct you to any specific articles?

A. Yes.

Q. I would like to show you what has been previously marked Plaintiff's 64, Defense Number 37, and ask you if you recognize this document.

A. Yes. This is the October 1993, "How to Protect Your Children."

Q. Do you recall if Mr. Lamerdin directed you to this particular issue of the Awake Magazine?

A. Yes, we did talk about it, yes.

Q. I would like to direct your attention to page 14. It's 13 of the exhibit. The last page of the exhibit in front of you.

Do you recognize that particular page?

A. Yes. Because that was our main focus at the time was how to help Kathy.

Q. And what is the title of that page?

A. It is "Consoling Adult Survivors of Childhood Trauma."

Q. And what is the direction that is given to you?

A. It talks about "Listen, Listen, Listen" is

the first subheading there.

It talks about if a child had a skinned knee, first impulse is to run to their parents. And so we try to keep an open dialogue with our children, if something like that would happen, let's talk about it.

Q. Now we are talking about your wife?

A. Right.

Q. And so --

A. Well, there was the listening part, to listen and be consoling. Again, I couldn't solve the problems, but to try to be comforting to her and talk through.

Q. Was that hard for you to do, being a fix-it guy?

A. At times, yes.

Q. Did you rely upon anyone else at the Congregation of Jehovah's Witnesses during this difficult time period -- I'm talking about the year leading up to Kathy's attempted suicide -- to assist you in taking care of Candace?

A. There was some other brothers I talked to, yes.

Q. How about, did you entrust Candace's care to anyone else outside the Kingdom Hall?

A. Well, my mother stepped in when it was necessary.

Q. She is part of the family?
A. She is part of the family.
Q. How about any brothers or sisters from the Kingdom Hall?
A. Well, Claudia took her one day to go shopping or something like that.
Q. And that is Claudia Francis?
A. Claudia Francis, yes.
Q. Every time you went to the Kendrick home, was he still married?
A. Yes.
Q. Was he still living with his wife and daughter and a messy dog?
A. Yes.
Q. Did you ever go there after he separated?
A. No.
Q. Do you know if Candace ever went there by herself with your approval?
A. No.
Q. When Candace told you that Jonathan Kendrick had hurt her arm, was she bleeding?
A. It was just a white line from a fingernail scratch, and there might have been just some very little blood.
Q. Skin was broken?

A. Skin was broken.

Q. Was there ever any other time when she told you Jonathan Kendrick hurt her?

A. No. There was no other time she said anything about Jonathan hurting her.

Q. That was in 2005?

A. Right.

Q. Now, did there come a time in 2009 when you received a call from Mr. Lamerdin about your daughter, Candace?

A. Right.

Q. What was that call about?

A. Well, Candace had met with Larry and was talking about what we are talking about today, that Jonathan had touched her inappropriately.

Q. Did you follow up that phone call with a meeting with Mr. Lamerdin?

A. Yes.

Q. Was anyone else present?

A. Mike Clarke.

Q. And what did you discuss, generally?

A. Well, they just asked me if I knew anything about this. They, kind of, went through the time frame that we have been discussing here now. And I had not seen anything or -- that's all I could tell them.

Q. Did they encourage you to do anything?
A. They did encourage me to try to reconnect with Candace and try to be there for her since they knew our relationship had become somewhat strained.
Q. Did you do that?
A. I tried.
Q. Did you contact Candace?
A. I did contact her. I would leave messages. She would call me back once in a while and she would chat a little bit.
Q. So just so we are clear, you never saw anything happen inappropriate to Candace with anybody at the Kingdom Hall; is that correct?
A. No.
Q. You never saw anything inappropriate happen with Jonathan Kendrick and Candace at the Kingdom Hall?
A. No.
Q. Did you see anything inappropriate with Jonathan Kendrick and Candace anywhere?
A. No.
Q. Did you ever allow Candace to go in a vehicle -- I think Jonathan drove a truck, didn't he?
A. No.
Q. Did you ever allow Candace to go in that truck with Jonathan Kendrick?

A. No.

Q. In view of the fact that your wife had these issues regarding memories of some childhood abuse, did that make you a little leery regarding your daughter?

A. Her mom was very sensitive to it. So it was now my responsibility to make sure that didn't happen to Candace.

Q. When you went to the Kingdom Hall with Candace, where would you sit?

A. Up in the middle section, up towards the front. The first three or four rows, it is too hard to look up. So it was usually about the fourth or fifth row we sit back.

Q. Is that your normal pew?

A. Usually. That's kind of where I would hang out, yes.

Q. And would that vary at all?

A. Typically not. Pretty much -- unless someone else had taken our seat, we would have to move around.

Q. When your daughter was age 8, 9 and 10, 11, how did you feel about her?

A. How did I feel about her?

Q. Yes.

A. I loved her. She was my daughter.

Q. Were you affectionate with her?

A. To a point.

Q. Would it surprise you to know that she told Laura Fraser she felt very safe with you?

A. It wouldn't surprise me.

Q. Does it flatter you?

A. It means I did a good job.

Q. Still trying?

A. Still trying.

Q. At the Kingdom Hall, we heard some testimony that before and after the meetings people talk and there is a lot of activity going on.

Is that your recollection of what was going on?

A. Yes.

Q. Do the children run around the halls, everything chaos?

A. Well, we try not to allow that. Parents are instructed to keep their children within view, you know, so that they don't get run over by cars or anything like that. We try very hard to teach our children to be obedient.

Q. And how about you and Candace? Did you try and do that with Candace?

A. Yes.

Q. Were there times when you were at the Kingdom

Hall where she was out of your sight?

A. I would usually try to keep her in the hall where I would be talking to people or whatever, and she would leave with me.

Q. When you were talking with people, did you have her in view, or would she be out of view, not around you?

A. I tried to keep an eye on her.

Q. How about going to the restroom?

A. Well, usually we take her to the restroom.

Q. What do you mean by "take her"?

A. Well, I would walk with her to get here there.

Q. So you would walk and wait outside?

A. Correct.

Q. And that was your custom and practice when she was 8, 9, 10?

A. Yes.

Q. Where did Jonathan Kendrick sit in the Kingdom Hall, if you recall?

A. He sat a few rows back, in the middle toward the back.

Q. Did you ever notice him in particular, at the Kingdom Hall?

A. I would see him from time to time.

Q. Did you ever talk to him?
A. Yes.
Q. Did you ever notice he slept through meetings?
A. He would nod occasionally.
Q. Did you do that too?
A. Once in a great while.
THE COURT: Let's take our morning break until 10:30.
(Break taken)
BY MR. McCABE:
Q. Mr. Conti, I would like to show you the picture that has been admitted as Plaintiff's Number 2.
Do you see that picture?
A. Yes.
Q. Do you recognize that picture?
A. Yes.
Q. Who is it?
A. That's Candace.
Q. Have you seen that picture before?
A. I have seen that picture, yes.
Q. Where?
A. There is one similar to it on my mom's refrigerator.
MR. McCABE: I have nothing further, your

Honor.

MR. SCHNACK: No questions, your Honor.

THE COURT: Mr. Simons?

MR. SIMONS: I have some Direct.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Mr. Conti, you told us that, because of the concerns that you had about Candace and the effect her mother and her mother's issues were having on her, that you got Candace into therapy with Laura Fraser even before the separation; is that correct?

A. Yes. We, as a family did, yes.

Q. And the separation was in July of 1996?

A. Correct.

Q. And would it surprise you to know that the first appointment with Laura Fraser was August 12, 1996, about a month later?

A. August 6?

Q. August 12, 1996, a month after the separation.

A. After the separation?

Q. Right. When you moved out.

A. We moved out in July.

Q. Yeah. The first appointment is August. So

it was after the separation that Candace began therapy with Laura Fraser, not before.

Does that ring any bells with you?

A. Because we went to see Laura Fraser right after -- right after -- okay. It might be.

Q. And wasn't that Kathy who got Candace to go to Laura Fraser, not you?

A. No. I never said it was me. It was Kathy. But we collectively did it as a family. We found someone within our medical plan.

Q. And didn't you tell us in the recess in response to Mr. McCabe's question that because of your concerns you got Candace into therapy?

A. We, as a family, collectively, did it together.

Q. Let's take a look at your deposition at page 25, lines 2 through 17.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. What started the process?

How did she get to --

(Whereupon, the video recording was stopped)

MR. McCABE: Counsel, what lines?

MR. SIMONS: I'm sorry. 25, lines 2 through 7.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. What started the process? How did she get to a therapist? She is ten years old. So, I'm assuming she didn't call and make the appointment herself. Someone assisted her.

Do you know how that happened?

A. I believe that was Kathy.

(Whereupon, the video recording was stopped)

MR. McCABE: Excuse me, your Honor. That's not the lines I'm looking at.

THE COURT: Let's again. Are we sure we are on the same lines?

MR. McCABE: Okay.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. What started the process? How did she get to a therapist? She is ten years old. So, I'm assuming she didn't call and make the appointment herself, someone assisted her.

Do you know how that happened?

A. I believe it was Kathy.

(Whereupon, the video recording was stopped)

BY MR. SIMONS:

Q. Before you came here to testify today, did

you discuss your testimony with the attorneys for the defendants?

A. We had talked about it.

Q. And did you have a meeting in person?

A. Yes.

Q. And you looked at the photographs that we looked at earlier of the Kingdom Hall?

A. No. That's the first time I have seen those pictures.

Q. How long did your meeting last?

A. About an hour.

Q. And did that meeting help you focus on what it was that the attorneys for the defendants wanted you to say here today?

A. We basically talked about the things that have happened, that's all. Just trying to discuss and find out what happened.

Q. Did you ever hear Jonathan Kendrick say about Candace that, "She is my number one," and, "I just love Candace," or other terms of affection?

A. No.

Q. Never said that around you?

A. No.

THE COURT: "Never said that around you."

And "No." So we have that double negative

circumstance again.

BY MR. SIMONS:

Q. That's correct.

Your recollection is Jonathan Kendrick never said affectionate things about Candace?

A. In front of me.

Q. Is that correct?

A. Correct.

Q. And you weren't really friends, and you didn't see Mr. Kendrick very often, but it happened that when Candace needed new wheels for her rollerblades that Jonathan Kendrick went with you to the rollerblade store. Correct?

A. Correct.

Q. And you weren't really friends with Mr. Kendrick and you didn't see him very often, but when you went on the Amtrak trip, Jonathan Kendrick went with you and Candace.

And you weren't really friends and you didn't see him very often, but when you went to see Gone With The Wind, Jonathan Kendrick went with you and Candace. Correct?

A. Correct.

Q. And there are other occasions when that happened as well, weren't there?

A. Not that I'm aware of.

Q. You saw him hurt your daughter enough to make her cry and to leave a mark on her?

A. She wasn't crying. She was noticeably upset by it.

Q. She told you he hurt her?

A. Yes.

Q. And you said, "Don't grab my daughter."

And he said -- Kendrick said, "Okay."

A. Yes.

Q. That was pretty much it?

A. Yes.

Q. Same thing when he was roughhousing with Kathy. You said, "You shouldn't do that."

And Mr. Kendrick said, "Okay."

A. Yes.

Q. When you would go to these various events, you said you would almost always meet at the Kingdom Hall. Correct?

MR. McCABE: Objection; vague.

THE COURT: I don't understand the question.

BY MR. SIMONS:

Q. When you went to the different events that you mentioned with Mr. Kendrick, you would meet at the Kingdom Hall?

A. We would talk about it at the Kingdom Hall and make the plans. We didn't leave from the Kingdom Hall and take the train, no. That's not it.

Q. So you went by and picked him up or he came by and picked you and Candace up? Which was it?

A. I believe we just met at the train station.

Q. How about Gone With The Wind? Did you meet over there in Palo Alto?

A. I am not sure. I don't remember who drove.

Q. And I think you told us that when your daughter was 9 and 10 years old at the Kingdom Hall you would take her to the restroom?

A. I would walk with her to the back of Kingdom Hall, yes.

Q. When she was ten years old?

A. Yes.

Q. When you were doing these various events with Candace and Jonathan Kendrick, Gone With The Wind or rollerblade shop or Amtrak to Sacramento, did you have any idea you were exposing your daughter to a known child molester?

A. I had no idea.

Q. Would it have mattered to you if you did know that?

A. No. Because we had already -- as a family

and Kathy's prior concerns, what happened in her life, we tried to be very vigilant about that and not allow Candace to be in that situation.

MR. SIMONS: Nothing further.

THE COURT: Anything?

MR. McCABE: Nothing further.

MR. SCHNACK: Nothing.

THE COURT: All right, sir. Thank you very much for your time this morning. You are now excused.

Mr. Simons.

MR. SIMONS: May we dim the lights? And under Evidence Code Section 776 present excerpts of the video deposition of The Watchtower Bible and Tract Society of New York, Inc. through Mr. Shuster.

And, Your Honor, may we inquire, because this is a more protracted presentation, if there is any problem with anyone being able to see the screen and may I move to outside of counsel table so I'm not obstructing the view?

THE COURT: Certainly. And noting the circumstances, Mr. Simons, yes.

And then to members of the jury, is that screen set up such that you all have a legitimate view of what is going to go on?

Everybody okay with the view, the view line?

Your site line? Okay.

(Whereupon, the video recording was played)

VIDEOGRAPHER: Good morning. We are now on the record. My name is Terry Carruthers, your videographer. I represent Atkinson-Baker, Inc. in Glendale, California. I am not financially interested in this action nor am I a relative nor employee of any attorney or any of the parties.

Today is February 15, 2012. The time on the monitor is 10:01 a.m. This deposition is being taken place at 100 Watchtower Drive in Patterson, New York. And this is action Number HG41558324 in the Superior Court of California, entitled Jane Doe versus Watchtower Bible and Tract Society of New York.

Your deponent is Mr. Allen Shuster. Your court reporter is Nancy Flynn from Atkinson-Baker.

Counsel will now introduce themselves, after which, the court reporter will please swear in or affirm this witness.

MR. SIMONS: Rick Simons for Plaintiff, Jane Doe.

MR. SCHNACK: Bob Schnack for Defendant, Watchtower Bible and Track Society of New York, Incorporated.

MR. McCABE: James McCabe for the North

Congregation of Fremont, California.

MR. McNAMARA: Francis McNamara, associate general counsel for Watchtower New York.

ALLEN SHUSTER

WAS DULY SWORN TO TELL THE TRUTH BY THE COURT REPORTER AND TESTIFIED AS FOLLOWS:

EXAMINATION

BY MR. SIMONS:

Q. Please state your full name.

A. Allen Eugene Shuster.

MR. SIMONS: So I think, with counsel's kind permission, I will go through the deposition notices and just clarify which categories you will be testifying as the representative of the Watchtower New York, Inc.

And that would include for the February 15th, 2012 1:00 p.m. Deposition Notice, the matters related to the August 1st, 1995 body of elder letter, categories 1 and 2 in that Notice.

Am I correct in that, counsel?

MR. SCHNACK: Yes. Topics 1 and 2 in that deposition notice.

MR. SIMONS: And similarly, you will be the designated representative to testify as to the correspondence of December 3, 1993 and the matters of

policy related to that, again, from the February 15, 2012 1:30 Deposition Notice today.

Am I correct in that as well?

MR. SCHNACK: Yes.

MR. SIMONS: And then, additionally, certain of the categories designated in the deposition notice for February 16 at 10:30 will be in your purview, which I understand generally to be:

Category 1, Corporate Administrative Structure.

Category 2, managerial staff functions, but not as to the Legal Department?

MR. SCHNACK: Yeah. Topic 2 only is Legal Departments. That would not be Mr. Shuster.

MR. SIMONS: Okay. Very good.

And the Topic 3, Service Department, would include Mr. Shuster's subject matter; is that correct?

MR. SCHNACK: Yes.

BY MR. SIMONS:

Q. Now, Mr. Shuster, do you have official job title at present?

A. Yes, I do.

Q. And what is that?

A. Assistant overseer of the Service Department.

Q. To whom do you report as your supervisor?

A. The overseer of the Service Department.
Q. And who is that at present?
A. His name is Gary Breaux.
Q. And who, in turn, does Mr. Breaux report to?
A. It is called the Branch Committee.
MR. SCHNACK: Are you talking about currently?
MR. SIMONS: Yes.
BY MR. SIMONS:
Q. And what is the Branch Committee?
A. It is made up of twelve elders that represent the United States Branch Territory among Jehovah's Witnesses.
Q. Are there twelve separate territories within the United States, or is it twelve elders who represent the territory of the United States?
A. Twelve elders that represent the territories of the United States.
Q. As assistant overseer, what are your general duties and responsibilities?
A. We have, within the department, several desks. We have a number of desks. I work with the area schools that Jehovah's Witnesses conduct throughout the United States.
We have a program of constructing Kingdom

Halls and assembly halls throughout the branch territory. I oversee that. I also oversee the desk that distributes convention assignments for our district conventions.

Q. How long have you held this position?

A. The position of overseeing certain aspects of this work, for probably 11 years.

Q. And prior to holding the position of assistant overseer, what was your previous assignment?

A. I worked as what is called a "contact" within the Service Department.

Q. And what is a contact?

A. A contact is an elder who consults or is consulted with by a number of different elders within the department.

Q. Have you been an elder since 1979?

A. Yes.

Q. And how long have you been performing services and duties here at the national headquarters?

A. Since '76, 1976.

Q. Have you served as an elder in any congregation?

A. Yes, I have.

Q. And where was that congregation or those congregations located?

A. In New York City.

Q. What was the time frame of your service in that regard as an elder in a congregation?

A. Well, from 1979 until transferring up here to Patterson. So that would have been in one congregation from 1979 until 1995, and then from 1995 until the present here at Patterson.

Q. Is your position a compensated position?

A. No, it is not.

Q. Are you, in your own mind -- I'm not asking for a legal conclusion -- but in your own mind, do you work as an employee of one of the Jehovah's Witnesses entities?

A. No, I do not.

Q. As part of the Service Department, currently, are you within the Watchtower Bible and Tract Society of New York, Inc.?

A. No.

Q. Is the Service Department presently operated through the Christian Congregation of Jehovah's Witnesses?

A. Yes.

Q. Has that been true since 2001?

A. That's correct.

Q. Are persons who are serving within the

Watchtower Bible and Tract Society of New York, Inc. presently holding authority to implement or impose policies, procedures or decisions upon Christian Congregation of Jehovah's Witnesses?

A. I believe so.

Q. And tell me what your understanding is of the relationship between those two entities?

A. I mentioned earlier there is a Branch Committee. I do believe some of those members of the Branch Committee are members of the New York Corporation.

Q. What is the general role of the Branch Committee?

A. They oversee the spiritual activities as well as the administering of the properties at the three complexes here in New York State.

Q. Is the Service Committee one of multiple committees within the Branch Committee?

A. When you say "Service Committee" --

Q. Service Department.

A. Service Department. And your question again?

Q. Is that one of multiple departments or entities within the Branch Committee?

A. It is one of a number of departments that the Branch Committee has oversight of.

Q. And speaking in terms of the composition of the Branch Committee, how large a committee is it?

A. Twelve members.

Q. And how are its members selected?

A. It is -- of course, I'm not privy to the deliberations of the Branch Committee, so I'm not sure I can answer that.

Q. And not asking as to any individual who might have been appointed to the Branch Committee, but generally speaking, procedurally, how are Branch Committee members selected? By what authority or process?

A. Members of the Branch Committee collectively -- I should say, the collective Branch Committee makes recommendations as to who should be added in the case of deaths. And so those recommendations are made to the governing body of Jehovah's Witnesses.

Q. And what is the governing body within the administrative structure? I'm not asking for spiritual or theological information here. I'm really looking administratively. What is the governing body?

A. The governing body is a committee that oversees the worldwide activity of Jehovah's Witnesses.

Q. Does the Branch Committee have any sort of

written policies, procedures that it follows?

A. Yes.

Q. Is there some form of either a manual or other documentary compilation that the Branch Committee is guided by in its work?

A. Yes.

Q. What is that called?

A. It is called Branch Organization.

Q. And is that -- is the appropriate term a "manual" or would it be some other term?

A. I think the terminology is "guidelines," Branch Committee guidelines.

Q. And is that series of guidelines applicable to the Service Department of the Christian Congregation?

A. Parts of it are.

Q. What other areas --

Well, let me ask you: Have you ever seen the Branch Committee Guidelines?

A. Yes.

Q. Do you use it, at least from time to time, in your work?

A. From time to time.

Q. What are the general subject matters covered under the Branch Committee Guidelines?

A. Matters having to do with branch facilities,

branch personnel, and the managing of the spiritual activities within a specific branch or branch territory. Just general operation guidelines.

Q. Are the Branch Committee Guidelines the same for every branch throughout the world, or are there separate Branch Committee Guidelines for different geographical areas?

A. Same throughout the world.

Q. Are the contents of the Branch Committee Guidelines approved by the governing body?

A. Yes.

Q. And would those Branch Committee Guidelines apply to Watchtower Bible and Tract Society of New York, Inc.?

A. I guess my question would be --

Can you say that one more time? I want to make sure I have the question correct.

Q. Do the Branch Committee Guidelines apply to the entities within the Watchtower Bible and Tract Society of New York, Inc.?

A. I would think so.

Q. Do they also apply to the Christian Congregation?

A. Yes.

Q. I know there are other entities such as

Watchtower of Pennsylvania. Would the Branch Committee Guidelines apply to these other entities as well?

A. Yes.

Q. Other than the Service Department, what are the other departments that have existed both --

Let me break this down, actually, I'm sorry.

Prior to the formation of the Fremont Congregation, going back to Watchtower New York, what were the various departments within Watchtower New York prior to 2009?

A. I don't know that I could name them all. I know that the Service Department came under the direction of the Watchtower Corporation of New York. I know certain other departments did. I can't say with certainty, no.

Q. All right. We talked about the Legal Department earlier, recognizing that you are not here in that capacity, but do you know of your own knowledge whether or not the Legal Department, prior to 2001, was operated through the Watchtower Bible and Tract Society of New York, Inc.?

A. I don't know.

MR. SCHNACK: I can tell you it was, Rick.

MR. SIMONS: It was. Okay.

MR. SCHNACK: Still is.

BY MR. SIMONS:

Q. In your work in the Service Department, if you have a question that involves legal issues presently, do you go to the Legal Department of Watchtower New York, or do you have a separate Legal Department within the Christian Congregation?

A. The Legal Department here at Patterson.

Q. Is that Watchtower New York?

A. As Rick has stated, it is. I'm sorry. Bob.

Q. Looking down at paragraph 10: Congregation elders are expected to keep confession of other spiritual communications confidential.

Is there a written definition, to your knowledge, in any of the materials that you referenced in your work or have been familiar with in your work, as to what constitutes a spiritual confidential communication?

MR. SCHNACK: I'm sorry. You are asking if there is a written definition?

BY MR. SIMONS:

Q. Yes. What is a spiritual confidential communication?

A. Nothing other than the scriptures. Throughout the Bible it refers to keeping matters in confidence. In Proverbs it refers to confidential talk.

So from a scriptural standpoint, spiritual advice or counsel would be regarded as confidential.

Q. Are some matters, in your experience, that are the subject of communications between an elder and a congregation member not deemed spiritual?

A. Just general, just conversation with fellow members of Jehovah's Witnesses is not regarded as spiritual in nature.

Q. For example, if a congregation member spoke to an elder about a problem he was having with a car that would not operate correctly and asked for some mechanical advice, would that be deemed spiritual in nature?

A. I don't think any of us would regard that as spiritual in nature.

Q. Where, within the definitions that you work with administratively, is the dividing line between the subject matter that is deemed spiritual communications and the subject matter that is deemed nonspiritual communications?

MR. SCHNACK: I'm going to object as vague. I am not sure I understand the question.

You can respond.

THE WITNESS: That is pretty general. I think I would like for you to give me a little more

specifics as to what you mean by that.

BY MR. SIMONS:

Q. How do you know in your work whether or not a communication between a congregation member and an elder is to be deemed spiritual or it is to be deemed nonspiritual as the example that we talked about earlier?

A. The example with the car?

Q. Yeah.

A. Well, let me give you an example. If someone came to me and, for example, a woman confessed to committing adultery, I would certainly want someone with me, another elder, to listen to that confession. I think we would both, as elders, regard that confession as confidential.

Q. Because the subject matter would be deemed spiritual?

A. I don't know that you would regard adultery as spiritual, but the fact that the confession is before two elders who represent the Christian Congregation, from that standpoint, it would be spiritual.

Q. Is it the confession of wrongdoing that is spiritual, regardless of the wrongdoing itself?

A. It is written in the context of a spiritual problem that maybe someone has.

Q. If you have a question in your mind as to whether the subject matter of the communication is spiritual in nature or not, how do you resolve that question?

A. Well, again, I think that is pretty general, Mr. Simons. Can you be more specific?

Q. Yes. If you are unable to resolve a question of whether a communication is spiritual in nature or not in your work, how do you get the answer to the question?

Do you ask someone else within the organization in a different department? Do you go to your supervisor? Do you research it yourself and make a decision yourself? How do you resolve a gray area as to whether communication is spiritual or not?

A. I think through experience one is able to determine the difference between what is a spiritual matter that should be -- or, for that matter, anything that should be kept confidential as to something that is not confidential or not spiritual.

Q. When you say "experience," are you speaking of your own individual experience or the collective experience of yourself and others within the administration and leadership here?

A. My own experience.

Q. Have you ever had an occasion during your

years of service where you asked for other's guidance in determining whether communication should be deemed spiritual and confidential or not?

A. Yes.

Q. And in those situations or in that situation, to whom do you go for guidance?

A. It depends on the context. It depends on what the issue is as to who I go to.

Q. Can you give me different examples of the types of subject matters of communications that would lead you to another and to --

A. Well, I served as an elder, as I said, since 1979 in various congregations. So in the role of an elder within the local congregation is made up of a number of elders bearing numbers of elders within a body in a local congregation.

So if it is in regard to an issue I referred to earlier, where a woman may confess adultery, then I would consult with another elder in those matters. We would regard that as confidential.

Q. How about if the subject matter was not one which was clear to you as to whether it is spiritual and confidential or not and you wanted further insight from someone else on that in addition to your own experience, to whom would you go for guidance on that?

A. You are talking about spiritual matters?

Q. Well, about the issue of whether or not a communication is a spiritual communication as opposed to one that is not.

A. As an elder in a local congregation, I would consult with other elders.

Q. How about in your capacity here as an assistant overseer in the Service Department?

A. I would consult with elders here in the Service Department.

Q. Is there someone within the administrative structure of the organizations, plural, who is the final arbitrator of whether a specific type of communications that you deemed spiritual and confidential or not?

A. I believe it depends on the nature of the spiritual, confidential question.

Q. And can you explain that for me?

A. There are some issues, some questions that are raised that I can freely discuss with my peers within the department. And based on a discussion, a determination can be made as to whether we have the authority to make a decision. In other cases, not.

Q. Are there situations, in your experience, when the question of whether or not a communication is a confidential communication, you have turned to the Legal

Department for determination of that issue?

A. We have gotten legal advice, yes, on a regular basis.

Q. And in your capacity within the Service Department, do you have a discretion to overrule, if you will, legal advice you received from the Legal Department of Watchtower New York?

A. Do we have the authority to overrule? Again, I think it depends on the context.

Q. With regard to the question -- I'm sorry if that question was overbroad, but let me narrow. On the question of whether or not an individual communication is deemed confidential or not.

MR. SCHNACK: I'm going to object to the form of the question. It seems you are co-mingling legal issues and spiritual issues. I'm not sure the church does that.

But to the extent you can respond, go ahead.

THE WITNESS: Yeah. I think, in response to what Bob is saying, anything that is confidential is not always spiritual. And something that is spiritual is not always confidential. So I don't think we can draw a parallel as if they were synonymous.

But again, your question?

BY MR. SIMONS:

Q. Thank you for that clarification. With regard to whether or not a communication is confidential, are you given the authority to make that determination in a situation where the Legal Department has given you an opinion as to that, can you determine to be different than the Legal Department?

A. Do you mean me personally, or do you mean as a department?

Q. You as an assistant overseer in your official capacity.

A. Again, I think it is a judgment matter. There are some things that are given in the way of advice, and it is just that, advice.

There are other things that are presented from the Legal Department that I personally would not want to take it upon myself to make that decision to overrule the good advice that we often get from -- that we regularly get from our legal counsel.

Q. Going back to the time period before 2001, when the Service Department was within the Watchtower New York, were the respective roles that we have been discussing between the Service Department and the Legal Department the same, but just kept within the one organization structure?

A. A little confusing question.
Q. All right. Prior to 2001, was the Service Department, in terms of its authority and role, the same as it is now within the Christian Congregation?
A. Do you mean the difference between when Service Department was working as the New York Corporation, since 2001, and the Christian Congregation?
Q. Yes.
A. Essentially the same.
Q. And was the nature of the relationship between the Legal Department and the Service Department the same before 2001 as it is at present?
A. When you say "relationship," do you mean --
Q. In terms of the nature of the issues that would be brought to the Legal Department and the consequences of information that would come back from the Legal Department to the Service Department?
A. Yes.
Q. Mr. Shuster, have you seen this letter of July 1st, 1989 before?
A. Yes.
Q. And when do you recall first being aware of this letter?
A. Shortly before July 1st, 1989.
Q. Did you participate at all in the drafting of

this letter?

A. I'm not certain.

Q. Okay. Do you know any of the individuals who participated in the drafting of this letter?

A. I don't think I could name someone specific.

Q. Is this what is known as a body of elder letter?

A. Yes.

Q. Is the content of this letter, Exhibit 5, one that requires the approval of anyone within the Jehovah's Witnesses organization before it can be circulated to elders throughout the United States?

A. Yes.

Q. What approval or approvals, if there is more than one, must be made before a body of elder letter such as this could be circulated at the time we are talking about July 1, '89?

A. Within the time frame of 1989?

Q. Yes.

A. It would have been a group of elders within the Service Department that would have reviewed this letter. It would have been a collaborative effort.

You are talking about the Service Department. Right?

Q. I'm talking about within the organization.

A. Within the organization?

Q. Completely.

A. Yes. Undoubtedly, the legal departments would have input into this. It would have been approved by a committee of the governing body.

Q. Has this body of elder letter of July 1, 1989 been revoked?

A. When you say "revoked," you mean in total or in part?

Q. First, in total.

A. No.

Q. Have parts of it been modified or revoked?

A. I would have to review the letter --

Q. All right.

A. -- in further detail.

Q. Okay.

MR. SCHNACK: Do you want him to do that?

MR. SIMONS: Yes.

THE WITNESS: It is, actually, the same now. Maybe there is one exception, and that's on page -- on page 4 at the very top, the first sentence:

"If the alleged wrongdoer confesses to the sin, crime, no one else should be present besides the members of the committee."

Just in addition to that, in the case of a

child being a minor, likely, in most cases, his parent or parents would be present. But other than that, essentially it is the same.

(Whereupon, the video recording was stopped)

MS. KRAETSCH: Your Honor, may we take a five-minute break until I figure out where the rest of the video went?

THE COURT: Sure. I will see everybody at 11:25.

(Break taken)

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. Let me ask you a question that may seem somewhat silly to you, but what is the difference in the purpose between the Awake Magazine and the Watchtower Magazine?

A. The Watchtower Magazine is a magazine that deals a lot with prophecy -- Bible prophecy and world events and how we see world events that we see happening today are really part of a prophetic sign as to the times that we are living in.

And so Watchtower is taken from as if a sentry were standing out in the wilderness on top of a tower overlooking a panoramic view, and he can see far in advance these events, what is coming his way. That

is the idea behind the Watchtower.

The Awake Magazine is more designed toward the public in general and articles of interest on creation, history, geography. They both have a printing of over 42 million copies.

The Watchtower is in 194 languages, and the Awake is in 84 languages. So it is a worldwide -- both of them have worldwide distribution.

Q. When members or publishers go out to spread the word to the community at large among non-members, do they provide to the community, at least as the persons who are interested, both Awake and Watchtower?

A. Yes. Both Awake and Watchtower and other publications.

Q. So am I correct in saying neither Awake nor Watchtower are published exclusively for the membership of Jehovah's Witnesses, they are directed towards the larger community as well?

A. The Watchtower, about three years ago was -- there is two publications. There is the public edition of the Watchtower and now there is a study copy -- a study edition of the Watchtower. And the study edition of the Watchtower is designed specifically for the membership.

Q. And that's a more recent development?

A. Yes.

Q. If we look back to the 1990s, would we have what is now the equivalent of the public Watchtower and Awake both being distributed for use of members and to the public at large?

A. Yes.

Q. Now, you mentioned the Watchtower now being utilized in certain study committees. Am I correct that there are various kinds of regular meetings and study sessions that congregations hold within Jehovah's Witnesses?

A. Yes, we do.

Q. And are there regular meetings held by congregations at the Kingdom Halls?

A. Yes.

Q. And how frequently would regular sessions at the Kingdom Hall be held in most congregations, at least in your knowledge and experience?

A. Do you mean meetings that a congregation would have, as opposed to meetings that Kingdom Hall would have?

Q. Yes.

A. Yes. A congregation typically would have two meetings a week; one during midweek, and typically one on the weekend.

Q. And do each of these meetings have a different purpose or is the purpose the same?

A. A different purpose.

Q. What are the purposes of the two meetings -- the midweek and the weekend meetings?

A. Well, both are open to the public. So anybody is invited to attend these meetings. The midweek meeting is made up of three different types of meetings. One is called the Congregation Bible Study. And there is a publication that the Jehovah's Witnesses use. It varies from year to year. That is considered for 25 minutes or half hour.

And then we have what is called a theocratic ministry school that helps to train the congregants as to how to perform public speaking or public reading, speaking to others about the Bible.

And then the last part of the meeting is called a service meeting. And information from a periodical called Our Kingdom Ministry is reviewed.

And again, having to do with the ministry. Because that's what Jehovah's Witnesses do is we speak -- speak about matters of God and bear witness about Him and tell others about what we consider to be good news in the Bible.

Q. Are the midweek meetings that are held at the

Kingdom Halls attended customarily by children as well as adults?

A. Yes.

Q. What does the weekend meeting usually consist of?

A. It is -- it consists of two meetings, a public talk addressed to the public, and then consideration of the study edition of the Watchtower. There are articles that are taken each week from that Watchtower and considered during the course of that hour on a variety of subjects.

Q. And are the weekend meetings customarily held at the Kingdom Hall?

A. Yes. In this country.

Q. Are there other meetings routinely held, in your experience and knowledge, that would be smaller study groups held, perhaps, in homes of individuals who are congregation members?

A. Not a study group. We do have places, homes, private homes where we gather for a very, very brief period of time, 10 to 15 minutes to meet prior to engaging in the public ministry.

Q. Are the weekend meetings customarily attended by children?

A. The public talk and Watchtower study at the

congregation Kingdom Hall?

Q. Yes.

A. Yes.

Q. When you say "public ministry," is service work and public ministry -- are those concepts the same?

A. Service work, meaning?

Q. Does the service work that is customarily used in your vocabulary include the public ministry that you were about to describe.

A. Yes. We don't use the terminology "service work." We do use the word "service." It is a field service or field ministry. And, yes, it is synonymous with the ministry.

Q. So it's service, not service work?

A. Right.

Q. Thank you. My apologies.

And how often are congregations involved, say, on a weekly basis in field service?

A. Typically, we have meetings all during the week and in the homes, usually in the mornings. Sometimes in the afternoons, we have a meeting for field service.

So in some cases it is seven days a week either in the homes or at our places of worship, our Kingdom Halls.

In other areas where the congregations are much smaller, they may have arrangements to meet less than that.

Q. And by field service or public ministry, does that mean going into the community to preach the gospel and spiritual teachings of Jehovah's Witnesses?

A. Yeah. The gospel. Speaking about the Bible and -- yes.

Q. And are children allowed to engage in the field service work -- I'm sorry -- the field service? I beg your pardon.

A. Yes.

Q. What does the term "publisher" mean?

A. A publisher can refer to a baptized or an unbaptized associate of the congregation.

Q. Can a child be a publisher?

A. Yes.

Q. And can a child be an unbaptized publisher?

A. Yes.

Q. What is the role of an unbaptized publisher in field service?

A. The same as an adult publisher.

Q. And what is that?

A. Reading the Bible. Sharing with others one's faith, one's conviction. Teaching them about what the

Bible says. There's a hope for the future. It is all part of the ministry whether one is an adult or a minor.

Q. Does field service work include manning a table or a booth or some kind of fixed place in a public location where persons can come by and approach and be given an Awake or Watchtower or other information?

A. That would be part of it. That is one form, one aspect of the public ministry.

Q. Does it include going into communities, into residences or neighborhoods going door-to-door as well?

A. That's part of it, yes.

Q. And that is usually done in smaller groups of, perhaps, two or three individuals?

A. Yes.

Q. And children are allowed to do that?

A. Yes.

Q. What are the other ways in which field service is accomplished?

A. Well, we have the public ministry, which often involves calling on homes, the house-to-house ministry. I think that's probably what Jehovah's Witnesses are more known for than anything else is their public ministry. Waking you up early in the morning is part of it.

Another part of it is, as you mentioned, is

the street witnessing, talking to passersby, engaging them in confession. Part of it is making visits on people who have expressed interest and calling back on them. There are many different types of ministry.

Q. Are any of these types of ministry ones which children are precluded from participating in?

A. Some of the work that is done in the public, like, on the street, maybe in metropolitan areas, there is always concern about children, and we want to protect them and keep them from harm. So there may be sometimes when we would recommend that children not participate in that aspect of the ministry, such as in business territories or on the street.

Generally, that is up to the parent to make that decision. They have the authority, the right to dictate where they go, where they do not go.

But the elders in the congregation may make some recommendations that would preclude children more from the standpoint of their safety.

Q. Is there such a thing as a pioneer service school?

A. Yes.

Q. What is a pioneer service school?

A. It is a two-week course that those who are what we call "pioneers" in the congregation, who have

agreed to devote a certain set of number of hours per month to the public ministry. Periodically they are invited to the pioneer service school.

Q. Does a pioneer -- I'm sorry. Must a pioneer be baptized to be eligible?

A. Yes.

Q. So an unbaptized publisher would not be eligible to be a pioneer?

A. That's correct. And there is different types of pioneers. But, yes. Right.

Q. So generally speaking, a family of members of a congregation would be included in the midweek meeting, the weekend meeting, possibly smaller study groups and field service?

A. Yes.

Q. And the amount of time, frequency of participation in these various activities and gatherings would vary, I assume, greatly, from family to family. Is that fair?

A. Yes.

Q. However, there is no requirement of a minimum number of hours as to either participation in meetings or in field service in order to maintain membership in good standing with the congregation?

A. That's correct.

Q. Who is deemed to be clergy within the Jehovah's Witnesses?

A. Well, this would be elders, anyone occupying the position or serving within the capacity as an elder.

Q. Are ministerial servants considered clergy?

A. No.

Q. Are all members in good standing considered to be ministers within Jehovah's Witnesses?

A. Yes.

Q. Let me have you -- direct your attention, then, please, to Exhibit 7, the second affidavit of Allen Shuster, signed December 7th, 2011, on page 4.

And that's your signature again. Correct?

A. Yes. In paragraph 7 on page 2, you advise us that the terms "member," "publisher," and "ordained minister" mean the same and are interchangeable within the faith. Am I correct that that does not extend to unbaptized publishers?

A. That's correct.

Q. Are persons who have been removed as field servants, like Jonathan Kendrick in the 1990s, still considered publishers?

A. Yes.

Q. So he was still a baptized publisher?

A. Yes.

Q. What was the predecessor, in terms of function of the Branch Committee?

A. Prior to the Branch Committee, which was formed in 2001, the Bethel operations, is the operations of the three complexes that make up, not only the world headquarters, but also the headquarters for the United States Branch facilities as well as the field operations who were separate. There were two separate entities that care for those functions.

Q. We talked about the Branch Committee Guidelines, the published guidelines and the handbook, so to speak. Was there a predecessor of similar type before 2001 when the Branch Committee was formed?

A. The Branch Organization -- is what you are referring to -- has been in existence prior to the formation of the U.S. Branch Committee.

Q. And so did the Branch Organization have a handbook or guidelines prior to 2001?

A. I'm sure that there was some guideline that they went by. I don't know that there was an official document. Maybe more just internal communications or perhaps some memoranda that gave them some structure.

Q. Who, if anyone, would have been required to approve the content of articles in the Awake before they were published? This is back in the '85 to '93 time

period.

A. It would be individuals that work in our writing department.

Q. Were issues of --

I'm sorry.

Were articles on the subject matter of protecting children from sexual abuse subject to approval from anyone other than persons in the Writing Committee back in the time frame that we are talking about, '85 to '93, as to these articles?

MR. SCHNACK: Do you mean the Writing Department?

MR. SIMONS: Writing Department, thank you.

THE WITNESS: I know, on occasion, that the Writing Committee would send -- the Writing Department, that is -- they would send articles to others outside the Writing Department for their review.

BY MR. SIMONS:

Q. Would an article setting forth the policy on something such as childhood sexual abuse, such as the January 22, 1985 article in the Awake, have been reviewed and approved by the governing body or a committee of governing body prior to its publication?

A. My understanding is that they would.

Q. What is that understanding?

A. Whether all of the members of the then existing governing body would review articles from the Awake or the Watchtower -- and I can't say for certainty, but what I do say for certainty is that some members of the governing body would review it, yes.

Q. What is your understanding based on?

A. Based on my knowledge.

MR. SIMONS: We have been going for a while. Any time you want to take a break, just tell us.

THE WITNESS: I'm good.

THE COURT: Or perhaps the court reporter.

(Discussion off the record)

BY MR. SIMONS:

Q. Your last answer was -- that you just stated -- can you tell me a little bit about how you acquired the knowledge of the governing bodies role in terms of approval of the policy articles or Watchtower policy articles?

A. I just know that the Writing Department is directly overseen by the Writing Committee of the governing body, and that there have been members in the past of the governing body who are in the -- on the Writing Committee, and also work in the Writing Department.

And I know the process, that it is reviewed

by a number of writers. And it has been the policy of at least a few members of the governing body, reviewing anything of the Watchtower and Awake that is published.

MR. SIMONS: Thank you, sir, for your time today. That is all the questions I have.

THE WITNESS: Thank you.

(Whereupon, the video recording was stopped)

THE COURT: Mr. Simons.

MR. SIMONS: Yes, Your Honor. Give me thirty seconds for us to focus our eyes and then we'll go to the next videotaped deposition, which would be Ms. Harmatz.

THE COURT: How long is that?

MR. SIMONS: About 15 to 20, I thought.

THE COURT: Okay. All right.

(Whereupon, the video recording was played)

VIDEOGRAPHER: My name is John Peace, your videographer. I represent Atkinson-Baker, Inc., in Glendale, California. I'm not financially interested in this action nor am a relative or employee of any attorneys or any of the parties.

The date is April 30th, 2012. Time is 1:01 p.m.

This deposition is taking place at Kaiser Permanente, Department of Addiction Medicine, located at

9449 East Imperial Highway, Suite 201, Downey, California 90242.

This is Case Number HG11558324, entitled Jane Doe versus The Watchtower Bible. The deponent is Helene Harmatz, Ph.D.

This deposition is being taken on behalf of the plaintiff.

The court reporter is Claudia Reyes from Atkinson-Baker.

Counsel will now identify themselves.

MS. KRAETSCH: Kelly Kraetsch for Plaintiff, Jane Doe.

MR. SCHNACK: Bob Schnack for Defendant, Watchtower Bible and Tract Society of New York, Incorporated.

MR. McCABE: James McCabe on behalf of the North Congregation of the Jehovah's Witnesses Fremont, California.

HELENE HARMATZ, Ph.D.

WAS DULY SWORN TO TELL THE TRUTH BY THE COURT REPORTER AND TESTIFIED AS FOLLOWS:

EXAMINATION

BY MS. KRAETSCH:

Q. Good afternoon, Dr. Harmatz. Will you please

introduce yourself?

A. My name is Helene Harmatz.

Q. And what is your profession?

A. I'm a counselor at Kaiser Permanente Psychiatry Department.

Q. And can you explain what a counselor here does?

A. We do assessments and treatments for clients, patients, who come in with depression or any type of either mental illness or emotional distress.

Q. What is your educational background?

A. I have a Masters in social work, and I have a Ph.D. in clinical psychology.

Q. Can you describe your professional training and experience?

A. Well, my training in social work was at the University of Southern California. And then my training in clinical psychology was through a professional educational university.

And the types of experience I have had is varied. I have worked in medical hospitals, to acute medical settings. I have worked in substance abuse at a non-profit agency. I have worked in sexual assault in a non-profit agency. I have worked in juvenile justice. And long, long ago it was Head Start.

Q. Can you describe your experience working with sexual assault victims?

A. I worked for a year-and-a-half in a non-profit agency with victims of sexual assault, incest survivors as well.

And I was the clinical director, but it was a small agency. So I did a lot of counseling with survivors, but also some hospital interventions and occasionally a court witness.

Q. And where do you work now?

A. I work at Kaiser Permanente in the Psychiatric Department in Downey.

Q. And how long have you been there?

A. I've been here -- I'm on my eighth year.

Q. Do you have a title here at Kaiser?

A. I do. It is psychiatric counselor.

Q. Have you ever treated Candace Conti?

A. Yes, I have.

Q. Over what period of time?

A. There have been five sessions, and I really don't recall when we started.

Q. Do you recall when your last visit with her was?

A. Last visit was last Friday, and that was on April 27, 2012.

Q. How was Ms. Conti referred to you?
A. She was referred by her case manager in addiction medicine.
Q. And what was your goal in Ms. Conti's care?
A. Supportive, but also assisting in the treatment of depression, anxiety, but mostly some PTSD.
Q. When you first started treating Ms. Conti, did you obtain a history from her?
A. I obtained some history. Not the full history.
Q. Do you recall what that history was?
A. She mostly talked about some legal issues that she was involved in, some substance history, her substance recovery that she was working on, some family issues concerning grandparents, mother as well. That's a lot of it.
Q. Dr. Harmatz, turning to page 22.
MR. SCHNACK: Are you using the numbers in the lower right-hand corner?
MS. KRAETSCH: Not the lowest number, but above that page 22.
MR. McCABE: So you are using page 22 of 41 of the right corner?
MS. KRAETSCH: Yes, I am.
BY MS. KRAETSCH:

Q. Dr. Harmatz, here on the Exhibit 1, page 22, there are notes from your October 4, 2011 session with Ms. Conti.

And you state here:

"Patient reports she was sexually abused from the ages of 9 to 12 by a man in her religious community."

What did she tell you about that?

A. She really didn't go into details. She simply stated that this occurred and, you know, that this was -- these were issues she was dealing with.

Q. Did you place any significance on that report that she gave you?

A. Yes. It is telling in terms of what could be going on with the patient.

Q. Can you describe in a little bit more detail why that was an important piece of her history for your treatment?

A. Well, with the diagnosis of PTSD, which was not made by me, this can explain where that comes from, that a client has experienced something so difficult that there are symptoms that can be ongoing and quite difficult. And, again, traumatic for her that ran through her life.

Q. You mentioned that she was diagnosed with

PTSD. Who made that diagnosis?

A. You know, I'm not positive, but I believe it was made in addiction medicine, and possibly by the psychiatrist; although, I'm not definitely clear on that.

Q. What was the significance to you of the diagnosis of PTSD?

A. Well, again, that it formulates so much of a patient's life even currently that there are symptoms that continue to be problematic: sleep disturbances, concentration disturbances, but also that interfering relationship issues, trust issues.

Q. Can you elaborate a little bit on what those symptoms were that Ms. Conti was exhibiting?

A. Well, definitely sleep issues. Frequent nightmares. So that kind of exhaustion can lead, again, to depression and, again, more interrupted functioning in daily life.

Also significant trust issues, which damage relationships, or, you know, inhibit somebody from carrying on.

So, again, the symptoms: sleep problems, some depression, heightened anxiety, so fearfulness and a lack of being able to trust.

Q. I see here on page 14 in your notes

pertaining to your visit with Ms. Conti on November 29, 2011, and you state: "She continues to have nightmares every night."

A. Yes, I recall her saying that.

Q. Can you go into some detail about what these nightmares consisted of?

A. She talked, and I stated here, about being held down and waves. But she really talked about not wanting to even sleep that, you know, being woken up and not getting a good night's sleep constantly. But this feeling of having no control over herself, that somebody else is holding her down, and she is having difficulty breathing.

Q. And from your professional experience, did you make an assessment as to what was causing those nightmares?

A. She seemed -- I don't think I even needed to make an assessment. She seemed to believe that this was related to the sexual abuse, and it seemed to make a lot of sense to me.

Q. In your profession opinion?

A. Yes. Definitely. Definitely. It made sense. To my knowledge, other things going on with Candace wouldn't make the same impact on her.

Q. So based on your education, training,

research, clinical work and familiarity with Candace Conti and her medical records, do you have an opinion as to the most likely cause or causes for her post-traumatic stress disorder?

A. From what I know of Candace, yes, it seems that the sexual assault is truly what's behind this.

Q. And what is the basis for that opinion?

A. My education and the dealing with other survivors of sexual assault and incest survivors.

Q. The notes from your session on November 29, 2011, on page 14, also mentions therapeutic techniques.

Can you explain the techniques that you listed here?

A. The cognitive behavior really has to do with the thought process and on using your thought process as an understanding of an emotional state. So really getting it into your cognitive sphere daily so that you can make some changes.

Is that clear enough?

Q. Yes. How about the psychodynamic?

A. Psychodynamic really is the connection of what happened, in terms of your past, so the social and psychosocial areas of your life and how that is displayed, again, significantly today.

Q. And can you describe the supportive

technique?

A. Just really being present, listening, and I would say really kindness and being present in a relationship with a patient.

Q. And in these notes you also describe a plan for Ms. Conti and state that the patient agrees with the plan.

Can you explain what that plan consisted of?

A. Well, if she takes medication in the way it is prescribed, continue her support, 12-Step meetings, because she is continuing to work on her sobriety. And the 12-step meetings being supportive as well as treatment oriented.

And the assertion on limit setting has to do with family members who may lean on her. And she needs to be a little bit more firm about that.

Q. You mentioned some prescriptions that Candace is taking. Do you know what those prescriptions are?

A. You know, I don't have it right in front of me, and I'm not a medical doctor.

Q. Okay. Fair enough. From her clinical care and her medical records, are you familiar with Ms. Conti's history and treatment in the Department of Addiction Medicine here at Kaiser?

A. I have not reviewed those records. I do know

that she did have treatment in this department.

Q. Can you describe the program that Ms. Conti was in?

A. I'm not familiar enough to do that. I'm sorry.

Q. Okay. I wanted to talk a bit about Ms. Conti's sobriety. Also in your notes from your visit with Ms. Conti on October 4, 2011, on pages 21 and 22, you stated: "Sober and clean over a year."

Did Ms. Conti undergo any objective laboratory tests to confirm that?

A. In terms of my work with her, no. In terms of her sobriety and working through the Chemical Dependency Department, I'm pretty sure, yes. So that was a self-statement that I put into my record.

Q. So do you know if she went for random drug testing in her program?

A. Yes. I believe that's the case.

Q. In your professional experience, can those random drug tests by faked?

A. Not to my knowledge, no.

Q. In your notes from October 4, 2011, you also state, "Her sobriety is first in her eyes."

What did you mean by that?

A. Well, she said numerous times, and has so not

only on that day, that this is a really important part of her life because she feels she has gotten back her life, and that making a decision to become clean and sober has given her a new chance, another chance to have a good life. So it is extremely important to her.

Q. And in your opinion, based on observations and any lab tests --

Let me start over. In your opinion, based on observations of Ms. Conti and review of any lab tests, as well as your own training and clinical experience, can you state with reasonable, professional certainty that Ms. Conti has been and remains free from influence or use of any intoxicating substance other than those that were prescribed for her?

A. I believe that to be the truth.

Q. And what is the basis for that opinion?

A. Her presentation is consistent. She may be at times emotional, but she is clear. She is focused. She seems extremely sincere.

The types of drugs she used in the past, I don't think she would be able to present the way that she does, in my experience.

Q. You mentioned that you saw Ms. Conti five times.

A. Yes.

Q. Was she responsible in her attendance for those five sessions?

A. Absolutely.

Q. Was she on time?

A. Absolutely.

Q. Did she ever miss any appointments that were scheduled?

A. Not to my knowledge, no, not unless she canceled. And I don't even know that that was the case.

Q. To your professional observation, did Ms. Conti demonstrate that she was motivated to obtain the maximum benefits from care and treatment that you provided to her?

A. Yes.

Q. In what ways?

A. She -- in a treatment plan, she has been agreeable to follow the recommendations. She is working on the things that we have worked on in terms of her being assertive with family members; in terms of, you know, taking good care of herself in the ways that we have talked about; in terms of some depression, she has really worked on the issues, you know. So I really hear from her that she is taking the steps that we have talked about.

Q. So you mentioned post-traumatic stress

disorder as well as depression. Were those the diagnoses that were made by a medical doctor for Ms. Conti?

A. Yes.

Q. Were there any other diagnoses attributed to her?

A. Probably secondary. Nothing that would stand out. I mean there is some anxiety in all of this, but that can be part of the post-traumatic stress, there is an anxiety portion.

Q. Getting back to your sessions with Ms. Conti, what demeanor does she display in your interactions with her?

A. I'm not sure I'm clear about what you are asking.

Q. Ms. Conti's demeanor while she's interacting with you in sessions, is she --

A. Responsive, receptive. She is attentive. She is very attentive. She seems forthcoming with a lot of material that she is willing and able to work on. There are some things that she is not really ready or willing to approach.

Q. And is that willingness important, clinically, to your evaluation and approach to treating a patient?

A. No. No. Because there are things that take time for somebody to be ready to deal with. There are things that are buried very deeply, things that are very traumatic that really can only be tapped when the patient is really ready. And to force that person before they are ready is, I don't believe, good practice.

Q. Can you explain what Axis 2 means?

A. It is generally reserved for a characterological or personality disorder.

Q. And to your knowledge, was Ms. Conti ever diagnosed with any personality disorders or other pathology?

A. No. To my knowledge, no. There is nothing in the record.

Q. Have you ever known her to be delusional?

A. No.

Q. In your November 2011 notes, you mention that Candace Conti told you:

"She continues to work her program and attends meetings and is feeling good about her sobriety."

That was an important enough observation you made a note of it. Can you explain why it was important for you to put it

in your notes?

A. Two things. It is important to her because, again, she stated so many times, but that time as well, that she was working a program and that sobriety is important to her.

But it also shows a commitment. It shows, in my professional experience, it shows somebody who is committed and who really wants their life back.

So this isn't about being manipulative or trying to get away with something. This is really about doing what is right for you, right and healthy and being on that path.

Q. What is your prognosis for Ms. Conti in the short-term?

A. It is a good prognosis. With PTSD, that's very, very difficult. That takes a long, long time.

In terms of any depression, or more anxiety -- and I know that those things weren't diagnosed at first -- but she is doing quite well. You know, I think she can be successful in a lot of things that she does. She still has, you know, plenty of issues, though.

Q. Can you elaborate from your professional experience and interactions and treatment of Ms. Conti, especially relating to the PTSD that you just mentioned,

what prognosis do you have in the long-term for her?

A. She is going to need to deal with these things more so than she has with me so that the nightmares can be freed up and so that she can -- I think she is developing more trust in people, but this is still pretty serious in trusting relationships, again, being able to be more comfortable in situations where she is not looking over her shoulder.

Although, you know, this situation wasn't like what you normally see in PTSD, a lot of times you will see a war survivor or a rape victim, as an adult, and they are looking over their shoulders.

But it is still the trust issues and the relationship issues, and, again, for her, specifically, the severe nightmares. So those things are -- I'm hoping will really improve in time.

Q. One final question. Do you have an opinion with reasonable professional certainty as to whether it was more likely than not that sexual abuse Candace Conti experienced as a child was a substantially contributing factor to her post-traumatic stress disorder?

A. From what I know of Candace, that is the only thing I know in her history that would equate with PTSD.

Q. And can you just explain the basis for the opinion that you just stated?

A. PTSD is fairly specific in that it is not -- it is a reaction to something that is -- can be life threatening. Okay. It becomes acute stress to begin with, and then over a period of time, it is post-trauma from a stress. And a serious stress. It is not just, you know, mom leaving home. This has to do with threat of physical harm.

And what I know of Candace this is the only physical harm that she endured. That's all I know.

MS. KRAETSCH: Okay. Thank you. I don't have any more questions.

EXAMINATION

BY MR. SCHNACK:

Q. Hi, Dr. Harmatz. My name is Bob Schnack. I just have a few questions for you. You said you took an incomplete history from Ms. Conti. Why is that?

A. We are limited in time. You know, probably that's the real reason. But incomplete, I'm really meaning in terms of her childhood. Okay. We started with where she was coming in, and I didn't actually go back in that session to go into -- you know, mom and dad and all of that.

Q. Okay. So you don't know a lot about her mother's history?

A. I do know more now.

Q. Now, as in as you sit here today?

A. Yes. Over this course of treatment. So the first assessment where more often I would get a more complete history, I didn't. But I have since that time.

Q. Okay. Is it fair to say you think she is doing very well?

A. Yes, I do.

MR. SCHNACK: That's all the questions I have.

EXAMINATION

BY MR. McCABE:

Q. Doctor, I think we introduced ourselves before the deposition. I just have a few questions.

A. Certainly.

Q. In your dealing with Candace Conti, you did not know her to have any relapses back into crystal meth abuse; is that correct?

A. That is correct.

Q. And how long has she been clean and sober now?

A. I believe she told me it's over a year and a half.

Q. Do you know how long she abused crystal meth?

A. You know, I'm really not clear. I can't say with certainty.

Q. Does eight years sound about right? Starting at age 16?

A. I'm really not positive. I thought it was more like six. But, again, I'm not positive.

Q. But basically for someone who has been involved in the daily use of crystal methamphetamine, she is doing quite well, isn't she?

A. Yes.

Q. It is quite remarkable that she hasn't had a relapse; isn't that true?

A. It's a difficult drug.

Q. But you would agree she is doing really well, remarkably well?

A. Very well.

Q. Ms. Conti seems to be well-oriented socially; wouldn't you agree?

A. From what she told me, yes.

Q. She is either in school or planning to attend school?

A. Yes.

Q. She has got plans to move to Central California with her mother?

A. Yes. She is doing some exercises, yes.

MR. SCHNACK: That's all I have.

MS. KRAETSCH: I have a follow-up question.

EXAMINATION

BY MS. KRAETSCH:

Q. When you said she was doing very well, are you referring to her beating addiction or to dealing with her PTSD?

A. I think I'm saying on all levels -- levels as a whole. She is attending meetings. She is sober. She is social. She has plans for the future. So, yes, on both, I think.

Q. And in your professional opinion, will she require further treatment for her PTSD and her depression?

A. I would say it is indicated.

MS. KRAETSCH: Okay. I don't have anything further.

Thank you so much.

(Whereupon, the video recording was stopped)

THE COURT: All right. To the jury, I will look forward to see you all at 1:30. Thank you for your diligence and attention.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. Who do we have left for the day?

MR. SIMONS: Two Kaisers and the Laura Fraser

video.

THE COURT: Okay.

MR. SIMONS: All by videotape depo.

THE COURT: Understood. And do you think we'll get it done by 3:00?

MR. SIMONS: I think we'll get it done, yes, maybe even a little earlier.

THE COURT: Okay. Thank you.

MR. SIMONS: We're back at 1:15?

THE COURT: Yes.

MR. SIMONS: Thank you, Your Honor.

(Lunch recess)

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: All right, Mr. Simons.

MR. SIMONS: We would play the videotape deposition of Dr. Laura Walton.

THE COURT: All right. Thank you.

(Whereupon, the video recording was played)

MS. KRAETSCH: Kelly Kraetsch for the Plaintiff, Jane Doe.

MR. SCHNACK: Bob Schnack representing The Watchtower Bible and Tract Society of New York, Incorporated.

MR. McCABE: James McCabe representing the

North Congregation of Jehovah's Witnesses of Fremont California.

LAURA WALTON, M.D.

WAS DULY SWORN TO TELL THE TRUTH BY THE COURT REPORTER AND TESTIFIED AS FOLLOWS:

EXAMINATION

BY MS. KRAETSCH:

Q. Good afternoon, Dr. Walton. Will you please introduce yourself?

A. My name is Laura Michelle Walton.

Q. What is your profession?

A. I'm a psychiatrist.

Q. What is the nature of your practice?

A. Currently, I practice psychiatry and addiction medicine.

Q. And what professional services do you perform for your patients?

A. I do evaluation, assessment, diagnosis of mental illness and addictive illnesses.

Q. What is your educational background?

A. I did a BSNB program at the University of Akron in Northeastern Ohio College of Medicine. And then I trained at the University of Pennsylvania in Philadelphia in Psychiatry.

Q. Do you have experience and training specifically with victims of childhood sex abuse?
A. I have a lot of experience. Not specific training, no.
Q. Can you just elaborate on that experience?
A. A large portion, probably 25 of my patients have some history of sexual abuse.
Q. And where are you working now?
A. I work for Kaiser Permanente.
Q. In which departments do you work at Kaiser?
A. Psychiatry and addiction medicine.
Q. Have you treated Candace Conti?
A. Yes.
Q. And over what period of time?
A. I would say the last year.
Q. How was Ms. Conti referred to you?
A. Through her therapy in addiction medicine.
Q. And that's here at Kaiser?
A. Yes.
Q. Can you describe what your role was in Ms. Conti's care?
A. She was referred for nightmares. And so I was to evaluate her medication with nightmares and to treat her.
Q. When you began to treat her, did you obtain a

history for Ms. Conti?

A. Yes.

Q. What history did you get from her?

A. I would have to look at the notes specifically.

Q. Okay. This is a copy of Candace Conti's behavioral health records.

A. Okay. My initial eval --

Q. Dr. Walton, if I could direct you to page 3, and looking here at Candace Conti's behavioral medicine records, which will be Exhibit 1, page 3, regarding Ms. Conti's visit with you on January 3, 2012.

Do you recognize these to be records that were taken in conjunction with your treatment of Ms. Conti?

A. Yes.

Q. Are these records kept in the regular course of Kaiser's business?

A. They are kept in electronic medical records.

Q. And were they made at or around the time that you saw the patient?

A. Yes.

Q. During your treatment of Ms. Conti, did you reach any diagnoses for her?

A. I did.

Q. And what were those?

A. Post-traumatic stress disorder.

Q. What was the basis of the diagnosis of post-traumatic stress disorder?

A. Based upon her history of having a traumatic event and then some difficulty with sleep, concentration, focus, interpersonal interactions as she relates to that event.

Q. Can you elaborate on what that event was?

A. She reported that she had been abused by an elder for several years in her youth -- if I had my notes, I would know specifically, but it was some years ago.

Q. Okay. Referring to your note on page 3 of Ms. Conti's records, there is some diagnoses listed here. Would you go through those with us?

A. Sure.

Q. Starting with Axis 1. What does Axis 1 mean?

A. Axis 1 is basically DSM's statistical manual for mood and anxiety disorder. It is the psychiatry way of quantifying mental illness.

So on Axis 1, usually these are affective disorders or anxiety disorders. Typically, they have a -- sort of a -- the best way to describe it is --

It is hard to describe. They weren't

influenced by personality, they weren't medical. These are short mental illness diagnoses on Axis 1.

So depression, post-traumatic stress disorder and chronic -- and drug abuse or addiction.

Q. So when you're talking about PTSD, would you prescribe any medications for that initially?

A. I did. Initially, we tried Minipress, which is an antihypertensive medication in the literature. It is medication that is approved for nightmares, specifically.

Q. Another diagnosis for Candace you mentioned is depression.

Can you explain what that diagnosis consisted of?

A. Sure. She basically suffered for a period of two weeks or more of bad mood, low energy, problems sleeping, eating, vegetative symptoms of depression. Here, it was in remission, but it wasn't active, but at some point, she met the criteria for her depressive disorder.

Q. And did you prescribe any medication for her depression?

A. I did. Wellbutrin.

Q. You mentioned that Ms. Conti first came to you because she was suffering from nightmares.

Can you elaborate on what she told you the nightmares consisted of?

A. She told me that she had recurrent nightmares of being held down, of gasping for breath, that she would awaken startled. And I didn't go into more depth of content, but it was her recurring nightmare she talked about.

Q. And in your professional opinion, those nightmares were related to Ms. Conti's post-traumatic stress disorder?

A. Yes.

Q. Based on your education, research, training and familiarity with Candace Conti and her medical records, do you have an opinion as to the most likely cause or causes of her PTSD?

A. Given her significant abuse history, that would be the most likely cause.

Q. So her abuse history is the basis for your opinion. Correct?

A. That is the basis of my opinion.

Q. Thank you. From her clinical care and from her records, are you familiar with Ms. Conti's history of treatment in the Department of Addiction Medicine here at Kaiser?

A. Yes.

Q. Can you describe the program that Ms. Conti was in?

A. You know, let me quantify that. When she came to me, she already had one month sober, so I don't know where she started in the program. But when she came to me, she was clean and sober for at least eight months, and it went from there.

But it likely involved outpatient or inpatient treatment for her addiction and then some work with a sponsor and AA groups is typical treatment.

Q. Do you have enough knowledge to have an opinion as to how Ms. Conti did in her program?

A. I believe she did well because that was never an issue. When we were discussing, it was more her mental health than her addiction. She was clean.

Q. Your entry in Ms. Conti's medical record for January 3, 2012 also states, reports, that she remains clean for meth and drug abuse and full remission.

A. Yes.

Q. Has Ms. Conti reported obtaining sobriety to you?

A. Yes.

Q. Are there objective laboratory tests to confirm she is being truthful about that?

A. There are.

Q. Did she undergo random drug testing?
A. Not based on my mental health care, no.
Q. Do you know if any of the drugs test results indicate that Ms. Conti was taking any other drugs than those prescribed to her?
A. No.
Q. You mentioned that you prescribed Wellbutrin for Ms. Conti's depression.
A. Yes.
Q. Was she taking Wellbutrin on April 25, 2011?
A. I would have to check my notes which I don't have. But I can say, from the time that I prescribed it, she had a good response. So from the point she was prescribed, she took it thereafter. I just don't know when it was prescribed.
Q. In regards to Ms. Conti's sobriety, in your opinion, based on observations of Ms. Conti and reviewing her specific lab tests and your own training and clinical experience, can you state with reasonable professional certainty that Ms. Conti has been and remains free from influence or use of any intoxicating substance, other than those you prescribed for her?
A. It is my opinion that she has been clean and sober.
Q. Can you explain a basis for that opinion?

A. This is all patient report. But her mental status was very alert, engaged. She gave me no physical signs of being under the influence. She was very clear about her history. And it was very consistent in the times that I met with her about her abuse, and she gave a good history. So I didn't think that she was impaired at all.

Q. To your professional observation, does Ms. Conti appear to be motivated to be a responsible person?

A. In my opinion, yes.

Q. And why do you have that opinion?

A. I believe that -- she has mentioned more than once that this is a very difficult process for her to relive her abuse, and that she is doing this -- she sustains for the greater good. So I think that she seems to be a person of good conscience.

Q. Does trust play a role in your treatment of patients?

A. Yes.

Q. How does trust play a role in your treatment of Ms. Conti?

A. Good question. I believe that the basis for a doctor/patient relationship is trust, or any relationship period. Especially with a psychiatrist. I treated her with psychiatry, everything is confidential.

It is not to be judged.

I am looking for signs and symptoms in a medical model to see if there is some treatment I can prescribe. I have to trust that she is giving me the symptoms and I can bring my expertise to remedy her symptoms.

Q. In your professional opinion, based on your education, training and experience, did you feel trust for Candace Conti?

A. Yes.

Q. Was Ms. Conti compliant with your instructions?

A. Yes. Very.

Q. Did she participate in sessions and counseling and keep her appointments with you in a responsible manner?

A. Yes. According to her medical record, yes.

Q. What demeanor did Ms. Conti display in your interactions with her?

A. She is very mature. Very articulate.

Q. Did you ever observe Ms. Conti to exhibit any other psychological afflictions or pathologies, such as schizophrenia?

A. No.

Q. Do you know Ms. Conti to be delusional?

A. No.

Q. What is your prognosis for Ms. Conti in the short-term?

A. Short-term? I would like to say fair. I would say fair, initially. She has a lot to get through in terms of this. But once she is past her real issues, I believe her life will be good. She has goals. She has dreams. She is very bright. She responded well to treatment.

Q. In your opinion what is it about the legal issues that you just mentioned that is difficult for Ms. Conti?

A. Every patient with PTSD, to recount the story is to relive it as it has happened. And there is inherent emotional consequences to reliving a story over and over again.

So given her history and her diagnosis, I believe it is difficult for her to talk about what happened to her.

Q. Is there a likelihood that Ms. Conti will continue to need therapy over her lifetime?

A. Yes.

Q. And what is the basis for that opinion?

A. PTSD can go into remission, but there really is no cure. It can be re-triggered, and it can be

episodic. So there may be incidences in her life where she -- it's re-triggered and has relapses.

Q. I want to discuss a little bit more about the prescription medications you prescribed for Ms. Conti. First, the Wellbutrin.

A. Yes.

Q. Was that successful?

A. Yes.

Q. Can you explain how that affected Ms. Conti?

A. She complained of low mood, low energy and problems with the therapist. Actually, the first medication we tried was Wellbutrin, and then she took it, and within a couple weeks she felt wonderful. She felt like she had the energy she needed to get a job. She was sleeping better. She no longer felt sad, and her depression remitted. She actually did very well with it.

Q. In your opinion, will she need to continue with that medication to maintain that in the future?

A. It is my recommendation that she does, especially when she goes through something like this. I think at one point she may be fine without medication, but I wouldn't recommend it until she gets past this, and she has no amount of stress.

Q. And how does the Minipress work that you gave

to Ms. Conti?

A. It worked well initially. Her nightmares weren't decreased, but she had side effects.

Q. What were the side effects?

A. She had palpitations, and it lowered her blood pressure to the point where she would awaken at night. And so we had to stop it and her nightmares continue.

Q. Has she reported that her nightmares continue to this day?

A. She has asked if there is something else we can try. And we have tried other medications, but none have really helped.

Q. Based on your professional experience, do you believe that Candace Conti's addictive behaviors are consistent with someone who suffered sexual abuse as a child?

A. It is certainly one of the sequela of abuse that went on for many years.

Q. What is your basis for making that opinion?

A. I believe it is in the literature. But many of the patients who have had early childhood trauma end up abusing substances to self-medicate their anxiety disorders, depressions and everything that comes with childhood trauma. So I believe many times people

self-medicate to not deal with what happened to them.

Q. Can you just explain a little more about what self-medicating means?

A. Sure. Patients who have been abused often deal with depression, anxiety, maybe even a psychotic disorder. And in order to feel normal, they often turn to alcohol and drugs until they are really diagnosed and treated for what is a PTSD or anxiety or depression, and they get medications that are illicit and not prescribed.

Q. And based on your professional experience and interactions with Ms. Conti and the treatment she had with you, is it your professional opinion that Ms. Conti was self-medicating with her illicit drugs before she began treating with you?

A. I believe that's a high probability, yes.

Q. Do you have an opinion with reasonable, professional certainty as to whether it was more likely than not that the sexual abuse Candace Conti experienced as a child was a substantial and contributing factor to her post-traumatic stress disorder?

A. I believe the two are correlated, yes.

Q. And could you please explain the basis for that opinion?

A. As I recall, the ages were -- she mentioned

something, 9 to 13. And she -- her drug use started shortly thereafter. And as I took her history, I believe that she was trying to not relive the nightmares that she had. And I believe that she turned to illicit drugs. That's my opinion.

MS. KRAETSCH: Thank you. I don't have any further questions now.

(Whereupon, the video recording was stopped)

MR. SIMONS: And next is the videotaped deposition of Laura Fraser.

THE COURT: Okay. And Ms. Fraser is?

MR. SIMONS: She is the MFT counselor that we heard testimony about earlier that Candace Conti saw in '96 to '98.

MR. McCABE: Your Honor, can we approach for one quick second?

(Sidebar discussion)

THE COURT: The last witness, the doctor, through inadvertence, made a statement that Mr. Kendrick was an elder of the church. He was not and is not. I just want to correct that record. That was her misstatement of her history. Do we all understand each other? Mr. Kendrick is not an elder of the church.

All right. Mr. Simons and Ms. Kraetsch?

(Whereupon, the video recording was played)

EXAMINATION

BY MR. SIMONS:

Q. Please state your full name.

A. My full name is Laura Harrington Fraser.

Q. And, Ms. Fraser, where do you presently live?

A. In La Jolla, California.

Q. Were you, for a time, residing in Northern California?

A. Yes.

Q. And what is your profession?

A. I'm a licensed, clinical, social worker and I work as a psychotherapist.

Q. And what is a licensed, clinical, social worker?

A. Uh --

Q. What does a licensed, clinical, social worker do?

A. In my case, I work as a clinician treating children, families, adults, to help them with struggles in their lives.

Q. Did you receive certain education to help you enter that profession?

A. Yes. I have a master's degree and post-masters. I worked for two and a half years or so under the supervision of experienced clinicians, and

then sat for boards and oral boards to become licensed.

Q. When were you licensed as a clinical social worker?

A. In 1994.

Q. And where was your practice when you first began your licensed stage of practice?

A. I still worked in San Jose for Eastfield Ming Quong, a large family therapy agency.

Q. Did you then become a professional practicing at the Palo Alto Medical Foundation?

A. Yes, I did.

Q. When did you begin your professional work there?

A. I began my professional work there, I think, around 1995 or '96. I'm sorry that I didn't bring my CV with me to review that.

Q. What was the nature of your patient population, if you will? Who were the people that you were providing your services for at Palo Alto Medical Foundation?

A. It was the psychiatry department of a large medical clinic. And so I feel like I was almost, like, a general practitioner of psychiatry. Although I -- out of the clinic stuff, I worked more with children and adolescents and families.

Q. Was that a particular interest of yours?
A. Yes. Specialty area of practice.
Q. And what was it about that area of practice with children and families that you found most interesting?
A. So many things. Teenagers are interesting and compelling and fun. And families, family work is -- I think, can have an impact over the long-term for children and families. And you can impact many people in one form of treatment versus taking individuals out.
Q. Did you provide therapy and counseling services to Candace Conti?
A. Yes, I did.
Q. And we have looked at some records that we have marked as an exhibit to your earlier deposition.
You have looked at those records?
A. Yes, I have.
Q. And are those records that you prepared during the time that you were counseling Candace?
A. Yes, I did.
Q. And were the records each individually prepared on or about the date that the visits occurred?
A. Yes.
Q. And when you left Palo Alto Medical Foundation, did you bring the records with you?

A. No. I did not. They were the property of the clinic.

Q. So there was a period of some many years until you had seen the records again?

A. Many years.

Q. Do you remember Candace Conti?

A. Yes, I do.

Q. And do you remember her outside of some of the things that are reported in your records? In other words, do you remember things about her that may not even be in your records?

A. Yeah. Probably, just fondness, memories, her bouncing into the clinic. Her dog she brought into the clinic. Things like that. Not necessarily some other piece of clinical information.

Q. Do you remember her appearance?

A. I do. I remember she had really cute freckles and red wavy, curly hair. And she would often come into my office with a big smile on her face.

Q. The records that we have looked at show that you first saw her on August 12, 1996; is that correct?

A. Yes.

Q. And then you last saw her on April 1st of 1998; is that correct?

A. Yes.

Q. And you saw her approximately 30 times; is that correct?

A. Yes.

Q. When you first saw her in August of 1996, what was your approach? In other words, how do you begin counseling a patient such as Candace?

A. I would have Candace and her parents come into a session. I would try to bring in all members of the family. I don't think her mother was present for that first session. And I don't recall why.

But I start by asking people to tell me why they are there, the presenting problem. And we talk about that a little bit. I ask, usually in families and with children, ask them to tell me something about themselves, just what they like to do or are interested in.

I then would try to set them at ease about being in a therapy situation, if they never have been before. I would often explain to younger children that I'm, sort of, like a coach, but a coach for feelings, or a doctor about feelings. But I don't give shots and things like that.

And I would explain confidentiality, that in our sessions what we would talk about is confidential between us unless there -- I would explain I was an

mandated reporter. If I learned anything about any abuse in the past or the present, I would have to report that. That would be a limitation to our confidentiality.

And then I also explain to kids I also have to use my clinical judgment, and if something is going on with them that I'm very concerned about that I feel their parents need to know, then I would have to do that. And I would tell them about that and help them with that so they have that understanding of the parameters of therapy, so we can work from a position of trust.

Q. You use the phrase "mandated reporter." What does that mean?

A. A mandated court reporter is -- I'm sorry. I'm getting distracted. Because I don't know if I am supposed to look at the camera or look at you. Does it matter? Okay.

A mandated reporter is someone who, like myself who works with children, who must, if they have a reasonable suspicion of child abuse, being neglect, emotional abuse, physical abuse or sexual abuse, they must report that to Child Protective Services, which is the Social Services Agency. And then Child Protective Services would initiate an investigation. And from

there many things can happen.

Q. Did you tell Candace Conti, in your first visit, that you were a mandated reporter?

A. Yes. I would have explained to Candace Conti and her father, yes.

Q. And did you explain what that meant to Candace?

A. Yes.

Q. Why did you tell, in this case, a 10-year-old patient, that you were a mandated reporter and what that means?

A. I tell all of my clients -- children -- that I am a mandated reporter, because I want them to understand that our work together is confidential and important in terms of our developing a relationship, that if they are being harmed in a way, those ways that are spelled out in the law, that I must protect them. And that would mean telling somebody.

And it is very important for children to know that because, when they do disclose abuse, it creates a huge disruption in their lives. And they might feel violated by their therapist, whom, if they understood the therapist would never tell anything outside of the session, that would be a huge violation of trust. Because once that is reported to the agencies, it is a

huge, profound disruption in their lives.

Q. Was it your practice back in this time frame in '96 to let the child make the determination as to whether or not they would disclose to you information that you would be mandated to report?

A. Of course, I couldn't report on something I didn't have knowledge of. So I just let them know the parameters of that. And there are many children who would disclose abuse because they were ready to take it on, so to speak, take on the ramifications of that.

And some have us choose not to disclose because they were not ready to take on the ramifications of disclosing abuse.

Q. Based on your education and training and experience, what are some of the reasons that children will not disclose to a mandated reported counselor such as yourself a history of sexual abuse?

A. Because it is embarrassing. Because they feel like it is their fault. Because they are very concerned about what is going to happen to them if they disclose that abuse either from the perpetrator themselves, from their parents, their church, their community, their school.

Due to the media, children know, they understand that Child Protective Services people would

show up at your school to interview you or kids understand that it is very disruptive.

Q. What was Candace's presenting problem when you first saw her in August of 1996?

A. That her parents were going through a very tumultuous divorce, and that she was witnessing a lot of discord between her parents, fighting and what I called shifting alliances in the notes.

Sometimes her parents would be, as she used to say, lovey-dovey and seem like everything is fine, and 20 minutes later they were screaming and yelling and carrying on and saying they couldn't stand each other and seeking out Candace for emotional support.

Q. Did you develop a plan of how you helped or hoped to help, at least, Candace?

A. My primary goal was to demonstrate to Candace that, by my actions, that I would be a consistent adult, that I would do what I said I would do, that I would be very interested in her emotional state. I didn't want her to be interested in my emotional state, which would show her a difference between how I believe an adult should take care of a child versus how her parents' inability to do that for her.

I thought I wanted to show, through my actions, my clinical actions, to role model to Candace

ways that I would set limits and boundaries with her parents when they would try to draw her in for emotional support for their adult needs.

Q. In your notes -- which you are free to look at as we go along here -- on August 12, 1996, in your first meeting, you made a summary of what you found to be Candace's mental status at the time.

A. Uh-huh.

Q. And what observations of Candace's mental status did you have in that very first visit?

A. That -- I'm sorry. Could you --

Q. Yeah. Can you tell us what your observations were of Candace Conti that you recorded on August of 1996?

A. Okay. That, as I just said, she was oriented, as we call it. She knew the time of day; she didn't have any psychotic behaviors; she knew the time of day; she knew who she was; she knew why she was there; she was able to communicate with me.

Her emotional responses, when I was asking her questions, seemed appropriate to what we were talking about. Sometimes if somebody is very disturbed, they won't have -- they will laugh at a sad thing or something like that. None of that was off for her. I assessed her for whether she was at risk for suicide, as

we do always with a new intake with a new client.

Q. Was she?

A. No. And she denied feeling that way. She did disclose that she is sad more often than not, as we put it, indicating depression and particularly she wished her parents would stay together and they would stop fighting. That was deeply painful for her. That was clear.

Q. You mentioned, in your note, a phrase of "hypervigilance" about how others in the room are feeling?

A. Yes.

Q. What were you describing?

A. I was describing that if I, for instance, asked a question of Candace -- and I observe this in children that are very conscious of how their parents are doing, rather than just answering a question, they might look to a parent to see how their parent is reacting to what they have to say.

And if they see their parent is sad or mad, they might change what they have to say to protect the parents' emotional state.

And so I noticed in that session that she was watching me. She was watching her father, and really paying attention to the others in the room versus freely

just answering questions about things, or answering my questions.

Q. What does that tell you about your patient when they behave in that fashion?

A. It indicates that they have been in a caretaker role, that they have learned in their families that they need to take care of others, take care of parents' feelings, most often, and watch all the time -- they won't be safe emotionally unless they can keep the parents safe. Therefore, they better not disrupt the parent, which is, of course, not the way it is supposed to be in a parent/child relationship.

Q. Did you feel that Candace had adopted a role, if you will, of caretaker to the parents?

A. Yes, I did.

Q. Why did you feel that way?

A. I gathered that from her hypervigilance. And I believe that both her parents were able to state that they thought she was in the middle of their arguing. They probably would have pointed the finger at the other parent to say, "She has to take care of my spouse when my spouse is upset." And that is often the case with acrimonious divorces.

But I believe that that was one of the reasons -- I wrote "Parents are very concerned that

Candace is involved in their struggles and their frequent fighting."

Q. Over the year-and-a-half that she was your patient, did you obtain a more complete view of the home life that Candace had experienced?

A. Yes.

Q. And what did you learn?

A. I learned that it was very chaotic, that she could not count on parents to be able to follow through on plans they had for her.

I learned that it was a very unpredictable environment in which she lived. I experienced -- I mean, there were a multitude of emotional crises, if you will, particularly related to her mother.

But father was unable to follow through on a lot of things I think he wished to be able to follow through on, but was unable to do that.

Q. In your September 5, 1996 note, you mention, towards the bottom of the note:

> "Therapist could work with Candace on being perhaps a little bit discerning about relationships and trusting others, as Candace is likely to have developed a somewhat skewed view of trust and nurturing. When someone is offering nurturing and positive attention, a

person will drive it out wholeheartedly because it will go away very soon."

Do you see that sentence?

A. I just found the page. Yes.

Q. What were you recording in that note?

A. I was noting my clinical impression that Candace would be extremely vulnerable to victimization by other people, manipulation by other people, because she was victimized and manipulated by her parents' emotional struggles. And I was very concerned about that.

Q. Did you learn that Candace's mother had been, by history, a victim of some form of abuse?

A. Yes.

Q. And how did that come to your knowledge?

A. I have to go -- my memory -- it is possible it probably was discussed at a treatment team meeting. But I think Candace was aware of that because it was a source of pain and struggle for the family.

Q. In the course of your professional relationship, did you learn the role that the religious membership in the Jehovah's Witnesses played in Candace's life?

A. Yes. It came up quite a bit. And certainly I have it noted toward the end of treatment that she was

really struggling with her involvement. But my sense is there was a large time commitment involved in it. And it is not noted in there, but I have memory of sessions of, sort of, negotiating -- I don't know -- maybe their regular Tuesday night meeting or something where Candace would rather see her friends or do her homework or whatever.

And then I think the father had to spend a lot of time there and was also working very hard because he was the only income earner in the family and consequently didn't have much time for Candace and that was difficult for her.

Q. Did the relationship that Candace had with her father change at all over the time period that you provided professional counseling with this thing?

A. Yes. At the beginning he was trying very hard to be attentive to her and meet her needs. But various things would come along and he would get preoccupied with those. Sometimes it was his work. I think it was commitments to the church as well.

And then toward the end of treatment, he got involved with a woman from the church and her children. And I believe that woman had a pretty chaotic life. And Candace was troubled by that because she felt like she needed his help.

Q. Over the course of this time that she was your patient, would Candace grow more distant from her father?

A. Yes. And that would fluctuate. The alliances would fluctuate quite a bit. And I think as Candace was struggling with some of the rules that dad had, related to church and church practices, whatnot, celebrating birthdays and not getting dressed up for Halloween and Christmas celebrations, et cetera, Candace's mother would allow her to have -- participate in those things that all her friends were participating in.

And so I think that would have pulled her toward her mother, yet her mother's life was so chaotic that Candace would get very offended about it, and then her mother would have some emotional event, and Candace would need her father or somebody else.

Q. Did her relationship with her mother change over the course of time that you treated your patient?

A. Yes, it fluctuated a great deal. I think in the beginning, Candace was extraordinarily worried about her mother and her mother's safety.

I think she would then be angry with her, and angry with her mother about involvement with a boyfriend by the name of Steve that is mentioned quite a bit in

there.

And then her mother started to abuse benzodiazepines -- tranquilizers -- and that created disruption. And then, when she couldn't get any more of that, she started drinking a lot. And she moved frequently, and really didn't have a stable income. So, yes, it was ever changing.

Q. If you could turn to your note of March 3, 1997.

A. Uh-huh.

Q. Did Candace have a problem setting boundaries in her relationship with her mother?

A. Yes.

Q. And what did you mean by that?

A. Meaning that if children are -- children are supposed to be the -- most of the emotional energy is supposed to be directed toward the child, and the child -- meeting their developmental needs, that the child's a forming human being, and there's lots of tasks they have to do out in the world to grow to be a healthy adult. And the bulk of the emotional energy in a family is to go towards that job of raising those children.

In Candace's case, her mother was extremely limited emotionally and really thought of Candace a lot more like a peer than she did as a mother.

And so -- I have distracted myself from the question.

Q. Well, let me jut ask you: Did you offer some suggestions in your March visit to Candace about how to set boundaries?

A. Yes. And so I would reiterate that -- what I was just saying, and got myself distracted -- but that I was trying to teach Candace that her mom's job, if her mom was not so emotionally limited and damaged, herself, would have been to attend to Candace's needs, not Candace to take care of her.

And so I was trying to help Candace understand, when she got that terrible feeling in her stomach or she felt scared, or her heart was racing or something, that she needed to -- that that was a message to her that she was really uncomfortable with how things were going, and she needed to settle in with her mom, "No, I won't meet this boyfriend."

Or I know she was scared about going to Los Angeles with her mom --

I don't know the substance, but -- and getting stuck down there, and her mom would say she was going to take her there, and then leave her and go see a boyfriend or that sort of thing, that Candace needed to say, "No, mom, that's not okay." Or "I need you here."

Or "I'm scared." Or "Please cake care of me." That sort of thing.

Q. In your note you record that you gave Candace suggestions, many suggestions --

A. Uh-huh.

Q. -- but Candace states that all of them seemed too threatening. What were you trying to record in that statement?

A. To record that the nature of the relationship between Candace and her mother, it was to her feeling of her mom being attached to her, and providing her support and strength and structure and safety was so tenuous, so limited, that if she made her mother angry or didn't do what her mother asked that her mother would stop loving her, essentially. And, for a child, there is no safety in that once that happens.

Q. Did Candace have a relationship with the paternal -- her father's parents -- the paternal grandparents?

A. Just the paternal grandmother. The grandfather was deceased, I believe.

Q. Was that an important relationship in her life?

A. Yes. And it became more substantial in terms of coming to therapy anyway. Toward the end of

treatment -- I don't recall her grandmother's involvement toward the beginning of treatment. But my sense was that Candace's paternal grandmother was very enmeshed with her father. Enmeshed, I mean, emotionally, not very separate themselves, and that can be problematic in adult relationships.

Q. Is part of your professional work, in particular working with adolescents as a therapist, to interpret what the patients are telling you?

A. Yes.

Q. And do you look for things that they may not be telling you as part of your therapy?

A. Yes.

Q. And why do you do that?

A. Well, I work particularly from what is called a family systems theoretical orientation. So, as I said before, the job of a family as a system, just like a company or something, is to -- each member has certain roles and responsibilities. But the job of that system is for each member of the family to do what they need to do developmentally at a certain age.

And, in particular, parents need to be full adults to take care of children and meet children's needs.

And so I first gather a hypothesis about

whether that structure is happening in a family. If the parents are not occupying that, sort of, executive role, if you will, I try to understand why not.

And so, in the first session, I gather family history so I can get a sense of where I think parents are, how they have done that developmental stage their child is in.

And then from there, try to gather information about how the child is doing in terms of what they need to be doing developmentally at a particular age.

Q. You have learned from me recently that Candace now reports that she was sexually abused as a 9 and 10 year old?

A. Yes.

Q. Outside by a non-family member?

A. Yes.

Q. Well, did she ever disclose that to you?

A. She did not disclose that to me.

Q. Do you have any opinion, based on your education and training and your experience with this patient and her family why she would not disclose to you an important piece of history such as history of sexual abuse?

A. Right. Well, first of all, she -- this is

kind of therapisty terms, but she felt like a child who had been sexually abused. But I didn't gather anything that led me to a reasonable conclusion except for she felt vulnerable by the things I stated: looking at other people's feelings, judging how the adults are doing, and that she was craving for adults to take care of her and care about her. So I felt that very strongly.

And in terms of her not disclosing it, there was absolutely no safety for her in her family, which made her vulnerable to a predator in the beginning and at any point in her life.

But also it would mean that she would have to decide, if she were to disclose that abuse, as I stated, I tell kids in the beginning what that means, if I have to report it, there was no safety. There was no one to keep her safe and stable going through a process like disclosing, having been molested.

Q. In your professional experience, is this, unfortunately, a common thread among many childhood sexual abuse victims?

A. Yes.

EXAMINATION

BY MR. SCHNACK:

Q. Ms. Fraser, we were introduced earlier. I'm Bob Schnack and I represent The Watchtower Bible and

Tract Society of New York and I have a few questions for you.

In your meetings and your therapy with Candace, you saw her for roughly a year and eight months; is that correct?

A. Yes.

Q. Throughout that time, isn't it true that Candace felt open to comment on the failings of her mother and father throughout her sessions with you?

A. She would not have characterized it as her failings. She felt open to talk to me about the things that were upsetting or scary to her in one way or another.

Q. And what did some of those things include, particularly with her mother?

A. That her mother got involved with a boyfriend shortly after her parents had separated homes, or shortly after we started treatment, and then wanting kids to meet the boyfriend and like the boyfriend and that sort of thing.

Q. Okay. And Candace shared with you about her mother being abused; is that correct?

A. Yes. To the best of my recollection, I think she did, yes.

Q. You reported that on August 12 of '96 and on

September 18 of '96, that Candace had shared that?

A. That Candace did. Okay.

Q. Correct.

A. Then that's true.

Q. And also that Candace came to you at one point with a list of twelve items that she had written down to discuss with you.

Do you recall that?

A. What --

Q. November 11th of 1996.

Do you see that?

A. Uh-huh.

Q. On November 11, 1996, Candace came to you with a list of twelve items that she wanted to talk about.

A. Yes.

Q. Is that true?

A. Yes.

Q. And is that indicative that she felt she could be open and honest with you, that she would write those things down?

A. Can you say more about open and honest?

Q. Well, you testified earlier this morning that you believed that Candace was open and honest with you?

A. To the best of her ability, yes.

Q. You didn't put that limitation on it this morning.

A. Okay.

Q. So is it unusual for a child like Candace to come in with a list of items to talk about?

A. No. I might have even suggested it.

Q. Okay. And did she talk to you about her mother having romantic sounds coming from the bedroom and that it bothered her?

A. Yes.

Q. Did she talk to you at another point about her mother being drunk, and her boyfriend Steve kissing and sucking her toes in front of her?

A. Yes, she did.

Q. So she was talking to you about those types of things?

A. Right.

Q. In fact, didn't Candace bring in a used condom she found in the restroom from her boyfriend and mother having sex?

A. Yes. And she did that because she wanted to prove that what she thought happened really happened.

Q. And why did she feel a need to do that?

A. In case her mother might have tried to dissuade her from thinking that's what happened.

Q. And did Candace express some concerns about being with the court mediator at one point that were dealing with the parents' divorce? Do you recall that?

A. Yes. I recall that was a note in there, and, yes, I would have to look at that note.

Q. Yes. Look at the December 16, 1996 note and it said that:

"Candace came in with a list of ten things from a family law mediator." And you called it an "excellent list."

Do you see that?

A. Yes.

Q. And Candace expressed some frustration in that her mother was in denial about the things that her mother had done to her?

A. Uh-huh.

Q. What did you mean that the mother was in denial about the things she had done to Candace?

A. Making her a promise that we will live in a certain house, or we'll live together, and everything will be fine, or even indicating that the parents were going to get back together and they would live happily ever after and that sort of thing.

Q. And earlier Mr. Simons asked you about the parents' relationships and whether they changed through

the course of the therapy you had with the parents, in terms of their relationship with Candace. Do you recall that?

A. Yes.

Q. And you said that the relationship fluctuated for both parents; is that correct?

A. Yes.

Q. When you used the word "fluctuate," what did you mean?

A. I'm talking about in terms of them not being able to offer her much emotional sustenance, and that fluctuated. I think her perception might have been, "Hey, Mom said we're gonna move here and it's all going to be great, so we are not going to have birthday parties or whatever." And then the next day mom is not there. She's with the boyfriend. Or dad said he was going to have time to do things, and then he can't. In terms of their ability to consistently provide emotional sustenance.

Q. Okay.

A. And that fluctuated all the time.

Q. And let's go back to the court mediator. Then, after she met with the court mediator, is it true that she found it to be a positive result --

A. Yes.

Q. -- because the court mediator had listened to her?

A. Yes.

Q. And that she had asserted what she wanted to say, and the court mediator listened to her; is that correct?

A. I believe so, yes.

Q. And so that's a situation where Candace wasn't afraid to say what she thought. Is that fair?

A. No. But we had worked on it in the context of therapy, and I helped prepare her, as I do for children in that situation, about what they are up for, what they can expect for the court mediator when they are going through sorting out child custody.

Q. Okay. And then on the December 18, 1996 note, that's where you followed up on Candace's meeting with the court mediator?

A. Uh-huh.

Q. And you wrote there that Candace thought she was able to go through her list and her list of items and felt that the mediator was listening to her and was honest in stating at this point in time, et cetera.

So that was a positive interaction for Candace; is that correct?

A. Yes.

Q. Now Candace talked to you a lot about her peers; is that true?

A. Uh-huh. As all kids do.

Q. And by my count, there were at least eight or nine different sessions where she talked about her peers, her boyfriends, those types of things?

A. Uh-huh.

Q. Now, you wrote early on that she seemed to have a wide network of peers. Do you recall that?

A. Uh-huh.

Q. She was developing a network of peers, even on September 12th of '96?

Do you see the very last sentence on that note?

A. Uh-huh.

Q. The positive balance to her mother's relationship, essentially, is that Candace is developing a fairly large network of peers and is feeling very good about those connections and is feeling very cared about.

Do you see that?

A. Uh-huh.

Q. That was true at that time; is that correct?

A. Yeah. In the context of a sixth grade child. So in her classroom she is talking with kids, she was wanting to walk home with them, do things like that.

She wasn't, like, I don't know -- meeting kids outside of that setting anyway.

Q. Okay. But those were her peers?

A. Yes.

Q. Weren't those her peers?

A. Yes.

Q. Okay. If you are in sixth grade, your peers aren't people you meet outside. Your peers are in school. Is that true?

A. Well, it could be at Girl Scouts, it could be all different kinds of places.

Q. Okay.

A. So I'm just saying that's my phraseology for meaning that she was talking about being really social at that point.

Q. And on another note, you wrote that she was not isolating herself, that she was talking with her grandmother, with you, with her friends. That's on the October 3, 1996?

A. Right. And that's in the context of evaluating depression, not necessarily like you might say in a day-to-day way. But that she, rather than just staying holed up in her room, she was out there and talking more. That doesn't mean she wasn't depressed anymore, but she --

Q. But she had peer-to-peer interactions?

A. Yes.

Q. Correct? That are consistent with what you would expect from a sixth grader?

A. Yes. Except shifting alliances, friends with one, friends with others. Kind of shifting relationships.

Q. Go ahead.

A. Not necessarily -- my recollection is not that she had a set bunch of good friends that she had a long and deep relationship with. I think she was pursuing what felt good, sort of, in the moment.

Q. And where do you get that from? Because that's not referenced anywhere in your clinical notes.

A. I get that from my memory. I get that from, you know, I think maybe even from talking about, you know, I said at the bottom of another note, I want to help her declare boundaries and be discerning about who she is friendly with or something along those lines we talked about earlier. It is in one of these notes.

Q. Now, with respect to her father, did you get the impression that he was very protective of her dating and going out with boys?

A. He -- I wouldn't characterize it as very protective. They struggled over negotiating those

boundaries and, you know, he wasn't rigid -- I don't remember him setting big punishments or something that they would talk about.

Q. Did Neal Conti ever tell you that, because of what his wife Kathy had been through as a child, that he was very protective of Candace as a child?

A. I don't remember that phrase directly. Although, if I noted it, he said it to me. I don't remember that in particular, but I may have noted that again when I did the treatment.

Q. Okay. Let's turn to the mother's boyfriend. And was Candace critical of her mother's boyfriend a lot?

A. Yes.

Q. And was she open and honest with you about that?

A. She told me her feelings about that.

Q. And she told you that quite a bit, did she not?

A. Uh-huh. She felt, I think, disloyal to her father by being connected to the mother's boyfriend too.

Q. And was Candace very direct with you about what bothered her with respect to the boyfriend?

A. I think she would tell me about different incidences that occurred usually, probably closer in

time to the timing of sessions because I think a lot went on in her life between sessions. So oftentimes she would come in with what was closest in that time frame.

Q. And did she tell you about the time that she and a friend went camping with her mother and Steve and her mothers exhibitionism?

A. Yes.

Q. And what did she tell you in that regard?

A. That it was embarrassing. I mean I'd have to look at my notes to give you direct quotes, but it was embarrassing, and she didn't like her mother's behavior, and it was uncomfortable.

Q. And, indeed, didn't her mother walk around naked in the campground?

A. She said that, yes.

Q. And did her mother ride horses topless as well in front of her friends?

A. Or rode a horse. I don't know. I would have to go look at the note. But, yes, I remember her saying that, and I knew that that ...

Q. And you remember that Candace told you about Steve and her mother having sex in a tent where it was obvious to Candace and her friend what was going on and that embarrassed her as well in front of the friend?

A. What note are we talking about?

Q. Let me find it. It was a camping trip. Let me find it here.

The date is 7-30-97. In the middle of that first page it says "They were camping at Kings Canyon."

A. "She always runs around naked" I put in quotations.

So Kathy would go skinny-dipping and she rode a horse in public with her top off. And then at home Kathy walked around naked in front of Candace's friend and sort of exhibitionism she was saying.

Q. Did you consider that something that needed to be reported to CPS?

I'm just curious with where that falls.

A. No.

Q. Why not?

A. Because I would characterize it as inappropriate, not necessarily abuse.

Q. Okay. And as a mandated reporter, where does that line fall, sexually inappropriate, but abuse?

A. It is on a very individual basis.

Q. Okay. And does it --

A. It requires clinical judgment.

Q. Okay. Candace talked with you a lot about her feelings about Jehovah's Witnesses; is that correct?

A. Toward the end, yes.

Q. And she was quite open about her struggles with that?

A. Her struggles. Yes. I think I'm having a hard time with you saying "open" all the time like that, because that's not the term that I would use necessarily.

Q. What term would you use? Just so we are on the same page.

A. Just, I think, say what she said -- I think the reason I'm reacting, is when you say "open," I think people might use that term in a whole lot of different ways.

So when you say she stated this at this time, I guess I think it is like you are implying that it is all exclusive about everything, and I think it is specific to an individual incident.

So if you say "She was open and honest with you about her feelings about her mother," what I'm saying is in specific situations, she was telling me what she experienced. But her overall relationship with her mother -- she had great conflicts with her mother. She loved her and she didn't want to disparage her. She wanted her mother to be an okay person. But at the same time she was deeply troubled when these kinds of events would occur.

Q. Okay. How does that relate to being open or not?

A. Well, I guess because my understanding is "open" would mean nothing is ever held back.

Q. So with respect to Jehovah's Witnesses, she told you about the struggles she had with the church. Is that correct?

A. It was coming up related to -- especially wanting to do things with peers, and, you know -- I don't think it is noted in here.

My memory tells me. I didn't write it down. But we talked a lot about Halloween. Because in sixth grade they were having a Halloween party and she wanted to dress up, and that wasn't sanctioned by the church.

And so I remember it coming up then. It would come up with regard to it started with, you know, birthday party celebrations, and I think Christmas also.

Q. Okay. So that was the conflict between her mother's beliefs and her father's beliefs, and that's where she had to try to develop her own belief system. Is that you were trying to coach her on?

A. I wasn't coaching her on that, no. I was just talking to her about how to speak to her parents. It would not be appropriate for me to coach her on her religion.

Q. Okay. But you did discuss with her, her struggles with the religion?

A. Yes. And we use that as an opportunity for her to articulate her needs and concerns to both of her parents in a reasonable way and for them to try and have dialogue about it.

Q. And you encouraged her to explore and question her family's beliefs and values, particularly about religion?

A. As all adolescents do.

Q. Okay.

A. In my opinion.

Q. Okay. And, again, at the end of the note on May 12, '97, it sounds like Kathy Conti had suggested to you that maybe Neal had some feelings for Candace that were inappropriate.

Do you recall that?

A. Yes.

Q. And you had asked Candace very directly --

A. Yes.

Q. -- whether her father kissed her, or whether there was anything inappropriate or uncomfortable?

A. Yes.

Q. And how did Candace respond to that?

A. And she said, "I feel safe around my dad."

Q. And she, indeed, said very strongly that he is appropriate with her?

A. Correct.

Q. And you didn't have any reason to disbelieve that?

A. No. I would have reported it if I did.

Q. Oh, if you had disbelieved her?

A. Yes.

Q. Even if her denial --

A. If I had a reasonable suspicion, I would have reported it.

Q. And you didn't have any suspicion?

A. I didn't.

Q. So that's one instance where you brought up the question of either physical or sexual inappropriateness --

A. Uh-huh.

Q. -- with Candace. Correct?

A. Yes.

Q. Did you bring it up at any other time during your sessions with her?

A. Not that I'm recalling without reading through line-by-line. But I did discuss with you that my clinical impression is she was -- from the start -- was that she would be somebody who was vulnerable.

Q. Did you ask her, in that first intake session, whether she had been a victim of sexual abuse?

A. I didn't note it. I often did do that as practice, but I didn't know whether I did or not. And when I meet people, I have to decide whether that's clinically appropriate to do at that time or not.

Q. What? Just to even ask that question?

A. Yes.

Q. Why is that?

A. Because it can be frightening to people or disruptive or scare them away from therapy or, perhaps the entire session has been spent in another area around, and so we ultimately get to that.

Q. At any point after that, though, did you ever ask her whether she had been sexually abused by anyone?

A. I didn't know that. So I don't know. It would certainly have been my style and my method of practice, if I felt that she was coming to me with something that I could ask her about, I would have.

Q. And you don't remember, one way or the other, whether you did?

A. No. I didn't note that anyway.

Q. You noted in a July 30th '97 note that you suggested that Candace keep a journal.

Do you recall that?

A. Uh-huh.

Q. Do you know if she ever kept a journal?

A. I don't. I know that we talked about she felt like if she were to try and keep one, that her mother would invade her space.

Q. And you gave her some suggestions?

A. Like, hide it. Right.

Q. But it was never mentioned again?

A. No. It wasn't. And once in a while you will get a child client who is a writer and they will like to do that, and some kids or adults are not.

Q. And in the same July 30th, 1997 note, that's when she talked with you about her mother's walking around naked in the house and riding a horse topless and that.

A. Uh-huh.

Q. And the note suggested that you also talked with Candace about how her mother's sex abuse had manifested itself.

A. Uh-huh.

Q. What discussions did you have with Candace at that point?

A. It was 14 years ago. But I don't know exactly how I phrased it beyond that, except for, in my knowledge of it, what I would have described is that,

when people have been sexually abused, they sometimes act out inappropriately, don't have appropriate boundaries, that sort of thing, as one of the ways that sexual abuse can manifest itself.

Q. And how did Candace react to that discussion? Do you recall?

A. I don't think that there was a huge reaction or I probably would have noted it. And not that -- I mean, I don't know. I don't have any recollection of her noting it. I mean, her stating anything. She didn't cry. She didn't have a dissociative state. She didn't giggle.

But she took in that information, but a lot had gone on for her that week. So, as you can see, a lot had gone on with her mother and she was pretty distraught anyway, so...

Q. Now, let's go back, again, to another incident with her mother, the November 3, 1997 note, and you write, about a quarter of the way down the page, Candace's mother consumed a bottle of wine by herself. That was upsetting to Candace. And then, when Candace got home, she found her mom's boyfriend, Steve, in the living room, where her mother was drunk, sucking on her mother's toes and kissing them. And Candace told Steve to go away.

Again, it seems like Candace was pretty assertive with respect to talking with you about things like that. Is that true? Or how would you characterize it?

A. Talking with me about "things like that"?

Q. Would you consider that sexual deviance, for example, what Steve and Candace's mother were doing in front of her?

A. Well, it is inappropriate to do that in front of a child.

Q. Okay. And how did that come up?

A. Well, this was another instance where one of the biggest things that Candace and I would have focused on then is that Candace felt like she had to protect her mother there, that he was taking advantage of an inebriated woman, and she was a young child having to tell him to stop.

Q. So she was stepping into the parental role again?

A. Again.

Q. Okay. And then --

A. Just because her mother was so limited. Not because she was so super mature as a child. It's a pseudo maturity. Sort of -- it is not with a strong emotional scaffolding. It is much more of a survival

kind of maturity, "You are hurting my mother right now."

And that is different from somebody who is mature and wise in the way of the world and can be an adult.

(Whereupon, the video recording was stopped)

MS. KRAETSCH: That's not quite the end, your Honor.

THE COURT: Okay.

(Discussion off the record)

(Whereupon, the video recording was played)

BY MR. SCHNACK:

Q. You mentioned this morning, when we talked to you about having to terminate the relationship, you had to terminate it around April 1, 1998 because you were going into a private practice?

A. Right.

Q. And did Candace express some concerns about terminating that relationship?

A. Yes.

Q. What did she tell you in that regard?

A. She was sad. She felt like I was somebody that knew a lot about her family history and all the chaos of it and -- what else did she say?

Q. Well, let's turn to March 23 of '98. I think that's the second to last session.

Do you have that one in front of you?

A. Yes.

Q. And the third full paragraph down, the second sentence, it says: "Talk about the importance of our relationship and the honesty that we've had with each other."

A. Uh-huh.

Q. Was that your words or was that her words?

A. My words.

Q. Your words. And so did you mean that when you wrote it down?

A. Did I mean it?

Q. Yeah. Is that true about the honesty that you and Candace had had with each other?

A. Yes. But I stated that in a clinical sense in that one of the other important goals of treatment was to be authentic with her, that when I was talking with her, if I was saying I was unhappy or concerned or that I truly was feeling that versus some of the manipulations she experienced emotionally in her relationship with both parents.

So it was honest and authentic in terms of what occurred between us in that therapy setting.

Q. Okay. And on the last session on April 1, you wrote that Candace has felt like this has been a

safe place for her to get support and help when she is dealing with difficult struggles in her family.

A. Yes.

Q. Is that along the same lines?

A. I said what I was going to do and I did it. And that was really important, because I don't think she experienced that with other adults.

Q. And then what you were going to do with what? Provide a role model for her?

A. Be there when I said I was going to be there. Be available when she called me. Try to teach her parents about attending to Candace's needs instead of having Candace attend to their's. When we set up an appointment time, I was there. That sort of thing.

Q. Okay. And then the last sentence on that April 1st note that references the, I think, the paternal grandmother being a stable force and a very helpful force to Candace in terms of her relationship with her parents.

What did you mean when you wrote that?

A. Well, I don't remember her presence a lot throughout therapy. But I think toward the end, I think Candace's paternal grandmother lived in the same house for many years and, you know, maybe had a routine she observed.

She didn't have a bunch -- I mean, to my recollection -- many different romantic relationships or marriages or whatever, but she had stability.

I don't know that she was emotionally capable of really guiding Candace a lot. My recollection is that there was an emotional enmeshment between the grandmother and Neal, the father, and that they hadn't separated into more separate adult relationships.

Q. Well, that's not referenced in any of your clinical notes. So what is that based on?

A. Maybe that's just my recollection, when I look over my notes and remember my treatment with her. And I think that's why I didn't ask the grandmother to come in and have a bigger role in this. She just -- I don't think she was a really strong force, unfortunately.

Q. But, nevertheless, you thought she was a stabilizing force for her?

A. Stable in that she was in the same house.

Q. And Candace was staying there during the week so she could attend school?

A. Right. And was supposed to help her with homework. And that was everybody's concern, even though the poor kid didn't have much psychic energy to do her homework.

Q. Just to quickly summarize, the things that Candace talked to you about included her mother's alcohol abuse; is that correct?

A. Pardon me? Could you say it again for me?

Q. Certainly. Just to summarize the things that Candace talked to you about over this year-and-a-half plus included her mother's alcohol abuse at times?

A. That came very much at the end. That was not a focus of treatment.

Q. But she did talk to you about it?

A. Yes.

Q. And she also talked to you about her mother's exhibitionist behavior?

A. On that occasion. And on that occasion she told me there were other times when her mother would walk around. That was not a focus of treatment. That came out during --

Q. Okay. I'm not asking you about focuses of treatment. I'm asking you about what Candace opened up and talked to you about.

A. On that one session at that one time.

Q. Okay. Did she also talk to you about her mother having been sexually abused? That came up in a session. Correct?

A. Yes.

Q. She talked about -- Candace talked about her own religious struggles with you?

A. At the end of treatment.

Q. Correct. But in several different sessions.

A. Uh-huh.

Q. She talked about her mother's mental illness in several sessions. Do you recall that?

A. She did not understand it. I think that was a concern of mine. She didn't understand it as her mother's mental illness. And I think I noted that throughout there that Candace wasn't really aware of her mother's diagnosis, and --

Q. But you suggested Candace be told her mother's diagnosis?

A. Right. And I don't think that occurred.

Q. Okay. And then Candace also talked about her mother's boyfriend, Steve, and their sexual behavior together. That was described in a couple of sessions; is that correct?

A. In a couple of sessions, yes.

Q. You asked Candace whether her father had been physically inappropriate with her; is that correct?

A. When her mother brought that up as a concern.

Q. Correct. But you discussed that with Candace.

A. I asked her about that, yes.

Q. But you still don't find it surprising that Candace would not have told you about her own sexual abuse?

A. I absolutely do not find it surprising. There was no safety for this child. Her parents -- we just discussed so many different things that occurred to this child. She couldn't have longer than 20 minutes of safety with a parent. There was no way she could disrupt their -- I mean, there wasn't any safety for her. It would have been so disruptive to her.

She was still rescuing both parents. What would they say if she disclosed that this had happened? How could she stay connected to her father? Would her mother say, "Well, my abuse is worse than yours"?

I mean, there was a myriad of possibilities. This kid had no safety.

Q. And by having no safety in her home, then her home life was truly troubled, probably from the start; is that a fair statement?

A. Yes.

Q. I mean, from birth forward?

A. I didn't treat her from birth forward.

Q. But based on what she told you, was there any doubt in your mind that this was going on for years?

A. That it had been chaotic in her home?

Q. Chaotic in her home for years.

A. Yes, I think so.

Q. And, again, one of those very things that I just listed, her mother's alcohol abuse, and --

A. But, again, you are emphasizing that as the primary area of treatment. I believe her mother -- I don't know that that was her mother's primary issue. And that is important because that was one way her mother was probably handling her own post-traumatic stress or whatever from her childhood. That was not, I think, the first thing that created her mother's difficulty.

Q. Well, why don't you list the troubled things in Candace's life as of the time you treated with her, then.

A. Can you be more specific?

Q. Well, you just -- I tried to go through these things with you, and you agree that Candace has told you about her mother's --

A. Right. But what I'm objecting to is that it sounds like -- and perhaps this is a difficulty in the way we discuss things in psychology and the way things are discussed in the legal field -- but the focus of treatment and the focus of Candace's struggles were not

as a result of her mother's drug abuse and alcoholism.

I believe that that was, in her mother's case, more of symptom of the way her mother tried to manage the pain she carried around with her all the time from the trauma she had had in her childhood.

She was not a very evolved or psychologically well-developed human being, nor was Candace's father. They were developmentally like three children, in some respects, living together.

Q. And what kind of effect does that have on a child?

A. It makes it really hard for them to gather a sense of self, to have a core sense of strength. Candace sticks in my memory because she was very resilient. I mean, maybe her temperament and her neurobiology, and I think she was an intelligent kid, helped her to couple together the best she could under the circumstances.

MR. SCHNACK: I don't have any other questions at this point.

(Whereupon, the video recording was stopped)

THE COURT: All right. Members of the jury, thank you very much for your time this week in this matter.

I will look forward to seeing each of you

first thing Monday morning by 8:30. I can assure each of you, we continue to make progress time-wise, and there are all sorts of good reasons for it.

But I will continue to assess the day-to-day circumstances. I will inform you on a day-to-day circumstance and I will look forward to seeing each of you Monday morning. Thank you, again, for your time.

(Proceedings were adjourned at 3:30 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD, CSR No. 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

JUNE 4, 2012

DAY 4

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A604CBB

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: Kellyk@fjslaw.com

Email: Rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF

JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: Jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

JACKSON LEWIS, LLP
BY: ROBERT SCHNACK, ESQ.
801 K Street, Suite 2300
Sacramento, CA 95814
Tel: (916) 341-0404
Fax: (916) 341-0141
Email: Schnackr@jacksonlewis.com

--oOo--

INDEX OF EXAMINATIONS:

	PAGE
WITNESSES FOR THE PLAINTIFF:	
WITNESS: ROBERT DAVILA	
DIRECT EXAMINATION BY: MR. SIMONS	17
CROSS-EXAMINATION BY: MR. SCHNACK	23
CROSS-EXAMINATION BY: MR. McCABE	27
REDIRECT EXAMINATION BY: MR. SIMONS	28
WITNESS: CAROLYN MARTINEZ	
DIRECT EXAMINATION BY: MR. SIMONS	31
CROSS-EXAMINATION BY: MR. McCABE	42
REDIRECT EXAMINATION BY: MR. SIMONS	45
CROSS-EXAMINATION BY: MR. McCABE	45
WITNESS: ANNA SALTER, Ph.D.	
VOIR DIRE EXAMINATION BY: MR. SIMONS	47
DIRECT EXAMINATION BY: MR. SIMONS	54
CROSS-EXAMINATION BY: MR. SCHNACK	71
CROSS-EXAMINATION BY: MR. McCABE	88

(CONTINUED)

INDEX OF EXAMINATIONS (CONTINUED)

WITNESSES FOR THE PLAINTIFF:

	PAGE
WITNESS: CANDACE CONTI	
DIRECT EXAMINATION BY: MR. SIMONS	94
CROSS-EXAMINATION BY: MR. McCABE	115
CROSS-EXAMINATION BY: MR. SCHNACK	120
REDIRECT EXAMINATION BY: MR. SIMONS	149
CROSS-EXAMINATION BY: MR. SCHNACK	154

--oOo--

INDEX OF EXHIBITS:

NUMBER	ADMITTED
Plaintiff's 30	38
Plaintiff's 55	65
Defendant's 35	145

(EXHIBITS NOT ATTACHED)

--oOo--

JUNE 4, 2012 8:22 A.M.

PROCEEDINGS

THE COURT: Back on the record in the matter of Candace Conti versus Watchtower Bible and Tract Society, New York, Inc., et al. Counsel are present. We are coming back from the weekend. But during the course of the same, counsel was kind enough to file a number of briefs and requests.

Today, in a moment, we are going to have Ms. Martinez as a witness. I requested that Mr. Simons to discuss with her fully the pretrial motions in limine that I made in this case to date.

Have you had the opportunity to do that yet, Mr. Simons?

MR. SIMONS: Yes, Your Honor.

THE COURT: Okay. And certainly I have indicated to counsel off the record the questions related to what she observed involving plaintiff and Mr. Kendrick during congregation activities as well within the realm of relative and relevant information.

Duty has been an ongoing briefed issue. We are going to be dealing with, I guess, Dr. Salter as our -- as your second witness?

MR. SIMONS: Third actually, but yes, this

morning.

THE COURT: All right. And just reminding counsel, going back to a number of orders I made, one of which was disfellowship being a protected activity.

And just inferentially, and by one comment the other day, I presume the good doctor is not going to go into any standard of care vis-a-vis disfellowshipping. Correct?

MR. SIMONS: Correct, your Honor.

Counsel and I had a brief discussion about that. And I absolutely agree with that, and she is on board with that.

What many organizations, both secular and religious did with a known offenders was to exclude them.

Part of her opinion is that if you choose not to exclude a known offender, then you have to warn people about that offender's propensity.

THE COURT: Okay.

MR. SIMONS: And so by exclusion or banning, we are not talking about disfellowshipping, and it does apply to other organizations other than religious ones. So that would be my offer, if you will, as to how to address that subject.

And that was the context that she talked

about disfellowshipping is in either exclude them or doing something else.

THE COURT: Mr. Schnack.

MR. SCHNACK: Your Honor, that gets right into the church discipline issue. He was saying if you don't disfellowship, if you don't exclude, then we have other options. And we are right in the heart of the church discipline, that is that you get into Ecclesiastical extensions doctrine, according to everything we briefed, and if you go there, you are going to have error right from the start.

THE COURT: All right. Again, that will be an initial brief.

So, Mr. McCabe?

MR. McCABE: Your Honor, Mr. Simons' comment made me think of the Janice Perez case out of the Ninth Circuit, which says that religion has the right to associate or not associate with anyone they choose out of the first amendment. So the banned you are excluding is just another way of saying disfellowship.

THE COURT: Well, you know, it is difficult to separate the wheat from the chaff.

So let's see if we can focus on where this one is going.

The disciplining aspects -- and I already had

a discussion on the record with counsel, but certainly disfellowship obviously is a protected activity.

If the doctor is going to talk about excluding to this court, that is going to be off limits. That is different from what the congregation and church, what the church could have done, however, in terms of informing and protecting.

Now in terms of duty, where I'm going on duty is not too far away from the proposed special instruction of the plaintiff. I'm not saying that's going to be exactly how it is going to come out.

But I hinted a couple weeks ago when we started this that shorn of the religious cloak, in the Court's opinion, this is a negligence case.

Now, my duty is -- and I think we all agree, notwithstanding all the briefing and arguments, that it is the Court's duty to determine the legal duty.

Now one of the cases -- I thought they did a nice job, kudos to protect his client, is there is a legal duty, and then there is a duty in fact, and then there is causation. And it is kind of an admixture of circumstances --

And I fully understand the nexus between -- and the difficulties of attempting to ferret out the religious aspects and the duty aspects.

However -- and there is a proposed special instruction, too, based upon Juarez that talks about the volunteers with responsibilities.

This case is kind of, what I will call a tweener, because in the duty context or in the action context, the church disciplined Mr. Kendrick by removing him from ministerial duties. So he is not like Juarez who continued, by allegation -- that was a motion for summary judgment, by the way -- and Juarez said, hey, there is a duty. This is reversible error because the standard is known or should have known.

Now this case is different because the church knew it wasn't about should have known by observing and raising questions and concerns. That they knew that there had been inappropriate conduct here. So where the court is going is: Yes, there is a legal duty to do something.

I think it is. And I'm not saying that the duty -- that it is a strict duty to warn. That instruction that was proposed is for the jury to consider whether that was something reasonable to do, and to consider other ameliorative actions that were taken or could have been taken.

And that's how I'm going to frame duty, is basically within the association aspects of Juarez minus

the acts of volunteer.

I'm going to find, basically, a common law duty to do something, including considering warning and taking other steps to educate the congregation so the children in circumstances like this do not find themselves in a position of, well, it is not our responsibility, so what happens happens.

And I don't believe -- in the framework of this case -- I have read all those other cases, and there are many, that I think differ from this particular case.

So just in fairness to counsel, and it is not necessarily the instruction I'm going to absolutely give, but I was playing with it for two hours this weekend, but it will be fairly similar to Special Instruction Number 1 proposed by plaintiff as to duty.

So do I think there is a duty? Yes.

Do I think the jury can consider -- certainly they are not going to consider causation, because that is certainly bandied about on pro and con in terms of evidence -- but it will be from a framework of protecting, slash, informing, slash, educating upon that disclosure.

Now, exactly how it fits A-B-C is going to be something similar to that proposed instruction. I'm not

going to, as a matter of legal duty -- understanding very precise, well brought arguments -- I'm not going to determine that there is no legal duty in this case.

MR. SCHNACK: So all testimony from Salter regarding excluding Kendrick is out?

THE COURT: Excluding Kendrick is out.

MR. SIMONS: Okay. I should probably grab a little break before she comes in to tell her.

THE COURT: I told you all at the end the other day, I have been very impressed at the professionalism and understanding.

I think I told you, it's a tough case on judges, jurors and lawyers. So -- but in terms of a duty, I'm going to find there is a duty.

And that, of course -- and I got lobbied left and right as to special relationships, which is an evolving concept, by the way, both under the restatement to and case law.

And I believe there is a relationship such that a duty should be imposed, but I have been very clear in some limitations, particularly -- and look, I have got very good defense lawyers here -- particularly as it relates to punishment and activity by the church in response.

MR. SIMONS: It was to be excluded.

THE COURT: Yes.

MR. SCHNACK: Then one other issue, your Honor.

It appears Mr. Simons is going to have Dr. Salter do all the opinions she expressed in her deposition.

He represented that she will be prepared to give a full deposition. She did that. And I asked her if she had any other opinions with respect to what's going to be her opinion and, number one, she said no. And it sounds like she is going to go beyond that. And I would ask that we exclude that from trial.

MR. SIMONS: The specific testimony that I think counsel is referring to is that she had testified particularly about the documents in the deposition that major religions in the United States have adopted policies of transparency, et cetera, et cetera. And I don't think that is the -- the nature of the objection.

One of the things she will say is that the 1993 Awake Magazine that we have all seen in evidence and heard about is consistent with those policies that the other major religions adopted. So I just don't see that as a different opinion or a newer opinion. I just see that as part of the same thing.

THE COURT: All right. Am I going to hear an

objection from the defense on that one?

MR. SCHNACK: That's not how Mr. Simons described it to me earlier. But if she is going to say that they had a policy that informed, I guess she can say it. Yes.

MR. SIMONS: Your Honor, I have indicated that there has been a little yen and yang to this trial. And certainly, if that's what she is going to testify to, I don't hear a defense objection.

MR. SCHNACK: That's correct.

THE COURT: Thank you.

Let's get our folks in here.

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: All right. To our jurors, thank you, as always for your commitment in this matter. And I hope each of you had a nice weekend.

All right. In terms of today, a couple things. We have a number of jury trials on this floor, so today you will have your real jury room, which Hill will get you to, which is right to the left here. But he will orchestrate that. That may change again because we are selecting a jury in the department next door.

Further, this week, Thursday and Friday, and -- I'm going to look you all in the eye when I tell

you this -- I really dislike interrupting jury trials because of the imposition on each of you.

However, under the laws of the State of California, we judges have to do a number of hours of judicial education.

Now I, of course, get educated in this courtroom every day. But notwithstanding, saying I have to satisfy an obligation. And seven months ago, because they only offer it twice a year, I signed up for it in Sacramento. Otherwise, I was going to get stuck with going to L A. So, I apologize. I wish I didn't have to say that to you, but this is the only time I can satisfy the rule of law. So Thursday and Friday we will not be here.

We remain clearly on pace, and there are a lot of good reasons for that. Certainly the professionalism on both sides as to everything we told you about timing and submission in the case and the like on circumstances.

So I will keep, every day, alerting you of anything going on, pro or con. So we are really very much on pace to submit this to you certainly no later than June 15.

That being the case, Mr. Simons, you have your next witness?

MR. SIMONS: Yes. Investigator Robert Davila.

ROBERT DAVILA

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Please state your name and spell your first and last name for the record.

THE WITNESS: Robert Davila. D-A-V-I-L-A.

THE CLERK: Spell your first name.

THE WITNESS: Oh. R-O-B-E-R-T.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. And Mr. Davila, by whom are you currently employed?

A. I am currently employed by the County of Alameda.

Q. And what is your job?

A. I'm the inspector with the county attorney's office.

Q. And very briefly, what is the general nature of the work that you do?

A. Currently?

Q. Yes.

A. Currently, I'm working in the Workers' Comp area of the DA's office.

Q. Do you investigate fraud and that sort of thing?

A. Yes, I do.

Q. Before working for the Alameda County District Attorney's office, where were you employed?

A. Fremont Police Department.

Q. And was that where you were working back in 1994?

A. Yes, sir.

Q. Do you remember what your assignment was in 1994?

A. I was assigned to the Crimes Against Persons unit as an investigator.

Q. And did that unit at that time include crimes of a sexual nature against children?

A. Yes, it did.

Q. Were you notified by CPS, Child Protective Services, of a possible complaint involving a Jonathan Kendrick?

A. Yes, I was.

Q. And have you had an opportunity to go back and look through your old notes from that case?

A. Yes, sir.

Q. Was the victim cooperative in your investigation?

A. As I recall, she was.

Q. And part of your investigation involved taking statements?

A. Yes, sir.

Q. And is it accurate to say you took tape recorded statements at that time?

A. Yes, sir.

Q. Okay. But the tape recordings have not survived the many years, is that --

A. I don't know what the status of them are.

Q. You have your notes that are summaries of the statements.

A. I have a police report, yes.

Q. Do you have a recollection, independent of your notes, of this particular case?

A. I vaguely remember it. It has been quite some time.

Q. And do you have a recollection of having taken a statement from Jonathan Kendrick?

A. Yes, sir.

Q. Did Mr. Kendrick admit to you in his statement that he had had touching of a sexual nature with his stepdaughter?

A. Yes, he did.

Q. And what specifically did he tell you?

A. He admitted to fondling the breast area of his stepdaughter.

Q. Did he admit to you that he had knowledge that the victim had taken Vicodin?

A. I don't recall that.

Q. If you take a look at your report at Page 3.

I'm sorry. I beg your pardon. It is Page 4.

And see if that refreshes your recollection as to whether Mr. Kendrick did or did not tell you anything about Vicodin.

A. Did you say Page 4?

Q. Yes.

Well, let's see if your Page 4 and mine look the same.

It begins with the March 4th, 1994 11:48 hours.

A. Okay.

Q. Did he or did he not tell you anything about Vicodin?

A. Not in this paragraph. There is nothing to indicate that.

Q. And in his statement to you, did he describe or admit to the same degree of physical contact with the

minor victim that was reported to you independently by the victim?

A. As I recall, he kind of minimized what occurred.

Q. Based on the statements that you took, did you make a recommendation to the District Attorney's Office?

A. Yes, I did.

Q. What did you recommend?

A. I took the case over to the District Attorney's Office for review.

Q. And did you make a recommendation as to that?

A. Yeah. I filed a formal complaint.

Q. Do you know who the district attorney was who was assigned to that case?

A. Yes, I do.

Q. Who was that?

A. Reg Saunders.

Q. And do you know what capacity he serves in presently?

A. Yes, I do.

Q. What is that?

A. He is a judge in Alameda County.

Q. Now, in the course of your investigation, after taking these statements and before going to the

district attorney with them, did you have any need to contact anyone from the Jehovah's Witnesses congregation?

A. No.

Q. And did you feel you had sufficient information that you could present your case to Mr. Saunders of the District Attorney's Office?

A. Yes, sir.

Q. You now work in the District Attorney's Office as an investigator.

Were there investigators in the District Attorney's Office back in the 1994 time frame?

A. Yes.

Q. And if -- based on your experience in the system for all these years, if the district attorney in the case required further information, could he assign a district attorney's investigator to go get it?

A. Yes, they can. Once the complaint is filed, it then becomes their job to do whatever duties or whatever else needs to be done after the fact.

Q. But this was a pretty complete case, just with what you thought you had.

A. I thought it was.

MR. SIMONS: Thank you.

Nothing further.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Officer Davila, you wrote the police report that Mr. Simons showed you; is that correct?

A. Yes, sir.

Q. And I notice on the second page it calls it a confidential report; is that correct?

A. Yes.

Q. And it was confidential why?

A. Well, based on the fact that because the victim was a juvenile at the time, there were laws that protect them from their names being on police reports.

Q. And your police investigation was initiated by a report from the Child Protective Services; is that correct?

A. Yes, sir, it was.

Q. And do you know who reported it to Child Protective Services?

A. I don't recall at this time.

Q. And your police report also mentions that when you conducted the interviews, there was a Child Protective Services case worker with you?

A. Yes, sir.

Q. And do you recall that?

A. Yes.

Q. So you have some specific memory?

A. Basically. It has been a long time.

Q. Yes.

A. I investigated a lot of cases in that time frame.

Q. But it has been 18 years.

And is there anything in the report that you would say is not accurate, essentially, now, 18 years later?

A. Yes. I didn't see anything that is inaccurate.

Q. Okay. And at the time that you wrote it, you intended it to be accurate?

A. Yes, sir.

Q. So you wrote in the report that the victim -- and her name has been out here, Andrea is what she has been called -- she told you that, quote, she took one Vicodin for her back problem and laid down in her room around 7:00 or 8:00 p.m., close quote.

So is it your testimony that the victim told you that she had taken the Vicodin?

A. Yes.

Q. And she didn't tell you that Mr. Kendrick had given her the Vicodin; is that correct?

A. I don't recall.

Q. But you would have written that in your report if she had told you that Kendrick had given her the Vicodin.

A. It's been a long time. I don't know.

Q. But you intended the report to be accurate when you reported it?

A. Yes, sir.

Q. You also wrote that Andrea told you that Jonathan Kendrick had admitted the incident to, quote, the elders of the church, close quote.

Do you recall writing that?

A. Yes, I do.

Q. And do you recall her telling you that?

A. Yes, sir.

Q. And you didn't talk to the elders in the church at all, did you?

A. No, I did not.

Q. And if you had interviewed them, you would have written that in your report, as well?

A. Yes, sir.

Q. Did you ever notify any of the elders or anyone else in the church that Kendrick had been charged with a sex crime?

A. I don't believe so.

Q. Do you know what the results of the charges that were brought against Mr. Kendrick were?

A. No, I do not.

Q. So you didn't take any steps to inform anyone at the church that Mr. Kendrick was a child molester; is that correct?

A. No, I did not.

Q. Do you know if anyone else at the police department did that?

A. I don't know.

Q. And do you know if the Child Protective Services took any steps to notify the congregation or anyone at the church that Kendrick was a child molester?

A. I don't know.

Q. Do you know if the DA's office did that?

A. No. I don't.

Q. You don't know if the probation department did anything in that regard either?

A. No, I do not.

Q. In fact, in the 1993 and 1994 time frame, was there any type of community notification regarding child molesters?

A. I don't know if there was in that time frame. I don't know if it came out after the facts with the Megan's Law and all that.

Q. But nonetheless, you didn't take any steps with regards to community notification at that time; is that correct?

A. No, I did not.

MR. SCHNACK: That's all I have, your Honor.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Just a couple questions, Officer Davila.

You took this report seven months after the incident?

A. I remember being notified several months after the incident.

Q. So the incident took place sometime in the summer, in July?

A. Yes, sir.

Q. And I believe the victim said it took place real close to her birthday on July 16?

A. As I recall, yes.

Q. And the family had continued to live together during the interim?

A. Yes, sir.

Q. And do you know what happened though once you referred the case to the District Attorney's Office?

A. I know the case was filed, but as far as what

the ultimate outcome was, I do not know.

Q. You were never called to testify in a trial or anything?

A. I don't believe so.

Q. And just prior to the report being made to Child Protective Services and then to your office, was there some kind of altercation at the Kendrick home?

A. I do recall being advised there was some type of altercation that had been reported to the police.

Q. Then this report was made shortly thereafter?

A. Correct.

MR. McCABE: I have nothing further.

Thank you.

THE COURT: May I have counsel up here for a minute.

(Sidebar discussion)

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Officer, just two further things.

Number 1, since you were informed by the victim that the elders of the church were already aware of the incident, would there have been any purpose in your contacting them to notify them of it?

A. At that point, I didn't think it would be

necessary, based on what I had.

Q. And secondly, we talked about confidentiality of a minor victim.

But once the charges were filed, there was no confidentiality as to the name of Mr. Kendrick, was there?

A. I'm not sure what the reporting processes or the records were in that time period. I don't know.

Q. Charges are filed in court. Correct?

A. Well, they were filed with the DA's office.

Q. Yeah.

And the complaint is filed in the Alameda County Superior Court?

A. Correct.

Q. And that would be People versus Jonathan Kendrick?

A. Correct.

MR. SIMONS: Thank you.

THE COURT: Anything further?

MR. SCHNACK: No, your Honor.

MR. McCABE: No, your Honor.

THE COURT: All right. Just for a minute to the jury.

I'm going to introduce you to the concept of limiting instructions.

At the start of the case, we, counsel, and court indicated Mr. Kendrick is a defendant in this matter. And the concept of limiting instruction is that you are sitting here considering evidence against each and all defendants, including Mr. Kendrick who is not here before us, physically.

At the close, when I give you these instructions, I will give you limiting instructions as to certain evidence that is being offered as to a specific defendant.

So the evidence you are all listening to is not necessarily offered against each and all defendants. And when you deliberate, your deliberations will be subject to the limiting instruction I give you as to which defendants certain evidence has been offered, relative to your consideration.

Does everybody understand the concept that at least certain evidence will go perhaps solely to one defendant? And I will instruct you accordingly which evidence that is for those deliberations as to any liability of questions.

Do we all understand each other on that concept?

JURORS: (Jurors indicate).

THE COURT: Okay, thank you.

MR. SIMONS: May this witness be excused, your Honor?

THE COURT: Everybody agree?

MR. SCHNACK: Yes, your Honor.

MR. McCABE: Yes, your Honor.

THE COURT: All right. Thank you for your time.

MR. SIMONS: Next witness is Carolyn Martinez.

CAROLYN MARTINEZ

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Will you please state your name and spell your first and last name for the record?

THE WITNESS: Carolyn Martinez. My first name, C-A-R-O-L-Y-N. And the last name, Martinez, M-A-R-T-I-N-E-Z.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Good morning, Ms. Martinez.

Where do you live at present?

A. In Carlsbad.

Q. And that's down by San Diego?
A. Yes. North of San Diego County.
Q. Was there a time that you lived up here in Alameda County?
A. Yes.
Q. What is your occupation?
A. I work in accounting in a biotech company.
Q. And when you lived up here in Alameda County, were you employed outside the home?
A. Yes.
Q. What kind of work did you do?
A. Accounting as well.
Q. Were you ever a member of the North Fremont Jehovah's Witnesses?
A. Yes.
Q. When did you first become a member?
A. I believe I was baptized in probably 1985.
Q. Was that into the North Fremont Congregation?
A. It was in the Central Congregation, but then shortly after, a year later, I became a member of the North Congregation.
Q. And were you married at the time?
A. Yes.
Q. And to whom were you married?
A. His name was Paul Inman.

Q. Was he also involved in the North Fremont Congregation?

A. Yes.

Q. And what position, if any, did he serve in?

A. Well, eventually, he became an elder in the congregation.

Q. You had children as well?

A. Yes.

Q. And were they also involved in Jehovah's Witnesses activities?

A. Yes.

Q. In the time period in the mid-1990s, 1993, '04, '05, '06, in that time period were you very active in your congregation?

A. Yes.

Q. And describe for us, if you would, the level of activity that you had in congregation activities in the mid-1990s.

A. Well, I was very active, I was a member of the Theocratic Ministry School, in which, you know, you participate by giving talks.

I was out in field service and, you know, a lot of social activities with the congregation.

Q. And were social activities with the congregation a part of life for a Jehovah's Witnesses'

family?

A. Yes.

Q. Did you know Jonathan Kendrick?

A. Yes.

Q. And how did you meet him?

A. He was a member of our congregation and became a friend of my husband's.

Q. Can you describe him for us?

A. Well, I would say -- I would say I was just disappointed that my husband chose to associate with him, because he kind of gravitated toward people that were a little weaker and I tended to gravitate toward people who were stronger in the faith.

Q. You are talking about faith?

A. Yes, in the faith.

Q. Do you remember Mr. Kendrick having a dog?

A. Yes.

Q. What do you remember about the dog?

A. Slobbering all over.

THE COURT: You know, I have been thinking about this throughout the trial. And there was another dog, relative to that other dog, I was thinking I needed to appoint a lawyer for him. Let's see what happens with this dog.

BY MR. SIMONS:

Q. Did you know Candace Conti?

A. Yes.

Q. And how old was Candace when you first met her?

A. I think she was a baby. She was the same age as my oldest daughter.

Q. And did you know the parents?

A. Yes.

Q. What do you remember about Candace Conti as a child?

A. Annoying.

Q. Why?

A. Just in need of attention. She was just kind of a little bratty. You know, she had some brightness to her, but mainly she was annoying.

Q. Now, is it true that your marriage to Mr. Inman came to an end?

A. Yes.

Q. And did you remarry?

A. Yes.

Q. Who did you marry?

A. Candace's dad.

Q. Neal Conti?

A. Yes.

Q. In what year?
A. 1998.
Q. And that marriage ended?
A. Yes.
Q. In divorce?
A. Yes.
Q. Approximately when?
A. I think the divorce was final in 2003, but we separated in 2002.
Q. Did you have a good relationship with Candace during those years?
A. Not really, no. It was very strained. There was a lot of distractions -- a lot of stuff going on with ex-wives and -- you know, Neal's mom. And there was a lot of stuff going on at that time, so it was very strained with Candace. It was just a lot of, you know, difficulties to deal with.
Q. After your relationship with Neal Conti ended, did you continue to stay in touch with Candace?
A. Not at all.
Q. Have you been in touch with her all these many years?
A. Not at all.
Q. Back at the time that Neal was married to Kathy Conti, do you remember having an impression of

Kathy Conti?

A. Yes.

Q. Were you acquainted with her from the North Congregation?

A. Yes.

Q. What did you see in her?

A. Just -- I don't know. Maybe like some mental illness. That's just my impression.

Q. Now, were there times that you saw Jonathan Kendrick together with Candace Conti?

A. Oh, yes.

Q. And where do you recall having seen them together?

A. Well, they were, at times -- Neal Conti, when he was married to Kathy -- they were in our book study which was at our house. And Jonathan was in that book study as well. So I would see Jonathan around Candace there too.

Q. Did you ever see them together at the Kingdom Hall?

A. Yes, all the time.

Q. What do you recall seeing?

A. He just was very enamored with her. He just looked at her inappropriately. That's what I remember. And, you know, I remember them holding hands. I

remember his arm around her. I remember them being out in service together. And that's what I remember.

Q. And when you say you remember his arm around her, was that on more than one occasions?

A. Yes.

Q. Was it something you saw frequently?

A. Well, frequent enough that I remember it.

Q. Was that something you saw in the Kingdom Hall or around the Kingdom Hall property, at least?

A. Yes.

MR. SIMONS: Is there an objection to Exhibit 30?

MR. McCABE: No.

MR. SIMONS: Your Honor, we are going to offer into evidence, Exhibit 30.

THE COURT: Plaintiff's Exhibit 30?

MR. SIMONS: Plaintiff's Exhibit 30 does not have a corresponding number.

THE COURT: Any objection from defense counsel?

MR. McCABE: No, your Honor.

MR. SCHNACK: No, your Honor.

THE COURT: Plaintiff's 30 is in.

(Whereupon, Plaintiff's Exhibit Number 30 was admitted into evidence)

MR. SIMONS: In fact, let me perhaps give a copy to the witness to look at.

BY MR. SIMONS:

Q. Now, do you recognize this as the aerial view?

A. Yes.

Q. And is this the Kingdom Hall?

A. Yes.

Q. What is this big area here?

A. That's the parking lot.

Q. And how about that kind of triangle, brown triangle up there?

Do you remember that?

A. That's just an open area.

Q. Was it accessible?

A. I think it was, but I have never been over there.

Q. Do you recall it being used for overflow parking sometimes?

A. Up there, that triangle?

Q. Yeah, the dirt part. Yeah.

A. Possibly.

Q. Do you recall from time to time maybe kids running around the parking lot, either before or after services?

A. You know, I don't really recall that, but it is possible because kids do things.

Q. Do you remember that there would be kids at the Kingdom Hall on service days?

A. Yes.

Q. And before and after, would there be socializing in and around the building?

A. Of course, yes.

Q. And you mentioned field service.

A. Yes.

Q. Describe for us what field service is.

A. That's when we go off in pairs. They go off in pairs, and they go and knock on people's doors and they try to teach people the Bible. So that's field service.

Q. Does field service start with a meeting somewhere?

A. Yes.

Q. Where, back in the mid-1990s, did field service for the North Congregation usually start?

A. It depended on the day. It could be at someone's house or it could be at the Kingdom Hall.

Q. And how would people know where to go for field service?

A. Because you were assigned by the congregation

where to go.

Q. Would there be an elder or someone who would have made that assignment?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. I'm sorry.

A. Sorry.

Q. That's okay.

And you saw Jonathan Kendrick and Candace Conti together in field service?

A. Yes.

Q. And more than once?

A. Yes.

Q. And that was during the time that Candace was still living with her parents? They were married together?

A. Yes.

Q. When did you learn that there was an allegation that Jonathan Kendrick had sexually molested Candace during the time that they were in the North Fremont Congregation?

A. When you contacted me.

Q. And how long ago was that?

A. About ten months ago.

Q. Before that, you had no idea?

A. No idea.

Q. Did you know that Jonathan Kendrick had molested any child before you and I spoke a few months ago?

A. No. No knowledge.

Q. And during the time that you were a member of the North Fremont Congregation, were you aware of any allegation of child sex abuse against Jonathan Kendrick?

A. No.

MR. SIMONS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Good morning, Mrs. Martinez.

You mentioned in your testimony that you saw Jonathan Kendrick holding hands with Candace Conti.

Did you ever speak to an elder about that?

A. No.

Q. You also mentioned that you saw him with his arm around her.

Did you ever speak with an elder about that?

A. No.

Q. Did you ever see Candace Conti come to Kingdom Hall without one or both of her parents?

A. No.

Q. Did you ever see Candace Conti come to field service without one or both of her parents?

A. No.

Q. You mentioned about the ground area of the exhibits you were just shown.

Have you ever seen cars parked there at Kingdom Hall meetings?

A. I believe so. I think there were times that we had a memorial and there would be a need for overflow parking.

Q. So the memorial, what's that?

A. That's a celebration of Jesus' death once a year.

Q. Okay. So once a year you saw cars parked there?

A. Yeah.

Q. And would that be for a daytime meeting? Nighttime meeting?

A. Kind of right before it turns to the evening.

Q. Okay. When did your family host a congregation book study that you talked about? What years?

A. Oh, boy.

Somewhere around 1990 to maybe '92.

Q. Okay. And during that entire time period was the Conti family attending that book study?

A. I believe so.

Q. And what about Mr. Kendrick, during that entire time was he attending the book study?

A. Yes.

Q. But after '92 that stopped?

A. Yes.

Q. And you stopped having the Bible Study in your home?

A. Uh-huh.

Q. How old is your oldest child?

A. She is 26.

Q. About the same age as Candace, I think you said?

A. Yes.

Q. When you married Neal Conti, did your daughters get along with Candace Conti?

A. I think my oldest daughter did, but, you know, they kind of picked on my youngest daughter, so that was a problem.

Q. They would gang up together?

A. Yes.

Q. How about you; did you get along with Candace during your marriage to Neal?

A. Well, it was a little bit of a challenge because at that time I would want --

You want a straight answer? No.

MR. McCABE: That's all I have, your Honor.

MR. SCHNACK: Nothing, your Honor.

THE COURT: Anything further?

MR. SIMONS: Yes. Just one further. I neglected to mention this. I apologize.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Did you ever see Candace Conti sit on Jonathan Kendrick's lap?

A. Yes.

Q. More than once?

A. I think so, yes. Uh-huh.

MR. SIMONS: Thank you.

CROSS-EXAMINATION

BY MR. McCABE:

Q. Where?

A. This would be at our book study.

Q. In your home?

A. Yes.

Q. In 1991 and '92?

A. Yes, to '92.

MR. McCABE: Thank you. Nothing further.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. And Candace Conti's parents were present at that book study?

A. Her dad. Her mom was rarely there.

Q. But her dad was there?

A. Yes.

Q. And your husband was an elder at the time?

A. Yes.

Q. And did you think that was strange that she sat on his lap at that book study?

A. Well -- okay. It was noted. In my mind, I noted it. So I would say, yes, I thought it was strange.

Q. And it was in the presence of Neal Conti?

A. Yes.

MR. SCHNACK: Nothing further.

MR. SIMONS: May this witness be excused?

THE COURT: Ms. Martinez, thank you very much for your appearance. You are now excused.

MR. SIMONS: Dr. Anna Salter.

ANNA SALTER, Ph.D.

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Please state your name and spell it.

THE WITNESS: Anna Carol Salter.

Anna, A-N-N-A. Salter, S-A-L-T-E-R.

VOIR DIRE EXAMINATION

BY MR. SIMONS:

Q. Dr. Salter, where do you live?

A. I live in Madison, Wisconsin.

Q. And what is your current occupation?

A. Well, I do several things.

I consult to the Department of Corrections half time. I also train lots of different groups that deal with child sexual abuse.

I have trained in 50 states and ten countries on child sexual abuse.

I also do civil commitment evaluations for the State of Iowa. That involves evaluating sex offenders to determine how dangerous they are.

And I also, on occasion, testify in court cases as an expert witness.

Q. Do you hold a license in a professional capacity?

A. Yes. I am a clinical psychologist, and I'm licensed in the State of Wisconsin.

Q. And we call you Dr. Salter.

What is your formal education?

A. I have a BA in Philosophy and English from University of North Carolina. And I have a Master's in Child Studies from Tufts University. And I have a Ph.D. in Clinical Psychology and Public Practice from Harvard.

Q. Now, you mentioned that your work is in the field of child sexual abuse.

How did you become first interested in this field?

A. When I finished my degree at Harvard, I first worked in a small liberal arts college for a couple of years but didn't like it so I got a job at a community mental health center. And what I discovered right away was that a huge percentage of the kids who were coming in were child sexual abuse victims.

And I didn't have any preparation for that. I had had maybe one lecture on sexual abuse victims in my entire five years at Harvard, and never had a course on it or had sufficient information. So I had to really start studying about what childhood sexual abuse was all

about.

Then offenders started coming in. And I knew for sure that I didn't have the training and experience to work with offenders.

The victims, you could use some of the techniques we used with non-victims.

But offenders, I knew required a different type of treatment.

So I obtained a grant from the State of Vermont, and I went around the country in the early '80s looking for programs that treated sex offenders, and I found several. One in particular in Seattle, Washington that had been treating them really with state of the art techniques for a number of years in Northwest Treatment Associates.

And I started writing my report for Vermont, and I just kept writing, and that ended up my first book, which I brought today, which was published in 1988 on treating child sex offenders and victims.

I kind of got drawn into it.

During this period of time, I was invited by Harvard Medical School to serve as the consultant for their child abuse program. This was actually a child sexual abuse program.

And this was actually before I had done much

work on the book. And my initial reaction was, I don't want to deal with childhood sexual abuse. It upsets me.

They said, you will be dealing with clinicians who deal with it. You will be supporting them. You won't be dealing with it directly.

And that's how I got involved initially. Ended up in a faculty department, growing two departments, working in a number of areas, one was their child abuse program.

Q. As part of the book that was published in 1988, did you do a research project into the history of information and knowledge available on the subject of childhood sexual abuse and its causes and prevention?

A. Yes. The first part of the book was a review of the history of childhood sexual abuse and how it had been treated.

Q. And your book was published in 1988.

When did you complete the research that was necessary to get it out and published in '88?

A. I think there was almost a two-year wait for publication. So it probably went out in mid-1986, so I had to have all research done by that time.

Q. Have you continued to do research and writing in the field of child sexual abuse and its prevention and understanding its causes?

A. Well, it's been my field ever since. I have published two additional books, and I'm working on my fourth book on child sexual abuse now.

Q. You mentioned training.

What kind of training do you conduct?

A. Well, I conduct training in just about every aspect of child sexual abuse. I train on impact on victims. I train on characteristics of offenders. I train on ways we can protect ourselves. I train on assessment and treatment of offenders. I train on deception and how sex offenders infiltrate organizations and -- full organizations and full families.

And I train on the deception of detection. And I have even made videotapes that organizations use -- I guess they're called DVDs now -- that organizations use to understand sex offenders better and what they are up against. And those DVDs are comprised of interviews with sex offenders on how they fooled people, how they operated for as long as they did without being detected. Many of them do operate for a very long period of time without detection.

Q. Who are the people that receive the trainings that you conduct?

A. I trained -- last week, I was in Idaho training police and prosecutors. I have trained for

organizations many times. I have trained child protection workers, teachers, members of organizations that have activities involved with mental health, judges. My trainings are all for professionals. I have trained probation and parole. I have trained corrections.

Most of my trainings are for anyone who works in the field of childhood sexual abuse or has a need to understand about offenders in order to protect children.

Q. And where have your trainings been conducted over the years?

A. Well, just about everywhere. I have been in all 50 states. Most of them several times.

Last week was Idaho. Thursday was Nebraska. The week before that was Salt Lake. I'm on the road a fair amount now. I have also trained in Costa Rica, in six cities in Australia and six cities in New Zealand and England and France and the Netherlands and Sweden, in Scotland, and Canada many times, and so forth.

Q. Are your books published in languages other than English?

A. Yes, they are.

Q. And without tooting your own horn necessarily, can you give us a description of some of the other languages that your books have been published

in?

A. Yes, sir.

I'm not sure all the countries it has been published in because I can't read the books.

I believe it was published in Japan, a number of other countries that speak other languages have published the books.

Q. Have you consulted with differing organizations involving the subject of protection of youth from child sex abuse?

A. Yes. Over the years I have consulted with a number of them. I have consulted with residential programs frequently for abused and non-abused kids. I have done training for church organizations. I did a videotape for an insurance company that wanted to develop a protection program because they were insuring churches.

Last week I got a call from the Madison School System about consulting with them.

I regularly consult because a large part of what I do has to do with protecting children from child sexual abuse.

Q. Were you conducting these various training sessions and consultations in the mid-1990s?

A. Yes, I was.

After my first book came out, I was doing quite a lot of training and consultation.

Q. And have you become familiar with the different standards and policies of institutions and organizations, including religious organizations, in which there are activities that are sponsored or promoted that involve children and adults together?

A. Yes. The book I'm familiar with -- first of all, with the general public, knew at that period of time, and secondly, what organizations were doing in response to that knowledge, in two different decades.

MR. SIMONS: Your Honor, I would offer Dr. Salter as an expert in childhood sexual abuse and its causes and prevention.

THE COURT: Gentleman, want to voir dire Dr. Salter?

MR. McCABE: No, your Honor.

MR. SCHNACK: No, your Honor.

THE COURT: Okay.

I find Dr. Salter qualified to give expert opinions for the reasons requested.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Dr. Salter, in your research and your own

experience, was there significant information available by 1993 to organizations, including religious organizations, who were involved in activities of youth and adults together on the subject of prevention of childhood sexual abuse?

A. Certainly.

In the '90s, there was -- there was -- there was material available to professionals long before that, but it didn't hit the press and it didn't really -- organizations didn't have sufficient awareness of it until, I think, the mid-'80s, and that was when the Catholic Church scandals first broke.

And those church scandals largely had to do with the fact that the abuse was covered up, the outrage of it seemed to be as much about the fact that higher-ups knew about it and did nothing and moved priests from one place to another as it was about the actual abuse itself.

The first one was -- located, in 1984, in Lafayette, Louisiana. And that was the first time that evidence that a bishop who had done the abuse had become public. Turns out that he reported the abuse to the bishop several times since 1997.

In 1992, the Porter cases broke in Boston. And Porter had numerous priests, and bishops and

dioceses had known about him, and had not warned the congregations in which he was a priest. And he admitted abusing more than 200 children.

Now, this hit the press so big that I actually found in my records a San Jose Mercury News from 1987 that was entirely devoted to the church's secret child abuse dilemma and had articles on:

"Church hushes up child molester cases."

"Hiding molesters ensures more victims."

This was a nationwide expose. And I think that was really warning in the '80s, organizations got warnings that child molesters could and would infiltrate organizations that had activities that involved youth.

They had clear warning on that. In fact, the Baptists, I believe when they passed their 1997 policy, said that we had had notice since 1984 of this problem.

So, yes, by the mid-'90s, this problem was front and center on the national stage. And the problem that was particularly -- people were particularly concerned about was covering up abuse and not warning congregations about abuse.

Q. Had the major youth groups and religious organizations that involved activities that had youth and adults together adopted policies of transparency regarding known sexual abusers by 1993?

A. Yes, they have. There were a lot of organizations that had talked about the problem in general. For example, the American Cancer Association in 1982 talked about adopting a policy about child sexual abuse and screening.

But the issue here isn't screening. The issue is speaking out about abuse or keeping it secret. And the 1992 United States Conference of Catholic Bishops published five principles involving receiving accusations of child sexual abuse.

And the first is to respond promptly, relieve the alleged offender promptly of his ministerial duties. There are others. And the last was one was within the confines of privacy for the individual involved, deal as openly as possible with the members of the community.

I think that the Catholic Church, at least they knew that covering this up was not going to help them.

In 1992, the United Methodist Church put out a policy. And they said the church is an entirely appropriate place for these issues to be addressed. And the father said before that in 1988 that the United Methodist Church shall uphold the rights of children to speak out when abuses occur and advocate for victims in strict enforcement of these rights.

The Unitarian Universalist Association, as early as 1977, put out a policy that said that the general assembly urges all persons to support the National Center for Child Abuse and Neglect, and they should report incidences of child abuse and neglect and that they should promote and support inter-agency coordination of services by courts, police, legal counsel, social rehabilitation agencies, medical screening facilities, foster family services and other agencies. In other words, that they should not keep this secret, but that they should report this.

So there were a number of programs that overtly said that these cases need not be covered up. They need to be reported and they need to speak out.

In fact, I believe that the Watchtower had a letter that was sent out a month before they were across the 1993 case. In fact, in that letter, they talked about the need not to hush these cases up, but the need to deal with them openly.

Q. Now, have you reviewed information that is specific to Jonathan Kendrick, Candace Conti and the North Congregation of Fremont Jehovah's Witnesses?

A. Yes.

Q. And can you give us a general overview of the information, that you have reviewed?

MR. SCHNACK: Your Honor, can we have a side bar please.

(Sidebar discussion)

BY MR. SIMONS:

Q. Dr. Salter, can you give us an overview of the information that you reviewed in connection with this specific case?

A. I reviewed the school records of Candace Conti. I reviewed the National Holistic Institute records, tax records, Superior Court of California, the Petition to Revoke Probation, criminal records, deposition of Kathleen Conti, Claudia Francis, Neal Conti, Jonathan Kendrick's criminal records, deposition of Lawrence Lamerden --

MR. SCHNACK: Your Honor, can we have another sidebar, please.

(Sidebar discussion)

THE COURT: To the jury, we will take a 20-minute break.

(Whereupon, the following proceedings were heard outside the presence of jurors)

MR. SCHNACK: It bothers me I have to jump up and down. It looks like we are hiding something. And Mr. Simons knows better than this.

We brought up issues of credibility that

happened twice with Lewis. This is happening here. And it bothers me that this is intentional.

THE COURT: I'm not going to agree with that, but I wanted you to talk to make sure this is within bounds. And I will also talk to the jury.

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: Back to the jury for a minute.

I won't do that too often. It is just the court administering the process of the case to make sure it goes according to that rule employed, the Old English rule.

And again, in terms of all of that, it is my decision when and under what circumstances -- you are to make no inference whatsoever. It's just this judge administering to what I see as the needs of the case at that time.

So hopefully we don't do that too often.

Back to you, Mr. Simons.

BY MR. SIMONS:

Q. Dr. Salter, now, we were talking about materials reviewed.

You reviewed several depositions in the case. Correct?

A. Yes, I did.

Q. And you reviewed the medical records of Ms. Conti?

A. Yes.

Q. And you reviewed the deposition of Laura Fraser?

A. Yes.

Q. And you reviewed, I believe -- you said the Fremont Police report from Officer Davila?

A. Yes.

Q. And you reviewed some of the correspondence that was involved as exhibits to these depositions. Correct?

A. Yes.

Q. Now, based upon your training and experience and materials that you reviewed in this case, did you form an opinion as to whether or not the Jehovah's Witnesses met the applicable standards of care for organizations who sponsor or promote activities that involve adults and children together in their handling of the Jonathan Kendrick report of abuse in 1993?

A. Yes.

Q. And in your opinion, did they meet that standard?

A. They did not meet that standard.

Q. And would you tell us, please, the basis for

your opinion?

A. By the mid-'80s, it was well known that you cannot either move sex offenders from one congregation to another, or leave them in a congregation unaware, where their people are unaware.

It was well known that -- well, in my terms, secrecy is the life blood of sexual aggression. And it was well known that this policy was a complete failure and that you needed to report these cases.

Standard of care was -- by the '90s. In the '90s it was too late for an organization to say we really didn't know what happened if we turned them loose.

But in the '90s, the standard of care involved reporting these cases and it involved not -- not making people aware of -- if they had a sex offender in their midst.

Q. Now, have you prepared some slides that go through the basis of this opinion and the information that was known to organizations at that time?

A. Well, the slides that I prepared are mainly on related topics. One was -- there is a set of slides -- when experts knew, when it was known in the field. And this is -- and some other things. This is the prevalence.

When I did the 1988 book, I looked at the research available at that time. And by that time, there was a significant amount of research that I could summarize.

So what you see here are just some prevalence studies that were done back in '84. And what these studies did is they tried to determine how many children were being sexually abused, male and female.

Continuing to the next line.

As you can see, there was significant literature out there by the '80s. The watershed from this literature was somewhere in the mid-'70's, and that was where you begin to get useful data on the prevalence of sexual abuse and the predatory offenders.

The next slide.

So I had no trouble finding studies at that point in time. It would not be correct to say that there was no information out there.

The next slide.

And the book I wrote in '87 -- '88, I had 257 references. I could have had quite a lot more.

So that's what the experts knew. Now, what I have talked about --

Could you go to the next line and see what it is.

Sorry. I think that's a previous one.

What I talked about is the fact that this body of knowledge that the experts had became public knowledge when these cases broke. Not just the Catholic Church scandal, but in 1991, there was a huge revival of the series of the Boy Scouts, and how many children had been abused before they instituted their new child protection policy. And the numbers were really staggering on how many children had been abused. Well over a thousand.

That was true, even though the Boy Scouts had started by the '20s, they had started developing a list of ineligible volunteers, people who could not volunteer to be around children in their program because they were child molesters.

So the Boy Scout thing came out in '91. The Catholic Church came out in '84.

Other scandals -- the George Reardon case came out in '92. And that was the case of the endocrinologist who had taken 60,000 pornographic pictures of his child patients. And when it came out in '92, he was immediately relieved of his license, so that he was not able to be around children anymore.

By the '90s, people knew what the risk was when you had a child molester. And the standard of

practice was not to keep it secret and let the person continue in the same activities with the same access to children. That was not the standard of care.

Q. Let me move to a different subject now, if we could.

You reviewed Candace Conti's medical records?

A. Yes.

MR. SIMONS: Your Honor, Exhibit 55 has previously been marked. I would move it into evidence at this time.

THE COURT: Plaintiff's 55?

MR. SIMONS: Yes. No corresponding number.

THE COURT: Okay.

MR. SCHNACK: Your Honor, I think that contains hearsay. There has been no doctor to basically testify to the doctor's report. So we would object.

MR. SIMONS: Well, may we?

(Sidebar discussion)

THE COURT: All right. Mr. Simons.

MR. SIMONS: May Exhibit 55 be admitted?

THE COURT: It may be admitted. I will make a record later about it.

THE COURT: Okay.

(Whereupon, Plaintiff's Exhibit Number 55 was admitted into evidence)

BY MR. SIMONS:

Q. Now are you familiar, Dr. Salter, with the concept of delayed disclosure as it applies to victims of childhood sexual abuse?

A. Yes, sir.

Q. Now, first of all, can you explain for us what that concept involves?

A. It is really just more -- has to do with research findings and being a concept.

When research has been done on children who were sexually abused, they have pretty much -- the studies have pretty much universally found that the majority of children do not report right away.

There is something called delayed disclosure. And I brought just a sample of this research, but there is really quite a number of studies on this topic.

That's the next slide.

Okay. This is a summary of 11 retrospective studies. And they discovered that one-third of the children who were sexually abused revealed it to anybody during childhood, and that only 10 to 18 percent of those cases ever got to authorities.

The majority of sexual abuse just isn't disclosed, period. And when it is disclosed, it is typically not disclosed immediately.

Next slide.

These are other studies, 6 to 12 percent ever got to authorities.

Next slide.

This is a study in 2000 by Smith. What they found in an example of 388 children or adults who had been sexually abused as children, was that only 18 percent reported it within the first 24 hours. 4 to 7 percent took more than five years. And 28 percent never told anybody before the researcher asked them on the phone or in person.

And consistently up to a third of adult survivors of sexual abuse, when they have done surveys on them, they told the researcher, you are the first person I have ever told about it.

Next slide.

This shows how long we have had this knowledge. Back in 1989, Sauzier did a study and discovered that of the children who were sexually abused, 24 percent reported within a week, 21 percent reported within less than a year, 17 percent reported more than a year, and 39 percent never reported, during childhood, the sexual abuse.

Next slide.

I just brought a few of these slides. There

is much bigger, broader research on this.

In 1990, immediately boys, 40 percent. Females, 40 percent.

Later, 14 percent males, 24 percent females.

Never as children, 42 percent males and 32 percent females.

Next slide.

Delayed discloser, Gomes-Schwartz, et al, '92, within a week, 24 percent.

Elliott and Briere, in '94, more than one a year, 75 percent. More than 5 years, 18 percent.

Next slide.

Pipe, et al, 2007, the delay since the last incident, less than a month, 43 percent. One to six months, 19 percent, and so on.

So the point being that I have yet to see a study, I have never seen a study that found that the majority of children who were sexually abused reported it right away. It is one of the rare cases in which the research is in agreement.

I think that's the last one.

Q. Now one of the things you were asked to do in this case was to take a look at the report prepared by a Dr. Martin Williams. Correct?

A. Yes.

Q. And do you recall the report offering the opinion that Candace Conti would likely to have been addicted to drugs in a substance abuser because of her mother's addiction?

A. Yes. I do recall that.

Q. Do you agree with that opinion?

A. No, I don't agree with that opinion. Although it is true that the children of addicts have a higher rate of addiction than other people.

But that doesn't mean a majority of them are addictive. At least 50 percent of the variants is due to the environment in these cases.

You could have -- let's say the rate of population of people addicted is 2 percent. Well, you could have, maybe even a four-time increase in children of addicts to 8 percent. That doesn't mean it is the majority of them.

I'm not aware of studies. And I hope he produces them if that's a claim he is going to make that shows that a majority of children of addicts become addicts themselves. There is a huge environmental factor involved.

Q. And additionally, in reviewing the question of the report with Dr. Williams -- and we haven't heard from him yet, so we are kind of doing this in a vacuum,

but he performed certain testing on Candace Conti. Correct?

A. Yes.

Q. And you reviewed his report of that testing?

A. Yes.

Q. Did you agree with the testing approach as a method of diagnosis in this kind of case?

A. Well, you can use testing in support for your testimony. But if you are going to evaluate someone who is claiming to be a survivor of sexual abuse, you have to use the right instruments. And I don't have his report in front of me. But my memory tells me that the instruments he used had to do with general personality traits.

But today the assessment of adult survivors is much more specialized. So you would use tests that specifically picked up trauma. Tests for PTSD. Tests for disassociation. Tests for trauma-related symptoms.

If you are going to use tests, you should use the tests that have to do with the trauma, not general personality tests that were not designed to pick up trauma or address issues of trauma. And he didn't do that.

MR. SIMONS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Dr. Salter, first of all, you are not aware of any laws that existed in 1993 that required religious organizations or their ministers to inform members of their congregation of a one-time child molester; is that correct?

A. Well, I believe that there was a law in place that required people who were involved with children to report. But it was not specific to the clergy until a later period of time. They didn't single out clergy until a later period of time.

Q. Right.

So ministers weren't required to report in California until January 1st of '97; is that correct?

A. That's correct. There was not a law that specifically addressed ministers.

Q. Yeah.

The earlier law addressed school teachers and health professionals and things like that. Correct?

A. Well, I believe it was a little bit broader. I don't have it in front of me. But there was a section talked about institutions that involved children.

Q. Okay. But not ministers or clergy. Correct?

A. Didn't exclude ministers or clergy. My

belief is that if they probably made it -- singled them out in '97 to make it sure that people understood that ministers and clergy should be reporting child sexual abuse, unless it was in the context of other professions.

Q. Well, mandated reporting isn't "should." Is it? It's required. Isn't mandated reporting required?

A. Yes.

Q. Okay. And clergy and ministers were not required to report until January 1 of '97 in California. Correct?

A. Clergies and ministers were not singled out. I think there was a question about whether the case law applies to them, and they certainly made it clear that it applied in 1997.

Q. Okay. Let's talk a little bit about the concept of confidentiality.

Are you familiar with the concept that ministers who provide spiritual help have an open confidentiality with regard to what they learned in concept with ministers? Are you familiar with that?

A. I'm familiar with the concept that they are required to keep things confidential if it is in the form of a discussion.

You know, I'll be honest. For instance, the

Catholic priest taking confession. I'm not aware that if a minister learns it from any source or in any context, that he is required to keep it confidential.

Q. So what is your familiarity with the practice of the Jehovah's Witnesses in that regard?

A. Well, their practice is definitely to keep it confidential and not to report it at that time, you know, and keep that safe, not to alert the congregation to the fact that they have a child molester in their midst.

Q. My question didn't involve child molesters, ma'am.

A. Okay.

Q. So are you familiar with the concept of confidentiality within communications that are made to the ministers?

A. Yes.

Q. And within the Jehovah's Witnesses, how is that done in practice? What is your familiarity with that?

A. I can only answer it in relation to child sexual abuse because I didn't study the general policies of the Jehovah's Witnesses. The only material I reviewed was having to do with this case.

Q. As a psychologist, do you have an obligation

of confidentiality when you learn something in confidence from a patient?

A. Yes and no.

I reviewed several. The APA Code of Confidentiality. In fact, I looked at the APA American Psychological Association Code in the 1992 ethics code compared to the 2002 ethics code. And what I found was what every psychologist knows and is taught, and that is, you cannot keep everything confidential. You cannot keep things confidential in which the person may harm themselves or may harm someone else.

Give me a second. I will find the place where it says that. That is true today. That was also true -- I'm sorry. This is a large ethics section. That was true then and it is true today.

I also reviewed the confidentiality codes from some other organizations, and I found the same thing, that there are exceptions to confidentiality and those exceptions have to do if a person is a risk to themselves or a risk to someone else.

Q. Let's turn to the publications that you testified about in --

Are you finished paging through, ma'am?

A. I was trying to find it and I guess I didn't highlight it. But I didn't entirely finish my answer.

Q. Well, you were talking about non-psychologists. So that's why I assume you were non-responsive to my question.

A. I found it. Please ask your question again.

Q. Let's turn to the publications there that you reference in your deposition.

You referenced a number of publications on childhood sexual abuse published by religious and other organizations.

Do you recall that in your deposition?

A. Yes, I do.

Q. And you referenced the American Baptist publication in 1993.

Do you recall that?

A. I recall mentioning the Baptists.

Q. Are you paging, still, for the ethics, ma'am, or what are you doing?

A. No. I was looking for the actual statement that they made.

My memory is that they had a policy that came out in, I believe, '97. But what the policy said was they have been served notice of this problem since '84.

Q. And in 1993 did the American Baptists have a policy of informing their congregations about a congregation member who was a one-time child molester?

A. Well --

Q. Did they? Yes or no, ma'am.

A. I am not aware of the policies.

Q. And neither did the United Methodists at that time, in 1993, did they?

A. I believe they did.

Q. Did they have a policy of informing their congregation about a congregation member who was a one-time child molester in 1993?

A. Well, in 1988, the policy was to speak out when abuses occurred. And so I take that as a policy --

Q. Within the confines of privacy. Correct?

A. No.

It says, the statement is:

"Be it resolved that the United Methodist Church shall uphold the rights of children to speak out when abuses occur and advocate for the strengthening and strict enforcement --"

Q. So it advocates for the children to speak out. Correct?

A. No.

Q. That's what you just read.

A. Well, I don't believe so, sir.

"Therefore be it resolved that the

United Methodist Church shall uphold the rights of children, speak out when abuses occur."

It is not the right of children to speak out. It is that the Methodist Church will speak out when abuses occur.

Q. You just said to "uphold the rights of children to speak out."

A. Well, then I made a mistake. It's:

"Uphold the rights of children, speak out when abuses occur, and advocate for the strengthening and strict enforcement of these rights."

Q. And did the Unitarians have a policy in 1993 that they would inform congregations if there was a one-time child molester within their congregation?

A. Their policy was to --

Q. Is that a yes or no, ma'am?

A. Can I finish my answer?

Q. I would appreciate if you just answer the question asked.

THE COURT: All right. For just for the minute, Doctor, could you be kind enough, it is a yes-or-no question.

Just answer it, and then counsel will go to

the next question if we have some time.

So for a minute.

The question again, counsel, on that.

BY MR. SCHNACK:

Q. Did the Unitarians in 1993 have a policy of informing their congregations about a congregation member who was a one-time child molester?

A. Yes. That's how I interpret the material on that.

Q. So read the specific passage.

A. Reporting -- they should --

Well, let me read the whole passage.

"The 1977 General Assembly of the Unitarian Universalist Association urges all persons to support the National Center for Child Abuse and Neglect and state and local programs for child abuse and neglect, specifically, 5, reporting incidents of child abuse and neglect."

And then it has several other things, publicizing, finding and utilizing programs.

And the last one is:

"Promoting and supporting interagency coordination of services by courts, police, legal counsel, social rehabilitation agencies,

medical screening facilities, foster family services, and other agencies."

When you report that, you make it public. That's my interpretation of what they are recommending.

Q. So reporting it to the police is what you are saying? To the authorities?

A. Yes. Reporting it and cooperating with other agencies. Cooperation with other agencies to address the problem.

Q. Are you aware whether the issue of Jonathan Kendrick's incident of molestation of his stepdaughter, Andrea, in July of 1992, was that ever reported to the police?

A. I believe it eventually was reported to the police.

Q. And do you know when that happened?

A. I don't know when that happened. There are not sufficient criminal records for me to follow them.

Q. Well, you stated that you reviewed the Fremont police report from '94.

A. I did. So it must have been '94. I won't forget that.

Q. And were you aware that Jonathan Kendrick and his wife, Evelyn, were trying to work out their marital issues in connection with that from July forward into

early 1994?

A. Yes.

Q. Where did you learn that?

A. I think it was in some -- I don't remember. It was either in deposition or some of the letters. But I believe that's correct information.

Q. So in any event, the issue of Jonathan Kendrick was reported to the police in February of 1994.

Is that your understanding?

A. Yes. I don't believe the Jehovah's Witnesses reported it.

Q. But it was reported to the police?

A. It was reported, but not by the Jehovah's Witnesses.

Q. And it was reported by Andrea's mother Evelyn? Evelyn Kendrick reported it.

Is that what your understanding was?

A. Yes.

Q. And are you aware of whether the police took action in 1994?

A. I'm not aware of the outcome of that case.

Q. Were you aware that the police recommended charges be brought against Mr. Kendrick as a result of that?

A. I'm not remembering the records very well.

I'm aware that he went to the police. And I'm aware that --

Yes, I do remember that charges were brought.

Q. And, indeed, he was convicted; is that correct?

A. Yes.

Q. That's your understanding, that in 1994 he was convicted?

A. I really don't remember the records of what happened to him at that point.

Q. Now, with respect to the policies and practices of Jehovah's Witnesses, are you familiar with publications issued by the Jehovah's Witnesses starting in the 1970s regarding child abuse?

A. Yes.

Q. Okay. And what was the first one that was issued that you are aware of?

A. I don't have them in front of me. They issued several publications. The most important one being in 1993, in October, a month before the case came.

Q. Are you aware that in July of 1976 the Jehovah's Witnesses published an Awake Magazine article concerning "Child Abuse, What Can Be Done About It?"

A. Yes.

Q. Would you say that's hushing it up if they

publish an article like that?

A. Well, the problem is -- wait. They actually --

Q. I would ask that you answer my question, and then we can see if you can explain it.

THE COURT: And, Doctor, please, yes or no, and then we will see whether the context deserves an explanation.

BY MR. SCHNACK:

Q. Would you say that publishing an article in July of 1976 called "Child Abuse, What Can Be Done About It," is hushing up the issue of child abuse?

A. It isn't hushing up this issue that is at stake. But it isn't hushing up the issue to publish an article that is providing information on child abuse.

Q. And that is educating parents who read these articles; is that correct?

A. Yes, it is.

Q. Educating elders who read the articles?

A. Yes.

Q. And are you aware of a June 22nd, 1982 publication in Awake concerning child abuse?

A. Yes.

Q. Are you aware that they also published a January 22nd, 1985 child molesting, "You Can Protect

Your Child."

That is Exhibit 17.

Are you aware that they published that?

A. Yes.

Q. And how about October 8, 1991, Exhibit 29, I believe.

A. Yes.

Q. Are you aware they published that?

A. Yes.

Q. And, again, would you consider providing --

Do we have the October 8, '91 article up?

Are you aware they published that, "Healing The Wounds of Child Abuse"?

A. Yes.

Q. Then let's go to October 8, 1993, Exhibit 37.

A. Yes.

Q. Are you aware that was published?

A. Yes.

Q. And do you know who these articles go to within the Jehovah's Witnesses Church?

A. They go to the elders, they go to members of the church.

Q. And these are mailed to every church member's household --

A. Correct.

Q. -- back in the '80s and '90s.

Are you aware of that?

A. Yes.

Q. And do you still say that is hushing up the issue of child abuse?

A. My difficulty in answering is, are you talking about hushing up a particular case of an offender or are you talking about hushing up the issue?

My testimony has to do with what happens when someone is caught and whether institutions and churches were aware that they should not hush that particular case up. That's a different question than whether they talked about the issue in general.

So they didn't hush up the issue in general. I agree with that. The question is: Did they follow their own policies when it actually came to a real case.

Q. And then with respect to other organizations, you mentioned the Boy Scouts, wasn't it true that the Boy Scouts had a policy that no scout master should be alone with a child?

A. Yes.

Q. And you are aware the Scouts have activities in which children are separated from their parents?

A. Yes, they do.

Q. They have, what, overnight camping --

A. Yes.
Q. -- that type of thing?
A. Yes.
Q. And you are also aware that Jehovah's Witnesses do not have any activities in which children are separated from their parents; is that correct?
A. They are not separated. It looks to me like they are included in all activities.
Q. So the children are always included with their parents in all activities.
A. Yes.
Q. And are you aware that Candace Conti never attended a Kingdom Hall meeting without either one or both of her parents?
A. Actually, I don't know that. Whether she was there or not. I know that her parents were frequently there. I don't know if she ever came on her own.
Q. Well, Candace Conti, herself, testified in deposition that that was the case.
And you read her deposition, didn't you?
A. Yes, I did.
Q. Okay.
A. I said that, that she said that in her deposition.
Q. Okay.

A. And I said that.

Q. And there was also testimony by her parents that they never were at any church-related activities -- that Candace -- Candace was never at any church-related activities unless one or both of them were there.

You're familiar with that testimony as well?

A. Yes.

Q. Now, I'm going to shift gears on you here, just because this is cross-examination. I don't have an outline, necessarily, like Mr. Simons had.

With respect to your trainings you conducted, you said they were all for professionals that were people in the field of child sex abuse; is that correct?

A. Yes. I don't remember ever training the general public, except for one training for foster care. But that's professionals as well.

Q. Okay. And you also commented that the whole issue in the Catholic Church, they were moving priests from one place to another, that type of thing?

A. Yes.

Q. And you are aware that that's not the situation in this case that we have here today, that Kendrick wasn't moved from one congregation to another?

A. No. But it seems very similar to me. The issue was not informing the congregation where the

priest would be, and leaving him in the same congregation and not informing them, it seems to me that it has the same impact. The issue wasn't moving.

Q. Okay.

A. The issue was not informing.

Q. Okay. So the issue was not that Kendrick was moving from one to another?

A. No, it wasn't.

Q. Are you aware when two elders met with Andrea Kendrick and her mother and Jonathan Kendrick in November of 1993, they informed Andrea and Evelyn that they could go to the police?

A. Yes.

Q. That they had the absolute right to?

A. Yes.

Q. Do you call that hushing it up?

A. They didn't inform the congregation, and they didn't go to the police. And the standards of care at that time, I believe, said that they should have.

Q. Now, do you know whether others in the church congregation were informed? The other members of the body of elders, do you know if they were informed?

A. I believe the elders were informed, yes.

Q. And the elders were parents? Do you know that? Or grandparents?

A. I assume many of them were.

Q. Now, you mentioned a doctor who was removed from practicing, or his license was revoked or suspended because he had reportedly abused his patients?

A. Yes.

Q. And was that a situation where the doctor was alone with his patients when he was treating them?

A. Yes.

Q. And you also -- it sounds like you agreed that children of addicts at least have a higher rate of drug use and drug addiction, that there is some percentage of increase over the normal population?

A. Yes.

MR. SCHNACK: That's all I have, your Honor.

THE COURT: Mr. McCabe?

MR. McCABE: Yes, your Honor.

CROSS-EXAMINATION

BY MR. McCABE:

Q. You are aware that Mr. Kendrick was not a priest in the Jehovah's Witnesses view of ministers and pastors and things like that?

A. Yes, sir.

Q. Okay. He was a just a member of the congregation.

A. Well, he was a brother. And they called them all ministers. But he was also a publisher. So he was doing church-sponsored activities with children as well.

Q. And so was Candace Conti at the time? She was a publisher, isn't that true?

A. That's true.

Q. And she was a little girl.

A. That's correct.

Q. And everybody in the congregation is called, who is a member, is a publisher; isn't that correct?

A. There is a requirement that they publish, that they go preach in other neighborhoods, yes.

Q. Well, whether it was a requirement or not, all the members of the congregation are called publishers; isn't that true?

A. I believe the term "publisher" is not equivalent to "brother." That it is conferred on everybody. My understanding is that publishing refers to people who go to neighborhoods and essentially preach the gospel according to the Jehovah's Witnesses.

Q. And you understand that men do that?

A. Pardon?

Q. And you understand the men in the congregation do that?

A. Yes.

Q. And women do that?
A. Yes.
Q. And children do that?
A. Definitely.
Q. So who was not a publisher in the congregation, then, that attends the meetings?
A. Well certainly there were people that didn't publish. I don't believe that Candace Conti's mother was publishing.
My understanding is that they ask people, require people to publish, but it doesn't look like to me that they all do.
Q. But that is no special designation?
A. I think it is a special designation. It is a church-sponsored activity that involves the members and the children together. They are not going out on their own and representing themselves. They are representing the church.
Q. Okay. And so is going to a meeting, that is a church sponsored activity. Is that true?
A. Yes, it is.
Q. And the congregation goes to the meetings?
A. The congregation goes to the meetings. But I still think the term "publisher" refers to a specific sponsored activity within the Jehovah's Witnesses.

Q. I understand what you understand. But I just want you to understand that a publisher is not a priest.

Do you understand that?

A. I do.

Q. Right.

And Mr. Kendrick faced some consequences after this meeting with the two elders in 1993; isn't that correct?

A. Yes.

Q. He was removed from his position as a ministerial servant; isn't that correct?

A. Yes.

Q. And that was announced to the congregation.

A. But not the reason.

Q. It was announced to the congregation, wasn't it, Doctor?

A. Only that he was removed.

Q. Thank you, Doctor.

Now, in regards to public notification, that took place in February of 1994; isn't that correct?

A. I don't understand what you mean by "public notification."

Q. Well, it went to Child Protective Services, didn't it?

A. Yes, but not by the Jehovah's Witnesses.

Q. Evelyn Kendrick was a Jehovah's Witness, wasn't she?
A. Yes.
Q. Okay. So she brought it to the police with her daughter, Andrea; isn't that correct?
A. Yes, her mother did.
Q. And went to the District Attorney's Office after that?
A. Yes.
Q. Okay. And then it went to court?
A. Yes.
Q. Okay. So there was public notification within three months of the elders taking the initial report from the Kendrick family; isn't that correct?
A. I would not agree with the implication that the Jehovah's Witnesses made this public.
The mother went to the police on her own. Jehovah's Witnesses did not, nor did they notify the congregation, nor did they notify later congregations.
Q. Well, did the police notify the congregation?
A. No.
Q. Did the District Attorney's Office?
A. No.
Q. Did Child Protective Services?
A. No.

Q. They all knew, didn't they?

A. Yes, they did.

Q. And they all knew the congregation was involved because in the police reports you read, it was discussed?

A. Yes.

MR. McCABE: I have nothing further, Your Honor.

MR. SIMONS: I have no redirect.

THE COURT: Dr. Salton, thank you for your testimony. You are now excused.

The jury will take a break until quarter to 11.

(Break taken)

THE COURT: Mr. Simons, your next witness?

MR. SIMONS: Candace Conti.

THE COURT: Okay. Ms. Conti, come forward and be sworn.

CANDACE CONTI

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: State your name and spell your first and last name for the record.

THE WITNESS: Candace Conti. C-A-N-D-A-C-E. Conti is C-O-N-T-I.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Ms. Conti, how old are you now?

A. I am 26.

Q. And where are you living?

A. I live in Stockton, California.

Q. And you live there with your mother?

A. Yes.

Q. What is the most important thing for you right now?

A. I would say the most important thing right now is my sobriety.

Q. And why would you say that?

A. Well, my sobriety has offered me to have a new chance at life. I have been able to feel -- have my feelings back again, to experience life, the good and the bad. It has given me better coping skills. Better coping skills with my life.

Q. Do you now have a plan that you hope to be able to fulfill to move into your future?

A. Yes.

Q. What is your plan?

A. My hope is for working with animals, specifically with horse and large breed animals. And my goal is to go to school and be a vet tech. That is my

passion, and I can't wait to pursue that.

Q. And you said you are able to have feelings. Are some of them good?

A. Yes.

Q. Can you describe some of the good feelings that you now have in your life?

A. I have been able to have positive relationships, positive friendships, and express my feelings toward my family. It is a lot different. A lot different.

Q. Are some of the feelings that you have now tough to face?

A. Very much so.

Q. And tell us in what way.

A. I think one of the biggest things is that when I was using, my dreams stopped, my nightmares stopped. And when I stopped using, my nightmares returned with a vengeance, I would say.

Q. Let's talk a little bit about the years between high school and when you stopped using.

What was the date that started your sobriety?

A. June 10, 2007.

Q. So you are going to be two years here in a couple of weeks.

A. Yes.

Q. Do you feel you will ever go back?
A. One day at a time. But, no. I have too much to live for.
Q. Now, you graduated from high school?
A. Yes.
Q. And in what year?
A. 2003.
Q. Let's talk about the years between 2003 and June of 2010. You talked about friendships.
Did you have friendships during those years?
A. I didn't have any friendships that were meaningful in the terms that friendships should be, no. They didn't have any substance. They were all just more casual acquaintances than being real true friends.
Q. What did your friendships center around?
A. Substance abuse.
Q. What about work; did you hold a regular job between high school and June 22nd of 2010?
A. I had quite a few jobs, but I don't -- I was never able to really make them last.
Q. Why not?
A. I think I was having a hard time making a commitment to really -- to really stick it through.
Q. How was your relationship with your mother during those years?

A. Well, my mother was in Florida since before I graduated high school, so she really wasn't around.

Q. And your dad?

A. I had no relationship with my dad.

Q. How about with your grandmother?

A. My nana?

Q. Yeah.

A. My nana was the only cool person, only family in my life at that time.

Q. Was that an emotional relationship between the two of you in those years?

A. No, it wasn't.

Q. What kind of relationship was it?

A. Well, when my parents were starting to separate, my nana -- and I was starting to stay at my nana's more often, she sat me down and said this is going to be our business agreement. So that is kind of how she has treated me. She didn't want the responsibility of me. She figured it should be on my parents.

Q. Let's talk about in those years your relationship with yourself.

How would you describe that?

A. I think I spent a lot of time running from myself.

Q. And tell us what you mean.

A. Just running from everything that happened in the past. Running from nightmares. Running from my family. Not wanting to confront anything.

Q. Before high school, in those, say, five years, your last year in middle school and your four years of high school, tell us a little bit about your life in those years.

A. I went to five different high schools. The majority of those were actually home schools. So that made it very difficult. I didn't really stay in one spot long enough. I think I was -- I think I was starting to really start hiding from people.

Q. How was your relationship with your mom during that time?

A. Very difficult.

Q. And why?

A. She was still going through a lot of what she was going through, and she wasn't very emotionally there to kind of go through the things that I needed her to go through. She was also using alcohol. So it made it very difficult.

Q. And how would you describe your inner feelings during those years as you grew to maturity from junior high to high school?

A. Very troubled. I felt like I was going to explode a lot of times. I was trying to keep it all together.

Q. When you were 16, do you remember who you were going to for your health care?

A. Juliana Wong.

Q. Where was she?

A. Bay Valley Medical.

Q. And one day when you were 16, did you see a different doctor? A Dr. Afruma?

A. Yes. Possibly.

Q. Do you have any recollection of seeing a Dr. Afruma one time in 2002?

A. No.

Q. Do you remember telling Dr. Afruma that you had been sexually abused?

A. No, I don't.

Q. Do you remember telling your parents?

A. I told my parents later on when I was almost graduating -- I think I told me dad. And then I told my mom a little bit after I graduated.

Q. So that would have been early in 2003?

A. Correct.

Q. Before telling these people about your abuse, had you told anyone?

A. No.
Q. Let's talk about while it was happening. Why didn't you tell someone while it was happening?
A. I was scared.
Q. And what specifically were you scared of?
A. I was scared of him.
Q. Who?
A. Jonathan Kendrick.
Q. And what was it about Jonathan Kendrick that you were scared of?
A. He seemed like a monster.
Q. Did he have a physical intimidating force on you?
A. Yes, he did.
Q. Describe it.
A. He was very big. I was little but he was very big and always very loud and physical. And when he kind of got hold of you, he wouldn't really let go.
Q. What did it feel like to you when he would give you a hug?
A. Felt like he was crushing the air out of me.
Q. Did you feel you could tell your parents in 1995 and '96 when this was happening?
A. I don't feel that I could.
Q. After your parents separated, you were seeing

Laura Fraser.

Do you remember her?

A. Yes.

Q. And you saw her deposition here in court?

A. Yes, I did.

Q. And she looked the same as when you were seeing her?

A. Same haircut, everything.

Q. And do you remember your very first meeting with Laura Fraser?

A. I do.

Q. And how did it start?

A. It was like, you know, being introduced to somebody new. You know, she made you feel like a friend.

Q. Did she talk to you about confidentiality?

A. Yes, she did.

Q. What did she tell you?

A. She actually, I think, had asked my dad to leave the room. And she told me that there were certain things that if, you know, we were to talk about, that, you know, she would have to report them either, you know, if somebody was hurting me and if, you know, if I wanted to hurt myself, those are the things that she would have to tell my parents and she would have to

report.

Q. And was that a disclosure that you were willing to have happen to you at that time when you were 12?

A. No.

Q. Why not?

A. Well, I think the thought of it was just really scary.

Q. Now, in your high school years, until you were 16 and talked to Dr. Afruma, you never told anyone.

Why not?

A. I think I was afraid nobody would believe me.

Q. And so as you got into your later teens, you felt you were ready to at least share with some people; is that right?

A. I think I was at a point where I was so -- I had so much inside me, that I needed to reach out to somebody. I think I was in a lot of pain, and I needed to reach out to somebody. That's why I eventually told my parents. And I just don't remember talking to the doctor about it, but I remember talking to my parents.

Q. What do you remember talking to the doctors at Bay Valley about in those years when you were 15 and 16 and 17?

A. I was having a lot of problems sleeping, and

I would have nightmares. And I would wake up crying and wake up short of breath. And I think that was something that Juliana had tried to help me with.

And I think I had -- you know, she was trying to address anxiety that I was feeling and being depressed, being sad.

Q. And when you were having those problems and trying to get Dr. Wong's help to address them, is that the same time that you started using illegal drugs?

A. It was very shortly after.

Q. Now, let's talk about Mr. Kendrick.

What is your first memory of him?

A. Seeing him at the Kingdom Hall.

Q. And how did you know him?

A. Just another brother in the Kingdom Hall.

Q. Did you know anything about his family at that time?

A. Andrea, his daughter, was a little older. But, you know, when we played, he was just a father of another child at Kingdom Hall that I could play with.

Q. Did he become friends with your family?

A. Eventually, yes, he did.

Q. And what do you remember about that?

A. I mean, I remember the talk of sports, you know, my dad and he would be talking sports in the

Kingdom Hall before and after the meetings. And then I think it kind of progressed into something more that, you know, he would come out and hang around at the house and fiddle around in the garage with my dad.

Q. Do you remember that you knew as a child that Mr. Kendrick and his wife, Evelyn Kendrick, were having troubles between them?

A. I do. In fact, the last time that I saw them, they were like -- they were in the back of the Kingdom Hall arguing, having a verbal argument, and that was the last time I had ever seen them. They left.

MR. SCHNACK: Could you just move a little closer to the microphone? I'm having trouble hearing. I apologize.

BY MR. SIMONS:

Q. When you remember that argument, and you said you never saw them again, who did you never see again?

A. Evelyn or her daughter, Andrea.

Q. After you were no longer seeing Evelyn and Andrea at any kind of Jehovah's Witnesses events, did Mr. Kendrick start to pay more attention to you?

A. Yes.

Q. Tell us what happened.

A. He got more physical. It was like he was starting to pay more attention to me. And --

Q. How would he show that affection or attention?

A. He would come up and give me these hugs and he would just squeeze me. It was like the air being taken out of your body. And then he would just usually say, you know, "who loves you" and he wouldn't let me go until I would say it to him. I guess that's kind of how it started.

Q. What would you have to say to him?

A. I would have to say, "you are." And then he wouldn't let me go.

Q. And did these hugs happen in the Kingdom Hall?

A. Yes.

Q. And around the Kingdom Hall?

A. Yes.

Q. We heard Elder Clarke talk a little bit about the time before and after the meetings. I think he used the words "distractions." That there is a lot going on when the service was not actually happening, before and after.

Tell us what you remember about what it would be like at the Kingdom Hall before or after a service.

A. Well, I was a kid back then, so, you know, the adult talk really didn't interest me that much.

So there is -- in the pictures that you saw, there is the assembly hall -- I mean auditorium. And then alongside that, there is a side hall, and there is two back rooms. And us kids would go back there and run amuck, we would play tag and -- you know. Or even, you know, bug our parents, maybe in the main auditorium, and running between the seats and things of that nature.

MR. SIMONS: Can we see Exhibit 30?

BY MR. SIMONS:

Q. When the weather was good, nice weather, where would the kids be before and after the meetings?

A. Well, we would play in that front area, like right in front of Kingdom Hall in those first handicapped spots. We didn't really have that many handicapped people in our congregation. And so there was a couple spots right there and we would just run around and play.

Also the front is a little bit different than I think it is now. There was a bench right there and a little walkway on the side. You can't really see it, but we would hide behind stuff right there.

And you know, sometimes when we would get away with it, you know, which was a lot, we could go run in the parking spots, and then that back area where it's not paved, that's all open.

Q. The triangle at the top?
A. Yes, that's all open.
Q. And were there times that you would see Jonathan Kendrick out there when you were out there with the other kids?
A. Yes.
Q. And were there times that he approached you when you were out there with the other kids?
A. Yes.
Q. And can you tell us about what would happen on some of these other occasions?
A. I can remember just, you know, be out there and playing with the other kids. And he would -- it was almost like he would single me out. He would come and would grab me. Just along the same lines, I just remember being so scared of him.
Q. Do you remember being in the services inside Kingdom Hall with your parents and Jonathan Kendrick being there?
A. Yes.
Q. And do you remember there were times when he sat with your family?
A. Yes.
Q. And were there times that you sat next to him?

A. Yes.

Q. Did you go to the meetings at the Kingdom Hall without at least one of your parents?

A. No.

Q. So on the meetings that you would go to, the Sunday meetings at the Kingdom Hall, one of your parents would always be there?

A. Yes.

Q. Did you do field service?

A. Yes, I did.

Q. Tell us how you became involved in doing field service.

A. Well, at that point, I wanted to be the best Jehovah's Witness I could be. So I had made -- I had made the commitment to myself to do a certain amount of hours every month out in field service. And it would range between 15 to 20 hours a month.

Q. Now, we have heard that there was a time in 1994 and 1995 when your mom started to become very ill.

A. Yes.

Q. And she didn't come to the Jehovah's Witnesses events anymore.

Is that fair?

A. That's fair.

Q. And your dad still came?

A. Yes.

Q. Were there times that you went to field service without your dad?

A. Yes.

Q. And why?

A. My dad would stay and take care of my mom, and I didn't want that to get in the way of going out in service, and so that's why.

Q. You told us about your commitment to field service.

Would it have been pleasant for you to stay home with your parents when things were that bad?

A. No.

Q. So if you were doing field service without either parent, how did you go?

A. Usually, you know, we would have groups, groups that would go. And it was kind of something that we had scheduled. I would go with somebody in the group.

Q. And how would you know what group to be in?

A. Those were -- are you talking about the actual service meetings?

Q. Yes.

A. I think those were predetermined by the elders.

Q. And how would you know where to go for your service, your field service on any given day?

A. Those are usually prescheduled.

Q. And who would tell you where to go?

A. Well, in that room that I was talking about, usually it was on the board. Anything that was -- you know, it was just paper on the board that the service meetings were scheduled and where they would be held.

Q. And that was at the Kingdom Hall?

A. That was at the Kingdom Hall.

Q. How would you get to Kingdom Hall if your dad wasn't going to go to field service with you?

A. I would get a ride.

Q. Were there times that he dropped you off?

A. Yes.

Q. Were there times you got a ride with someone else?

A. Yes.

Q. Were there times that Jonathan Kendrick volunteered to take you?

A. Yes.

Q. Were there times that you went out in the field service with Jonathan Kendrick but without either of your parents?

A. Yes.

Q. Did your abuse by Kendrick occur on some of these occasions?

A. Yes.

Q. Tell us what would happen.

A. Our groups would go out, we would get our territories, and we would go out and service. And we would do door to door.

And then there was times when our groups would separate even further. And we would go to, you know, laundry mats or -- and things like that. And sometimes he would take me, he would take me to go do some of these things and then we would end up at his house.

Q. He would take you in his --

A. In his truck.

Q. What do you remember about riding with him in the truck?

A. The dog hair.

Q. I'm sorry. What?

A. A lot of dog hair.

Q. What else do you remember?

A. The windows. It was an older truck, and the -- the passenger door didn't work. And I was -- I wasn't strong enough to push the button, so he would open it for me, and then I would get in. And then it

didn't work, and he would have to let me out. It was a dirty truck.

Q. What do you remember besides the dog hair being inside the truck?

A. I remember tools being had a multicolored bench seat in his truck, and he had a blanket over it.

Q. Did he play music?

A. Yes. He listened to classic rock.

Q. And what would he say -- well, there were times that he took you to his house?

A. Yes.

Q. More than once?

A. Yes.

Q. More than twice?

A. Yes.

Q. Many times?

A. That's what it feels like.

Q. And what would he say to you?

A. He would just say, "Let's go play."

Q. How would he take you from the truck inside his house?

A. I could never open the door, so he would come and open the door. And he would lead me to the house and usually with his hands on my shoulders.

Q. Now, were Evelyn and Andrea ever in the house

when he took you there?

A. No.

Q. Did you even know they still lived there?

A. No.

Q. Was anyone ever there?

A. No.

Q. And did he do things to you there?

A. Yes.

Q. What did he do?

A. It started with him touching me and putting his hand up my shirt and down my pants.

Q. Did he remove all of your clothing at times?

A. Yes, he did. He would take pictures.

Q. Did he remove all of his clothes at times?

A. Yes.

Q. Did he have you do things orally with him?

A. Yes.

Q. Did he sometimes do things with some kind of object?

A. I was too small. And then it would seem to excite him, and he would use a pen.

Q. Where did you go after this was over?

A. Maybe to the Kingdom Hall. Maybe to lunch with the rest of the service group.

Q. Did you maybe want to show anyone what had

happened to you?

A. No. I was scared.

Q. What did you do to hide it?

A. I just tried to act normal. That was the best I could do then.

Q. After you no longer were being abused by Mr. Kendrick when you were 12 and 13, did you still from time to time see him in Fremont?

A. Yes. I would always be scared by the sound of a truck that was like his.

Q. What kinds of occasions would you see him?

A. When I still resided in Fremont and my nana liked to go to the Albertson's or Lucky's in Centerville, and I would quite a few times see him there or somewhere in Fremont.

Q. What would you feel when you saw him or his truck?

A. I was scared.

Q. And what would you think of?

A. Where can I hide?

MR. SIMONS: I have nothing further.

THE COURT: Would you like to take a break for a few minutes?

Let's take a break until 11:30.

(Break taken)

THE COURT: All right. Mr. McCabe.

MR. McCABE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. McCABE:

Q. When I took your deposition back in August, you mentioned that you were intending to go to Cerritos Junior College.

Do you recall that?

A. Yes, I do.

Q. Did you ever get to attend classes there?

A. No, I didn't.

Q. And that is down in the Downey, Norwalk area, that college?

A. Yes. Down in Los Angeles.

Q. When did you move from that area?

A. Very recently. It has only been a couple months.

Q. And you now live in Stockton?

A. Yes. That's correct.

Q. You live with your mother?

A. Yes, that's correct.

Q. Do you live in a house or an apartment?

A. In an apartment.

Q. Does anyone else make up that household?

Just you and your mom?

A. Just my mom and I.

Q. Do you have any pets?

A. I have a hamster.

Q. A hamster?

And you are interested in being involved with veterinary work; is that correct?

A. Very interested.

Q. Now, when you informed my clients, Mr. Clarke and Mr. Lamerden about your abuse, where did you meet?

A. We met in the back room of the Kingdom Hall in Fremont.

Q. Kind of like a library room?

A. No. It was the actual school.

Q. So next to the library?

A. Correct.

Q. And you arranged that meeting with them; is that correct?

A. It was arranged.

Q. Did you call Mr. Clarke and set it up?

A. No, I did not.

Q. How did you happen to go to the Kingdom Hall and meet them?

A. The meeting was arranged by Cliff Williams.

Q. And when you met with them, did they pray

with you at the start of the meeting?

A. Yes, they did.

Q. Did they have their Bibles with them.

A. Yes.

Q. Did you ask them after that meeting to contact your father?

A. Did I ask them?

Q. Yes.

A. I can't recall.

Q. Now, your claim against Mr. Clarke and Mr. Lamerden and the representatives of the Fremont Congregation was that they didn't protect you from Mr. Kendrick; is that correct?

MR. SIMONS: Objection. Your Honor. I think it is vague and calls for a legal conclusion.

THE COURT: Well, I think it certainly might call for a legal conclusion.

Counsel, why don't you rephrase it. It doesn't seem to me to be a factual basis for the claim rather than --

BY MR. McCABE:

Q. Your claim is that my clients were negligent in protecting you; is that correct?

MR. SIMONS: Same objection.

THE COURT: Same ruling.

BY MR. McCABE:

Q. All right. You want money damages from the Fremont Kingdom Hall, right?

A. Yes. But there's a lot more than that.

Q. But you want money damages from the congregation for your pain and suffering; is that correct?

A. Yes.

Q. And for your past medical expenses and your future medical expenses?

A. Yes.

Q. And for any other lost economic damages that you have had; is that correct?

A. Yes.

Q. And you want the same money damages from the Watchtower Bible and Tract Society also, don't you?

A. I guess.

Q. Okay. And what about Mr. Kendrick, the monster? You want money damages from him as well, don't you?

A. I guess.

Q. Well, that's what this process is all about; it is about obtaining money for your damages?

A. There is more to it than just that.

Q. Okay.

A. I believe.

Q. But money is a factor in this case?

A. Yes.

Q. Okay. And you want money from the monster, Mr. Kendrick.

A. (Witness nods).

Q. Is that a yes?

A. Yes.

MR. McCABE: Your Honor, may we approach please?

(Discussion off the record).

BY MR. McCABE:

Q. Ms. Conti, back on December 28, 2012, did you execute an agreement that basically states that if you got any judgment against Mr. Kendrick in this case, you would not seek to execute on that judgment or obtain the moneys that would be due and owing to you?

MR. SIMONS: And the objection is, your Honor, is that it calls for a violation of the evidence code privilege and the settlements and that is irrelevant and factitious.

THE COURT: All right. And I will overrule you. But I will allow you to ask questions of your client regarding context.

THE WITNESS: The question you are asking,

did that agreement ever -- is there an agreement?

MR. McCABE: Yes.

BY MR. McCABE:

Q. Did you have an agreement with Mr. Kendrick in this case?

A. Yes, I do.

Q. And that agreement is not to seek any money from him if you are awarded it in this case?

A. Yes.

MR. McCABE: I have nothing further, your Honor.

THE COURT: Counsel.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Do you need another break?

A. I'm fine.

Q. Do you recall your deposition back in August of 2011?

A. Yes.

Q. And I didn't attend that; is that correct?

A. No.

Q. I did not, correct?

A. No.

Q. Okay. So you testified during that

deposition that you never went to Kingdom Hall without one or both of your parents.

Do you recall that testimony?

A. Yes, I do.

Q. And is that still true today, that -- your testimony being you never went to Kingdom Hall without one or both of your parents?

A. Yes.

Q. So what that means is, you never went to Kingdom Hall by yourself, without either Neal or Kathy Conti. You know those names? Those are both your parents?

A. Yes.

Q. And you also testified that you sat with your parents at the Kingdom Hall during meetings.

Do you recall that?

A. Yes, I recall that.

Q. Did you ever go to a meeting at the Kingdom Hall where you did not sit with your parents?

A. I don't know.

Q. You don't remember any. Correct?

A. No.

Q. Okay. You don't remember any?

A. I don't recall.

Q. And your testimony was that the first time

anything occurred at the Kingdom Hall was in the main auditorium with Mr. Kendrick.

Do you recall that testimony?

A. Yes, I do.

Q. And you said he bear hugged you; is that correct?

A. That's correct.

Q. Is that the type of hugging you were describing earlier?

A. Yes.

Q. And you testified that that was in front of others and it happened during meetings?

A. Yes.

Q. And you also testified that the bear hugs occurred at every meeting you went to at the Kingdom Hall.

Do you recall that testimony?

A. It felt like that.

Q. And do you recall testifying that Mr. Kendrick made you sit on his lap during meetings?

A. Yes, I do.

Q. Did that occur with your parents right next to you?

A. I don't recall.

Q. Where in the auditorium did he make you sit

on his lap during the meetings?

A. It was either -- the only seating in the Kingdom Hall is in the main auditorium or in the back school.

Q. But others were always present when he made you sit on his lap; is that correct?

A. That's correct.

Q. Now, you also testified that his abuse of you started when you were about age nine; is that correct?

A. I believe so, yes.

Q. And you would have turned nine in November of '94.

Do I have the math right on that?

A. Yes.

Q. And for what period of time did this abuse occur? When did it end?

A. It ended when I didn't see him anymore.

Q. Do you remember testifying in deposition that it ended right after your parents divorced, when you stopped attending the Kingdom Hall?

A. Yes.

Q. Do you recall that testimony?

A. Yes.

Q. Is that when the abuse stopped, then?

A. When I stopped going to the meetings.

Q. And you stopped going to meetings when? After your parents divorced?

A. I couldn't say. Give me -- I couldn't give you a specific time when I stopped going.

Q. Well, did you continue to attend meetings after your parents separated in July 1996?

A. On and off.

Q. You attended with your father at that point; is that correct?

A. Yes.

Q. And did the bear hugs in the Kingdom Hall after you attended with your father after your mother and father separated?

A. If he was there, yes, I believe so.

Q. Okay. So after July of '96 there were still incidents involving Jonathan Kendrick and you. Correct?

A. It feels that way, yes.

Q. And what is your understanding of when your parents actually divorced? Is that July 1997; is that what you remember?

A. I think when you are a kid, the divorce might not necessarily be when the court says it is.

Q. Okay.

A. It is when turmoil is in your family.

Q. But you still attended the Kingdom Hall after

your parents separated; is that correct?

A. Yes.

Q. And when your parents separated, did your mother stay in the family home?

A. Yes.

Q. And that was on El Cajon?

A. Yes.

Q. And when your parents separated, you moved out of the house right away, right, with your father?

A. Yes, for a short time.

Q. And you lived at your grandmother's house at that time. Correct?

You and your father moved into your grandmother's house, and she moved to another house?

A. Correct.

Q. And while you were living with your father at your grandmother's house, you still attended meetings at the Kingdom Hall. Correct?

A. Yes.

Q. And was the abuse by Mr. Kendrick still ongoing then during that time period, after the separation, when you were living at your grandmother's house with your father?

A. I can't be for certain.

Q. Now, you also testified that at the Kingdom

Hall, the only abuse that occurred were these bear hugs and sitting on his lap; is that correct?

A. That's correct.

Q. None of these other things you talked about with Mr. Simons occurred at the Kingdom Hall. Correct?

A. Which part?

Q. Well, we will get into the sexual things where he was undressing you, taking photographs, using a pen, those types of things, those all happened at Mr. Kendrick's house; is that correct?

A. Yes.

Q. None of that happened at the Kingdom Hall?

A. No.

Q. Do you recall, in the deposition, that you testified that at some point, after he was giving you hugs at the Kingdom Hall and having you sit on his lap, that you said the abuse escalated, and he took you to him home after Sunday meetings at the Kingdom Hall.

Do you recall that testimony?

A. Yes.

Q. When did he start taking you to his house after Sunday meetings?

A. I couldn't give you an exact timeline.

Q. Would it have been after -- you know, after you were age nine, then, into, like, late '94 into 1995,

in that time frame; is that what we're looking at?

A. When you are a kid, I don't think you can go by years that much.

Q. Okay. So was your mother attending the meetings at the Kingdom Hall when Mr. Kendrick started taking you from the Sunday meetings?

A. No.

Q. So it was after that time period, at least, correct?

Is that correct?

A. I believe so.

Q. And do you recall testifying that the abuse that occurred at his house, including the use of pens and that, went on for a couple years.

Do you recall that testimony?

A. Yes, I do.

Q. Is that your testimony here today, that that abuse went on for a couple of years?

A. Certainly feels like that.

Q. And you also testified that it happened several times a month during those couple of years.

Do you recall that?

A. Yes.

Q. And the abuse was always at his house that it occurred. Correct?

A. If you are being specific to the things that were later stated, like undressing me and taking pictures, that took place at his house.

Q. Okay.

A. The squeezing me and bear hugs took place at the Kingdom Hall.

Q. Okay. So other than squeezing you with the bear hugs and sitting on his lap, the abuse took place at Jonathan Kendrick's house. Correct?

A. Correct.

Q. And it always happened on Sundays. Correct?

A. I don't think so.

Q. That's what you testified back in August.

A. I don't believe it only happened on Sundays.

Q. How many times did it not happen on Sundays? In other words, how many times did it happen on other days of the week other than Sundays?

A. I can't give you an exact answer on that.

Q. But your testimony is that it occurred several times a month over, perhaps, a two-year period. Correct?

A. That's what it feels like.

Q. What do you mean when you say that's what it feels like?

A. It felt like it was -- it happened over and

over again, and it just didn't stop. It didn't stop.

Q. It sounds like you are not certain how many times it happened. Is that a fair statement?

A. I believe that's a fair statement.

Q. So you are saying it could have happened five or ten times, and that's it?

A. It feels like a lot more.

Q. But you just cannot be certain?

A. I cannot be certain.

Q. And your testimony was that neither Andrea nor Evelyn Kendrick were ever at the house at the time that Jonathan Kendrick took you to his house. Correct?

A. That's correct.

Q. Were they living at the house at the time this abuse occurred?

A. They were never there.

Q. But do you know whether or not they were living there?

A. No, I don't.

Q. Now, you also testified that there was an incident on an Amtrak train; is that correct?

A. That's correct.

Q. Okay. Tell us about that.

A. I think we had -- I don't know where exactly we went. But on the way back, it was my dad and

Jonathan Kendrick. And they were drinking. And I recall -- I remember that he had grabbed me and put me on his lap and he wouldn't let me go and I was trying to get away.

Q. And you testified you had gone to see the movie, "Gone With the Wind," in Sacramento on an Amtrak?

A. I believe so.

Q. And was that an open Amtrak car that that occurred?

A. Yes.

Q. Where was your father at the time?

A. We were in the dining car, so he was sitting across the way from us.

Q. Across from the little table in the dining car?

A. Yes.

Q. And then you and Kendrick were across from your father?

A. I think I was standing, probably running from table to table or something.

Q. And then what did Kendrick do to you on that trip?

A. He grabbed me and he stuck his hand up my shirt.

Q. And do you know when that trip occurred?

A. I couldn't give you a time.

Q. Was Jonathan Kendrick already in the process of taking you to his house to do these other things you described when that Amtrak trip occurred?

A. I don't know.

Q. You don't know if it was before or after?

A. No.

Q. So other than Amtrak and the hugs and sitting on the lap at the Kingdom Hall and what happened at his home, is there any other abuse you are claiming here against Jonathan Kendrick?

A. I don't believe so.

MR. SCHNACK: Your Honor, this might be a good time to break.

THE COURT: I agree.

I will look forward to seeing the jury at 1:30.

Thank you as always for your patience and attention.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. Let's get a couple things on the record.

Number 1 is, I allowed into evidence Plaintiff's 55.

Counsel -- and I have said this on and off the record -- have been very professional in terms of their dealings with each other during the course of this case.

They apparently had an agreement that medical and business records would be admissible, rather than bringing in the custodian of records as to each document and/or exhibit proffered.

The court did spend some time with counsel relative to securing an agreement as to joint admissibility, and I agree with both the comment and the agreement to allow the admission of 55 in.

I know that under questioning, the plaintiff didn't recall her meeting with the physician, Dr. Afruma, nor whether she reported the abuse and its nature. I just make that comment.

Relative to the comment "not to sue," the court was just made aware of the existence of the same. And thought it was a legitimate line of impeachment based upon the question and answer just before I was alerted to its existence.

I don't believe it is a settlement agreement per se, because its outline, basically, were plaintiff to secure any judgment, that she would not pursue collection of the same. I will revisit that ruling in a

sense, having already allowed it personally, I will say that he can give context to the nature as to the reason for the agreement.

If anybody wants to seek to move it into evidence, then I think there may be a need for substantial redactions. Again, I don't have it in right in front of me, but I would highlight that as I sit here.

In terms of the progress of the case this afternoon, certainly defense will do whatever cross-examination they continue to do.

Mr. Simons may want to be with the plaintiff for a little bit, after which I would dismiss the jury for the day and deal with the number of issues regarding the expert, Dr. Applewhite. And then we will continue going forward.

I can't say, and I want to say it now, earlier than later, understanding the schedule for the week, which also includes this judge being in Sacramento for 16 hours of professional education, I have reviewed the proposed instructions, many of which there seems to -- I thought I would direct counsel to meet and confer. There are a number of Casey instructions that are either offered by one or the other that I think with having made a number of rulings I made and whatnot, I

would like to think with the quality of lawyers I have here that we could get through much simpler than when they were submitted to me, a number of those instructions based on my motion in limine rulings.

I clearly understand, and I will let a record be made, that -- and I expect it, candidly, almost from moment one of the briefings, that we will continue to have some debate about a specific language of the duty instruction.

I have also indicated inferentially that the proposed Plaintiff Number 2, as to Kendrick being a volunteer, I am not convinced within the context of this case, because he still was a ministerial servant with whatever attended privilege that attached. So I'm not sure if that portion of Juarez is applicable. I will certainly allow argument on it and context.

But what I'm looking for, and I have already said, I am going to give a duty instruction in this case and the issue is the nature and the substance.

I have also indicated, and I gave some consideration this weekend as to how it was going to effect this, I am not going to tell the jury that I ruled a certain way. I want to frame what I have done in the context of privilege, communication privilege, and the reference to scripture in the context of what

the civil law of California provides without saying I ruled, because I don't want to tilt the balance either way in terms of giving the jury a sense one way or the other.

But I am going to do something with the jury, and I'm starting to work on how I'm going to effect that.

I got something from Mr. Simons relative to a proposal.

So I invite both your meeting and confer on any other circumstance as to dealing with the so-called privilege issue.

Now my record at this juncture doesn't have any reference to privilege, and everybody has behaved themselves relative to that.

But certainly, I, and we, have a very knowledgeable jury here. So when they start deliberating, I am sure they are going to start to talk about what weight can we give the scriptures and the nature and context of how the information was delivered. So I want to give you a preliminary set of thoughts about that.

Then finally, I am going to retire to chambers, and I'm going to work through Mr. Simons' admissibility of statistical evidence or the absence

thereof. Nice work.

And I also have glued to my work station in there, the motion in limine number nine, I believe, of plaintiff, as to Monica Applewhite.

I have a full set of documents from the defense as to Plaintiff's Request to Exclude Portions of Applewhite's Testimony. And I will, as soon as we deal with the witnesses here this afternoon, I will deal with, contextually with the video of Dr. Applewhite so we can be in good order to proceed, I presume, tomorrow morning.

And just to kind of cut to the chase, since we adjourned a little earlier, tomorrow I would expect or should expect the video of Applewhite, I presume.

Mr. Simons, you will have the psychiatrist also, for the plaintiff.

MR. SIMONS: Right. She will be here early.

THE COURT: Okay.

And then at that point in time, subject to rebuttal, the plaintiff would rest?

MR. SIMONS: Yes.

THE COURT: And then the defense, tomorrow would intend to have or call upon?

MR. McCABE: After Applewhite, Mr. Shuster. And I have three women from the congregation who will

testify, and then Mr. Clarke.

THE COURT: Okay.

All right. And then we will be in session Wednesday. I was trying -- because I'm a script guy, I was trying to figure out when we are going to have that session on instructions.

And I'm the problem. And I'm the problem because I will get in my humble vehicle and I will drive to Sacramento for a couple days.

And in the sense of thinking of all that, and that's no negative inference to Sacramento, so that's the fact of presenting to judges twice a year, one in Sacramento and one in LA. And negative inference to LA, I spent four lovely years down there.

All right. Anything further?

MR. SIMONS: Yes, your Honor.

Generally speaking, three women from the congregation, there is not a particularly specific identification of who these witnesses would be. And more significantly, whether their testimony is cumulative or even relevant.

THE COURT: Well, I will start with names.

MR. McCABE: All right. Sylvia Munoz, Bernice Munoz, and Pam Figuerido. They are all going to testify about their observations and observances during

the 1993 to 1997 period of time in the North Fremont Congregation.

And they are not cumulative because they all have a different view. And I think in view of the number of doctors we had testify from Kaiser and the length of time that my witnesses are going to testify is hardly something --

THE COURT: Well, I don't make premature rulings on evidentiary objections.

Certainly, Mr. Simons can ring the bell if the story line is the same on the basis of all three.

I can think of a number of ways they would not necessarily be duplicative. But I will await their testimony and the ringing of the bell.

MR. McCABE: If we finish with the plaintiff's testimony and rebuttal Wednesday morning, would we be able to talk instructions in the afternoon?

THE COURT: Oh, absolutely. Absolutely.

But the sense I want to give everybody here is, because this has been so well put together by counsel, that you are well ahead of the cliff of time.

So there is no hurry way to work with the judge on this one all all in terms of where you are. So, do your work, and if that ends up being the case, the answer is absolutely.

MR. SIMONS: Your Honor, if we are -- since we are kind of on schedule, if we are able to resolve all the instruction issues on Wednesday, then it seems to me that we can show Dr. Williams' video Monday morning, and then proceed to instruction and argument, or argument and instructions whichever seems to support follows, but --

THE COURT: And I will tell you what I generally do and I would want to do in this case in particular.

What I generally do is instruct before closing argument. I have my reasons for it. Some are obvious; some aren't.

But in a case like this, and this is a compliment to all of you, is that this is as engrossed a jury as you are going to find. They have been educated in many ways as to many circumstances of the actions of many, forgetting the umbrella of how the pleadings evolved.

But in this particular case, it would be my druthers, absolutely, to resolve the instruction aspects and have those ready to give to a jury, as they go in a jury room, with those instructions, and the exhibits go in.

And to the extent you are legitimately ready

on Monday, I would instruct them and you would argue.

But I have found and have assessed the number of cases, the more interesting and complex a case, the more you really want give the instructions before you argue.

Because I think the problem is, I already have -- you know, attorney's statement is not evidence. But everybody wants to know what the burden is. I mean, every person, every juror who comes in here, say, I'd like to hear from the judge early on, on what is the burden here. The same thing, I believe most of them say they would like to hear the instructions before.

All right. On that high note, I will look forward to seeing everybody at 1:30.

(Lunch recess)

MR. McCABE: Your Honor, I'm going to discuss the redaction.

THE COURT: May I see the redacted version? I understand as redacted.

Is that okay with you?

MR. SIMONS: The only redaction I think that should be made, your Honor, is Toy Register. Because central to this agreement is that this guy is not going to be coming into court and intimidating and threatening all the witnesses, all the women witnesses. And they

all testified except for Toy Register.

THE COURT: Okay.

And to that specific issue as to whether Kendrick, et al, refraining from contacting and harassing --

MR. McCABE: We don't have an objection.

THE COURT: Here is the redactions I'm going to direct, that the only thing being redacted from the first page is Toy Register.

Now, let's see what else is on the second page.

Back to you, Mr. Simons, relative to one paragraph on Page 2.

Do you have any objection to that being redacted, understanding I made my ruling?

MR. SIMONS: And with that understanding, your Honor, I'm not sure why it would be redacted. There doesn't seem to be anything confidential or misleading there.

MR. SCHNACK: Your Honor, we don't have an objection.

With that one redaction, we were being overly cautious.

THE COURT: All right. I will leave that.

MR. SIMONS: And your Honor, in explaining

this agreement, part of Ms. Conti's reason and willingness to do this is the criminal system had already dealt with him. He was a registered sex offender and he was convicted in 2004 and she knew that. And therefore, I would suggest that the door has been opened for her to tell why she entered into this agreement.

MR. McCABE: Well, that's novel, your Honor.

THE COURT: Quite frankly, it is good lawyering, but novel?

MR. SCHNACK: Well, novel -- novel after the fact.

MR. McCABE: That conviction can't come in.

THE COURT: And I agree. I am good one to judge when doors are open and all that. So, I would not agree to the condition of 2004 comes in.

MR. SCHNACK: Your Honor, and everything related to it, including the Megan's Law listing, Kendrick being on the website, all of that has to be out.

THE COURT: Well, we haven't gone into that yet, and absent some form of really opening the door, we are not going to go into that at this time.

I will let you ask her -- I have already told you, you should give context to the circumstance.

Now, basically, I ruled it, this is not a civil cell network type of nature that is excludable. And it was, in my view, a legitimate area, based upon the question and the answer.

That having been said, I know that you said you have had the door opened in terms of giving context to why she did this.

So long as she doesn't refer specifically to the 2004 conviction, we have had a rule of testimony about the 1993 conviction, she can testify truthfully as to whatever she felt about him having been dealt with.

But no express duty as to 2004 and all the intended circumstances.

MR. SCHNACK: Including names, all websites, all that kind of thing?

THE COURT: Correct.

MR. McCABE: Okay. And there is one other issue while we're on record.

THE COURT: All right, Mr. McCabe, I'll hold you to that.

MR. McCABE: For right now.

The plaintiff testified several times, when I asked her about money, well, were there other reasons. And I suspect that she -- what her other reasons were something that we heard from her is that she wanted a

change of policy. There is no request for injunctive relief in this complaint. I think she needs to be instructed that she can't tell us that she wants us to change our policy in this case, because it is not a remedy that she sought. And I think it should be excluded.

THE COURT: Mr. Simons?

MR. SIMONS: Well, first of all, Cliff Williams testified that's what she talked to him about before there was a lawsuit --

THE COURT: That's the personal thought I had.

MR. SIMONS: Secondly, although we have redacted part of it, part of that same sentiment is expressed to the Fremont elders, and that's in evidence in one of the exhibits, and that's all before she brought the lawsuit.

THE COURT: I would deny the request of Mr. Williams' testimony.

Anything else, counsel?

MR. SCHNACK: Not right now.

THE COURT: All right. Then that redaction as related in Toy Register is out. Otherwise, it is in. And --

MR. McCABE: So that would be Defendant's

Exhibit Number 135.

THE COURT: Do we agree on that, Mr. Simons?

More importantly, Madame Clerk, you and Ms. Kraetsch will read it as Number 135.

MR. SIMONS: Thank you, your Honor. Another appropriate exclusion.

THE COURT: All right. Then 135 is in.

(Whereupon, Defendant's Exhibit Number 135 was admitted into evidence)

THE COURT: And then put that on your list so we end up with our complete record.

MR. McCABE: Your Honor, I think that Mr. Simons would agree, but I could be wrong, we don't want to redact the top line that shows that it was a fax from Linda Kendrick.

THE COURT: You do or you don't?

MR. McCABE: I do.

THE COURT: Well, let me see. I almost hate to ask this question in terms of the lineup here. I heard the name, but I still haven't filled a spot on this.

Linda Kendrick is whom to Jonathan?

MR. SIMONS: His current wife --

THE COURT: Current wife.

MR. SIMONS: -- and the grandmother of his

2003 victim.

THE COURT: We will redact from Linda Kendrick, because they don't know who she is. I'm not sure. I will even do it under a 352 analysis in terms of confusion.

MR. McCABE: Thank you, your Honor.

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: Okay, Mr. Schnack.

MR. SCHNACK: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Ms. Conti, let's go back, briefly, to your August 25, 2011 deposition that was taken in your attorney's office.

Do you remember that?

A. Yes.

Q. Do you remember the admonitions that were given to you prior to your testimony by Mr. McCabe?

A. Do you mean the rules of the --

Q. Yeah. The rules of the road for depositions, what was going to happen, what you had a right to do.

Do you recall that?

A. I can honestly say that I remember getting

those. As far as singling them out, I don't know.

Q. Okay. Well, let's go through at least a couple of them.

Let's turn to page 8, line 1 of her

Can you see that there?

MR. SCHNACK: Your Honor, may I approach?

THE COURT: You may.

MR. SCHNACK: And, your Honor, may I just stand here and read with her?

THE COURT: Well, I think with that -- up there.

BY MR. SCHNACK:

Q. So Mr. McCabe asked you, he said:

"And I will assume if you answer my question that you understand the question, but I'm just here to get your testimony. I'm not going to try to get any trick questions or anything like that. So if I ask you a question that's unintelligible to you or you don't understand, please ask me to rephrase it or tell me you don't understand so I can try to do that. Is that fair to say?"

And your answer here was what?

A. Yes.

Q. And Mr. McCabe said:

"Whatever you testify to here today will be put in a booklet form, and it is a booklet form like this that is in my hand. And it reads like a script in a play sometimes, and it will be presented to you to read and sign. You are free to make changes in the transcript if you feel that there is a material mistake being made in the transcript. But if you do make changes, that can be commented upon by me or someone else and affect your credibility in a future proceeding. Do you understand that?"

Your answer was?

A. Yes.

Q. And then Mr. McCabe said:

"So what I'm saying, we just want your best testimony today, your best recollection. I don't want you to guess about anything. If you don't know, that is certainly an acceptable answer. Do you understand that?"

And your answer was a simple yes; is that correct?

A. That's correct.

Q. Now, in your deposition you never mentioned

that you were taken by Jonathan Kendrick from field service; is that correct?

A. That's correct.

Q. Shifting gears.

Do you have information -- or back in February of this year, did you have any information about Jonathan Kendrick's financial status at all?

A. No.

Q. No?

A. No.

MR. SCHNACK: That's all I have, your Honor.

THE COURT: Okay. Mr. Simons.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Your Honor, I'm showing Exhibit 18, which is Exhibit 106.

Now, you were here when the elders testified about your meeting with them in 2009, the Fremont elders.

Do you remember being here for that testimony?

A. Yes.

Q. In their letter of your meeting --

MR. SCHNACK: Your Honor, this is beyond the

scope of direct or cross. He had the opportunity to bring this up in his direct.

THE COURT: Overruled.

BY MR. SIMONS:

Q. You were asked if you wanted to confront Jonathan Kendrick, and you said what?

A. I said no.

Q. And in that meeting, what did you tell the elders in Fremont was your biggest concern?

A. I wanted to protect other children.

Q. Did you ask for any money?

A. No.

Q. And we heard Cliff Williams come up and testify about the meeting that you had with him down in Los Angeles.

Do you remember that meeting?

A. Yes, I do.

Q. And there were two telephone calls as well over a period of a year.

Do you remember that?

A. Yes, I do.

Q. And Mr. Williams told us that you had talked to him about changing the policy so that children would be protected.

Was that testimony that he gave true?

A. Yes, it was.

Q. And did you that conversation with Elder Williams that you wanted to have policies changed so that children would be protected?

A. That was my main concern. That was the whole reason why I talked to them.

Q. Did you ask for any money?

A. No.

Q. In any of these meetings did any of the elders that you talked to ever express any interest in helping you change the policies so that children could be protected in the future?

A. No. In fact, it was quite the opposite.

Q. If the witnesses had agreed to change their policy of secrecy involving children and sex abuse, would you have ever brought this lawsuit?

A. No.

Q. Why not?

A. Because I don't want to have to go through this.

Q. Now, with regard to your agreement with Mr. Kendrick, did you feel that the civil court was really the right place to deal with Mr. Kendrick?

A. No.

Q. You knew you had to name him because he was

the perpetrator; isn't that right?

A. Yes, it is.

Q. And where did you feel was the right place to deal with Mr. Kendrick?

A. Criminally.

Q. And have you reported to the Fremont Police Department that Jonathan Kendrick abused you when you were a child?

A. Yes, I have.

Q. Did that matter -- well, let me ask you this: Have you met with the Fremont Police Department?

A. I have met with both a sergeant and gave the report to the sergeant, and the sergeant felt that it was an adequate story or allegation to bring in an investigator. And I sat down with the investigator on a separate occasion.

Q. What do you understand is the status of that, as far as you have been told?

A. It is a very active investigation.

Q. Now, there were some other terms in this agreement that you made to me through Mr. Kendrick, weren't there?

A. Yes.

Q. And one of them was that he would not harass, molest, intimidate, contact or annoy you during any of

the proceedings related to this lawsuit.

Do you remember that term?

A. Yes, I do.

Q. Was that important to you?

A. That was very important to me.

Q. And that if Mr. Kendrick was subpoenaed by either side, he should still have to come to court?

A. Yes.

Q. And not just you, but Mr. Kendrick agreed to refrain from contacting and intimidating and annoying and harassing the other women, witnesses in this case, including Evelyn Kendrick. Correct?

A. Correct.

Q. And Andrea Becerra?

A. Yes.

Q. And Claudia Francis?

A. Yes.

Q. And your mother, Kathleen Conti?

A. Yes.

Q. And Carolyn Martinez?

A. Yes.

Q. Was that an important part of the agreement to you?

A. That was a very important part.

Q. And why?

A. I felt that -- I'm sure that, you know, for a lot of reasons, they are not as scared of him as I am, but I know that for the sake of this case, for people to come forward and be completely honest, that it was important for them to not feel his presence.

Q. And lastly, you were asked about not mentioning the field service in your deposition.

Were you asked about field service in your deposition?

A. No, I was not.

Q. When you met with Dr. Williams, who was the mental health examiner hired by the defendants to conduct an examination, did you tell him about the field service?

A. Yes, I did.

MR. SIMONS: That's all the redirect, your Honor.

THE COURT: Okay. Mr. Schnack.

MR. SCHNACK: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. Ms. Conti, you mentioned aspects where you agreed to not take any money from Mr. Kendrick no matter what this jury does.

You said it was important that Mr. Kendrick not harass these other people.

Was that important to you prior to February 28th of 2012?

A. What is the significance of February?

Q. That's when you signed the agreement. Prior to that, he supposedly could have harassed all these people.

A. He very well could have.

Q. Yeah.

So why in late February of 2012 did that become important enough to you to sign an agreement?

A. I felt that for this case, for people to be able to testify to the truth of what happened, that if his presence was here, that people might be scared or intimidated by that fact.

Q. But the agreement says also not to show up at depositions and things like that.

And this case was filed in early 2011, wasn't it?

A. Yes.

Q. So why wasn't that important when depositions were being taken? Your deposition was taken in August of 2011, other depositions were taken in 2011.

So why wasn't that important then?

A. I think when this case was started, it has been a fear of mine that he be around.

Q. But nonetheless, you have a very explicit agreement not to take any money from Mr. Kendrick no matter what this jury does; is that correct?

A. Yes. But there is more to that.

Q. Excuse me?

A. There is more to that. There was a reason for that.

Q. And you have explained that. Correct?

A. Correct.

Q. But again, you are not going to take any money from Mr. Kendrick no matter what this jury does.

A. No.

MR. SCHNACK: Nothing further, your Honor.

MR. McCABE: May I have just a moment, your Honor.

I have nothing further.

MR. SIMONS: May we approach?

(Sidebar discussion)

THE COURT: To give the jury some context, on January 12, 2012, Mr. Kendrick defaulted in attending this proceeding. And I entered an order setting that aside, allowing him to come forward within this proceeding, on January 19, 2012. I'm telling you that

only to give you context, okay.

MR. SIMONS: Okay. Thank you, your Honor. Nothing further.

MR. McCABE: Nothing further, your Honor.

MR. SCHNACK: Nothing further, your Honor.

THE COURT: All right. Ms. Conti, thank you very much for your time.

MR. SIMONS: Your Honor, with the exception of Dr. Lynn Ponton, who has been arranged in advance to appear tomorrow morning, the Plaintiff rests.

THE COURT: Okay. To the jury, I'm going to excuse you now. I'm going to --

You have a sense of this because you have seen this judge at work.

I'm going to make another series of decisions that will continue to frame the presentation to you of evidentiary issues that have been presented on an ongoing basis to me.

That will allow us, with one minor exception and perhaps a little or some of both --

You would have one more expert tomorrow, Mr. Simons, is that --

MR. SIMONS: Yes, your Honor.

THE COURT: Okay. The defense would then commence the defense case. And we talked about that

also.

And please understand the context. A lot -- and forgetting there have been a couple interruptions in this matter. But the timing of the case proceeds on a day-to-day basis, and oftentimes in response to decisions that I make as a jurist. I make all forms and types of decisions. So this case --

Well, for instance, on Wednesday -- and I told counsel, they are well ahead of the time schedule to you, I will be very much more demonstrative late tomorrow afternoon to see where we are. But the goal, of course, is to get, understanding my educational issue, is to allow each side to present their evidence fairly within the time agreed, and to submit it to you for decision, legitimately and as early as we can.

So I will see you tomorrow at 8:30. I will take my time to listen to argument and make another series of decisions, and then I will really be able to assess late tomorrow afternoon where we are and what time burdens will be on you.

But I'm going to look at you collectively in the eye and tell you that we continue to be ahead of a tough calendar judge's schedule, very legitimately in terms of quality and collaboration of all counsel here. So I will look forward to seeing you here tomorrow at

8:30.

(Break taken)

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. Let's talk about Dr. Applewhite's depo. I'm going to be as simple as this judge can be.

There are a number of the objections, I do believe go more to weight than admissibility. I am very expressed about a couple of them.

I don't want any reference by Dr. Applewhite to remain about the duty to inform nonexisting religious organizations in 1993, particularly in connection with how I am intending to instruct as to general civil duty.

So I just want you, as best, to -- I'm not looking at that vision -- but her comments to say duty to warn did not exist at that time. I understand what she was saying, but the jury very well may not. And there may be some confusion there.

As Opinion Number 9, privacy and confidentiality considerations, most of that is okay with me, except it appears she started talking about the vast part of the law for a reason, dot, dot, dot.

Mr. Simons, what did she dot, dot, dot with, relative to that?

"And so I recognize that it is part of the code of ethics for a reason, that's part of the law for a reason, and that's part of what religious organizations across the board talk to their leaders about."

I think that's the answer we --

MR. SCHNACK: Your Honor, we have that deposition loaded if you --

THE COURT: I'm concerned about that sentence talking about the law and now religious leaders. Okay, I think that can be problematic.

MR. SCHNACK: Page 36, line 22 to page 37, line 14, is what is referenced in Plaintiff's motion.

(Whereupon, video recording was played)

BY MR. McCABE:

Q. Was part of your opinion that confidentiality religious organizations and other organizations that you worked with, was that a good thing or bad thing?

A. It is not part of my opinion to say whether it is a good thing or a bad thing. I just know that with counseling, with social work, or therapists, with religious leaders and pastoral counselors, there is a trust relationship that is built, and when people need to go to someone for help, they need to feel that they are going to disclose information, and the person they

disclose to is going to be trustworthy. They are not going to gossip about them, and they are not going to be reckless and share information.

And so I recognize that that's part of the codes of ethics for a reason, that is part of the law for a reason, and it is part of what religious organizations across the board talk to their leaders about.

(Whereupon, video recording was stopped)

THE COURT: Okay. Her voice just dropped down for the last part of that sentence.

MR. SIMONS: "What religious organizations across the board talk to their leaders about."

THE COURT: Okay.

I'm inclined to strike that sentence, because, particularly in this case, we have got information they talked to lawyers back in New York, and all sorts of stuff.

But it also starts to meddle with what the law applies as to confidentiality. And I don't want confusion with that jury as to "the law" because I'm going to set forth a standard of care that they are going to interpret and apply. And I don't want them to have a sense that, again, that's an expert saying what the law is.

And so is that saying to religious leaders across the board, the understanding is they are following the law?

MR. SCHNACK: So you are taking out a couple sentences out?

THE COURT: She ran them together. I am taking the sentence that started with, "That's part of the law for a reason."

And it sounds to me like it was a full sentence. And that's why religious leaders rely on -- you know, I couldn't tell as a matter of sentence structure whether that was a one long sentence or were two sentences with appropriate grammatic structure.

TECHNICIAN: Your Honor, do you want to hear that last part one more time?

THE COURT: Yeah, I do.

(Whereupon, video recording was played)

A. "That was part of the code of ethics for a reason, that is part of the law for a reason, and that is part of what religious organizations across the board talk to their leaders about."

(Whereupon, video recording was stopped)

THE COURT: Yeah, she took a pause, "that's part of the law for a reason," but it is still connecting notwithstanding the law, the response to what

religious leaders across the board for a reason is, and it could be linked up because that's what the law provides. But whether there are two sentences or one -- I don't want that in there.

MR. McCABE: So starting with, "That's a part of the law --"

THE COURT: Right.

MR. McCABE: -- for the rest of the answer.

THE COURT: And those would be my ruling about Dr. Applewhite.

MR. SIMONS: All right. So 8 is out, and 9 is the last sentence.

THE COURT: Modified as related.

MR. SIMONS: Okay.

THE COURT: And the rest of the objections are overruled. I think they do, again, largely go to the weight and -- I'm not privy, but I certainly will be tomorrow. It is a vigorous cross-examination of plaintiff's counsel vis-a-vis the nature of those objections and substance.

MR. SIMONS: And so, your Honor, when we were showing some of the videotape depositions of the health care providers, counsel courteously agreed that we would just edit out the objections that were in there.

THE COURT: I do that almost case-to-case, so

we have a clean tape.

MR. SIMONS: Yeah.

I preserved my objections with the motion, so they can be edited out of the deposition.

THE COURT: Okay.

MR. SCHNACK: Your Honor, one final thing. During his brief cross-examination of Ms. Applewhite, he asked whether one of her partners in another business entity had been -- faced charges of sexual harassment back in the 1990s. And --

THE COURT: Well, to me, that shows a lawyer doing his work. Thorough investigation.

MR. SCHNACK: I'm not sure it comes in at trial, your Honor, so --

THE COURT: I got your drift on that. We could play that. Was there any more link-up as to potential bias as to the expert, other than whatever the width and breadth was of a department getting sued for harassment?

MR. SCHNACK: He just asked her if she was aware that that charge had been made, and she said yes.

MR. SIMONS: Well, no. I asked a little bit more than that.

MR. SCHNACK: Well, let's see it. Let's play it.

It was at the very last part of the deposition. Literally, the last paragraph.

THE COURT: The stinger paragraph?

(Whereupon, video recording was played)

BY MR. SIMONS:

Q. During that time you were sending representatives off to potential clients as an organization that could effectively provide certainty --

(Whereupon, video recording was stopped)

MR. SIMONS: We are talking about during the time of the proceeding. So I'm already in the subject matter here.

(Discussion off the record)

(Whereupon, video recording was played)

BY MR. SIMONS:

Q. Do you do business as Monica Applewhite?

A. I do business as Monica Applewhite, but I also have a limited liability corporation called Confianza.

Q. And before that did you have a partnership called Presidium?

A. Yes. I was a partner in Presidium.

Q. And during what years were you a part in Presidium?

A. Well, when we started the company, it was

called Child Safe Environments, but they kept getting us mixed up with playground equipment and things of that nature. So we also began working with organizations that serve adults, like adults with autism. So we ultimately changed the name to Presidium in 1994. And I worked with Presidium as a cofounder and an owner until 2009.

Q. During the time that you were a partner, was there a partner named Richard Dengel?

A. Yes. Richard Dengel was one of the partners that I had at Presidium.

Q. And is it true that Presidium -- how many total partners were there during the time that you and Mr. Dengel were partners?

A. It's Dr. Dengel. But there were four of us to begin with. There was Dr. Richard Dengel, Dr. Wayne Duehn. And there was -- D-U-E-H-N.

And then there was Mr. Ted Blevins and myself.

And we began with four partners. And Ted Blevins left early on in the partnership. And then Richard Dengel and I brought out the shares of the stock in the company from Dr. Duehn.

And then it was just Dr. Dengel and I for most of the time. We did the majority of the work at

Presidium and supervised and brought all the employees and grew the company.

Q. And during that time, Presidium represented itself to its potential clients as an organization that could effectively provide services in the field of prevention and education of sexual abuse and sexual harassment. Correct?

A. It began with all forms of abuse, because we dealt a great deal in the early years with physical abuse as well, working in foster care and residential treatment. But over time, sexual abuse became the primary focus.

Q. And is it true that during the time you and Mr. -- excuse me -- Dr. Dengel were partners, that he was suspended in 1996 for a semester from his faculty position at the University of Texas without pay for the sexual harassment of a student?

A. That's my understanding.

Q. You knew about that at the time?

A. Yes.

Q. I don't have any other questions.

(Whereupon, video recording was stopped)

THE COURT: Any further argument?

MR. SIMONS: I would say, your Honor, it goes to her qualifications as an expert in sexual abuse

prevention. She didn't know her partner was one.

MR. SCHNACK: The question, your Honor, dealt with sexual harassment. And when he asked whether they provided prevention -- prevention policies, et cetera, it dealt with sex abuse, not sexual harassment. It's not related to anything in the case.

MR. McCABE: In addition, your Honor, it was at the University of Texas, and not in connection with his work at the Presidium. He was suspended for a semester from the University of Texas.

THE COURT: I got that. And I made the judicious decision not to -- but that rule will stick on the last two lines as to Professor Dengel. I love that argument. But as to Dr. Dengel, we will leave that out.

Any further circumstances to deal with, counsel?

MR. SIMONS: Not at this time.

MR. McCABE: Not at this time.

THE COURT: Be prepared. We are moving along well. To the extent -- I guess -- well, and again, get your case and take care of it, and at least be prepared this afternoon to do jury instructions if we can.

Okay. Thank you, counsel.

(proceedings were adjourned at 2:12 p.m.)

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD,CSR 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

JUNE 5, 2012

DAY 5

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A604D27

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: Kellyk@fjslaw.com

Email: Rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF

JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: Jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

JACKSON LEWIS, LLP
BY: ROBERT SCHNACK, ESQ.
801 K Street, Suite 2300
Sacramento, CA 95814
Tel: (916) 341-0404
Fax: (916) 341-0141
Email: Schnackr@jacksonlewis.com

--oOo--

INDEX OF EXAMINATIONS:

	PAGE
WITNESSES FOR THE PLAINTIFF:	
WITNESS: ELIZABETH PONTON, M.D.	
VOIR DIRE EXAMINATION BY: MR. SIMONS	21
DIRECT EXAMINATION BY: MR. SIMONS	29
CROSS-EXAMINATION BY: MR. SCHNACK	48
REDIRECT EXAMINATION BY: MR. SIMONS	51
WITNESSES FOR DEFENDANT, NORTH FREMONT CONGREGATION OF JEHOVAH'S WITNESSES:	
WITNESS: BERNICE MUNOZ	
DIRECT EXAMINATION BY: MR. McCABE	54
CROSS-EXAMINATION BY: MR. SIMONS	63
WITNESS: SYLVIA MUNOZ	
DIRECT EXAMINATION BY: MR. McCABE	64
CROSS-EXAMINATION BY: MR. SIMONS	75
WITNESS: PAMELA FIGUERIDO	
DIRECT EXAMINATION BY: MR. McCABE	76
CROSS-EXAMINATION BY: MR. SIMONS	88

(CONTINUED)

INDEX OF EXAMINATIONS: (CONTINUED)

	PAGE
WITNESS: MONICA APPLEWHITE, Ph.D. (by videotape)	
DIRECT EXAMINATION BY: MR. McCABE	94
CROSS-EXAMINATION BY: MR. SIMONS	128
WITNESS: ALLEN SHUSTER	
DIRECT EXAMINATION BY: MR. McCABE	145
CROSS-EXAMINATION BY: MR. SIMONS	176
REDIRECT EXAMINATION BY: MR. McCABE	184

--oOo--

INDEX OF EXHIBITS:

NUMBER	ADMITTED
Plaintiff's 60, Defendant's 29	163
Plaintiff's 29, Defendant's 44	171
Plaintiff's 12, Defendant's 50	172
Plaintiff's 65, Defendant's 49	174

(EXHIBITS NOT ATTACHED)

--oOo--

JUNE 5, 2012 8:02 A.M.

PROCEEDINGS

(Whereupon the following proceedings were heard outside the presence of jurors)

THE COURT: On the record, Candace Conti versus Watchtower Bible and Tract Society, Inc., et al.

Counsel, what would you like me to address this morning?

MR. SCHNACK: I see that Dr. Ponton is in the audience here today. I wanted to make sure, given the deposition testimony and some other things that have happened here during the trial that she not mention Kathy Conti's abuse by an elder, that she not mention that Kathy Conti --

THE COURT: Why don't you hold because, Doctor, I want you to listen.

Doctor, why don't you come on in and sit in the jury box.

Why don't you come on up. Welcome. And let me get you settled.

THE WITNESS: Thank you.

MR. SCHNACK: And, again, that there be no mention in front of a jury of Kathy Conti's abuse by an elder. And, again, Kathy Conti is Candace Conti's mother. And Kathy Conti's parents were Jehovah's

Witnesses.

THE WITNESS: I'm just going to write some of these down. Sorry, your Honor.

THE COURT: Let's do that. So let's go topic number one. And, Doctor, I made -- just for your information, I made a series of rulings effectively detailing and putting standards and limits in evidence on both sides. So I want you to listen very clearly as to what is off limits relative to your testimony.

First of all, Kathy Conti having been abused by an elder in Jehovah's Witnesses.

THE WITNESS: Okay.

MR. SCHNACK: And second thing is that Kathy Conti's parents were Jehovah's Witnesses.

THE WITNESS: Okay. The grandparents for Candace.

MR. SCHNACK: Correct.

THE WITNESS: Okay.

MR. SCHNACK: That Kathy Conti was raised as one of Jehovah's Witnesses.

The only thing that can be referenced with respect to Kathy Conti is that she was sexually abused as a child, period. Nothing within the church, nothing referencing the church in that regard.

THE COURT: All right.

And in fairness, Doctor, in terms of context, I have allowed Ms. Conti to testify about having been sexually abused.

THE WITNESS: Uh-huh.

Was she unable to mentioned that it was a Jehovah's Witness?

THE COURT: Right. Absolutely. That's part of my orders.

THE WITNESS: Okay.

THE COURT: But we don't want any association stuff relative to that abuse in the church.

THE WITNESS: Thank you.

MR. SCHNACK: The next topic deals with delayed reporting or delayed disclosure or as what might be called Child Sexual Abuse Accommodation Syndrome. One is that, although the syndrome can be mentioned, the credibility of the person making the delayed report cannot be mentioned.

THE WITNESS: This will be a little more confusing, I think, for me.

So I can mention the syndrome --

MR. SCHNACK: Sure.

THE WITNESS: -- the Childhood Accommodation Syndrome. But the credibility, I don't quite understand what you are saying.

MR. SCHNACK: You testified that delayed reports should not be discounted, that they should not be viewed as not being credible just because they were delayed. And that you cannot do that here today.

THE WITNESS: Okay.

MR. SCHNACK: Do you understand the ruling?

THE COURT: Well, let's talk about that one, Doctor, just for a minute.

So let's go -- you see, I haven't seen this deposition testimony.

So you say the Doctor testified how? As to what?

MR. SCHNACK: She testified that delayed reports or delayed disclosure should not be discounted and not be believed simply because they were delayed. And, indeed, she went further to say that, statistically, false reports constitute, I mean, 2 to 8 percent of all reports, something along that line.

THE WITNESS: All right.

MR. SCHNACK: And that gets into the credibility of reports. We discussed this with respect to Carl Lewis, Mr. Simons tried to get him to bring it in. We had a couple side bars.

THE COURT: Your Honor, I fully understand and I know the history.

MR. SIMONS: I would disagree with the depiction of Mr. Simons trying to get that in.

THE COURT: Oh, don't worry about that. I think that is just lawyers being lawyers. But the false reporting aspects, I don't think are germane to what we are doing here. So the testimony as to what is false reports and the credibility, the inferred credibility we shouldn't be talking about. But the delay and the reasons why and whatnot, of course.

MR. SIMONS: Your Honor, if I may, sort of, restate that for the Doctor.

What we are trying to stay away from is any testimony where we say, I found her believable, or I believed her, or her testimony is consistent with what other victims may show connecting Candace Conti and the issue of her credibility directly with the various statistical and research information that we have on delayed disclosure.

THE COURT: And, Doctor, I don't know how many times you have been an expert witness, but the jury has its function, you have yours with the expertise you bring to it. And you are not the judge of the credibility aspects.

You know, you are sitting here to educate the jury as to the nature of the syndrome and the

circumstances without pinpointing it as to the credibility of a particular person.

THE WITNESS: So if I were to say delayed disclosure is very common in childhood sexual abuse victims, would that be --

THE COURT: I think that's fine.

THE WITNESS: Okay.

MR. SCHNACK: Your Honor, I do discourage what Mr. Simons' said only to the extent that it is not narrowed to what he said. Yes, you cannot tie Candace Conti's reports. I believe her that she is credible because of the delayed report. But that indeed delayed reports are credible.

It is a general statement as well that it's excluded, not that it's delayed reporting is common. I don't disagree with. But the fact that they are common and they should not be disbelieved goes a step further.

THE COURT: I don't disagree with that.

MR. SIMONS: And neither do I.

THE COURT: No.

MR. SCHNACK: So the next topic I have is the whole issue of church discipline. Your Honor, the issue of disfellowshipping that came up, what you call "the walking dead" in your report.

Anything related to church discipline, other

than Jonathan Kendrick having been removed as a ministerial servant in the November 11, 1993 report, should not be referenced whatsoever.

THE WITNESS: So run this by me again.

Mr. Kendrick's was removed is my understanding. I can say that, yes?

MR. SCHNACK: Yes.

THE WITNESS: Believe me, disfellowship -- I am not an expert on the faith, so I will stay away from that topic.

MR. SCHNACK: It doesn't matter whether you are an expert on it, but that you shouldn't reference that at all.

THE COURT: Doctor, I want you to know that I ruled that effectively disfellowshipping is a protected activity. You acknowledged to me that you are not an expert on the process or the nature of that. Stay away from talking about what happened to Mr. Kendrick.

By the church, I have allowed evidence into the fact that he had been removed as a ministerial servant, but I don't want any editorializing on that either other than acknowledgment of the fact.

MR. SCHNACK: And along with that, no other form of church discipline. If they didn't disfellowship him, they should have done something else. Nothing

along that line.

THE COURT: That's not your problems, Doctor, and nor is it hardly evidence.

MR. SCHNACK: The next category I have, there were several references both in your report and within your testimony about child abuse within the Jehovah's Witnesses church organization or words to those effect, that we ask be stricken as well and not referenced whatsoever here.

MR. SIMONS: I agree.

THE COURT: Now, Doctor, any questions as to that?

Again, we are focusing on this particular matter, not other goings-on and whatnot.

THE WITNESS: I will do my best. But just, if I am overstepping, please interrupt me.

THE COURT: Oh, I can assure you counsel will.

I am having this little session to avoid -- and if you have any questions -- because what I'm going to do is I'm going to direct you to obey the rules I've already made contextually so that we don't have issues with the jury.

And if you have any questions, the point is to ask them now so we can make sure we have a clean

presentation.

MR. SCHNACK: And that's my concern too with the last comment, Judge, is if she forces us to set up and have another side bar that we have to do repeatedly, that creates the problem we are trying to avoid. So I don't appreciate that you should try. I think you should just do it. That's my suggestion.

THE COURT: Well, gosh, I wish life were that --

MR. SCHNACK: I do too, judge, but we have had to do a number of side bars in this trial.

THE COURT: But I'm a judge that observes the jurors' reactions and whatnot, and they understand it, and I have told them specifically. So, counsel, understand this, that I have a lot of -- here and I think they get it. I think they understand the nature of the process here. And I think they are all very much on board understanding what is going on and why.

But, Doctor, I need -- we are going topic to topic now to assist you in the organization and understanding so we can avoid any problems.

I mean, we have all been here over two weeks to present this case and I have commented, which is rare for me, that counsel have gone the extra number of yards, if not miles, to make sure that the jury gets a

clean presentation of each side of their case. So I need your attention and backing on that, at least.

THE WITNESS: Well, I will make every attempt to follow this. I was just thinking that there might be something that I had not thought about or known about. That's all. I'm really intent on following the rules.

THE COURT: I know. And if you have any questions before you answer, I will allow a break just so there is no misunderstanding.

MR. SCHNACK: There was also reference in the report that Jonathan Kendrick was an elder or that Candace was abused by an elder within the church.

There has already been an instruction that he was not in that position ever. So that should be excised from your testimony completely.

THE COURT: And for whatever reason, and I'm not sure what the reason is, there was some misunderstanding, in at least a couple areas of evidence here, that Mr. Kendrick was an elder. He never was. And I don't know -- it is like a virus. You get that in one report and then you find it in three reports. But I would want you to know this, as a matter of fact, he was not an elder.

THE WITNESS: He served in the capacity as a ministerial assistant.

THE COURT: "Servant" is, I think, what you call it.

MR. SCHNACK: Yeah. You didn't get the name right. But it is "ministerial servant."

THE WITNESS: A ministerial servant. Okay. Am I allowed to say that?

THE COURT: Yes.

THE WITNESS: Okay.

THE COURT: And actually, it has been a wonderful education for this Court in terms of the structure. But ministerial servant, I believe, is the title.

MR. SCHNACK: And the last thing I have is, again, because Paul Inman was referenced yesterday when she shouldn't have been during Carolyn Martinez's testimony. We don't want any references to Paul Inman. The name Inman should not be brought up. And I didn't see it in your testimony, so that's probably not an issue.

THE COURT: I think we are giving Inman maybe a little more due than he's worth.

But, again, I don't know what this profession did in terms of Inman.

How is Inman in your report?

MR. SCHNACK: Did you review any depositions

of Paul Inman?

THE WITNESS: Not to my knowledge.

MR. SCHNACK: Okay. So just don't use the word "Inman" during your testimony, I think we will be fine.

THE COURT: It sounds like that is almost a given.

MR. SIMONS: And I would, your Honor, disagree with the Soviet style of removal of Paul Inman from history. The fact that Carolyn Martinez was married to him was certainly not, I think, intrusive in any way of the Court's rulings.

THE COURT: Yeah, I didn't regard it as a make way pieces of circumstance. I can have a little sketch up here to try to keep everybody, the family tree here in order.

MR. SCHNACK: Well, we disagree with the scope of the ruling then.

But, nonetheless, for our purposes here today, the word "Inman" shouldn't cross your lips, Doctor.

That's all I have, Your Honor.

THE COURT: All right.

And if you want to chat with Plaintiff's counsel, again, I will certainly give you an

opportunity.

All right. I'm glad we had this session. You can review your notes and relax. We start at 8:30 and I will swear you in at that point in time.

And, again, I will advise you to stay within the lines of the rulings I have made. And I have done this specifically because of where we are in the trial and everybody's good faith effort to comply.

All right. Anything else?

I saw your special verdict. I haven't had a chance really to consider it.

MR. SIMONS: That's fine, Your Honor.

Were you able to open it?

THE COURT: I can open it and -- it could only happen in this trial. For some reason, when I get emails from you, they won't print. Sometimes they will print from you; sometimes they won't.

I have had my IT guy in here once. He's going to be back in here.

But I have been able to open it and read it. I'm just not able to print off of it. I'm having my clerk print off of hers.

MR. SIMONS: I think I have a hard copy here with me today somewhere.

THE COURT: Well, you said you were going to

bring it so --

MR. SIMONS: Yeah.

THE COURT: -- you know, with plaintiffs' lawyers there's always hope. So I was hopeful you'd show up with it.

MR. SIMONS: Yes. And I'm wondering -- I didn't notice it in the top of my notes where it usually would be, and I'm wondering if I walked out of the door without it.

THE COURT: Well --

MR. SIMONS: But in which case I decided to bring it --

THE COURT: -- I am certainly not going to hold you to --

(Discussion off the record)

MR. McCABE: You know, one thing I noticed is that, Your Honor, that it lumps the two defendants together and I object to that.

MR. SCHNACK: There are other issues.

(Discussion off the record)

(Whereupon the following proceedings were heard in the presence of jurors)

THE COURT: Good morning, Ladies and Gentlemen of the jury.

Mr. Simons?

MR. SIMONS: Yes, your Honor.

The Plaintiff would call Dr. Lynn Ponton.

LYNN PONTON, M.D.

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record.

THE WITNESS: Certainly.

Lynn, L-Y-N-N, Elisabeth, E-L-I-S-A-B-E-T-H, Ponton, P-O-N-T-O-N, M.D.

VOIR DIRE EXAMINATION

BY MR. SIMONS:

Q. Dr. Ponton, what is your occupation?

A. I am a child and adolescent psychiatrist and a professor of child and adolescent psychiatry at the University of California in San Francisco at UCSF.

Q. And could you tell us, please, about your formal education.

A. Yes, I will. Hopefully, I will remember it.

I am from a French Canadian background from Northern Wisconsin. Went to the University of Wisconsin in Madison, and studied English and biochemistry. Then

followed that up and went to the University of Wisconsin Medical School.

After that, I completed medical school in 1978 and then trained in pediatrics in New York City at Bellevue and St. Vincent's Hospital.

And then following that, I went to the University of Pennsylvania in Philadelphia and trained in adult psychiatry.

Then I came here to the University of California in San Francisco. I trained in childhood adolescent psychiatry, fellowship, for three years.

And then I stayed on as faculty. And I have been at the University of California in San Francisco since 1980 teaching and working.

In addition, I have psychoanalytic training and I'm a trained psychoanalyst at the San Francisco Psychoanalytic Clinic.

So I do a lot of teaching, probably the main doctor there who teaches in the area of adolescent psychiatry. And I work with all the kids with cancer and psychological problems at Moffett Long. So it is a great job, and I get to work with some great people.

Q. Can you tell us if you are board certified?

A. Yes, Mr. Simons.

I am board certified in adult psychiatry and

in child and adolescent psychiatry. Both were obtained in 1985.

And then following that, I worked for both the boards, and I have been a board examiner from 1985 to the present time.

In my area of expertise, child and a adolescents, I served on the board committee and wrote the psychiatry boards, both adult and child and adolescents, for ten years.

So I'm very involved in really helping young psychiatrists learn about the field and hopefully pass their tests and go out and work with people.

Q. Now, what does it mean to be "board certified"?

A. A couple different things, Mr. Simons.

It is a lengthy process because you have to first pass the American Medical Boards, three parts, and get your basic licensure.

Then, within your subspecialties, your specialty areas, you have to take both an oral and a written exam.

Unfortunately, for the young doctors, it costs a lot of money and time, and we are trying to look at how to make it as expedient as possible so we can really educate more doctors.

Q. And, Doctor, after having taken the exam yourself, now you work on creating the examinations for these future specialists in adult and child psychology?

A. That's correct. I do. I love writing. You know, I sound like I'm a nerd. But writing is my strongest skill probably because I studied English in addition to chemistry. And that's probably why I have been able to be adept in certain areas.

Q. Tell us a little bit about the writing that you have done during your career.

A. I have written -- to be a full professor at the University of California. That, I have to say, was not easy for a woman. In 1989, I sued the University of California, Class Action for the Women's Faculty. And I won equal pay and equal advancement for Women's Faculty in a class suit.

I obtained tenure before that time and then had some struggles with them, as might be expected.

So I am very active at the university trying to welcome young faculty, and really faculty from all backgrounds and help them to become teachers and clinicians there.

I have written probably about -- you know, I would have to look at the CV because they change every couple of times, and see how it is listed here -- but

somewhere between 125 and 150 articles.

I have written The Textbook of Adolescent Psychiatry. I'm one of the five authors on that. The Handbook of Adolescent Risk Taking.

I have written other things. I have written some popular books about risk-taking behaviors, sexuality, sexual abuse, that are well known, and I have also written fiction.

Q. Are you licensed as a doctor in California?

A. Yes, I am. I have been since I moved here in 1980.

Q. And have you had specialized experience and training in the field of childhood and adolescent sexual abuse?

A. Yes.

I had the good fortune to have trained in pediatrics in New York City when the first mandatory reporting was coming about. And I remember the first case that I had to report as an intern at Bellevue. And three daughters were abused by their father. And they said -- I remember my attending saying, "We have a new rule that you are going to have to report these cases."

And it took me all day to write them up and report them. And that, I have to tell you, has continued over these 35 years. There is a lot of

reporting.

At UC, we report about one case a week in Moffett Long of sexual abuse. So I have trained the younger doctors in how to do that. I work with the social work team. And I work actually with the state agency some too.

Q. Now, in your teaching assignment, who are the students that you are teaching?

A. I teach young and child adolescent psychiatrists, and then also the pediatricians because they have to be alerted about sexual abuse reporting. The nursing staff at UC, so, psychologists who are training there and social workers.

It is really a wonderful environment to work in, a collaborative environment of about 45 to 50 people working as a team to help the kids.

Q. Now, do you actually see patients? You call it, I guess, clinical practice.

Is that the right term?

A. I see patients in two contexts. In the morning -- not today because I'm here -- but we have walk-arounds, and we will see the cases that are in the hospital at UC. And I'm the main attending. And there is a group of other attendings of younger doctors. We walk around with the kids with cancer.

One of the boys is dying today who has cancer. And the team is meeting with him and with his father to really help them accept the situation. He is very traumatized by it and is in the intensive care unit. And I work with all of those inpatient cases. And I'm involved in both the psychological and some of the medical areas related to it.

I'm quite knowledgeable about pain control as connected with psychological aspects of illness.

Then in the afternoon, I see the patients in the outpatient setting. Usually about 25 to 30 per week.

I'm known particularly for working with young people, like Candace Conti, so the age group of young people, both boys and young men who have been abused too.

Sadly, many young men have been abused also, and it is not as well-known. You know, sometimes the Catholic priest abuse cases have made it more familiar to people, and some of the cases with coaches. And I work with those cases too.

And in the afternoon, I see a lot of patients and I enjoy that. And hopefully I'm done by 7:00 to have dinner with my husband, or if any of my kids are in town, you know, I have dinner with them. I try to get

them to have dinner with me.

Q. Have you experienced, outside of the University setting, with childhood trauma, and in particular with addressing programs for childhood trauma?

A. Oh, yes. I'm very active working with the American Psychiatric Association and with the American Academy of Child and Adolescent Psychiatry.

I was the founding chair in the '80s of the Disaster and Trauma Committee for the American Academy.

You probably appreciate this because I got the idea after the Loma Prieta earthquake, when I watched my own children react to the earthquake and have a lot of traumatic symptoms.

And then we organized town meetings for Oakland and San Francisco and for Marin for parents about how to help your children within a few days after the earthquake. I also worked with the Oakland Fire. And I'm currently very involved in the San Bruno fire cases.

So my expertise is really dealing with post-traumatic stress disorder and disaster and trauma. I think what I am most well-known for in that area is that I went on national television and then went to New York City after 2011 -- or September 11th, and went on

after President Bush to talk about helping the nation's children with post-traumatic stress disorder.

So I know a lot about that area and especially how to help children, adolescents and adults reduce their trauma load really through a lifetime of being in a traumatic event.

MR. SIMONS: Your Honor, I would offer Dr. Ponton as an expert in the field of psychiatry and child and adolescent psychiatry.

THE COURT: Any questions for Dr. Ponton?

MR. McCABE: No, your Honor.

MR. SCHNACK: No.

THE COURT: I would find her qualified as an expert for the two reasons sought.

DIRECT EXAMINATION

BY MR. SIMONS:

Q. Now, Dr. Ponton, did I ask you to evaluate Candace Conti?

A. You did, Mr. Simons.

Q. And did you meet with her?

A. I did. I met with her several times.

Q. And in addition to meeting with her, did you review some other materials?

A. I did.

I want to follow all the guidelines here, but

I reviewed a number of depositions and medical records and many documents, really looking at them related to this case.

Q. Did you review Candace's medical records, including the medical records from her childhood and adolescent years?

A. I did.

Q. And did you review the depositions of various health care providers who have treated Candace over time?

A. I did, Mr. Simons.

Q. When was the first interview that you had with Candace Conti?

A. Let me look at this and make sure of this.

I think the date was incorrect on my evaluation, but I saw her in the fall of 2011. And I believe the first date was September 20th, 2011.

Q. And when was the last date that you saw her?

A. I don't have it. I would have to check my billing records, but I would say within the last two months I met with her.

Q. Did you develop an opinion as to whether or not the childhood sexual abuse Candace Conti experienced was a cause of harm to her?

A. Yes, I have, Mr. Simons.

Q. And what is your opinion in that regard?

A. I believe that the childhood sexual abuse such as Candace Conti endured for a lengthy period of time significantly harmed her.

Q. And you mentioned earlier post-traumatic stress disorder, PTSD.

What is post-traumatic stress disorder?

A. Post-traumatic stress disorder came out after, actually, the war that the world has participated in.

We probably saw the first cases of the Shell Shock Syndrome, you know, after World War I and World War II. Even the Spanish American War had early reportings of it. You can see throughout time -- or human time -- stories referring to it.

But beginning in the '80s -- after '70s and '80s, after Vietnam, and particularly at the University of Pennsylvania where I worked, we worked with a lot of Vietnam Vets and it came up. Really started to see a syndrome. At first they attributed it to Agent Orange in the Vietnam war. And then they realized that it was some sort of anxiety disorder.

And post-traumatic stress disorder is a anxiety disorder. So it is important to keep that in mind.

Other anxieties are global. There is a global anxiety disorder that is very common. Fears. Specific fears are also anxiety disorders. But they are traumatic, really, events that really awaken in the body, psychological and physical responses.

So with post-traumatic stress disorder -- which I sometimes call it the Queen of Anxiety Disorders -- there is a traumatic event that makes the person feel that really under very serious threat or jeopardy that occurs in that way. It can be a fire, such as those who witnessed the San Bruno fire.

Sexual abuse makes a child feel very threatened in terms of body integrity. And the DSM, which is our diagnostic manual in psychiatry, this red book, it really describes how with children, post-sexual abuse, really makes them feel traumatized and attacked.

Because you can see, it is hard to see, but a fire and a sexual abuser, if you're a child, are similar. But they really are similar in terms of some of the body's response to it.

So there's a traumatic event. It really disturbs the functioning of the young person. And that can be how they do in school, how their emotional state, their physical response.

And then there are three categories of

symptoms that we're really looking at. The first one, almost everybody knows about. The re-experiencing symptoms, which are like flashbacks, bad dreams, that you just can't forget this trauma. You can't get it out of your mind and it keeps coming back.

And with Ms. Conti, one of the most disturbing things -- she is quite a well-read young woman, and the first to really describe Edgar Allan Poe's The Pit and the Pendulum story to me.

But she feels like she is down in the pit in her dreams and she is being held down and abused. And that recurrent dream really re-enacts the trauma that she has experienced. So the re-experiencing symptoms are very important.

The second category are avoidance symptoms. You try to avoid thinking about, feeling or talking about the traumatic event. And we have all done that. I really strongly encourage avoidance, if there is a traumatic event in play and it is on the television. You don't want to watch it. You don't want to expose your children to the trauma of the repeated viewings of videos that are traumatic.

So that aspect is really, really important to use some avoidance.

But if you avoid it completely, then it still

is inside you, as it was with Ms. Conti. She avoided talking about it. Really hid it. Not feeling safe to talk about it. And it really affected her internal world in a very important way and contributed, I think, to some of her significant problems, you know, which were substances and also depression, you know, that were used, I think, to soothe her and help her with this.

The third category are physical symptoms with post-traumatic stress disorder. And that can be hypervigilance, you are jumpy, you are watchful, you are really checking things out. You are carefully looking at everything because you have been through something that has really taught you to watch things in a different way.

So that's what the diagnosis is. That is how it is made, through the three categories. And that is really the way we think about it.

Q. Do you have an opinion, with reasonable, professional certainty, based on your knowledge and education and training, and your work in this specific case, as to whether or not Candace Conti experienced post-traumatic stress syndrome as a result of her sexual abuse?

A. I do, Mr. Simons.

Q. And what is your opinion?

A. That she has severe chronic post-traumatic stress disorder.

Q. You used the word "chronic." What does that refer to?

A. Chronic means that it's lasted longer than six months. And, for her, it has lasted for years.

Q. And if we could look at Exhibit 55.

Now, you mentioned that you had reviewed Ms. Conti's medical records?

A. That's correct. I have. And I actually tagged this and my copy of it. This particular record, I think I have it.

Q. And this is a record from August of 2002.

A. That's correct.

Q. Why is this record significant to you in forming your opinions? And particularly with regard to the opinion you just expressed about chronic PTSD.

A. Well, this is an early disclosure of abuse. I mean, it is really going to be, you know, years before Ms. Conti is fortunate enough to get the treatment that she needs.

But if we look -- look at the star -- this is Dr. Afruma's report. And if you look midway down there, the abuse is reported, presumably, by Candace to him for age 9 to 13. And it is interesting -- that's an

approximate, you know, age. And I would guess that Candace said that she had been abused for a couple of years.

Why this is important is she is much younger at this point in time, but she is giving this disclosure. And it really aids in credibility and it is really looking at the story over time.

So it is important that that had come up and she was thinking about it. It is important to know, in sexual abuse, that it can be disclosed and then the person gets scared again and doesn't talk about it. So it has to do, really, with how safe you feel in the environment talking about it.

So she talks about it here. She also acknowledges, at this point, that it began at about 9 years of age when she was a very young child. And you have to think, 9 is very young. It is really an elementary student. And you see those kids on the playground, probably have your own grandkids and kids, and they are very, very young.

I think what is interesting about this -- and I have to say something about our pediatric group, which I'm part of too with some training -- it is written, "not discussed further."

And I will just say something about it, not

so much a comment about Candace, often they do not say "not discussed further" because there is the question of mandatory reporting applicable at this point in time. And they say that because that covers them in terms of not reporting.

So I think that that's why that is written in that particular way, but it supports Candace's later disclosure.

MR. SCHNACK: Your Honor, can we have a side bar, please?

THE COURT: Sure.

(Sidebar Discussion)

BY MR. SIMONS:

Q. Let's look at the second page of the Dr. Afruma's health form, August 2002.

Now, are you familiar with the standard medical recordkeeping techniques?

A. I have to say that we just went to Apex today at UC. And not being there, I am missing being oriented on it. And so it is changing. But I read a lot of medical records every day. Yeah.

Q. Is there a standard designation for the "OAP" that we see in the middle?

A. Yes. It is actually "SOAP". They are called "SOAP notes." Subjective Objective Assessment and Plan

is what they mean. It is our standard formatting for notes. Not everybody uses it. And it has become really -- we are going to the box system with Apex all over the country. It starts today at UCSF. And we check boxes. And we are using a new format. So SOAP is probably going to go by the wayside. So it is challenging.

But what is important here is, if you look at the assessment part there, these are the doctors' diagnoses and post-traumatic stress disorder, depression and insomnia. And then the recommendation under the plan is really encouraged to discuss with the counselor, psychiatrist, consider cognitive therapy as part of the treatment plan.

And I think that's -- what cognitive therapy is, cognitive therapy is a therapy that targets thoughts. And cognitive therapy was developed by Aaron Beck at the University of Pennsylvania. And it really is useful in recurrent thoughts from post-traumatic stress disorder in helping the individual to cope with them.

You generally need it, along with a lot of other treatment in somebody who has a chronic case like the one with Ms. Conti.

Q. Is this record the first suggestion in any of

Ms. Conti's medical records about a possible post-traumatic stress disorder that existed prior to your evaluation of her?

A. It is the first one, Mr. Simons, that I have seen. You know, we don't always have every medical record.

I think there is one more point I would like to make off of it, as I put on my glasses here, I can really see better -- and this doctor also saw, and it says -- it mentioned how the drugs can be used to numb the experiences.

So Ms. Conti's use of substances could have been used to numb her symptoms of post-traumatic stress disorder. And the doctor very nicely said that it is best to have a proper diagnosis and treatment plan.

So I think what the doctor was trying to do was redirect here and set her on a proper course. Of course, she is a very young girl when she comes in for this.

Thank you.

Q. Now, with regard to the chronic part of PTSD, does PTSD that has existed in a chronic state of more than six months have more difficulty being subjected to treatment than other forms of PTSD that may be acuter or of shorter duration?

A. That's correct, Mr. Simons.

There is a couple of things we look at. What makes a case require longer periods of treatment? One is the chronicity, really how long it has been there.

The other are what we will call "co-morbid diagnoses," the other problems that go along with it.

In Ms. Conti's case, the depression that goes along with it makes it harder to treat, and the history of substances makes it harder to treat too.

So those things really mean that you have to spend more time, you have to have a much more of a talking relationship with the young person.

For example, after the San Bruno fire, we worked in several of the schools in the San Bruno area to target post-traumatic stress disorder in the first four weeks after the fire. And we had some success with that.

But that's very early intervention, you know. And if you have a situation that is existing much longer, it is really much harder to work with.

Q. You mentioned the drug use.

First of all, you are aware of Candace Conti's sustained history of substance abuse?

A. I am. I don't know how much of that we are to talk about. I want to follow all the rules here, Mr.

Simons, though.

Q. Do you have an opinion as to whether or not her years of substance abuse are caused in substantial portion from the sexual abuse she experienced as a child?

A. I do.

Q. What is your opinion?

A. As Dr. Afruma said here, I think it is very likely that Candace was using these drugs to numb her symptoms. I think she had very strong symptoms of post-traumatic stress disorder. And I think those drugs -- many of the drugs that people sell on the street are antidepressants. You know, they are not what we buy or use and they are not what we wish for people because they are badly made and have lots of side effects, and they ruin people's lives. But they are antidepressants.

Q. Now, do you have familiarity with the various studies and statistical information concerning genetic factors in substance abuse?

A. I do.

Q. And based on your information working on this case and your professional knowledge, do you have an opinion as to whether or not it would be more likely than not that Candace Conti would have been in sustained

substance abuse absent the child sex abuse?

A. I don't know how I can say this and stay within the rules, but I will try.

I believe she suffered very significant sexual abuse at an early age. Nine is very early. You know, it is not just fondling. I don't know if the details of the disclosures have been given. And it went on for a significant period of time, and there were multiple episodes. So all of that makes it very significant.

With respect to your question about genetics and substance abuse, if a family member was using substances and, you know, genetically carried that predisposition, you know, how would that affect Ms. Conti?

There are studies that indicate that there are higher rates in children of substance abusers that are going to use substances too.

But there are -- also, the vast majority of children of substance abusers do not use substances. You know, and many of us know this, because we have parents who might drink, and we instead decide we are never going to do that and we are going to stay away from it, and, you know, things like that.

So I think that is the majority of people.

So just because your parents had a genetic propensity, you know, to use and carry that genetic loading, doesn't mean that you are necessarily going to become a user.

Q. Did you do a trauma assessment of Candace Conti?

A. I did. I will look for that right here.

Q. And while you are looking, can you tell us what a trauma assessment is?

A. We are trying -- much in the last few years, we have tried to normalize the testing that we are doing. And we are especially trying to do it with the big cases, so we can get validity on our testing mechanisms for post-traumatic stress disorder. So this is the post-traumatic stress checklist, the civilian variant. And in terms of her symptoms, you know, I will go through them so that you have some idea about them.

She has repeated disturbing memories, as I mentioned the dream of The Pit and Pendulum, you know, and being held down. That is one of the most disturbing things for her. She has a lot of triggering with physical reactions, which is heart pounding, trouble breathing or sweating.

You know, one of the ways you can find out if somebody has had trauma is if they are taken in for

panic attacks to the emergency room, you have a family member at home that has had an experience like that, often that is linked into that. So that is a key, I think, to keep in mind.

And she had a lot of physical symptoms that were reported to various docs.

Then loss of interest in things that she used to enjoy is very, very important.

What is also noteworthy about adolescents in this, in post-traumatic stress, is they feel as if their life is going to be cut short if they have experienced a traumatic event. And she has that feeling that she will die young. Just because she experienced something so bad so early, she is convinced that this is going to happen to her.

That, with adolescents and children who have had trauma, is incredibly characteristic of it. So that is a major problem.

Then other things, she is super alert and she feels jumpy.

So those are the things that showed up on this scoring mechanism.

Q. Over the time that you have seen Candace Conti, have you seen significant improvement in her overall condition?

And first of all, let me start out, you are aware she's been in treatment?

A. I am aware of that, Mr. Simons. I strongly supported that.

Q. And have you seen improvement from the first time you saw her to the last time you saw her?

A. Very much so.

Q. And is that improvement a significant finding?

A. Yes. Because it really indicates -- I think when the abuse is disclosed and a person is able to talk about it and really figure out how it made them feel and respond as a child, it is very helpful.

And knowing that she has responded so well, now that the abuse story has come out, is really very important in this case.

Q. What is your prognosis for her?

A. With treatment -- and she will require a lot of treatment -- I believe she has a fair to good prognosis.

They say you never really recover from chronic severe post-traumatic stress disorder. Meaning that if a traumatic event happens later in your life, it re-triggers it.

But you get wonderful coping strategies from

therapy, and really the sense that your resiliency is increased and you can master this.

As I said in my report, I am recommending two years of intensive, three times per week, therapy for her and followed by six years of individual treatment of one time per week.

I think the total amount, financially, was about $160,000 for that in today's world in money.

Q. Do you have an opinion as to whether or not Candace Conti exhibits or suffers from any other psychiatric illness or diagnosis of significance that would affect any of the matters we have talked about so far in your opinions?

A. Yes. I already mentioned the depression. And she meets -- she was diagnosed as depressed here by Dr. Afruma years before.

The type of depression that I diagnosed her with is dysthymia. And that is a depressed mood that is really ongoing, chronic and over a period of time. It contrasts with major depressive disorder, which you have probably heard about.

Both need treatment. Dysthymia is more common when somebody has had depression. They may have had a major depressive disorder, as she did, probably at the time of the abuse and felt like harming herself, did

some self-mutilation and cutting, which is very characteristic of young girls who have been sexually abused. But then it evolves into a chronic depressed state, which is what this did.

In addition, as you know, Mr. Simons, the substance abuse disorders are psychiatric diagnoses too.

Q. What about paranoia or other similar types of diagnoses? Does she have any evidence that she exhibits in her records or in your interviews with her of those types of diagnoses?

A. It is important to say, I think, what paranoia is.

She does not, first of all, and her thinking is very clear. I am very impressed with her ability to read, use her mind, use therapy. That is really coming to light. And I wish her well in her career with animals. Animals need treatment too. They are not my favorite. I'm not an animal person. But they really need help and she loves them.

And so I think that that's very important. So she has got a path of pursuit, and is really intent upon that. And that is really very important.

MR. SIMONS: Thank you.

I have no further questions.

CROSS-EXAMINATION

BY MR. SCHNACK:

Q. You testified that Candace experienced what you call a lengthy period of abuse; is that correct, ma'am?

A. Yes. If you could please call me "doctor." I know it is a lot to ask, but it is my title and function here and I worked hard for it.

Q. I'm not sure that I didn't address you as doctor.

A. You addressed me as, "ma'am." But that's okay.

Q. Okay. There is no malice intended there.

A. Thank you very much. Thank you for doing that.

THE COURT: All right, Mr. Schnack.

MR. SCHNACK: Thank you, your Honor.

BY MR. SCHNACK:

Q. In your report, you wrote that Candace told you that she had been abused, quote, more than twice per month, and often it happened four to six times per month, close quote, by Mr. Kendrick.

Do you recall that?

A. Yes. I have got my report here, and I knew you were going to question me on that.

Q. Ma'am -- I'm sorry, Doctor, if you could just answer the questions without the sidelines, I would appreciate that.

A. Okay. Can you please repeat that?

Q. Certainly.

Do you recall writing in your report that Candace reported to you that for three years she had been abused, quote, more than twice per month and often they happened six times per month, close quote, by Jonathan Kendrick?

A. I have it here. I don't recall writing it, but it is in front of me and I wrote it.

Q. And then further down in that same paragraph, you, quote, in summary, Candace's sequence of abuse by Jonathan took place over three years and involved hundreds of episodes of sexual abuse, close quote.

Did I read that correctly?

A. Yes. This is in my part of the report, description of the events as reported by Candace Conti.

So it was what she told me during that first interview.

Q. And -- okay. Let's turn now to your deposition. You charged $800 an hour for that deposition; is that correct?

A. The rates are set by the University of

California, which I am a faculty member of. And then they go into my university compensation plan which pays for my staff.

Q. Is that a yes or a no?

A. I did charge that. They charged that, yes.

Q. And how much are you charging Mr. Simons for appearing here today?

A. I think the rate might be $900 for court testimony.

Q. And is it fair to say you have charged 25 or $30,000 or more for the evaluation of this case?

A. Not at all. I think you saw the billing. And I will get it for you, and I can tell you.

Q. How many hours have you put into it?

A. I will find it. I want to make sure.

I think, if you remember from my deposition, that the billing was remarkably low in this case, partly because I'm very -- I'm a speed reader, and it is relatively quick. So let me look at this.

And I think --

Q. With all due respect, we didn't discuss your billings in your deposition.

But go ahead and respond.

A. I brought them there for discussion and was not asked about them.

But I think, approximately, the total billings here are well under $8,000. And that's up until the time of the deposition. I would guess that since that time, probably, you know, in preparation, you depo-ed me in one hour, so that was $800.

I probably --

Q. But I paid that. Correct?

A. Yes. But I got that money. So you did pay me.

Thank you for doing that. I put it in my comp plan.

But I think probably the total on this is much closer to twelve to $15,000 for being more than a year at work on the case.

MR. SCHNACK: Okay. No further questions.

THE COURT: Mr. McCabe?

MR. SIMONS: No, thank you, your Honor.

THE COURT: Mr. Simons?

MR. SIMONS: Yes. I have one question.

REDIRECT EXAMINATION

BY MR. SIMONS:

Q. Doctor, did I understand you correctly that the money that you charge and receive actually goes through the Regents and into your department, and not to

you personally?

A. Right. It goes into a shared university compensation plan and pays for a percentage of our salary and is used -- I have two assistants. And especially, since I'm switching to the Apex, we all have to train, and they help me a lot. They are younger.

Q. So that does not go to you personally?

A. Does not go to me personally, no.

MR. SIMONS: That's all I have.

MR. SCHNACK: Nothing further.

THE COURT: Doctor, thank you very much for your time. You are now excused.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. Please have a seat. The jury is outside of the courtroom.

MR. SCHNACK: Yes, your Honor. We wanted to move for a directed verdict on the punitive damages claims, the last cause of action alleged in The Watchtower Bible and Tract Society's Complaint, there is no evidence of malice of pressure and thought, or much less clear and convincing evidence of that, and we ask that that be stricken from the case at this point.

THE COURT: All right. Motion for Directed Verdict noted as to its timeliness and circumstance.

I will reserve it until tomorrow for argument and in briefing and what anybody wants to do. Because I expect we will conclude fairly early tomorrow. And I will decide the motion at that time, after due consideration of anything further and all evidence.

All right. Let's take a break until twenty to 10 and we continue to go forward.

(Break taken)

THE COURT: All right. Mr. McCabe, your first witness.

MR. McCABE: Defense would call Ms. Bernice Munoz to the stand, your Honor.

THE COURT: Welcome, Ms. Munoz.

Please stand and raise your right hand.

BERNICE MUNOZ

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record.

THE WITNESS: Bernice Munoz, B-E-R-N-I-C-E, and last name Munoz is M-U-N-O-Z.

THE COURT: Would you please move the chair forward so that you are more comfortable, a little more

forward. And then is that comfortable for you?

THE WITNESS: I think so.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. McCABE:

Q. Could you tell us where you live?

A. Fremont, California.

Q. And are you married?

A. Yes, I am.

Q. What is your husband's name?

A. Daniel Munoz.

Q. How many children do you have?

A. Four sons.

Q. Do you have any grandchildren?

A. Yes, I do.

Q. How many?

A. Twelve.

Q. Wow, congratulations.

Do you have great grandchildren?

A. Eleven.

Q. Okay. And are you one of Jehovah's Witnesses?

A. Yes, I am.

Q. When did you become baptized as one of

Jehovah's Witnesses?

A. In June of 1987.

Q. And were you associated at the time of your baptism with the North Fremont Congregation of Jehovah's Witnesses?

A. Yes, I was.

Q. Are you still associated with that congregation?

A. Yes.

Q. Did you attend meetings at that congregation in 1993 through 1997?

A. Yes, I did.

Q. I'm going to show you what has been previously marked as Defense Exhibit Number 132, and ask you if you recognize this photograph.

Do you recognize that?

A. Yes, I do.

Q. Can you see it well enough?

A. Yes.

Q. What is this?

A. It is the entryway of the Kingdom Hall of Jehovah's Witnesses.

Q. Okay. Is that the Kingdom Hall that you attend, the entryway?

A. Yes.

Q. The next slide.

Do you recognize this one?

A. Yes.

Q. What is it?

A. It is the back side of the Kingdom Hall.

Q. Okay. It looks like there is double door there.

Is that what you see?

A. Yes.

Q. And is that the entryway to the Kingdom Hall?

A. Yes, it is.

Q. And is that where most folks come into the meeting and enter in through that door?

A. Yes, uh-huh.

Q. And do they also exit out that door?

A. Yes.

Q. Okay. The next photograph I would like to show you is another picture.

Do you recognize any of the people in that picture?

A. Yes, I do.

Q. Okay. Do you recognize the interior, what that room is?

A. Yes, it is the Kingdom Hall.

Q. Okay. And this looks like an auditorium with

a -- looks like an aisle going down here.

Is there one or more aisles separating that are these seats?

A. There is two aisles.

Q. Okay. So one down this side?

A. Yes.

Q. And then one down the other side where the main group of people are pictured?

A. Yes.

Q. Do you know how many seats are on each side of the aisles?

A. Maybe 25.

Q. On the sides or in the middle?

A. On the side aisles?

Q. Yes, on the sides.

A. Maybe like around 30.

Q. Okay. How many people can be seated in this auditorium, if you know?

A. Sometimes maybe over 200.

Q. Okay. For a normal meeting currently, what is your attendance like?

A. Maybe about a 180.

Q. How about back in the 1990s? '94, '95, '96?

A. It was pretty much the same.

Q. Okay. It's a mix of adults, children,

younger, older people, families?

A. Yes.

Q. Do you remember back in the mid-1990s a family in the congregation known as the Conti family?

A. Yes, I do.

Q. Do you remember who made up that family?

A. The father, the mother and a child. A little girl.

Q. Do you remember what the little girl's name was?

A. I believe it was Candace.

Q. Okay. Do you remember what she looked like?

A. Yeah. She was white and she had reddish brown hair.

Q. Do you remember what the father and mother's names were?

A. I'm sorry.

Q. Father and mother's name, do you remember what they were?

A. Neal Conti and the mother, I believe, was Kathy Conti.

Q. Okay. Did you see them at the Kingdom Hall during the mid-1990s when you went to meetings?

A. Yes.

Q. Were you a regular meeting attender? Did you

go to each of the meetings at the Kingdom Hall?

A. Yes, most of the time.

Q. If you were sick or on vacation, you didn't go; is that correct?

A. Right.

Q. But if you were in town, did you go to the meetings?

A. Yes.

Q. Do you remember another family in the congregation by the name of Kendrick?

A. Yes, I do.

Q. All right. Do you remember who composed that family?

A. It was Brother Kendrick and his wife and a child. A little girl.

Q. Do you remember what the girl's name was?

A. The little girl? No, I don't remember.

Q. How about Mrs. Kendrick; do you remember her first name?

A. No, I don't.

Q. Do you remember seeing both of these families attend meetings at the same time back in the mid-1990s at the Kingdom Hall?

A. Well, I would say so.

Q. Did you ever see Candace Conti sit on

Jonathan Kendrick's lap at the Kingdom Hall before, after or during the meetings?

A. No. Never.

Q. Did you ever see any little girl sit on Jonathan Kendrick's lap at the meetings?

A. No.

Q. Do you remember where Jonathan Kendrick used to sit in the meetings?

A. I remember him sitting with his wife and child, and they used to sit in the middle.

Q. Okay.

A. But when he was alone, sometimes he sat in the back row or so. And I remember this because sometimes he used to fall asleep in the back row.

Q. How did you know he was asleep?

A. Well, because he had his eyes closed and he had a silent snore.

Q. So at least when he was sleeping, no one was sitting on his lap.

A. What was that again?

Q. When you saw him sleeping, no one was sitting on his lap?

A. No.

Q. Did you ever see Mr. Kendrick give Candace Conti big bear hugs at the Kingdom Hall?

A. No.

Q. Did you ever see Jonathan Kendrick leave in his vehicle with Candace Conti, in the vehicle alone?

A. No.

Q. Did you ever see Jonathan Kendrick and Candace Conti out together in a field ministry going from house to house together alone?

A. No.

Q. Did you ever see Candace Conti at the Kingdom Hall without her father or her mother or both of her parents at the Kingdom Hall?

A. No.

Q. Did you ever observe anything about Mr. Kendrick that, as a mother or grandmother, would cause you any concern about his behavior at the Kingdom Hall?

A. No.

Q. I'm going to show you what has been marked previously as Plaintiff's Number 64 and the Defense Number 37, and ask you if you recognize this document.

A. Yes, I do.

Q. Could you tell me what it is?

A. Well, it is talking about protecting your children.

Q. Well, first of all, what is this document?

A. It is an Awake Magazine.

Q. Okay. And back in '93, how did you obtain copies of the Awake Magazine, if you did?

A. In the mail.

Q. So you got them delivered to you in the mail. Were they also available at the Kingdom Hall?

A. Yes.

Q. Do you recall getting this magazine back in the 1990s?

A. Yes, I do.

Q. Do you recall reading it?

A. Uh-huh.

Q. Was it your custom and practice to read the magazines when they came?

A. Yes.

Q. Do you have a general idea of what the magazine was about?

A. No. Not now, I don't. It is talking about protecting your children and things that could happen to them.

Q. Okay. Sexual child abuse. Correct?

A. Yes.

Q. Do you have this magazine still available to you in your home?

A. No.

Q. Do you have a computer in your home?

A. Yes.

Q. Do you have an electronic library in your home?

A. Yes.

Q. Do you have a Watchtower electronic library in your home?

A. Yes.

Q. And does it have a search engine in it?

A. Yes, it does.

Q. So if you typed up "child abuse" in the search engine, would it bring up this article?

A. Yes.

Q. And other articles that dealt with this subject?

A. Yes.

MR. McCABE: I have nothing further, your Honor.

THE COURT: Mr. Simons?

CROSS-EXAMINATION

BY MR. SIMONS:

Q. Were you paying special attention to Brother Kendrick?

A. Special attention? No.

MR. SIMONS: I have nothing further. Thank

you.

THE COURT: Ms. Munoz, thank you for your time.

You are excused.

MR. McCABE: Your Honor, the Defense would call Sylvia Munoz.

SYLVIA MUNOZ

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Will you please state your name and spell your first and last name for the record.

THE WITNESS: Sylvia Munoz, S-Y-L-V-I-A M-U-N-O-Z.

DIRECT EXAMINATION

BY MR. McCABE:

Q. Good morning, Ms. Munoz.

A. Good morning.

Q. Could you tell the jury where you live, please?

A. 35958 Adobe Drive, Fremont, California.

Q. Are you related to the Ms. Munoz that just testified?

A. Yes. That's my mother-in-law.
Q. What is your husband's name?
A. Daniel Munoz.
Q. And how long have you been married?
A. Twenty-seven years.
Q. Do you have any children?
A. Two sons.
Q. How old are they?
A. Nineteen and 26.
Q. So one is the same age as Candace Conti?
A. Yes.
Q. Are you one of Jehovah's Witnesses?
A. Yes.
Q. What congregation do you attend?
A. North Fremont.
Q. And when did you start attending meetings at North Fremont Congregation?
A. Since before I was baptized before 1991.
Q. So you were baptized in 1991 but you were attending meetings before you became baptized?
A. Yes.
Q. Were you a regular meeting attender during the 1990s?
A. Yes.
Q. Did you miss many meetings?

A. I tried not to. Only when my children were sick.

Q. And when they weren't sick or you weren't on vacation, was it your custom and practice to be at the meetings?

A. Yes.

Q. I want to show you what has previously been admitted to evidence as Defense Number 132, and ask if you recognize this picture.

A. Yes.

Q. What is this?

A. That is the front of the Kingdom Hall where they have the meetings.

Q. And that's the Kingdom Hall you still attend today?

A. Yes.

Q. I want to show you a picture of the interior of that -- or looks like the interior of a room.

Does that look to be like the Kingdom Hall that you attend?

A. Yes, I recognize the friends there.

Q. Okay. And do you recognize the interior of the building too?

A. Yes.

Q. Is it pretty much the same as it has been

since, say, 1993 or 1994?

A. Yes. I think they had a paint job done to the interior. But, yeah, it is the same.

Q. But structure is still the same?

A. Yes.

Q. Same amount of seats in the facility?

A. Yes.

Q. What's it like before and after the meeting ends? Is it chaos in the Kingdom Hall, kids running around, things like that?

A. It's not chaotic. I mean, you know, we are encouraged to speak to one another and communicate and associate before and after the meetings.

Q. Kids running around and playing tag?

A. Sometimes. I mean, they're children. They do like to play with their friends and talk to their friends. But it never gets out of hand or anything like that.

Q. Your children didn't do that?

A. No. We always had our boys right by us.

Q. Back in the mid-1990s, do you remember a family by the name of Conti?

A. Yes.

Q. And who made up that family?

A. Neal Conti, the father, Kathy, and they had a

daughter, Candace. And I believe Neal had a son, but I can't remember his name.

Q. And do you remember them coming to the Kingdom Hall to meetings there?

A. Yes.

Q. Do you remember specifically Candace? Do you remember what she looked like?

A. Yes.

Q. What did she look like?

A. She was light-skinned. She had freckles on her face, dark brownish red hair, kind of long. She was a cute little girl.

Q. And do you also remember a family by the name of Kendrick attending meetings at the Kingdom Hall during the same time period, the mid-1990s?

A. Yes, I do.

Q. Do you remember what their names were?

A. Jonathan Kendrick, Evelyn. And Evelyn had a daughter by the name of Andrea, I believe.

Q. And do you remember both of these families being at meetings together at the same time?

A. Yes.

Q. Did you ever see Candace Conti getting a big bear hug from Jonathan Kendrick?

A. No.

Q. Would that have been appropriate in your mind to have something like that happen?

A. That would not be appropriate, no.

Q. How about -- did you ever see Candace Conti sitting on Mr. Kendrick's lap either before, during or after a meeting?

A. No.

Q. I'm talking about when she was 9, 10, 11 years old.

A. No.

Q. Would you have thought that would be appropriate?

A. That would not be appropriate.

Q. Okay. What about, did you ever see Mr. Kendrick -- do you remember what kind of vehicle he drove?

A. No, I don't remember.

Q. Did you ever see Mr. Kendrick and Ms. Conti, as a little girl, 9, 10, 11, 12 years old, leaving the Kingdom Hall property together in the same vehicle?

A. No.

Q. Did you ever see Mr. Kendrick and Ms. Conti working together in the field ministry?

A. No.

Q. Did you ever see them driving anywhere in a

car together?

A. No.

Q. In doing your field ministry, do unmarried men go in a car with an unmarried woman together alone?

A. No.

Q. Why not?

A. Because it is not appropriate.

Q. Now, did you ever see Candace Conti alone at the Kingdom Hall without one of her parents being there?

A. No.

Q. I wanted to show you Plaintiff's Number 30. It is an aerial photo. And I want to see if you recognize what it is.

Can you see that photograph?

A. I can see it, yes.

Q. Would you like one in your hand to look at?

A. I would probably like to see it a little closer.

Q. Let me give you a copy of what is on the board.

A. Looks like the parking lot.

Q. The parking lot of what?

A. Of the Kingdom Hall.

Q. Do you notice there is kind of like a triangle to what is my right side of the photograph as

I'm looking at it?

A. Yes.

Q. Do you see that?

A. Yes.

Q. What is that area?

A. It is -- now it is kind of like an overflow of the parking lot, I guess. Or sometimes the friends do park. But back then I don't think it was really used for that.

Q. And how often do you see cars parked in this area?

A. Now, probably pretty much every meeting now. But before, no.

Q. Is there more than one congregation that meets at this Kingdom Hall?

A. Not at the same time.

Q. Is this a dirt area?

A. Yes, uh-huh.

Q. How do children dress when they come to the meetings at the Kingdom Hall currently?

A. They are very nicely dressed. The girls wear nice dresses and even the young ones, little boys, wear suits, nice shoes.

Q. Was that true back in the 1990s as far as you remember?

A. Yeah, my boys were always dressed in a suit.
Q. And your boys were -- one of them at least was the age of Ms. Conti.
Did you allow your boys to play out in this dirt area that we are talking about?
A. Never, no.
Q. Before and after meetings?
A. No, never.
Q. You never caught them out there --
A. No.
Q. How about running around in the parking lot?
A. No.
Q. Why not?
A. It's dangerous. The friends are coming in and out of the parking lot.
Q. I want to direct your attention now to Plaintiff's Exhibit 64 and Defense 37, which has been admitted into evidence in this case, and ask if you recognize what this document is.
A. Yeah. It is an Awake Magazine.
Q. Back in -- looks like it's in October 8, 1993 Awake Magazine.
Do you recognize that?
A. Yes.
Q. And do you recall if you received this

magazine back in 1993?

A. Yes.

Q. What is the general subject matter about this magazine?

A. Protecting your children.

Q. I would like to draw your attention to a picture in this.

Do you recall reading this when you got it?

A. Yes.

Q. All right. And let me ask you this too while we are looking at the picture -- I'm going to go to page 8 of the exhibit.

Excuse me.

Seven out of 13 of the exhibit. But there is a number, like, 7 over 13. Do you see that?

A. Seven over 13, yes.

Q. And currently, do you have this magazine available to you in your home?

A. I would have it in our -- what we call our CD-ROM that is our Watchtower library where we have a lot of our publications.

Q. And you have that on a CD-ROM?

A. CD-ROM, yes.

Q. Do you have a computer?

A. Yes.

Q. Does your CD-ROM have a search engine in it?
A. Yes.
Q. So if you wanted to look at any articles about childhood sexual abuse or protecting children, what would you do?
A. I would log on to the CD-ROM in the Watchtower library and I could just put in a couple words and hit search and it would bring up a couple articles.
Q. Articles like this?
A. Right.
Q. As you look at page 7 of 13 in that photograph that's there, do you know what that is depicting?
A. Yes. It is depicting an adult trying to talk to a young child.
Q. Okay. And the subject matter of sexual abuse, does it look like there is a mom and a dad here coaching a child?
A. Yes.
Q. Do you remember seeing Jonathan Kendrick specifically at meetings back in the mid-1990s?
A. Yes.
Q. Anything significant ever stand out about him?

A. I do recall sometimes he would fall asleep during the meetings. Not all the time, but sometimes.

Q. And that was noticeable by you?

A. Yes.

Q. Do you know where he sat at the meetings when he came by himself?

A. I believe it was toward the back.

Q. Did you ever see him do anything inappropriate with a child at the Kingdom Hall?

A. No, never.

Q. Out in the parking lot?

A. No.

MR. McCABE: I have nothing further.

CROSS-EXAMINATION

BY MR. SIMONS:

Q. Good morning, Ms. Munoz.

A. Hello.

Q. Did you have any reason to keep a special eye on Jonathan Kendrick?

A. No.

MR. SIMONS: Nothing further.

THE COURT: Are we done with Ms. Munoz?

MR. McCABE: She can be excused, your Honor.

THE COURT: Thank you for your time this

morning.

You are now excused.

MR. McCABE: The defense would next call Mrs. Pam Figuerido.

PAMELA FIGUERIDO

WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

AND TESTIFIED AS FOLLOWS:

THE CLERK: Would you please state your name and spell your first and last name for the record.

THE WITNESS: It's Pamela Figuerido. P-A-M-E-L-A, F-I-G-U-E-R-I-D-O.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. McCABE:

Q. Good morning, Mrs. Figuerido.

A. Good morning.

Q. Could you tell the jury where you live, please?

A. Fremont, California.

Q. How long have you lived there?

A. Let's see. Since 1983.

Q. Are you married?

A. Yes.
Q. What is your husband's name?
A. Gary.
Q. All right. Do you have any children?
A. Yes.
Q. What are their ages?
A. Thirty-four and 39.
Q. Do you have any grandchildren?
A. Seven.
Q. Are you one of Jehovah's Witnesses?
A. Yes, I am.
Q. When were you baptized as one of Jehovah's Witnesses?
A. In 1961.
Q. How old were you at that time?
A. Thirteen.
Q. Were you baptized at the North Fremont Congregation?
A. I was baptized in San Jose.
Q. Okay. Were you attending the North Fremont Congregation at the time of your baptism?
A. No.
Q. How long have you been attending meetings at the Kingdom Hall at North Fremont?
A. Since 1983 when we moved there.

Q. And back in the mid-1990s, what was the frequency of your meetings? Since I heard they had three meetings a week, what would be your custom and practice of going to meetings back in the mid-1990s?

A. That would be correct. We have two mid-week meetings and a Sunday meeting.

Q. Did you go to all the meetings?

A. Yes.

Q. Did you ever miss?

A. Well, when we were on vacation or if one of us was sick.

Q. Okay. In the Kingdom Hall which you attend, I want to show you what has been marked as Exhibit 132. And I want to show you a picture of -- looks like some people standing together, and ask if you recognize anybody in this picture.

A. Oh, yes.

Q. Who are those people?

A. They are members of the congregation.

Q. Okay. And it looks like they are either standing or singing or something.

But how many rows of seats are in this -- I mean, like, are there aisleways in the seating arrangement?

A. Well, there is three sections of seats and

two on the sides and one center section.

Q. Now, on the side section, I assume you are talking about what is just going off camera here in the corner?

A. That's correct.

Q. How many seats are in those rows on that side?

A. I think there is four.

Q. How about on -- there is another row on the other side, I take it, in this area?

A. On the far wall?

Q. Yeah.

A. The same.

Q. Four seats in the middle?

A. I think there is about ten.

Q. Okay. How many people attend the meetings currently on Sunday?

A. Usually around a hundred.

Q. A hundred?

A. Uh-huh.

Q. How about back in the 1990s; was that similar?

A. Similar.

Q. I want to show you another picture that's been -- before we go to that other picture -- what's the

meetings like at the Kingdom Hall in North Fremont before and after the meeting?

A. Before and after? We just visit with one another, greet one another as we come in. Children are talking amongst themselves. And then the meeting is called to order and we sit down.

Q. How about after the meeting? How long do the meetings last?

A. About an hour and forty minutes.

Q. So after the meeting, do the kids go berserk?

A. Absolutely not. They are not allowed to.

Q. Okay. Do they ever run and play tag, things like that?

A. Well, you're going to have the occasional child that's going to run and hide. But for the most part, they are well-behaved.

Q. Do the ministerial servants attendants try and keep that pretty orderly after the meetings?

A. Yes.

Q. I want to show you another picture that has been marked Defense Exhibit Number -- Plaintiff's Exhibit Number 30, excuse me.

I will bring you up a copy because it might be a little hard to see from there.

Do you recognize what that photograph is?

A. It is the Kingdom Hall on Peralta.

Q. An aerial photograph of it?

A. Yes.

Q. Okay. And I'm looking at the brown -- looks to me kind of brownish greenish triangular area as I'm looking at this photo to my right.

Do you see that?

A. I do.

Q. What is that?

A. That's an ease way, I believe, for the city. It is just a dirt area. They do use it for parking cars in.

Q. How often do you see cars parked?

A. Every meeting.

Q. And that is a dirt area?

A. Uh-huh.

Q. Do you ever see children playing out there?

A. No.

Q. Well, was that true in the 1990s?

A. Same. They always try to be very cautious in the parking lot. It's dangerous with all the cars.

Q. How are children dressed when they attend the meetings?

A. They wear their Sunday best.

Q. So did your children play out in this dirt

area from time to time?

A. My son may have snuck out there a time or two. But my daughter, no.

Q. Did you catch your son out there?

A. You better believe it.

Q. Okay. I want to show you what's been marked Defense Exhibit 17 and Plaintiff's 59, and ask if you recognize this document.

A. Yes. I remember this one.

Q. What is it?

A. It is an article in the Awake Magazine on child molesting and how -- it gave advice on how to protect your child.

Q. Do you remember receiving this particular issue of the magazine in January of 1985?

A. Yes. This one stands out in my mind. I remember the shadowing and the child with the baby.

Q. Was it your custom and practice to read the magazines when you received them?

A. Yes.

Q. How did you receive them back in 1995 and '96?

A. Through the mail.

Q. Were they also available anywhere else?

A. You could pick them up at the Kingdom Hall.

Q. And were they also made available to anybody else outside the Congregation of the Jehovah's Witnesses?

A. They could subscribe to them, yes.

Q. What about when you do your -- what do you call it? -- house to house work?

A. Yes.

Q. Do you also offer those to people?

A. Yes.

Q. Do you recall what this series of articles was generally about?

A. Well, the one thing that stood out in my mind was the importance of communication with a child. Because a child that is ignorant becomes vulnerable. And so the communication to let the child -- teach them ways that it's never wrong to come to myself or their father if somebody did something to them that they felt uncomfortable with.

Q. Do you recall ever going over this material with your children?

A. I did.

Q. I want to show you what has been marked Plaintiff's Number 64 and Defense 37, and ask if you recognize this document.

A. Yes.

Q. What is that?
A. This is another article on protecting your children.
Q. And did you receive this article?
A. I did.
Q. How did you receive it?
A. Through the mail.
Q. And was it also available down at the Kingdom Hall like you mentioned?
A. Yes.
Q. Do you remember reading this particular article?
A. I do.
Q. Do you still have this article available to you?
A. On CD-ROM.
Q. What is a CD-ROM?
A. It is the Society's CD that has been made available to us, and it has the publications on it that we can reference when we need them.
Q. So it has a search engine in it?
A. Yes.
Q. You can just type in a few words and get articles that you want?
A. Yes.

Q. If you type in "child abuse," you think this article would come up?

A. It would.

Q. Do you remember the Conti family at the Kingdom Hall in North Fremont in, say, early 1990s to mid-1990s?

A. Yes, I do.

Q. Do you remember what their names were?

A. Yes. The father was Neal Conti; the mother, Kathy Conti; daughter, Candace Conti and her stepbrother, Ricky.

Q. Okay. Do you recognize Candace here in court today?

A. Yes, I do.

Q. Do you remember what she was like as a little girl?

A. She was your typical little kid. I mean, she tended to be a little bratty at times. I'm sorry to say that. But she was strong-willed and had a mind of her own.

Q. That's okay. We have heard that description before.

Did you remember also another family in the congregation at that time in the mid -- early, mid-1990s by the name of Kendrick?

A. Yes.

Q. Do you recall who was in that family?

A. Jonathan Kendrick and then his wife was Evelyn, and they had a daughter, Andrea. Well, it was his stepdaughter. It was Evelyn's daughter.

Q. Okay. Do you recall the Contis and the Kendricks being together at the Kingdom Hall at the same time?

A. Yes.

Q. Did you ever see Jonathan Kendrick give a big bear hug to Candace Conti?

A. No.

Q. Did you ever hear him say, "Who loves you," and then holds on to her until she said, "You do" and then he let her go?

A. Never.

Q. If you had seen that, would that have been remarkable to you?

A. Absolutely.

Q. Did you ever see Candace Conti as a 9, 10, 11-year-old girl sitting on Jonathan Kendrick's lap at any Kingdom Hall events?

A. No.

Q. Would you have thought that was appropriate?

A. For a 9- or 10-year-old girl?

Q. Yes.
A. Yes. It was inappropriate.
Q. Did you ever see Candace, even as a littler child, sitting on Mr. Kendrick's lap?
A. No.
Q. Did you ever see Candace Conti leave the Kingdom Hall premises alone with Mr. Kendrick?
A. No.
Q. Did you ever see Candace at the Kingdom Hall without either her mother or her father or both her parents being present?
A. No.
Q. What about, you talked about the field service or field ministry when you go door-to-door.
Did you ever see Candace Conti and Mr. Kendrick going in the field ministry alone by themselves?
A. No.
Q. Did you ever see them together in the field ministry?
A. No.
Q. Would it have been appropriate had they been together in the ministry?
A. Working together just the two of them?
Q. Yes.

A. Inappropriate.

MR. McCABE: I have nothing further, your Honor.

THE COURT: Mr. Simons.

CROSS-EXAMINATION

BY MR. SIMONS:

Q. It sounds like you had a long and stable and happy marriage; is that correct?

A. That's correct.

Q. And you have been blessed with great stability in your home?

A. That's correct.

Q. And is that also true of all the other families in the North Fremont Congregation?

A. Yes. For the most part, yes.

Q. And you talked about communication with the children and all.

And would you agree that in all of the families that you know within the congregation, over the years that you have been there, that the families have good communication with their children?

A. Yes.

Q. With regard to Mr. Kendrick, you mentioned that he would sit in the back of the Kingdom Hall during

the services?

A. I didn't say that.

Q. Did he used to sit in the back mostly?

A. I remember him sitting about halfway up. When I visualize him in there, I remember him sitting about halfway up on the right-hand side.

Q. So it would not really be accurate to say that he sat in the very back and would, maybe, sleep through the services?

A. He would sleep through the services, yes.

Q. But he was not in the back?

A. Not when I saw him, no. He would mostly sit in the middle.

MR. SIMONS: If we could see that third photograph from Exhibit 133.

MR. McCABE: I think it is 132.

BY MR. SIMONS:

Q. Do you see that back wall there behind the seats? Are you able to see that from where you are sitting?

A. Yes.

Q. What is behind that?

A. Over the bathrooms in back there.

Q. They are in the back?

A. Yes.

Q. Are there some other rooms, storage rooms and things like that?

A. There is a closet and a conference room and what we call our second school.

Q. So if, for example, you wanted to go to the bathroom somewhere in the middle of the hour and forty-minute service, would you have to go to the back of the seats and then out through one of the doors there to get to the back?

A. You wouldn't go through a door. You would go through that opening right there in the back.

Q. Let me just use my laser pointer here.

Is this the opening?

A. No.

Q. Okay. Where would you --

A. It would be to the left of that, where you were pointing.

Q. To here?

A. Yes. That, that right there are the doors going outside.

Q. Okay. So if you went through this doorway, is there something between that looks sort of like the doors that are right there but, in fact, there is some space between that?

A. That's correct.

Q. That's just hard to see on the picture.

A. Right.

Q. But you would go through there and then you would go in the back and that's where the bathrooms would be and these other rooms?

A. That's correct.

Q. And when your children were at the -- when your children were at the Kingdom Hall services, you kept them pretty close. Right?

A. Yes. They sat right with us.

Q. And before and after, you didn't allow them to kind of run out and maybe mix with the other kids while you would be visiting with other members of the congregation?

A. They would be inside the Kingdom Hall, but I always had them in my sight.

Q. So you wouldn't really be watching what was going on in the parking lot if you would be there inside the building.

A. Well, how could I see the parking lot if I was in Kingdom Hall?

MR. SIMONS: Very good. I agree.

Thank you.

MR. McCABE: May this witness be excused, your Honor?

THE COURT: Ms. Figuerido, thank you very much for your time this morning. You are now excused.

MR. McCABE: Your Honor, our next witness has previously been videotaped. It's our expert, Dr. Monica Applewhite. And we are calling her as an expert in child sex abuse as related to historical standards of care, and also an expert in prevention and response of organizations, and an expert in patterns of molesters and standards of care for religious and church organizations.

THE COURT: All right. And, Mr. Simons, do you agree that Dr. Applewhite is an expert for those purposes?

MR. SIMONS: Well, your Honor, I think we have discussed that outside the presence, so I'll defer to you for that.

THE COURT: All right. I will rule that she is an expert for these purposes.

MR. McCABE: May we play the video then, your Honor?

(Whereupon, the video recording was played)

MR. McCABE: James McCabe on behalf of the Defendant, North Congregation Jehovah's Witnesses of Fremont, California.

MR. SCHNACK: Bob Schnack on behalf of the

defendant, Watchtower Bible and Tract Society of New York.

(Whereupon the video was stopped)

(Sidebar Discussion)

MR. McCABE: May we resume playing, your Honor?

THE COURT: You may.

MR. McCABE: Thank you.

(Whereupon, video recording was played)

MR. McCABE: James McCabe on behalf of the defendant, North Congregation of the Jehovah's Witnesses of Fremont, California.

MR. SCHNACK: Bob Schnack on behalf of the Defendant, Watchtower Bible and Tract Society of New York.

MR. SIMONS: Rick Simons for Plaintiff.

MS. KRAETSCH: Kelly Kraetsch for Plaintiff.

VIDEOGRAPHER: Thank you.

Will the court reporter please swear in the witness?

MONICA APPLEWHITE, Ph.D.

WAS DULY SWORN TO TELL THE TRUTH BY THE COURT REPORTER AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. McCABE:

Q. Dr. Applewhite, good morning.

Could you tell us your name and spell your last name for the record.

A. Monica Applewhite. It is M-O-N-I-C-A. A-P-P-L-E-W-H-I-T-E.

Q. Are you married, Dr. Applewhite?

A. Yes, I am.

Q. And you have children?

A. Yes, I do.

Q. How many?

A. I have a daughter who is twelve years old and a son who is eight years old.

Q. And what kind of work does your husband do?

A. My husband teaches high school physics and advanced placement biology.

Q. And do you have an educational background that qualifies you to testify in this case?

A. Yes, I do. I have a Bachelor's degree in Social Work, a Master's in Science and Social Work, and a Ph.D. in Clinical Social Work.

Q. Where did you earn those degrees?

A. I earned the Bachelor's degree from Texas Christian University, and the Master's and Ph.D. from

University of Texas in Arlington.

Q. And your principal focus of your work is -- what would you describe it as?

A. The primary focus of my work, since I began my career, has been working with organizations to better prevent, detect and respond to child abuse of various forms, including physical abuse, emotional abuse and sexual abuse.

Q. Have you had any professional experience working with social service agencies, governmental entities?

A. Sure.

I have worked with residential treatment programs for children who have been removed from their homes, having been abused in their own biological homes, and worked with foster care and emergency shelters, which have been in place. And I have also worked with protective services in several states.

Q. What states would that be?

A. Texas, Wyoming, State of Washington, Montana and New Jersey.

Q. Do you have any professional experience working with youth organizations?

A. Yes, I do.

Q. Which organizations would that be?

A. The youth organizations would be the YMCAs and the Boys and Girls Clubs. I have worked with Scouting programs. I have worked with private and public schools, residential schools, charter schools, and just a variety of small, single entity youth-serving organizations.

Q. And what has been your role in working with these organizations?

A. The roles change, depending on what is necessary within the organization, but I have conducted many risk assessments, and that is to examine the organization and determine if there were to be an incident of abuse in this organization, this is the most likely way for it to happen, and this is what you can do to prevent that from happening in the future, as well as to come in after there has been an incident and work with the organization to be sure an incident doesn't happen like that in the future.

Q. Do you have any professional experience working with religious organizations?

A. Yes. I have worked with religious organizations since beginning in about 1996, working with organizations in a similar area of youth organizations of other types. But also in developing large-scale prevention programs to prevent incidents of

abuse from happening within the religious organization and in the child's life when they're in it.

Q. Could you tell the jury what are some of the religious organizations that you have worked with?

A. Sure.

I have worked with the United Methodist Church, the Presbyterian Church. I work with many Roman Catholic Diocese as well as religious orders and congregations of men. I have worked with Southern Baptist, and there are also organizations around the world where they're ecumenical in nature, and so they bring together various denominations.

For example, there is one in Australia called Sadist Church, and that is all of the religious denominations together, working to prevent sexual abuse misconduct and other types of misconduct within their churches. So I work on a very broad scale in some of these organizations.

Q. What is the basis of the recommendations you give to these organizations regarding the prevention of child abuse?

A. The primary basis for the recommendations that I provided are prevention and detection and response.

The primary basis for that is analysis of

actual cases. In other words, that you take a case or a group of cases and you try to figure out how did that happen?

How did this person come into the organization?

Could it have been prevented?

Could it have been detected sooner?

Is there a way to respond in the future where a system could be set up to prevent this type of an incident from happening in the future.

Or in these other cases, to determine how to prevent and respond properly in the future.

And I have conducted an analysis of more than 1800 cases of abuse that have happened within organizations, not just religious organizations but in all different types of organizations.

Q. Do you have any experience working with victims on sexual abuse?

A. Yes. I haven't worked as a therapist directly with victims, but I have worked on many, many occasions to either identify how the abuse was perpetrated in a particular case or to receive the allegation of abuse that a person is bringing to an organization. And that is both with children who are still children and also adults who had experiences of

abuse when they were children.

Q. And do you have any experience working with offenders, sexual offenders?

A. Yes. Very early in the work that I did, I was working with juvenile sexual offenders because we had residential treatment programs and foster care and rescue shelters where a young person who was sexually offended, other children was placed in that situation. And we had a need to develop supervision programs for them.

Later on, I began doing a similar type of work with adult sexual offenders who were going to be in an environment where they needed supervision. And so I also worked with the adult sexual offenders in developing supervision for them.

Q. Can I ask you what motivated you to do research in the field of historical standard of care?

A. When I first got interested in the history of this area of care, it was not central to my work. It was back in 1993, 1994 when I began learning about the development of the knowledge base. And I began conducting educational seminars. And in many cases those educational seminars would be the first time that someone had ever heard anybody speak up about sexual abuse.

And so afterwards people would just line up and want to talk about their stories that they had of their own experiences of sexual abuse. And it was not uncommon for people to feel a real sense of devastation that their families hadn't noticed or they even told someone and that person didn't believe them.

And so I became interested in the ability to articulate to them why is it that maybe their parents didn't notice or that maybe they told someone and they didn't believe.

So that's how I started in the interest in standard of care. But then in 2007, I really started an exhaustive review to go as far back in history as I could to understand the way the standards of care developed over time.

Q. Okay. and in regards to the historical standard of care for children, could you explain to the jury what you mean by standard of care?

A. Sure.

A standard of care in the area of -- in particular, sexual abuse with organizations, is the benchmark for what would be expected of an individual or an organization in a similar circumstance during this time frame.

In order to come up with that standard of

care, I look at the criminal justice system initiatives, how criminal justice handles this as a criminal matter, how other similar organizations handling similar situations, what is known by researchers and professionals who work with sexual offenders, who work with people who have experienced sexual abuse. And then what is the general public awareness? And when we put those things together, that is the way you can develop that benchmark standard of care.

Q. What is your main work today?

A. My primary work to date is conducting educational programs with organizations as well as with broad groups of people, such as the work that I do in Ireland and Australia, is to educate people on a very broad scale and that would be social welfare agencies, schools, religious organizations, youth serving organizations, to teach them about the dynamics of sexual abuse, how to prevent, how to protect, how to respond in a way that's compassionate. I do those types of education programs.

I also continue to do risk assessments in organizations and that is, again, to identify what could be done more proactively in this organization to prevent abuse. And I also provide an outside ear if an organization has someone who is coming forward who has

experienced abuse in that organization and they want to meet with somebody who is outside of the organization, then it is not uncommon for me to do that work.

Q. And I take it, because you are here testifying for us today, that you also -- part of your work is consulting on lawsuits. What percentage of your work would you say is involved in being involved in some type of forensic testimony or examinations?

A. The portion of my work that is really involved with this type of an activity with lawsuits, consulting or providing a deposition is about three to five percent of the work that I do today.

Q. And previously you and I have worked together on another case; is that correct?

A. Yes, it is.

Q. And that case was in San Diego?

A. Yes.

Q. And you gave a deposition in that case also?

A. Yes, I did.

Q. How many depositions have you given altogether in cases involving issues of sexual abuse?

A. I have given four other depositions in cases that are similar to this.

Q. Okay. So what is that? About one a year would you say?

A. About one a year.

Q. And you testified in a trial before like we are having here today?

A. I have never testified in a trial.

Q. What are your areas of expertise? What are they with respect to child abuse?

A. My areas of expertise are the evolving and historical standards of care for organizations in preventing, detecting and responding to incidents of abuse. I also have expertise in the patterns of sexual offenders in terms of how they operate within organizations. I have expertise in the supervision and management of sexual offenders as well as the standards of care for response to individuals who come forward.

Q. In terms of response, does that also include investigations of allegations of child abuse?

A. I have expertise in internal investigations as well as the standards for organizations to investigate.

Q. Okay. And in connection with your preparation to testify in this case, could you tell us what you reviewed to formulate your opinions in this case?

A. In this case I reviewed many of the Awake and Watchtower publications that are published by the

Jehovah's Witnesses organization. I reviewed depositions and exhibits that were particular to this case. I went back and reviewed state law, federal law that had relevance to this case. And I also reviewed some professional codes of ethics from counselors and social workers.

Q. Okay. Have you formulated some opinions on this case?

A. I have formulated opinions on this case.

Q. And could you tell the jury what the general basis is of all your opinions?

A. The general basis of the opinions that I have formed in this case are the prevailing laws in the State of California and the federal law at the time, the activities, with respect to all forms of abuse, but specifically sexual abuse within organizations that serve children as well as religious organizations specifically.

I have also utilized my own experience in working with religious organizations and other youth-serving organizations, and taken the facts of this particular case, paired them with those elements and that's the basis for my key opinions.

Q. Okay. Could you tell us what your first key opinion is in this case?

A. The first opinion that I have is that the knowledge base regarding the sexual abuse of minors and the skills and protocols needed to prevent and detect and respond properly to sexual abuse had developed over time in an incremental basis, and therefore, any evaluation of reasonable care in any case has to be examined within a particular historic context that those activities occurred.

Q. So why is a historical framework important to your opinion?

A. The historic framework is really critical in this particular area because the body of knowledge surrounding sexual abuse is very, very young. We really only began studying human sexuality in a research-based way in the late 1940s. And so we have a very young body of knowledge overall about human sexuality. Then within that the knowledge base regarding sexual abuse of children is even younger.

And so we have made some dramatic shifts in just the past 20 years. We have made even dramatic shifts in the past ten years. That is with respect to our knowledge, within our skills and within our expectations for what happened after an incidence of sexual abuse occurs and what happens in terms of prevention in the primary matter as well.

Q. Do you have some benchmarks regarding the historical standard of care that you can show the jury?

A. I do. I've actually prepared a timeline that I think is helpful in looking at those benchmarks.

Q. Do you recall what my question was?

A. Are there some benchmarks?

Q. Yes.

In the historical framework of responding to child abuse issues?

A. Yes.

Q. Can you tell us what some of those are?

A. Sure.

I think in terms of just understanding when I say that the knowledge base is young, the first benchmark that I would point to is 1982 when the experts within the United States decided that they were going to get together and talk about everything that they knew about child sexual abuse. And that was in Denver Colorado in 1982.

And at that symposium, the experts made a decision that they were only going to discuss intra-familial abuse, incest abuse. They weren't going to have any conversations about abuse that occurred outside the family because they didn't have enough information to really make presentations about that.

That was just 1982. And so I think that that is a critical benchmark to know.

The next piece that I think is really critical is to look at the 1994 benchmark, which is when we first had a law in the United States that said, if a violent rapist is released from prison and moves into a neighborhood, we will let that community know that this violent sexual offender is going to be living in this neighborhood near children. The very first time in the United States that we had a law that said that that was the thing to do, was 1994 in the State of New Jersey.

Q. What was that law called?

A. That was called Megan's Law. It was named for Megan Kanka who was raped and murdered by a twice-convicted sexual offender. And the public was outraged and said that we don't want to have a violent sexual predator move into the neighborhood and have the police know about it and not inform us.

And that was the very first state that had that law, Megan's law. It became actually Federal law then in 1998 when the Federal law said that every state will have some form of what is called community notification.

Q. And what do you mean by "community notification"?

A. Community notification is the proactive informing that we have a predatory violent sexual offender that is coming into a particular community. That is community notification.

Q. Did a version of the Megan's Law passed in New Jersey in 1994 become part of the law in the State of California?

A. Yes. The State of California actually passed the California Megan's Law and enacted that law in January 1 of 1997.

Q. Have there been any significant changes as far as historical standards of care since the mid-1990s?

A. Yes.

The other significant changes would include that -- well, first -- up until this point, our federal government, state governments, hadn't provided to youth organizations any real, tangible resources to help them know how to screen select? How do you monitor volunteers? What are the ways in which we can protect children? Those things had to be developed by individual youth organizations on their own.

But beginning in 2002, the Points of Light Foundation provided information about how to screen volunteers. And then in 2007, the Centers for Disease Control published the first national guidelines for

organizations that gave guidance to the variety of ways in which an organization can prevent sexual abuse from happening in that organization. And that was called the Preventing Child Sexual Abuse Within Youth-serving organizations: Getting Started with Policies and Procedures.

Q. Does that pretty well cover your first opinion that you have in this case?

A. Yes.

Q. Could you tell the jury what your second opinion was in this case?

A. Yes.

With respect to access and responsibility with children, religious organizations in particular are divided in three categories. The first category would be members. Ordinary members of a congregation. The second would be the employees and the volunteers who have particular roles with children and youth programs.

And the third category would be clergy and spiritual leaders. Some individuals who have a sexual attraction to minors unfortunately do target religious organizations as a means to gain access to children. And depending on the individual, their own skills, their own abilities, and their own roles that are available within a religious organizations, they will make choices

about how they are going to attempt to use that religious organization.

Q. And you mentioned clergy and spiritual leaders.

Was the defendant, Jonathan Kendrick, in this case, a clergy or a spiritual leader during the time period he was alleged to have abused the Plaintiff?

A. Jonathan Kendrick was not a member of the clergy or a spiritual leader within the Jehovah's Witness organization.

Q. Okay. And I would like to go into your third opinion and, perhaps, introduce it by asking you this question: Do the Jehovah's Witnesses have positions of special access to children who are in positions of trust with children?

A. In working extensively with religious organizations, I am very skilled to identify the special roles that are available within an organization who gain access to children.

For example, if there is a Vacation Bible School or a youth camp, then that person working at a camp or an overnight environment such as that has access to children overnight, is there when undressed, is there when they're swimming, they may go horseback riding or mountain climbing and have legitimate opportunities to

have physical touch with children. Those are some higher access positions.

You also have people who are there to specifically teach children and have a Sunday School class and take ten children into a room and teach them about the Bible. So in most religious organizations, there are times when children are separated from their parents and the adults who are in charge of that program have special access.

What is unique about the Jehovah's Witnesses Organization is that they don't have programs that are geared specifically toward children or that at these times separated children from their families.

And so there are no unique positions of access with children or positions of trust with children that are in this particular organization because the unit of service that is the family, so they always stay together throughout all the programming.

Q. Does that pretty well cover your third opinion then?

A. There is one other dimension of that opinion that I would like to share and that is that there are positions of responsibility within the Jehovah's Witnesses Organization.

The first one is called the ministerial

servant. And the ministerial servant is not in a pastoral role or counseling role or spiritual worker. They are really there to manage the singing or hand out the literature or hand the microphone if they are going to speak. But they don't have any special access to children.

The second would be more in line with the leadership of a congregation, is the elder. And elders actually don't have special access with children either because they are not teaching children, they are not separating children from the families. So they do provide pastoral care, but they are not in a unique position of trust for children.

Q. Thank you.

Could we hear your fourth opinion. What is that?

A. The fourth opinion is that, as a result of this distinctive structure of the Jehovah's Witnesses, it is not possible -- it was not possible for Jonathan Kendrick to get himself into a position of unique access or trust with children.

As a result, Jonathan Kendrick chose the methods that were available to him, and that was to gain access through family and friends and target the children within that family or friend.

As a result of this unique structure, the standard of care question that I believe I needed to consider in this particular case was:

During the time frame of 1993 to 1997, what measures were religious organizations taking to regulate the access to children that is provided by the child's own parents?

What was the standard of care in the mid-1990s?

And the answer is this. I don't know of any mainstream religious organization that has ever attempted to regulate the access to children that they provide, that is provided by the child's own parents. I have never seen that in a religious organization.

But in addition, I would not recommend that as a risk management technique, to give the authority to make decisions about a child's interpersonal relationships over to the clergy versus allowing the parents to make those decisions for themselves. That's not a risk management strategy that I would recommend.

Q. Dr. Applewhite, since the standard of care didn't require and you would not recommend them telling parents who can have access to their children, what can religious organizations like the Jehovah's Witnesses do to protect their children?

A. Well, it is critical when trying to figure out how best to protect children in a given organization, is to figure out what are the particular activities of this organization.

In the Jehovah's Witness Organization, because children aren't separated from their parents, the really best method for protecting children in that organization is to give the parents as much information as you possibly can about the warning signs, about the need to protect children, about the prevalence of sexual abuse. And tell them there is a need and explain to them how to meet that need.

And in that instance is where I really believe that the Jehovah's Witness Organization has done an exceptional job. And that is providing real materials directly in the hands of parents, not keeping that information just with religious leadership but giving it directly to the parents and saying, "Here is what you need to know about sexual abuse. Take this. Protect your children. Here are the warning signs. Here is what you watch out for. Here is what you do if you see it."

And that is what the Jehovah's Witness Organization has done, both in the publication of the Awake and the Watchtower. And those publications began

in the 1970s and have continued to be published periodically adding on as the knowledge base grew on through the 1990s.

Q. I think maybe my question kind of evoked you to get into your fifth opinion; is that true?

A. I think it did.

Q. Okay. Sorry about that.

What were other religious organizations doing as far as providing material and education for families during this time period?

A. During the time frame of the mid -- well, from the '80s on through the mid-1990s, most of religious organizations were not providing specific educational programs for parents. And there were policies being developed about response and there were some things that were happening in religious organizations, but this idea of educating parents directly, I didn't see that in other religious organizations during that time frame.

Q. Do you see it now in those religious organizations?

A. Since 2002 there have been religious organizations that have developed specific educational materials for parents and families.

Q. Does that pretty well cover your fifth

opinion in this case?

A. Yes, it does.

Q. How about your sixth opinion?

A. The sixth opinion is that, based upon my reading of the depositions and exhibits, at no time was Jonathan Kendrick placed into a position that required or allowed him to be alone with children, to be in supervision of children, to spend time with children away from their families, or to engage in those higher activities such as overnights, changing clothes or legitimate physical contact.

He was not authorized by the congregation to work with or spend time with Jane Doe or any other child or particular group of children. He just didn't get that assignment.

Q. Does that pretty well cover your sixth opinion in this case?

A. That's my sixth opinion.

Q. And when you said that Jonathan Kendrick wasn't placed in any position that required or allowed him to be alone with children, you were specifically referring to whom would be placing him in that?

A. Yes. That's a big clarification.

My opinion is about Jonathan Kendrick not being placed by his congregation or his congregation

leaders into a position that required or permitted him to be alone with children.

Q. And just referring back for a minute here to your fifth opinion, which had to do with educating parents and family members about this issue, do you have an opinion about whether Jehovah's Witnesses, as a religion, met the standard of care for educating and protecting children?

A. In the mid-1990s?

Q. Yes, ma'am.

A. My opinion was that, in the mid-1990s, that the Jehovah's Witnesses well exceeded the standard of care for educating parents about sexual abuse.

Q. Okay. Does that cover your fifth and sixth opinions?

I know I mixed them up going back and forth.

A. I'm pretty sure I didn't mix them up. But I think it has been covered.

Q. Okay. So can we go to your seventh opinion? What is that?

A. It does appear that in 1993, Jonathan Kendrick self-disclosed, in the presence of his wife and stepdaughter, that he had touched the breast of his stepdaughter.

He first disclosed to an elder, and then two

elders met with the family, with Jonathan Kendrick, Evelyn Kendrick and Andrea. And in the presence of his family, Jonathan Kendrick disclosed that he had sexually touched his stepdaughter.

At that time the adults in the marriage of Evelyn Kendrick and Jonathan Kendrick made a decision to stay married. And the elders listened to his disclosure and left the decision to report to the police up to the family.

Even though the position of ministerial servant is not a position of trust with children, it is a responsibility in the congregation. And so the elders made a decision at that time to remove Jonathan Kendrick from that position of ministerial servant and to make an announcement to the congregation that he had been removed from that position.

If he had had a position of trust with the children, such as youth minister or camp counselor, it would have been necessary at that time to evaluate whether or not he could continue in that position. But since he wasn't in that position, that's not really relevant in this case.

Q. Did the elders do anything more than remove Jonathan Kendrick as a ministerial servant by your reviewing the materials that you examined in this case?

A. In addition to removing him as a ministerial servant, Michael Clarke and Larry Lamerdin both said they kept a special watch on him and paid attention to whether or not he had any inappropriate contact with children within the meetings at Kingdom Hall.

Q. And do you find that to be appropriate within the standard of care?

A. I find it to be appropriate.

Q. Can we go on then to the ninth opinion?

A. Yes.

Privacy and confidentiality considerations for individuals who are alleged or known to have committed wrongdoing.

Considering their privacy is part of their criminal justice system and part of the codes of ethics for most human service professionals and helping non-professionals as well as the policies for confidentiality that are in the procedures of most religious organizations.

So considering the private information a person discloses is a very common theme for counselors and others like them.

And the wording of the letters to the bodies of elders in the United States that were provided by Watchtower, the wording that they used to caution elders

against recklessly disclosing private information, the wording of that very closely mirrors the National Association of Social Workers Code of Ethics, the American Counseling Association Code of Ethics and even the Child Welfare League of America Standard of Excellence.

Those concerns about confidentiality and privacy -- the wording is very, very similar to religious organizations as well as those codes of ethics.

Q. You were referring to letters from the Watchtower Bible and Tract Society who are the defendants in this case.

Those letters were directed to whom?

A. The Watchtower Society sends letters to all bodies of elders in the United States. And that's really the way that policies get implemented within the Jehovah's Witness Organization. They -- the Watchtower Society will send the letter out to all of the bodies of elders. The bodies of elders will oversee the congregation. So when they want the elders to know how to be respond to the situation, they send out letters to the bodies of elders.

Q. Okay. So specifically did you have reference to a July 1st, 1989 letter?

A. I am referring to the July 1st, 1989 letter as well as there were two other letters that were sent prior to the particular dates of consideration here.

There was another letter, March 23rd of 1992, which was three years later, and then another letter, which was February 3rd of 1993.

And I think when you read those letters, you really get a sense for the critical concern being that the elders need to respond to victims of sexual abuse with a great sense of compassion and sorrow for what's happened to them and to take some time to listen to them.

They also -- the letters to the bodies of elders really caution elders against being insensitive and saying things like, Why don't you just forget about that? They say take some time. Understand that the person who has experienced abuse may have some real mixed feelings and you have to really reach out to them with a heart of compassion.

Q. Well, is part of your opinion, then, that confidentiality within religious organizations and other organizations that you work with, is that a good thing or a bad thing?

A. It is not part of my opinions to say whether it is a good thing or a bad thing. I just know that,

with counseling, with social work, with therapists, with religious leaders and pastoral counselors, there is a trust relationship that is built. And when people need to go to someone for help, they need to feel that they are going to disclose information and the person they disclose to is going to be trustworthy. They are not going to gossip about them. They are not going to recklessly share that information. And so I recognize that that is part of the codes of ethics for a reason.

Q. For training, education and experiences, are confidentiality a part of social service agencies and other organizations other than religious organizations?

A. As a social worker, it is part of my code of ethics. As a social worker, it is in my training and education and expertise. I see that in religious organizations and counseling environments that concerns about privacy and confidentiality are pervasive within the professions.

Q. Now, earlier in one of your previous opinions you mentioned about the Awake and Watchtower Magazines that are provided to members of this religious organization. You referred to articles that educated them.

And did you have any specific article in mind?

A. I read many articles, but I did pull just a few of them because I think that they are good examples of why I feel like the standard of care was exceeded.

The first was in July 22nd, 1976, was just a broad article about how we just call attention to the problem of child abuse in general. And it is called "Child Abuse: What Can Be Done About It?" And that was published in Awake.

Then in January 22nd of 1985, the Awake Magazine published an article called "Child Molesting: You Can Protect Your Child." And I really found this striking because it explained to parents the pervasiveness of the problem and explained that it contradicted what many people believed in 1985.

It might not be a stranger and it might not be somebody who appeared to not be a nice person. It could be a neighbor, it could be a good friend, it could be a member of the family and it could be a minister.

And they provided very specific scenarios that people could relate to. And I find that, in educating people, it is really critical that you provide those very specific scenarios so that people can relate to them and see those behaviors in their own environments.

So they also really gave specifics. There is

a section called, "If The Worse Should Happen." And it says be suspicious, pay attention. And if the child does disclose, how to manage that disclosure in a way that it is not going to cause harm to the child. So I found this to be more of a parents education program. And that was in January of '85.

In 1991 Awake also published an article called "Healing The Wounds Of Child Abuse." And this one also I thought was really far ahead of its time because it explained the very, very complicated feelings that an adult can have who experienced sexual abuse as a child and provided guidance to elders and other members about how they can respond to that person.

And then about a month later, they also published letters that people had written in about how important it was to them to read this information, and those letters were also published.

Then lastly, in October of 1993, there was another publication called "Protect Your Children." And it gave an updated version of the adult education program that was published in 1985. And one of the really strong things that said in there is, don't limit your training to one time with your child. And I still have to tell parents that now, that you can't think you are going to sit down and have a talk with your child.

You have to know it is going to be an ongoing project to work with your children.

So much of what was published in 1985 and then in 1993 I would still use in an adult education program for parents.

Q. And all these magazines that you refer to, the Awake Magazines are published by Watchtower Bible and Tract Society; is that correct?

A. These publications are all published by The Watchtower Society.

Q. And do you know how they are disseminated to the public or to the members of this religion?

A. These are disseminated in a variety of ways depending on what the publication is. And they are also referred back to in those letters to elders that come from Watchtower, they'll say, please remind yourself about the information that was contained on this day.

But the way it is generally disseminated is they come out in the publication, and then the members go and educate other people using those publications.

So they read them themselves. They come directly to their house. At this time, they were coming directly to their house.

And so they would come to their home, as well as to be in the Kingdom Hall. And also there would be

meetings around certain of the publications, where there would be teachings directed to the articles.

Q. Do these articles refer to scientific community in this area or experts in the field?

A. It was -- it was actually one of the things that I found interesting and striking, was that, for example, in 1985 David Finkelhor and Gail Sheehy were cited -- were quoted.

And David Finkelhor was clearly one of the most important writers at that time, one of the most important researchers. He was the researcher who first began explaining to people that sexual abuse could at times cause long-term effects.

And so both David Finkelhor and Gail Sheehy are quoted in the 1985 article. But there are always in these particular publications, authoritative researchers and experts who were cited in the material. So it is not just providing scriptural references or spiritual references. It also gives really solid information from a social work perspective.

Q. Thank you, Doctor.

I would like to take you to your tenth opinion at this time.

Can you state what that is, if you can?

A. Sure.

One of the things I considered in this case was whether or not it was reasonable that the elders in the North Fremont Congregation didn't notice or didn't suspect that it was possible that Jane Doe was experiencing sexual abuse. And my opinion was that it was reasonable that they didn't detect.

And the reason that I have that opinion is because there were two groups of people that were in a better position than they were to know or suspect, who also did not know or suspect. And those two groups of people are, first, those individuals in her family who were so close with her. And that would be her father, her mother and her paternal grandmother with whom she lived on and off.

And then there was a second group of people who also didn't know or suspect, that were professionals. And that would be her therapist, Laura Fraser, the mediator who she met with about the divorce, Barbara Ryan. And she also had professional contact with her school counselor, Dana Takamoto.

And so neither of the people within she was intimately involved nor the professionals who were involved in her life knew or suspected that she was experiencing sexual abuse. And, therefore, it's my opinion that it was reasonable that the elders also did

not know.

Q. Okay. So, Dr. Applewhite, based on your education, your training, your experience and all the materials that you've examined in this case, did the elders, who received information from Jonathan Kendrick in November 1993, violate any standard of care in how they handled that situation?

A. My opinion is that the elders who heard the disclosure from Jonathan Kendrick and his family did not violate any standard of care that I know for religious organizations or leaders within religious organizations in the mid-1990s.

MR. McCABE: Thank you. I have no further questions at this time.

CROSS-EXAMINATION

BY MR. SIMONS:

Q. Dr. Applewhite, back in the time period we are concerned about in 1993 and 1994, you were starting to get your Ph.D. at the University of Texas; is that correct?

A. At the University of Texas in Arlington.

Q. During that time, you did some research as part of your dissertation in getting your Ph.D. Correct?

A. Yes.

Q. Okay. And what was that research in?

A. That research was on women who were involved in violent relationships.

Q. Were you actually doing consulting and training with religious groups about childhood sexual abuse prevention in 1993 and 1994?

A. I was not yet working with religious groups in 1993 or 1994.

Q. You used the term, or counsel did, "historical research."

What context is historical research involved in the opinions you have given us today?

A. I'm sorry. Can you -- can you ask me that again?

Q. Yes.

Is it fair to say that the opinions you have given about standards of care in 1993 and 1994 are based upon the research that you have done and library work, rather than your own personal experience in 1993 and 1994 in the field?

A. I don't think that that is entirely correct. Because during that -- from 1992 to 1994, I was already gathering cases and doing root cause analysis of cases. And so those particular cases that I was doing the

analysis on had happened normally within the past ten years.

But I was also already gathering the cases during that time frame. And so there were some contemporary cases from '93 and '94, but they would have gone back about ten years. So I gathered about 300 cases during that two-year time frame and did root cause analysis on those.

So I don't think that everything that I'm basing today on is just from literary research or just from professional research. It is also the work that I did during that time.

Q. Was any of that work directly with the victims themselves?

A. Some of that work was directly with victims because when we were trying to figure out how in relation to respond, I also met with people who had the experiences of abuse and asked them questions about -- for example: When you made that call, what were you hoping to hear? What could have been said?

So, yes, I -- I was never doing therapy with them, but I certainly spent a great deal of time listening to what their concerns were.

Q. And how many of those different individuals that you might have interviewed in '93 and '94 were

sexually molested in a religious institution context?

A. Just a handful at that time. I would say five or six people. I'm sorry. Probably two or three children as well that I met with the families and they were still children.

Q. Your work does, however, include extensive research into the same periods that other religious organizations had implemented in the time period during and before 1993 and '4. Correct?

A. My?

Q. Your opinions today rely in large part upon your research into what other religious organizations were doing in the same time frame.

A. Yes.

Q. And part of the different religious organizations that you looked at was what the Catholic Church was doing.

Is that fair to say?

A. The Catholic Church was included in that.

Q. Okay. And you are also very familiar yourself with the standards involving, if you will, positions of the Catholic Church with regard to child and sexual abuse issues.

A. I'm not sure I know what you mean by "positions."

Q. Have you done a lot of consulting with various either dioceses or other Catholic-based organizations?

A. I have done a great deal, a great deal of work with the Catholic Church in various ways.

Q. And I think you have, in your resume, two published articles, one of which was published in the American Magazine, which is a publication of the Catholic Church. Correct?

A. Yes. The American Magazine is published by the Jesuits.

Q. And in your research and work with the Catholic Church, did you become aware of a public standard of the U.S. Conference of Catholic Bishops from 1992 on the subject of childhood sexual abuse?

A. I am familiar with that.

Q. And was that a five-point policy statement?

A. Yes.

Q. And do you remember whether any of the five points dealt with the subject of communicating and disclosing information to the community?

A. Yes. I recall.

Q. Do you recall what the exact language was?

A. I don't recall the exact language. I remember that the fifth point of the five points that

the bishops published in 1992 said that -- to deal as openly as possible with -- within the confines of confidentiality with the public and the community. But I may not have -- well, you have it.

Q. Do you recognize that as the 1992 Conference of Bishops Policy Statement?

A. Yes.

Q. And what did policy statement five say?

A. There is five points. The fifth point says:

> "Within the confines of respect for privacy of the individuals involved, deal as openly as possible with the members of the community."

Q. All right. Thank you.

Have you published any articles on the subject of childhood sexual abuse prevention in any professional peer review journal?

A. I have not published academic articles in this area.

Q. You work for a firm called Park Dietz at present. Correct?

A. I contract with Park Dietz and Associates. That is correct.

Q. And what is the fee that you charge for your services in this case?

A. There is two different fees. There is the fee that Park Dietz and Associates charges, and then there is the fee that I charge to Park Dietz and Associates.

In this case, Park Dietz and Associates charges $450 an hour and I charge to Park Dietz and Associates $300 an hour.

Q. And Park Dietz is a forensic consulting firm. Is that fair to say?

A. I think that's fair to say.

Q. And what does that phrase "forensic consulting firm" mean to you?

A. Dealing with matters -- well, consulting in matters of law and criminal law.

Q. And you testified, as counsel pointed out, in deposition in San Diego last month in another case of Jehovah's Witnesses alleged sexual abuse. Correct?

A. Yes, I did.

Q. And do you have a number as to the amount of billing dollars that have been submitted for your combined work for the Jehovah's Witnesses in this case and that case?

A. I'm sorry. What was the word that you used? Do I have a --

Q. How much has Park Dietz charged for your

forensic services in these two cases?

A. I'm sorry. I don't have that number on the top of my head.

Q. Do you have an estimate as to the number of hours that you have spent in your review of materials in preparation for testimony in this case?

A. Yes.

Q. What is your estimate as to that?

A. I can look it up.

Q. Okay.

A. Prior to this month, there were 41 hours. And then this month I believe that there has been another -- probably another 25 hours. And then here coming to testify as well. That would be in addition to that.

Q. So we are somewhere in the neighborhood, for this case, of $30,000?

A. Okay. My math is not that great, but it sounds like about $30,000, yes.

Q. And what were the fees charged in the San Diego case?

A. That, I don't know. I'm sorry. I just don't know.

Q. Were the hours you spent in that case similar to the number of hours that you spent in this case?

A. Similar.

Q. You talked about the exceptional child abuse prevention program that, in your opinion, the Jehovah's Witnesses had in place.

Can you tell me whether or not you agree that whether a program is effective or not in child sex abuse prevention and education is best evaluated by whether it has reduced or prevented childhood sexual abuse occurring within the institution?

A. Well, let me begin by saying that what I said was that it was an excellent parent education program, which is different than a sexual abuse prevention program. Parent education is a dimension. And I believe that those materials that were provided are excellent.

And then, is the best way to evaluate the effectiveness of a sexual abuse prevention program to measure whether or not instances of sexual abuse are in fact reduced is -- in an ideal world, that would certainly be the best empirical basis for evaluating a program.

In the real world, I very rarely see that type of empirical evidence being gathered to evaluate sexual abuse programs. I just don't see it very often, but I certainly think that that is the ultimate

question, does it reduce sexual abuse.

Q. Have you received any data as to the incidence of child sexual abuse within Jehovah's Witnesses organizations during the past 30 years?

A. I have not asked for that.

Q. And so, as you sit here today, is it accurate to say that you have no statistical or empirical data at all upon which you rest your opinions with regard to the appropriateness and effectiveness of the Jehovah's Witnesses child sex abuse education and prevention programs?

A. Actually, because it is so -- you can't have, really, a control group, in a sense, in a program like this.

What I base my opinions on are the root cause analysis of cases. And so, for example, would I make a recommendation that this is an appropriate way to prevent?

What I'm basing that on is a case in which the -- for example, I interview the perpetrator and the perpetrator says, Well, I chose this child instead of that child because this child said that they were going to tell their parents. Or this child had an older sister who kept coming over to my house and asking questions.

So rather than going afterwards and saying, "This is the number of children who weren't abused." The way I base the recommendations is on cases where we know what allowed the abuse to slip through the cracks.

And in this particular instance, the reason I say these are good materials is they provided the specific information that, first of all, the adult survivors have said, It is critical for people to understand. And also, they provide the particular types of protections that I have seen prevent cases of abuse in the past.

So it is not a statistical analysis for me. It is really a case-based analysis.

Q. So the direct answer to my question about whether or not you base your opinions at all on any statistical data about prevalence or absence of child sexual abuse within Jehovah's Witnesses is, no, you do not.

A. No, I don't base it on statistics.

Q. All right. Before Park Dietz, you consulted with another business group as your -- if you will, your method of consulting. Is that correct?

A. Well, first, the only thing that I do with Park Dietz, so just the few legal cases that I work on, the --

(Side bar discussion)

THE COURT: First of all, we are going to stop the depo now. That was not the subject of discussion between counsel and the judge. But had -- and I will take responsibility for it. We have been working through a number of issues as we go along.

Here is what I expect. I am going to dismiss you now and ask you to come back at 1:00 o'clock, early.

We will have some more testimony this afternoon. One of you has a very legitimate circumstance in the morning.

What I would intend to do, and call it, if you would, an executive decision because I'm going to take responsibility for it -- this has been, obviously, a -- well, I have been meeting with counsel off and on outside of your presence, as I have related.

I am not going to bring you in tomorrow. You know, I have got the obligation Thursday and Friday in Sacramento. But I can tell you and look you in the eye that, with all that has been going on and very professional circumstances and cooperation, this case is going to go to you on Monday, instead of deeper into the week.

And when all this is over and you have rendered your decision, as a matter of procedure,

certainly I will welcome any questions. And, of course, as I have already instructed you, you can talk to the lawyers. And, of course, you don't need to talk to anybody. But we will -- I expect closing argument by everybody on Monday.

As part of the work of the case, as I have told you, you get to be the judges. But what I didn't tell you is, I still have to do a little judging. And I have been doing judging every morning. And as part of what -- already I have given you, what I call, pre-flight instructions, to give you a sense of what your responsibilities are and who has got burden of proof and whatnot.

The instructions in this case -- I will be working with counsel, again, in the morning to agree upon or to make rulings upon as needed the entire set of closing instructions, which will be far greater in number than the so-called pre-flight.

But in terms of the planning of your daily lives, we will not be in session tomorrow. We are back in session at 1:00 o'clock this afternoon. I want to be very clear on that. And I'm hopeful that we will get through the testimony today such that we will be in a position on Monday to argue and go to -- I'm very confident you are going to get the case on Monday. I

can't tell you exactly when, but that is what is going to happen.

So that being the circumstance, I am going to excuse you now, and I will look forward to seeing you at 1:00.

We will go as long as we need to today to accommodate and structure what I have told you, notwithstanding the calendar I have this afternoon.

So as always -- and I wanted to say this directly right now. I'm not much a fan of history does this, not this judge, of sitting on high up here, but I would already like to thank you, in terms of the obvious diligence each of you are giving and attention to what has been going on here.

So thank you, and I will see each of you at 1:00.

(Whereupon the following proceedings were heard outside the presence of jurors)

THE COURT: Counsel, let me see if I understand.

You are going to have Mr. Shuster?

MR. McCABE: Yes, your Honor.

MR. SCHNACK: And then we are going to discuss depositions real quickly here. And it might be a few lines at most.

THE COURT: Okay. Well, I am in here taking care of other business, so I'm not going anywhere. So, if you need me.

All right. I will look forward then to seeing everybody as 1:00 o'clock. Thanks.

(Break taken)

MR. SIMONS: Housekeeping.

Now that Dr. Applewhite has testified, I would request the court rule -- I request for judicial notice the statutes that were in effect in California on January 1st, 1993.

THE COURT: I will take judicial notice of it.

What would you like me to do other than that?

MR. SIMONS: Well, once it is judicially noticed, I think, your Honor, then it can either be read to the jury or at least referred to or read to the jury in closing argument and shown to the jury in closing argument. At least I'm thinking that.

THE COURT: I'm not sure of that. I will take a look at that. Certainly I have the power to take judicial notice of it but I don't think that necessarily answers the questions as to whether we show it to the jury or not.

And that kind of dovetails with some

consideration we will talk about tomorrow in terms of instructions and the law.

MR. SIMONS: Yeah. Because, yeah, one alternative is to instruct that, the section on such-and-such a date said. But it is not evidence per se.

THE COURT: Well, that's what I'm thinking through as we are having this discussion, is I have to be very careful with that. Because certainly I wouldn't -- under the statute, I took judicial notice of, I wouldn't give a per se instruction on that statute.

MR. SCHNACK: Yeah. We do want to be heard on that later then.

THE COURT: We will do it tomorrow when we do our instruction stuff.

MR. SCHNACK: Thank you.

THE COURT: I'm not surprised by your request. The issue is: How to present it?

MR. SIMONS: Yeah. And we have heard conflicting testimony from the experts as to what the statute said.

MR. SCHNACK: Particularly the one that doesn't reference clergy whatsoever.

THE COURT: All right. We will hash that out

tomorrow on how to present it and we'll rule on it potentially.

MR. SCHNACK: Since we are doing housekeeping, do we have a time in mind for having the court reporter present tomorrow?

THE COURT: And here is the time I have in mind just because of the nature, that we start at 10:00 a.m? Fair enough. Because after that, that's fine, if I can get in here and continue to deal with all my sundry decision making then, I will be clear and clean at 10:00. Okay?

Madame reporter, 10:00 o'clock. I'm sure you'll take part in that.

THE COURT REPORTER: Of course.

THE COURT: And we can go as long as we need to to get it right tomorrow.

Okay. If you want to arrive earlier, you are always welcome to, if you want to have the jury room or whatnot, whatever rooms available, you can do that, and then we can meet at 10:00 and we can go from there.

(Lunch recess taken)

THE COURT: All right. Mr. McCabe.

MR. McCABE: Thank you, your Honor.

I will call Mr. Allen Shuster to the stand.

THE COURT: All right, then. Mr. Shuster,

come on up. I will remind you, you have been previously sworn and remain under oath. Please have a seat.

ALLEN SHUSTER,

WAS PREVIOUSLY SWORN TO TELL THE TRUTH BY THE CLERK AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. McCABE:

Q. Mr. Shuster, where were you born?

A. Monmouth, Illinois.

Q. And where did you grow up?

A. I grew up in Hope, Arkansas.

Q. And did you go to high school there?

A. Yes, I did.

Q. Did you graduate?

A. Yes, I did.

Q. What did you do upon graduation from high school? Did you do any college?

A. I did not, no.

Q. What did you do?

A. I began my ministry then, you know, as what is called a regular pioneer. And that means agreeing and volunteering to devote a certain amount of time to the ministry. And so I began that in September of 1971.

Q. Okay. So you were previously baptized as one of Jehovah's Witnesses; is that correct?

A. Yes.

Q. What year was that?

A. That was in 1968.

Q. And how old were you then?

A. I was 15.

Q. On your pioneering activity, that is primarily done door-to-door, conducting Bible Studies, things like that?

A. Yes. That is a form of ministry.

Q. How long did you continue in Hope, Arkansas as a pioneer for Jehovah's Witnesses?

A. About three years in Hope, Arkansas. And then I moved to a small town called Prescott, Arkansas and pioneered about a year-and-a-half there.

Q. Okay. What did you do next?

A. I sent in an application to serve at the world headquarters of Jehovah's Witnesses in Brooklyn, New York, and was accepted in April 1976.

Q. When you arrived in New York, what was your job assignment?

A. I worked in the factory. We did -- that's where the Bibles and other literature for Watchtower are printed and distributed.

Q. What specific job did you have?

A. I worked in the -- what's called the paint shop. I did finishing and refinishing of furniture.

Q. Are you intimately familiar with the beliefs and practices of Jehovah's Witnesses?

A. Yes.

Q. And you know about the policies and procedures of the organization of Jehovah's Witnesses on child abuse?

A. Yes, I do.

Q. Okay. After you worked in the paint shop, did you have a job change?

A. Yes. I was transferred to the Service Department in the early part of 1981. I think it was January or February.

Q. What, exactly, is the Service Department?

A. The Service Department is an office that has oversight of the United States field, the congregations of Jehovah's Witnesses. We have 13,400 congregations.

Q. What does the Service Department do with the 13,400 congregations?

A. It provides spiritual advise and counsel to our elders who are serving in these 13,400 congregations.

Q. Would that include some of the letters that

the jury's seen and heard about?

A. That's correct, yes.

Q. So those letters come from the Service Department of The Watchtower Bible and Tract Society?

A. Yes.

Q. I'm going to approach and show you an exhibit that's previously been marked Defense 131, and ask you if you recognize that document, seen it before.

A. Yes, I do.

Q. I want to take you through it and ask you some questions.

Is this an accurate depiction of the structure of the church of Jehovah's Witnesses?

A. Yes, it is.

Q. And it looks like it's a hierarchy of the organizations from the top down?

A. Yes, sir.

Q. At the top there it mentions the governing body.

Who are they?

A. The governing body is a body of seven men, seven elders who make up the spiritual leadership of the church structure of the Jehovah's Witnesses.

Q. And where do they do their service work?

A. They live in Brooklyn, New York. They are

from varied countries. Mainly in New York.

Q. Okay. Next I noticed there is a U.S. Branch Committee.

What is that?

A. It is a committee of twelve men, twelve elders, who have oversight of the United States field activity, oversight of the Service Department. They are one branch of about a hundred branches throughout the world.

Q. And does the U.S. Branch Committee provide any spiritual instruction or guidance for the Congregation?

A. Yes, they do.

Q. Where do they get their instruction from?

A. Their the governing body.

Q. And next you have the Service Departments underneath the Branch Committee?

A. That's correct.

Q. And then I notice there's district overseers and circuit overseers.

What's that?

A. Yes. These are elders who travel to various congregations and provide spiritual instruction and encouragement, patterned after the first century Apostle Paul, that's who traveled with the congregates.

Q. So are they kind of like field representatives of the Service Department?

A. Yes.

Q. Now down to the Congregation level.

Who was the spiritual leaders of the congregation on the local end?

A. It would be the elders.

Q. And what is their function and role?

A. They provide spiritual direction to the congregation, and they teach, shepherd, they do evangelizing work. And so they basically take the lead in these aspects within the congregation.

Q. So if we could use terminology from another religion, they would be like the priests or the pastors of the congregation?

A. Like the clergy. Yes. Pastors, ministers.

Q. And then the next level we heard some testimony about ministerial servants. They do mostly administrative things and physical things around the Kingdom Hall?

A. Yes. They are helpful to the elders. They handle microphones in the congregation. They work with latecomers who arrive and can help seat them. They work in parking lots parking cars. A variety of things, distributing literature to the members.

Q. Okay. Regarding the beliefs of Jehovah's Witnesses, you believe you are a Christian organization?

A. Yes, we do. That is somewhat of a misconception among some. We do believe in Jesus. We recognize him as our Savior and leader, and we respect the teachings that he gave in the gospel accounts.

And so we try very hard to adhere to the teachings of Jesus, as well as his conduct in the way he treated people. We don't always measure up, but we try our best to follow his example.

Q. How many Jehovah's Witnesses are there in the United States?

A. There are approximately a million two-hundred thousand active Jehovah's Witnesses.

Q. I think it seems like more with the number of hands that were raised about people calling at their doors.

Why do Jehovah's Witnesses call on people's homes from house to house?

A. Well, it's -- we feel there is some encouraging Good News that we have to offer. I know at the jury selection it was commented that they were a little irritated by Jehovah's Witnesses calling at their home. And it is understandable. I don't want to be awakened on Saturday morning either.

But we do feel there is a message we have to offer and that is Good News about the Kingdom of God. We are taught to pray as Christians and let Your Kingdom come and that Your will be done on earth as it is done in heaven.

So that Kingdom offers a prospect of hope to the future that is encouraging. Many are receptive to the message that we have and we are experiencing growth as an organization.

Q. How does a person become a Jehovah's Witness?

A. We're not born as one of Jehovah's Witnesses. We don't perform infant baptisms. But we feel that it's important that each individual make a decision based on his own knowledge of the Bible, to encourage taking the knowledge.

John 17:3 says: This means everlasting life, taking the knowledge of the only true God and the one whom you sent forth, Jesus.

So based on that knowledge, we feel that individuals can make an educated decision as to whether they want to become a member of Jehovah's Witnesses. And then symbolize that by means of watered baptism as Jesus himself did.

Q. Okay, sir. How is the activities of Jehovah's Witnesses supported?

A. It is purely by voluntary contribution. We have some boxes in the back, contribution boxes, that if an individual wanted to contribute something, they are welcome to do that. We don't pass the plates or we don't tithe. It is all on a voluntary basis.

Q. Go back to Exhibit 131, where it mentions "baptized publisher."

What does that terminology refer to?

A. It refers to a member of the congregation, one who has been baptized.

Q. And why the use of the word "publisher"?

A. Because it is an individual who has his own love of people and a desire to imitate Jesus who was an evangelizer who go from door-to-door, from village to village someone who has agreed voluntarily to publish the Good News of the Kingdom.

Q. What about an unbaptized publisher?

A. They are individuals who have expressed a desire to publish and have met moral requirements and as a result they want to join the members in preaching and sharing the Good News.

Q. Are they kind of like a baptized publisher in training?

A. Yes.

Q. Okay. Are the elders and ministerial

servants baptized publishers?

A. Yes, they are.

Q. Okay. Now, are the meetings of Jehovah's Witnesses open to the public?

A. Yes.

Q. Do you have any rules or regulations about excluding people or the public who want to come and visit?

A. No. It's open to -- all of our meetings are open to the public.

Q. So if we look at the chart here, then you mention that they're -- the chart mentions visitors and guests, children and other family.

Is that what you mean by open to the public?

A. Yes. We have -- of course, children of Jehovah's Witnesses attend with their parents. We have other family members who have an interest in being at our meetings. We have people that we study the Bible with that attend the meetings. And so all in all we have quite a group, ministry. It is probably 2.5 million in this country.

Q. Who attend meetings?

A. Who attend meetings.

Q. Okay. We heard the elders aren't paid for their work in congregation.

Are you paid as a member of the headquarter staff in New York?

A. No, I am not.

Q. So you are a volunteer?

A. Yes.

Q. Okay. We have also heard testimony about congregation members being ordained ministers.

Is that true?

A. Yes, that's true.

Q. What does that term mean in the religion of Jehovah's Witnesses, a person being an ordained minister?

A. Yes. An ordained minister is one who is baptized and we regard it a little bit different than a secular person's.

We feel that at Jesus' baptism, he commenced his ministry and thus that was the recognition, his ordination as a minister. He didn't need any accreditation, accreditations, such as presented in a school. But from that point on, he became a minister. And we regard Jehovah's Witnesses who are baptized members as ministers.

Q. So an ordained minister, is that a word that can be equated with just a member of the congregation?

A. That's right.

Q. Doesn't represent any leadership role or teaching role of congregations of the Jehovah's Witnesses?

A. No.

Q. So you are telling us there is about 1.2 million ordained ministers in the United States?

A. That's correct.

Q. Of Jehovah's Witnesses?

A. Of Jehovah's Witnesses.

Q. What is The Watchtower Bible and Tract Society?

I have heard a lot about it, but I don't know what it is yet.

A. It is a legal entity that was established to print and to distribute Bible and Bible literature and to provide spiritual direction and convey the appointment of elders and ministerial servants to the local congregations prior to the year 2001.

Q. And what is happening since that year?

A. That now comes under a different corporation.

Q. Oh.

How big are the congregations of Jehovah's Witnesses on average, if you know?

A. On average, we have between 75 and 150, including our publishers and members in our

congregation.

Q. What happens if the congregation grows larger than that?

A. We usually -- we usually divide from another congregation. And that allows the elders to give closer attention to shepherding and teaching. And so we are a family-like atmosphere, and so having smaller groups is more conducive.

Q. Are you an elder?

A. Yes.

Q. When did you first become an elder?

A. In 1979.

Q. So when you were in New York?

A. When I was in Brooklyn, New York, yes.

Q. Are you still in the congregation today?

A. Yes, I am.

Q. How many congregations have you been in where you have been an elder?

A. Two.

Q. Can you tell me what the position of the Watchtower Bible and Tract Society is -- is it fair, when I say "Watchtower," is that -- we know what we are talking about?

Is that just the organization of Jehovah's Witnesses when you say "Watchtower"?

A. That would be a simpler way of addressing it.

Q. Okay. So what is the position of Watchtower on the issue of childhood sexual abuse?

A. Well, I can say that's -- and this is probably an understatement -- that we absolutely abhor child abuse. We hate it. It is an egregious sin. And we are not going to tolerate anyone who is a child abuser in a congregation and to be a member of the congregation and to be actively involved in that kind of activity.

Q. So what about a repentant child abuser? Can they be attending congregation meetings, being part of a congregation?

A. Yes, they can.

Q. Okay. Can a person who is known to be a child molester be a ministerial servant?

A. No, he cannot.

Q. Can he be an elder?

A. No, he cannot. Absolutely not.

Q. Can he be a pioneer?

A. Absolutely not.

Q. How long has that been the policy of Jehovah's Witnesses?

A. That has been a long-standing policy of Jehovah's Witnesses, ever since I can remember.

Q. We talked a lot about The Watchtower and Awake Magazines. I want to take you to what has been marked and admitted as Exhibit Number 17 for the Defense and Number 59 for the Plaintiff. Just touch on a few points of that with you.

Do you recall this issue of the Awake Magazine?

A. Yes.

Q. Have you read it recently?

A. Yes.

Q. Are you well familiar with what is contained in there?

A. Yes.

Q. What basically is the cover series addressing?

A. Well, I think, as has been discussed a number of times already, that this is an article that is talking about child molesting, that you can protect your children. And the first article talks about the growing trend in societies, which was printed and distributed back in 1985.

So at the time it was -- this problem was growing, and there was more education, more learning being achieved as a result of research. And so, as a result, there was a need to -- our organization,

Watchtower, felt the need to provide education for parents so as to protect them. And this article cites a number of sources, a number of experts that comment on the growing trend of child abuse in society.

Q. Were some of those experts the ones that Dr. Monica Applewhite mentioned?

A. That's correct.

Q. I would like to direct your attention to page 6 of 10 in this exhibit. I think it is entitled "Child Molesting: Can You Protect Your Child?"

What is the advice that is given to parents in this portion of the exhibit?

A. Yes. It is just talking about the first line of defense.

It says:

> "The first line of defense is to avoid situations that leave our children vulnerable. For example, parents are advised to be careful about using as babysitters young adults who seem to prefer being with children rather than with folks their own age. One clinical psychologist reports that two-thirds of the molesters he is treating committed the offense while babysitting."

Q. So strong warning to parents?

A. Yes.

Drawing attention to the fact that child abusers are not just your next-door neighbor, not just a stranger, but it could be someone you know.

Q. I would like to draw your attention next to that same exhibit to the box on page 8 of 10. "If The Worst Should Happen."

What does this information advise parents to do?

A. This is a teaching box and it outlines, despite the fact you may take precautions, there may be situations where, God forbid, the worst thing happens and that is your child is abused. And so it says there are some things that can be done to deal with that.

One is that, first, the child and other children too must be protected from any further abuse. This must be done whatever the cost.

And, second, the child must be given a lot of love and emotional support. The parents must make it very clear that the little victim is not to blame. The crime, anything that happens as a result of it, even if a close relative goes to prison, is not her or his fault.

Q. The next page of that exhibit, perhaps it is page 10, was there any practical advice given to parents

about how to train their children regarding this issue of child abuse?

A. Yes.

Q. What was it?

A. The article cites a book written by a Linda Tschirhart Sanford, The Silent Children. And she suggested using a tool, The what if? What if the babysitter did this? What if the babysitter did that? What if the babysitter said, "Let's keep a secret"?

So it's a way of parents running some scenarios with the children so as to prepare them with the possibility of maybe someone wanting to molest them and how to deal with it.

Q. Why is that information published in your Awake Magazine?

A. It is because we recognize with children that parents are really the first line of defense in helping their children. So we want to educate our parents to know what they can do to protect their families.

Q. Okay. I would like to take you to the next Awake article. It's October 8th, 1991. It's Defendants' Exhibit 29, and Plaintiff's Number 60. I don't believe this has been admitted, but by agreement we agreed this can come in.

MR. McCABE: May it be admitted your Honor?

MR. SIMONS: No objection.

THE COURT: Plaintiff's 60 is in.

(Whereupon, Plaintiff's Exhibit Number 60 and Defendant's Exhibit Number 29 was admitted into evidence)

BY MR. McCABE:

Q. What was this series of articles about?

A. This was one of the magazines or journals that Dr. Applewhite spoke about in her deposition about individuals who have been victims of child abuse. And it just gives some suggestions as to what individuals can do to deal or cope with their feelings and what others -- those who can support them and help them through this difficult period.

Q. Okay. I would like to take you to the next exhibit. It has been admitted, Defendants' Number 37 and Plaintiff's Number 64, the October 8th, 1993 issue of the Awake Magazine.

Do you recall this article?

A. Yes. "Protect Your Children."

Q. And what were some of the highlights discussed in these articles?

A. On the page 4 of the exhibit, there was an article there from Awake Magazine that mentioned "All experts agree that the best defense against child abuse

is public awareness."

Q. Is that what Watchtower is trying to do by publishing this information?

A. That's correct. By publishing magazines of this sort, we were helping parents realize that they really are the first, are the best defense against child abuse and helping promote public awareness at least.

Q. I would like to draw your attention to page 6 of 13 of this exhibit. There is a book described there.

Do you know who the author of that book was?

A. Yes. Her name is Cheryl Fraser.

Q. And what was her advice that spoken here?

A. She says:

> "That while children should feel free to ignore, scream at or run from an abuser, many children who are abused explain later that they didn't want to seem rude. Children thus need to know that some grownups do bad things and that not even a child has to obey everyone who tells him or her to do something wrong. At such times a child has a perfect right to say no."

Q. Okay. So directing your attention to the first page, was some practical advice given and illustrated to help parents teach their children to

protect themselves?

A. Yes. It's pictured there. I think we have seen already that the purpose of this was to run scenarios which help to demonstrate what a child can do by using words, by being firm in body language to resist any improper advances.

Q. Okay. I would like to take you to the next page of this exhibit and ask you: Was it a policy of Jehovah's Witnesses to encourage their members to hush-hush up this subject matter?

A. Absolutely not, no. We would not have published information of this nature if we were trying to hush-hush.

Q. And I would like to direct your attention to the end of the first paragraph in the box that is highlighted.

Could you read the first two sentences for me?

A. Beginning with "Repeatedly"?

Q. Yes.

A. Okay.

"Repeatedly reassure the child that you will do your best to provide protection. That the abuse is the abuser's fault, not the child's. And that the child is not bad. That

you love the child. Some experts advise reporting the abuse to the authorities as soon as possible. In some lands the legal system may require this."

Q. Now, these articles that we have looked at and the jury has seen repeatedly to other witnesses, are these the stated Watchtower policies regarding the issue of child abuse?

A. Yes, they are.

Q. Is there any other way that Watchtower policy is communicated to the congregations of Jehovah's Witnesses?

A. Yes. Not just through the journals of our Awake and Watchtower but through letters to our bodies of elders.

Q. Okay. Let's take a look at Defense Exhibit 26, Plaintiff's Number 1, that has been admitted into evidence.

Can you tell us what this is?

A. This is a letter to all bodies of elders, dated July 1, 1989, and it has to deal with a variety of subjects that was addressed to our bodies of elders, subjects such as search warrants and subpoenas, crimes, criminal investigations, when service and publishers move, lawsuits, the issue of confidentiality and also

child abuse.

Q. And would this be considered a policy letter from Watchtower Bible and Tract Society?

A. Yes, it would.

Q. You mentioned child abuse.

How big a section of this letter was devoted to that subject, child abuse?

A. On page 3 of the exhibits, I believe there is just four sentences, again, read the paragraph that highlights reporting child abuse when the law requires it, but especially when these things happen, we want to the protect our young people and then report that to our Legal Departments.

Q. Was this the be-all end-all of Watchtower's child abuse policy, this July 1st, 1989 letter?

A. No, it was not.

Q. Do you continue to publish from the Watchtower on this subject matter?

A. Yes, we have.

Q. And do you continue to publish up to the present time?

A. That's correct.

Q. We heard this morning from members of the congregation about CD-ROMs.

Can you tell us what that is?

A. It is a library of information over the last 40 years that is available to anyone who is associated with Jehovah's Witnesses. And it contains articles like the one we just discussed in the journals of the Awake, Watchtower and various other publications. So it has a search engine. You can just type in an expression and it pulls up all the articles on that subject.

Q. Is it updated from time to time?

A. Yes, every year I believe it is.

Q. Okay. And so a new member of the congregation would have access to all this information?

A. Yes.

Q. Are CDs made available to all the members of the congregation?

A. Yes, they are.

Q. Where would they get it?

A. They can get it at the literature counter in our Kingdom Halls.

Q. And that is one of the functions of the ministerial servants to take care of?

A. That's correct.

Q. Okay. I'd like to turn your attention next to what's been admitted as Plaintiff's Number 27, but it's also marked as Defense 32.

Do you recognize this document?

A. Yes, I do.

Q. What is it?

A. Again, it is a letter to all bodies of elders in the United States.

Q. And what was the purpose of sending this letter out to the congregations?

A. It was recognized that victims of child abuse may not have physical scars but they have emotional scars. And it is important that the elders who are interested in protecting and helping the individuals. And so the purpose of this letter was to educate our elders, further educate our elders, as to what they can do to help the victims of child abuse.

Q. Was part of it to help them to be sensitive to things they say when they hear about allegations of sexual child abuse?

A. Yes. That is one of the letters that I believe Dr. Applewhite referred to in her interview.

Q. There was a, I believe, one page attachment to this letter also as part of Exhibit 32.

A. Yes.

Q. Do you recognize that document?

A. I do.

Q. Is that a document you received as an elder in your congregation?

A. Yes, it was.

MR. McCABE: Can we have that on the screen?

BY MR. McCABE:

Q. What was the purpose of this one-page handout?

A. This was given to every elder at the time. And it was for the purpose of filing it, keeping it within his personal belongings so in the event if someone was victimized as a -- or was abused a child, was abused as a child, then they could look up the various Watchtower and Awake articles referenced there as well as the scriptures. It has many scriptures, many Bible references in there, to familiarize themselves with the materials so as to be sensitive to these victims.

Q. And did you personally use this exhibit yourself?

A. Yes, I did.

Q. What did you do with it?

A. I read it and I looked up all the references and read the biblical -- Watchtower references, Awake references and Bible references.

Q. Next, I would like to take you to Exhibit Defense Number 44, Plaintiff's Number 29. Appears to be another letter to all bodies of elders in the United

States.

MR. McCABE: And I would ask that this be admitted into evidence?

THE COURT: What number is this?

MR. McCABE: It's Defense 44, Plaintiff's 29.

MR. SIMONS: This is the '95?

MR. McCABE: Yes, sir.

MR. SIMONS: No objection.

MR. McCABE: Thank you.

THE COURT: It shall be admitted as requested.

(Whereupon, Plaintiff's Exhibit Number 29 and Defendant's Exhibit Number 44 was admitted into evidence)

BY MR. McCABE:

Q. Is this also part of The Watchtower policy on dealing with allegations of sexual child abuse?

A. Yes, it is.

Q. What's the policy stated in this particular letter?

A. In paragraph 3, it states very simply that when someone has abused a child, that they should talk really frankly to the former child abuser, strongly cautioning him as to the dangers of hugging or holding children on his lap, and that he should never be in the

presence of a child without another adult being present.

Q. Okay. I notice it says that they should talk frankly to a former child abuser.

Do you know why it uses the word "former"?

A. That would be a member who has exhibited a repentant attitude and remains a part of the congregation.

Q. Okay. If they were an active child abuser that the congregation knew about, what would happen? Never mind. Withdraw that question. Excuse me.

Let's go to Exhibit Number 50. It is also Plaintiff's Number 12.

MR. McCABE: And, again, I would move that this be admitted as an exhibit at this time.

MR. SIMONS: No objection.

THE COURT: It shall be admitted.

(Whereupon, Plaintiff's Exhibit Number 12 and Defendant's Exhibit Number 50 was admitted into evidence)

BY MR. McCABE:

Q. What is this letter?

A. This is a letter to all bodies of elders, March 14, 1997, that outlines some of the policy that we have in regard to child abusers.

Q. Okay. And this is part of the written

policy?

A. Yes.

Q. Okay. What is the policy stated that's made in this March 14th, 1997 letter?

A. It begins in paragraph 4. It raises the question: Who is a known child molester? And quoting from the January 1st, 1997 Watchtower article on "Let Us Abhor What Is wicked," mentions on page 29 that a man known to have been a child molester would not qualify for privileges in the congregation.

Q. What does that mean?

A. That means he would not serve as an elder nor as ministerial servant nor pioneer.

Q. And how long has that policy been in effect?

A. That has been a long-standing policy ever since I can remember. It's because he has not measured up to the scriptural or biblical standard for an elder or ministerial servant.

Q. Okay. And on the second page of this exhibit, what is the focus of the policy that is stated here?

A. This is on page 2 of the exhibit?

Q. Page 2, yes.

A. It outlines what the elders should do whenever a former molester moves to another

congregation. And the secretary is to prepare a letter, that's signed and sent to the new congregation outlining the background of that individual and the need for the elders to be cautious and cautioning him in his association with others.

And then a copy of that is sent to the Branch Office, the Service Department, so that he doesn't slip through the cracks.

Q. Okay. So what else is mentioned in here about protecting children?

A. That they want to be very alert to the activities of anyone who is known to have molested a child in the past, recognizing that he may have certain weaknesses that he needs to deal with.

Q. I notice it refers to a Watchtower Magazine. I would like you to look at Defendant's Number 49, Plaintiff's Number 65.

MR. McCABE: And I would ask that this be admitted into evidence.

MR. SIMONS: 65, 049. No objection.

THE COURT: So admitted.

(Whereupon, Plaintiff's Exhibit Number 65 and Defendant's Exhibit Number 49 was admitted into evidence)

BY MR. McCABE:

Q. Why did the March 14th, 1997 letter refer to this particular Watchtower?

A. Because this Watchtower basically mentions the policy referred to in the March 14, 1997 letter that a known child molester would not qualify for responsibilities in the congregation.

Q. Is this information that we just reviewed, these letters in The Watchtower and Awake Magazine articles, do they constitute a Watchtower policy regarding allegations or issues that arise dealing with childhood sexual abuse?

A. Yes, they do.

Q. And you indicated that Watchtower continues to publish articles on the subject. Is that correct?

A. Yes. Up to the present, they are interested in the ongoing education of parents to protect their children.

Q. How many issues of Watchtower and Awake are printed every month?

A. 42 million of each journal per month.

Q. Are they all just in English?

A. No. The Watchtower is printed in 194 languages and Awake in 84 languages. It is a worldwide distribution of magazines.

Q. And so is it your contention that Watchtower

treats the issue of childhood sexual abuse in a hush-hush manner?

A. Absolutely not, no.

MR. McCABE: Thank you. I have no further questions.

THE COURT: Mr. Schnack?

MR. SCHNACK: No.

THE COURT: Mr. Simons?

MR. SIMONS: Thank you.

CROSS-EXAMINATION

BY MR. SIMONS:

Q. Mr. Shuster, part of your duties over the years has been to provide depositions and declarations and testimony in lawsuits involving the Watchtower New York. Correct?

A. Yes.

Q. And let me ask you a couple of questions that we did not go over at the time of your deposition.

First of all, when people are in field service, do they sometimes collect money?

A. They do accept voluntary contributions from individuals, yes.

Q. And the money that is collected during field service, that goes to Watchtower New York. At least it

did before 2001.

A. I'm not sure of the entity, but it does go to what we call the World Wide Work, yes.

Q. Now, after 2001 -- I just want to get that structure that you gave us straight here.

The Legal Department still remains in Watchtower New York?

A. I believe that was the deposition testimony, yes.

Q. And before 2001, the Service Department and the Legal Department were both in Watchtower New York.

A. I believe that's correct.

Q. Now, you said a person known to be a child molester cannot be an elder or ministerial servant or pioneer.

Can they continue to be a baptized publisher?

A. Yes.

Q. They can continue to be a minister?

A. Yes.

Q. And they can continue to be called "brother"?

A. Yes.

Q. And they can be sent out as a baptized publisher into neighborhoods to spread the word of the gospel?

A. Yes. But not by themselves or with a child.

Q. Is there in writing anywhere the caveat that you just gave to us? I haven't seen it in any of the exhibits.

A. I believe we have something in writing, yes. I couldn't put my finger on it right now, but yes.

Q. Is it here with us today?

A. I don't know if it is here. I don't recall.

Q. We have been in this trial now for a couple weeks. And you certainly know that one of the issues is whether or not a person who is positively identified as a child molester was going into field service with children who did not know and whose parents did not know that he was a molester. Correct? And you have heard all that for the last couple of weeks.

A. Yes.

Q. Any reason why, if there was a policy that specifically prohibited baptized publishers who were known to have molested children from going into field service with a child, that that written policy wouldn't be right in front of you right now?

A. That policy is specific to each individual situation. In each situation there are instructions given in the letter to a body of elders where that individual is and that instruction is given in that letter.

Q. Okay. But where is the written policy?

A. I'm not sure. You are talking about to the public in general?

Q. Or to the elders specifically.

A. As I mentioned, the instruction is specific to the individual's case.

Q. So there is no corporate written policy from Watchtower New York and there never has been that says a positively identified child molester cannot go into field service with a child?

MR. McCABE: Your Honor, may we approach?

(Discussion off the record)

THE COURT: Do you want to repeat the question, Mr. Simons?

BY MR. SIMONS:

Q. We were talking about a written policy that advises elders that a person possibly identified as a child molester cannot go into field service with a child.

Are you aware of any such administrative policy in writing that is with us here in this courtroom?

A. Not in this courtroom.

Q. Now, we looked at the 1985 Awake Magazine, and we talked about the first line of defense. I don't

want to look at the Awake Magazine again. We have seen it enough.

But let me just ask you this: In any Awake Magazine, was the members, the public who are members of Jehovah's Witnesses, the congregation members who receive Awake Magazine, told that, if there was a positively identified child molester within the congregation, that that information would not be shared with the parents who are the first line of defense?

A. I do believe we have information to that effect.

Q. And which Awake Magazine is that in?

A. It was not in the Awake Magazine.

Q. You were part of the drafting of the July 1st, 1989 body of elder letter?

A. I think I mentioned to you at the time, but I am not certain. Possibly. It is hard to remember. It is quite a few years ago.

Q. That letter was not distributed, like Awake Magazine is, to the general congregation membership?

A. That's correct.

Q. You talked about sensitivity to child abuse victims.

Would telling the mother of a 13-year-old victim that it was her fault that her child was molested

because she was not having enough sex with the molester fall under that general umbrella of sensitivity?

A. I don't know of any elder who would say something like that. That is not being sensitive. If he said that, it would be wrong to say that.

Q. And do you disagree, sir, that, if the first line of defense is the parents, that warning the parents of the existence of a positively identified child molester within the congregation gives them the tools they need to protect their children from a very specific individual threat?

A. I don't agree with that. And if I can explain the reasons.

Q. All right.

A. The reason is because we are very much interested in protecting our children, and that's why we have educated the parents over the years.

We have given cautions to our elders about individuals who are child molesters, who are repentant, who remain part of the congregation.

We have assured them to sit down, very frankly, as stated, don't sit, don't be around, don't hold or hug or kiss or take into ministry anyone who has that proclivity.

We also comply with the legal requirements.

If the law says to report that, then we are sensitive to the responsibility that we, as ministries, have to be in subjection to the superior rules, Romans 13:1.

If the law doesn't require it, then we as ministers will instruct the parents or the guardian or the victim that he has a responsibility. If he wants to report that, that is entirely up to him. But it is his absolute right to do that. We are not going to restrict him from doing that.

And in addition to that is the issue of confidentiality. It's something that we are very concerned about as ministers.

And the Bible has outlined this issue from even before Christ. In Proverbs 25:9, Do not reveal the confidential talk with another.

So when someone comes to us and has a problem -- and it could be a variety of problems -- it doesn't just have to be child abuse. It could be child abuse -- they have a certain expectation that what they say to us is going to be private. It is going to be kept confidential.

So we take that responsibility seriously. Otherwise, you could have individuals that withhold saying anything, and then you do have a problem with that.

Q. And if the individuals say, "Don't keep this private, protect people," is it still confidential?

A. I'm not sure of the question.

Q. You are assuming that the report of the childhood sexual abuse must remain secret because it was given in confidence, in your answer, your lengthy answer that you just gave us.

A. We provide warnings to the elders that give them cautions as to how to deal with that individual. We continue to educate our parents so that they can be the first line of defense to try to protect their children.

Q. I'm not sure that you answered my question, Mr. Shuster.

If the communication reporting a child molester is not requested to be kept private, but instead is delivered so that people can be protected from that molester, does that still mean that it has to be kept secret under the policies of your organization?

A. We regard that as a confidential communication.

Q. And that's because the --

A. We comply with the laws of the land.

Q. Do you do both?

A. Yes.

MR. SIMONS: Nothing further.

THE COURT: Anything further?

MR. McCABE: Just two questions, your Honor, although I risk putting a number on it.

REDIRECT EXAMINATION

BY MR. McCABE:

Q. The Watchtower and Awake Magazines, are they distributed worldwide free of charge?

A. Yes.

Q. And do you go door-to-door in public ministry yourself?

A. Yes.

Q. When is the last time you ever received any money doing that?

A. I can't remember the last time.

MR. McCABE: Nothing further.

THE COURT: Anything further, counsel-person?

All right. You can step down. Thank you for your time.

Anything more?

MR. SCHNACK: Next, your Honor, we are just going to put on a minute and a half or so of the Plaintiff, Candace Conti's, deposition.

MR. SIMONS: Yes. I've reviewed it. There's

no objection.

MR. SCHNACK: (Reading from video screen)

Question by McCabe to Candace Conti:

I'm sure your attorney's explain to you that everything that is being said in the room is being taken down by the court reporter and you have just sworn to tell the truth.

And so your testimony here, even though it's in your lawyer's office, in the conference room, has the same force and effect as if you were testifying in a court of law.

Do you understand that?

And Ms. Conti replied: Yes.

And Mr. McCabe asked: Also, whatever you testify here to today will be put down in a booklet form like it reads like a script in a play sometimes, and it will be presented to you to read and sign.

You are free to make changes in the transcript if you feel that there is a material mistake being made in the transcript, but if you do make changes, that could be commented upon by me or someone else and affect your credibility at future proceedings.

Do you understand that?

And Ms. Conti answered: Yes.

MR. SCHNACK: Next clip.

Mr. McCabe asked: How many times did it take place, the bear hugs?

Ms. Conti said: I couldn't give you a number.

Mr. McCabe: Frequently?

She replied: Very frequently.

Question: Every meeting?

Ms. Conti replied: I would -- I could safely say that.

MR. SCHNACK: And then the last clip.

Mr. McCabe asked: Referring to the abuse that took place at the Kendricks' home, was anyone else present during any of these instances?

Ms. Conti replied: No.

Question: Was he married at that time?

Answer: No.

Question: Did he live alone?

Answer: Yes.

THE COURT: Okay. Any further evidence from the defense?

MR. SCHNACK: Watchtower Bible and Tract

Society rests.

MR. SIMONS: North Congregation rests.

THE COURT: Anything further?

MR. SIMONS: No, your Honor.

THE COURT: All right. The parties have rested. I will look forward to seeing each of you well rested on Monday morning. The closing argument will be made.

Generally speaking, I like to instruct before final argument, particularly in a case like this. So we will be working tomorrow morning on the instructions and related matters. The matter will be, again, submitted to you on Monday for your deliberations and decisions.

And again, I say this as sincerely as a judicial officer can say it, I thank you for your obvious attention in this matter, your patience, and I look forward to seeing you Monday morning, 8:30, right here.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: We have pending, your meet and confer, particularly Casey non-special instructions.

I, again, will be in here early tomorrow morning. You can arrive anytime you agree. Let's presume we will go on the record at 10:00, and that's

not fixed in stone, so make sure we have a reporter here.

I am going to deal with the motion to strike Lewis' testimony.

I'm going to deal with the request for directed verdict.

As to the punitive damages count. And again -- I can open -- actually, the printer, at least for a minute, was working. So if anybody wants to email me and make any argument about a motion for directed verdict, have at it. I'm not going to see it before 6:45 tomorrow morning. However, the demands I have for the rest of the day --

So I will deal with the directed verdict motion. Motion to strike the Lewis' testimony. I will consider the application and -- looking into a cohesive fashion, the judicial notice for request in that statute.

I am also looking for anything anyone would like to proffer relative to dealing with the concept of privilege, its definition, and a presentation to the jury that, as a matter of law, separating the rest of the process -- their decision making process contextually.

MR. SCHNACK: My list also says limiting

instructions.

THE COURT: Well, are you talking about the special instructions?

MR. SCHNACK: No. Limiting instructions regarding --

THE COURT: Right. Correct. Thank you.

And just -- and I'm operating from memory, which right now is a dangerous thing, but limiting instructions going to Kendrick's admissions, the grooming incident. There were four by my count. And I have a little note in chambers, but we will discuss those openly in terms of the limiting instructions.

And then certainly maybe saving the best for last, a special instruction dealing with the duty issue here.

And I'm not set in stone on this, because I have looked at several. And I have thought -- I was scratching a little bit myself on this.

I don't think this case fits directly into Juarez with the active volunteer. One reason, of course, is that the testimony is consistent, and Mr. Kendrick was not acting -- after the incident report -- was not acting in a ministerial manner, unlike the Juarez.

So I took a long look at the proffered

Special Instruction Number 2 of plaintiff, and I thought that was a Men's Warehouse fit to the case, suit fit to the case, certainly not the quality of clothing worn by all counsel here.

But my focus on my so-called weekend was an associational instruction, not entirely consistent with, but not dissimilar from that proffered by Plaintiff Special 1.

So again, that's open field, and I will look forward to comments and whatnot.

My goal remains, obviously, is to -- for the lawyers and the judge -- is to tell everybody, I don't care who wins in my courtroom, but I try to get it right. So that's my goal tomorrow in a case that has a lot of shimmy -- shim to it.

So on that high note -- well, I am in here. You are all welcome to get here as early as you agree. But my goal, again, which is movable, is to have the reporter here at 10:00 o'clock so we can act and react and really make some progress.

I won't have any -- unlike the last two weeks at least -- my day tomorrow is much calmer than it has been since at least the week before we started this trial. So we have plenty of time to get it right tomorrow in terms of our discussions and in term of

dealing with the numerous instructional issues.

MR. SCHNACK: Shall we meet and confer on what needs to be redacted on the medical records as well?

THE COURT: Any housekeeping tasks.

MR. SIMONS: Nobody actually offered them, I thought.

MR. SCHNACK: I thought you offered them.

THE COURT: Tell me the number.

MR. SIMONS: It is 51/120. And I thought we just said, you know what, after she testified we didn't need the records. It seems to me we had that discussion.

THE COURT: I don't believe it was admitted. I will have my clerk check it. It was in testimony -- but I don't recall. I put it in for identification, but I don't believe I admitted it.

MR. SCHNACK: I understood it was admitted.

THE COURT: So, Madam Clerk, I'll have you take a look at that question.

All right. Nice work. I'll see you in the morning.

(Proceedings adjourned at 2:10 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD,CSR 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

JUNE 6, 2012

DAY 6

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A604D2B

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: kellyk@fjslaw.com

Email: rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF

JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY

OF NEW YORK, INC.

JACKSON LEWIS, LLP

BY: ROBERT SCHNACK, ESQ.

801 K Street, Suite 2300

Sacramento, CA 95814

Tel: (916) 341-0404

Fax: (916) 341-0141

Email: Schnackr@jacksonlewis.com

--oOo--

INDEX OF EXAMINATIONS:

(NO WITNESSES WERE CALLED)

--oOo--

INDEX OF EXHIBITS:

NUMBER ADMITTED

(NO EXHIBITS WERE ADMITTED)

--oOo--

JUNE 6, 2012 10:53 A.M.

PROCEEDINGS

THE COURT: Back on the record in the Watchtower Bible and Tract Society Inc. All counsel -- counsel had a meet and confer relative to proposed jury instructions in this particular matter.

As a matter of process, I'm going to ask Mr. Simons, counsel for Plaintiff, to go, as I say in Latin, in seriatim, Casey instruction specifically referenced by chronology as to what the parties may be given in this matter.

If there is agreement as to a certain instruction being modified, just indicate, if you would, as to the defense version or to the written version that we will submit to the court on Saturday so I can see all of it.

And we will -- first of all, as I said, put behind door "A" the agreed-upon instructions from Casey, the agreed upon instructions as modified by your agreement.

And then, because of the nature of the interplay, there are a number of instructions as to punitive damages.

What I have proposed is: I will listen to motions, specifically defense Counsel's motion to submit

the testimony of Mr. Lewis and then their motion for directed verdict, and Plaintiff's response directed verdict/non-suit.

I will make my rulings and then we will return to the instructions and proceed accordingly. Okay?

MR. SIMONS: All right.

THE COURT: Mr. Simons, to you as to specifically agreed-upon instructions, their source and then any comments as to any specific instruction if modified by agreement of the parties.

MR. SIMONS: All right. Your Honor, thank you.

Beginning with Casey 200, 201, 202, 203, 208, the Plaintiff's's supplemental version with the videotape heard part, 210, 212, with an agreed modified version, 218, 219 --

MR. SCHNACK: We have 218 as modified?

MR. SIMONS: Yes.

THE COURT: And I -- thank you. I have it as modified.

MR. SIMONS: 219, 220, 221, 223, 400, the defense version, however, with the names changed from Jane Doe to Candace Conti.

I'm sorry, your Honor, 401, we deferred; is

that correct?

THE COURT: By my note, yes.

MR. SIMONS: Yes. Okay.

THE COURT: And let me state for the record, as I understand it, it is Plaintiff's position that 401 contextually should be given, notwithstanding any other special instruction given on that statute, on that duty and standard of care while defense objects to the introduction of 401.

And I will listen to that argument when we come back.

MR. SIMONS: And similarly, 406, there is an issue. It is agreed to be given, but there is an issue.

THE COURT: And let me say for my record, the agreement in my understanding, is there is no objection as to named parties to this lawsuit, there is an issue -- I will call it a Prop 51 allocation issue -- as to un-named parties, as I understand it. Okay.

MR. SIMONS: 412, 413, 430, 431, which needs to be modified to fill in the party names.

434, which needs to be modified to change Jane Doe to Candace Conti.

MR. McCABE: Just so we are all clear, on 431, we are going to change "negligence" to be "negligence" or "fault."

MR. SIMONS: Yes.

THE COURT: And my notes say that.

MR. SIMONS: Yes. Thank you.

1005. 1306 is the instruction that was not specifically requested until this morning with regard to sexual battery. And the parties have agreed on language as to 1306.

3700. 3701 as modified by the parties.

3703 as modified by the parties.

3720 as modified by the parties.

3900, the Plaintiff version.

3902, the Defendant version with Candace Conti instead of Jane Doe.

3903, as modified by the parties to just limit it to the one specific item.

3904A. 3904B.

MR. SCHNACK: Again, those are already modified again to exclude any reference to the claim of wage loss and future earnings.

MR. SIMONS: Right. The Plaintiff's versions would exclude the claim of wage loss. Counsel is correct.

THE COURT: All right.

MR. SIMONS: 3905 and 3905-A. 3925.

3933 is agreed to, but the issue of

non-parties remains unresolved.

3934, as modified to reflect the different theories.

3960 is agreed to but, again, the non-party issue is unresolved.

3964, 5000, 5002, 5003, 5005. 5006. 5009.

5010, which will be edited to reflect and the notes will be destroyed.

5011, at this point we would request mutually and insert jury instruction Casey instruction 114 and 116. 5012.

The question of 5016 is before the court.

5017 agreed to.

5020 agreed to.

THE COURT: All right. Does defense counsel agree with that?

MR. SCHNACK: Yes, your Honor.

THE COURT: On that recitation. Thank you, gentleman.

All right. At this time I will invite argument. First of all, I want to ensure, counsel that I have read the motion. I have got emails which I could read. I got a copy from the Plaintiff in response. So I read all writings that have been presented to the court for a purpose of making a record and a bit of

argument to the defense and the moving party.

MR. SCHNACK: With respect to Carl Lewis, your Honor?

THE COURT: With respect to Carl Lewis.

MR. SCHNACK: Basically it is what we put in the motion, your Honor. He testified that there was no scientific or empirical evidence to support the CSAAS. And he further testified that it has no particular application to any particular case. He did that on redirect and recross. And for that reason, it can't assist the jury. And that's why we think his entire testimony should be stricken. That's the only topic he testified on.

THE COURT: Mr. Simons.

MR. SIMONS: That standard, your Honor, may be applicable in federal court. It is not the standard in the state court. And the question is helpful to the jury. And under People vs. Brown, I think that standard can come in in this case.

THE COURT: Clearly, it is the Court's belief that there are differences between the state law and the federal law on this. Having considered a well-phrased motion and reply, I'm going to deny that motion.

All right. Let's move on to the request. And on my record at this juncture is a directed verdict

motion and, of course, plaintiff has replied directed verdict/non-suit.

Having said the same on my record, and at the close of the Plaintiff's case, defense made a motion for directed verdict. Let's, on our record -- who is going to handle it for defense?

MR. SCHNACK: I would.

THE COURT: Okay. Mr. Schnack. Frame it very specifically as to the nature of the motion. I will allow you to argue and Mr. Simons to reply, so I can consider the motion and make a ruling.

So to the defense for argument purposes.

MR. SCHNACK: Yes, your Honor. Just to supplement the briefing on this. This is for a directed verdict on the punitive damages claim that has been alleged against Defendant, Watchtower.

The standard is brief. I'm sure you're familiar with. That's the oppression, fraud or malice by clear and convincing evidence.

The only issue raised in the pleadings, and indeed in the evidence, was that the July 1, 1989 letter was a policy, and that that evidence, malice, oppression or fraud -- the only evidence about that letter that even rises to a level of negligence was argument of counsel. Not one witness testified that that was a

policy to keep child abuse secret, which is the whole basis of the claim. If you read through the Complaint, that is the basis for it.

And there was no evidence whatsoever from any witness. Dr. Salter, the expert, did not address that letter in her testimony. Dr. Ponton did not address it. Carl Lewis did not address it.

The only evidence came from the defense witnesses that were called by the Plaintiff, and none of them said it was a policy of secrecy. None of them said it was directed specifically to child sex abuse. And, therefore, it just cannot meet the standard to even submit for the punitive damages claim to the jury.

I guess one final point, your Honor, is, because that is a national policy, the last part of our brief under the BMW case, you cannot effect -- try to effect national policy by awarding punitive damages in state court. And so that is a further reason why it is improper here.

THE COURT: And, again, I thought that was good work again.

MR. SIMONS: In reverse order, the BMW case, that applies to whether or not the punitive damages can be included in assessing the amount, conduct towards persons other than the plaintiff.

That's a separate question from whether or not despicable conduct is -- or indifference, if you will, with conscious disregard is, itself, subject to proof only by the conduct to the plaintiff.

Those are separate issues. So I would distinguish the BMW case in that regard.

Secondly, I do not think that it requires an admission by the defendant of malice in order for the jury to find malice.

And, in fact, in many cases malice, and particularly, and in a malice in a negligence context, as this case is recited in Plaintiff's motion to amend, negligence citations involving findings of indifference all involve cases where the defendant is not admitting malice, but that it is inferred from the other facts and circumstances in the case.

And in this case, I think there is more than sufficient evidence from Dr. Salter as to the timing and the events involving the Catholic Church, and the other evidence we have set forth in our written opposition from which a jury could find by clear and convincing evidence that the true purpose of this policy was protection of The Watchtower and not protection of the children.

MR. SCHNACK: Just briefly, your Honor, the

only evidence on this July 1,1989 letter was that it was very broad. It addressed subpoenas of counseling records with couples who would seek out an elder. It addressed subpoenas, criminal matters, things unrelated to child abuse.

The only reference to child abuse -- two things: One, there's mandatory reporting laws if you recall in that paragraph at the top, it was shown several times. One is their mandatory reporting laws of calling the Legal Department so you can comply with legal requirements.

And two, help protect the victims.

Nothing in there said cover up, hush-hush on child abuse. If he refers to conduct by Abrahamson and Clarke, they were not managing agents. They were agents of Watchtower, but not managing agents. And again, the evidence doesn't reach even the preponderance, much less the clear and convincing evidence.

MR. SIMONS: May I respond to that point, your Honor.

First of all both the managing agents, both Abrahamson and Clarke were following instructions from New York which were issued from the policies issued by the governing body. And the governing body is the managing agents, according to Mr. Shuster. I don't

think there is question of who the managing agents are or where the policies come from.

And, secondly, on the question that counsel raised with regard --

I'm sorry. I just lost my train of thought .

-- that the policy does not address child abuse by determining that information that is not confidential, such as the report of Jonathan Kendrick sexually abusing Andrea, is deemed confidential by corporate policy rather than by law.

That is a function of effecting through the policy of confidentiality, actual secrecy regarding the report of child sex abuse that was not received in confidence.

So I think that, while the policy is well-written to, perhaps, masquerade its effect and intent, the policy's actual effect and intent is different.

MR. SCHNACK: Might I respond, your Honor?

THE COURT: You may.

MR. SCHNACK: Two things. One, the testimony was that there was scriptural requirements to confidentiality, not that it was a legal requirement.

Second, there was no evidence that Watchtower told Clarke and Abrahamson to keep it confidential.

Again, we are dealing with two individuals who were agents, yes, but not managing agents. It is their conduct that is being measured.

THE COURT: All right. I have given a lot of thought to this, and history would tell you that I have granted a number of non-suits and motions for directed verdict.

I'm going to decline to do so in this particular case. Nobody cited to me a case -- and I'm going to find it in a minute.

First of all, the rule of law is that, in my reviewing and judging in this particular matter, I do adopt the standard of clear and convincing, since it is limited to the request for punitive damages.

Having said that, I have considered the couple weeks of testimony here, the evidence before me, and I'm going to decline to grant the motion as to punitive damages. That is not to say either party certainly can make any post-trial motions they want.

But the policy itself -- first of all, in Turk -- and I will get the cite in a minute -- that was a case involving apportionality. Absolutely no evidence in a bad faith case as to malice or any of the nature or arguments relating to the imposition of punitive damages.

And I think this type of argument or application is inherently -- unless there is just no evidence whatsoever -- and understanding the difference between the evidentiary standards, I am going to deny the motion because I think the letter, the policy, the testimony of witnesses and whatnot that there is a lot in play in this case.

You know, part of the readings go to whether you make a conscious and deliberate action that imperils the safety of others.

And inherently in a case of this nature where child abuse is alleged, that would give me great pause, relative to directing a verdict at this time in this particular case, and effectively serving the jury function here; although, it is certainly a consideration as to the Judge's call, as to whether I exercise it or not.

So I'm going to deny the motion for directed verdict as to punitive damages in this case.

It is Stewart versus Truck Insurance Exchange, which that does put on the burden to the plaintiff to meeting the standard of clear and convincing evidence.

There is also a lot of language in Stewart versus Truck Insurance Exchange as to the burden -- I

mean the admonishments as to a juries in this.

> "When ruling on a motion for a directed verdict, the judge may not waive the evidence or determine the credibility of witnesses. All of the evidence presented by the party opposing the motion must be accepted as proved, understanding it is evidence not argument. And all evidence presented by the moving party must be disregarded."

Stevens versus Parke, Davis.

So applying the legal standard, the evidentiary standard, and whatnot, I am going to decline to order a directed verdict in this matter at this time.

All right. Let's go back through the open issues, and we will get to the special verdict requests at the end of our continuing discussion regarding the basic instructions.

Now, on my checklist, let's go to 401 for a minute.

And, Mr. Simons, your pitch on that. Basic standard of care: Casey.

MR. SIMONS: One second your Honor. I'm catching up here.

Your Honor, 401, it is the reasonable person standard of negligence which would apply in this case.

The specific standard of care and whether it was reasonable to need it or not and the specific duty and whether or not it was met are supplemental, I think, to the basic understanding of the standard of care.

Additionally, this would apply to any other person, so certainly if the court is inclined to include non-parties, this would be the only standard of care instruction as to those individuals, and I'm not suggesting it should.

THE COURT: I understood that.

All right. To defense counsel. Absent the non-named parties, your thoughts on giving the 401.

MR. McCABE: Well, one thought, your Honor, is it talks about the failure to act. And that gets to the whole question which is: Was there a duty to the warn?

THE COURT: I agree. I agree. And so your point is entirely and legitimately made as to whether there was a duty to warn. As directly. And you said it. All right. By the time we get down to the special instruction, I will then quote that 401.

All right. Where in the 3900s, there was a question about use of the table. I guess --

MR. SCHNACK: The life expectancy table, I think it is that one.

MR. SIMONS: Yes. It says 3932.

THE COURT: And all counsel, notwithstanding my fondness for each of you, to remain in my good graces, I want to get my instruction books back up here before you leave.

MR. SCHNACK: We actually stole it from the table next to us.

THE COURT: Well, there might be a factual issue as to how it got here.

Okay. Standard of care.

Okay. To defense counsel on this one.

MR. SCHNACK: Your Honor, on 3932, there is no evidence whatsoever of life expectancy for Plaintiff, Candace Conti.

There is no expert witness testimony, no lay testimony on it, period. So we don't believe it is appropriate to give it.

THE COURT: This is just one of those yin and yang circumstances in this case again. I am going to give it. I would be more attentive and understanding if there was a concern that she wouldn't live the average life span and the need for testimony as to that. But on 3932, I would use the table for life expectancy. And that's my ruling.

Okay. Let's get to the non-parties aspect

because that affects a few things here.

All right. So I presume the defense is saying to this judge --

First of all, to counsel for the defense, who would you like to be included for purposes of the jury's consideration as to verdict?

MR. SCHNACK: Kathy Conti, Neal Conti, Fremont Police Department, Child Protective Services, and the Alameda County District Attorney's office.

THE COURT: Mr. Simons?

BY MR. SIMONS:

Q. Your Honor, Fremont Police Department, Child Protective Services and Alameda County District Attorney's Office, I do not believe there is any evidence in the record that would support the finding of a duty breach causation as to them. So I think that the prima facia case required before it can be included on the allocation is not met there.

Kathy Conti, there was no evidence that she was able to take care of herself, much less anyone else during the critical time period. I don't think there was any evidence for this jury to find that she was negligent.

And Neal Conti was not aware that Jonathan Kendrick was a threat to molest his child. He may not

have been the warmest parent, but there is no evidence that he knowingly allowed his child to be molested. And, in fact, there was substantial evidence that at that time his relationship with his daughter was such that had he known, he would have protected her.

THE COURT: Well, I certainly agree, because I have been doing what I consider a review of the evolving Prop 51 expansions. Certainly, I would not be inclined to instruct or allow a verdict consideration as to the Police Department in Fremont or the D.A.

MR. SCHNACK: Can we respond to that, your Honor?

THE COURT: Sure.

MR. SCHNACK: In the same way that he contends there was no evidence by the Fremont Police, the evidence was that do not ever take any community notifications at the very same time that the elders worked on it.

And they worked -- they got the very same confession that the elders did. They prosecuted him criminally, and yet they took no community notification.

How is that any different than what they are alleging that the elders did not do?

THE COURT: Well, but you are now bringing in the D.A. and the police and whatnot, and it raises, I

think, different questions as to the duty and the analysis of the same.

MR. SCHNACK: I have defended public entities, your Honor. These types of claims are brought against them all the time.

THE COURT: I know that, but the issue is: How are they disposed of? And I assure you in this particular case based on the evidence, given that instruction.

MR. McCABE: Your Honor, it just goes back to the duty to warn. The police didn't have a duty to warn. The elders didn't have a duty to warn.

So if you take the police out of it -- he knew about the elders involved. He knew the congregation was involved. He knew that there were children in the congregation. So it was the same thing.

THE COURT: I'm not sure it is. At that point in time -- well, I'm going to think about it. I mean, this is a fairly sophisticated point. But that is a very -- well, I'm going to think about it a little bit.

Anything further from Mr. Simons.

MR. SIMONS: On the law enforcement agencies?

THE COURT: Right.

MR. SIMONS: Yeah. Where was the evidence of

standard of care that required them to notify the general community?

THE COURT: Well, of course it is very clear that at this juncture, all the elements would have to be established contextually within the evidence before me.

I can tell you, the easiest decision on this one, as far as I'm concerned, is the father. Okay. I'm not going to put him into the loop there.

MR. SCHNACK: If we could be heard on that as well, your Honor.

THE COURT: Sure.

MR. SCHNACK: He testified that he read all the materials that came from Watchtower that told him what to do to protect his daughter. And if he didn't do it, there was a negligence issue there.

THE COURT: Well, I know. And I mean, that's almost an application negligence, per se, because he's simply a parent that didn't pick up the fact that his daughter was getting molested.

MR. SCHNACK: As did the professionals who saw his daughter at the very same time.

THE COURT: Well, but I think the congregation -- well, certainly in terms of they knew and they had the confession relative to that.

Remind me about the mother. She was not

there -- it is going to be kind of a linked in with the father too. The mother was not there for the confession, so-called confession, neither was the stepmother.

MR. SCHNACK: We are talking about Andrea Kendrick?

THE COURT: Right.

MR. SIMONS: The victim and the mother were both there with Jonathan Kendrick and the two elders.

THE COURT: At the time of the elders?

MR. SIMONS: Yes.

THE COURT: Now, what is your view as to when the mother of the Plaintiff first learned as to the -- well, the alleged molestation by Kendrick?

MR. SIMONS: Do you mean Kathy Conti?

THE COURT: Yes.

MR. SIMONS: First learned in 2003.

THE COURT: Okay. I will take a look at that in a minute.

MR. SCHNACK: Your Honor, going back again to this law enforcement agency, if you are not going to include them on a similar duty to warn, you are converting this to a clergy malpractice case. We are running back in those circles. If there is duty to warn based on information that Kendrick had abused his

stepdaughter and the police, the D.A., and Child Protective Services got that same information in the same time period, and they didn't warn anyone.

They knew she was attending church, they knew Jonathan Kendrick was involved in the church, yet they did not take any notification, whether the community notification was specific to the church, if you are just going to hold the elders responsible on duty to warn, that's a clergy malpractice case again.

We are running in these same circles.

THE COURT: Well, it has certainly been an interesting case trying to separate out from the duty analysis and responsibility of the church as to anyone else.

But if I can speak. If you convinced me to put the police department in on this one, then every time they deal with any clergy case, then they have to go to the congregation, I guess the congregation, to insulate themselves, and make a broad public statement. And boy, that seems to me to be an incredibly burdensome duty. And, of course, the duty concept is largely an expression of public policy as to the imposition of a duty.

So in the context of evaluating duty, I brought Palsgraf into this one long ago, as to the

limits of duty, is it more appropriate as a matter of public policy with the facts in this case that the duty extends to, effectively, the elders here under these circumstances. And were I to adopted it to the police department, to a D.A., to anyone who knew about it, because that's essentially the argument that you are making, is it doesn't need to be the police department or the D.A. or the Child Protective Services. If I accept as a matter of policy that the duty to warn extends out there, then the question is analytically, where does it cease?

Let me give you a hypothetical. If I'm walking down the street in Fremont, California, and I overhear somebody say to me, "I know for a fact Joe Smith molested his 15-year old stepdaughter," do I have a duty to go run to the cops and report that?

MR. SCHNACK: In 18 states in this nation, you do.

MR. McCABE: But, your Honor, if you have a special relationship -- and that's what is lacking here, and that's the same problem because the same duty that you are worried about imposing on the police, Mr. Simons wants to impose on every not-for-profit church group or any member's activity that they happen to know about, he did it once before.

So if you take your analogy, if I hear that somebody in my Little League operation has been arrested for a DUI, and then three years later he kills somebody in the DUI who happens to be a Little Leaguer, I should be on the hook. That's what we are doomed with.

THE COURT: Well, thank you. That kind of goes, because I have already ruled against you on this. You have tried to limit your responsibility --

And, look, good lawyers do crazy things, and I really thought this was fabulous, but forgetting defining the breadth and width of the duty, you said to me, "This must be limited to acts on church property." Actually, we argued property. But church functions. To which my immediate and quick response was, you know, if you find breach there, I don't think causation and damages, because of that breach, are limited by geography. Okay. I have already ruled that. I am going to stick with my ruling on that.

I will tell you what I will let you do, though. I will let you give me a five-page brief on the Prop 51 aspects and the application to this case as to the cops and whatnot.

I can tell you what I'm thinking -- well, I'm going to reserve my question about the parents on this one. But if I'm going to be consistent, I really

thought through, once there is a breach here, there is a matter of causation damages, the church is not limited to ask that it occurred on the premises. And I really thought that through, so I'm not going to change on that one.

I will let you brief, and you can email to me tomorrow, and I will try to do what I can from Sacramento. I will respond to them on Saturday morning. As far as my thinking -- and I haven't thought it through -- was that I was going to keep it between the parties here. But I will -- I will give you ten pages, because it is a very interesting issue.

I can tell you, I'm not going to change my mind as a judge in terms of geography on this in terms of breach. But I will consider on the failure to warn aspects whether the cops, the D.A. and whatnot, I guess should be included contextually and analytically.

MR. SCHNACK: If you are not going to read it until Saturday, can we have until Friday noonish?

THE COURT: Sure. I am not going to leave a lot of dangling participles here. And that affects several jury instructions.

All right. Let's move on for a moment to special instructions. Now, I'm not sure I have seen all of these. But I have seen: Sexual misconduct outside

the scope of the agency.

Let me read that into the record:

"Criminal sexual misconduct falls outside of the course and scope of the agency and should not be imputed into the principle. A person is otherwise responsible for harm caused by the wrongful conduct of his agent while the agent is acting within the scope of the authority given to him."

All right. Any response from Plaintiff on that?

MR. SIMONS: Yes. I think its confusing and unnecessary because we do have instructions with regard to who is an agent and the scope of their agency by our modifications of the 3700 series on that topic.

This, being more generic, runs the risk that people are going to wonder what to do. If we want to do a specific instruction, as the court has indicated it does, that Kendrick's sexual abuse, if any, of Candace Conti is not imputed or an agency relationship, I think that would be the way to address that issue, otherwise, this issue is addressed by 3700.

THE COURT: I'm a little hamstrung, because I haven't seen your modified instructions on agency. I do want to give an instruction about criminal sexual

misconduct not being imputed. Okay. I think we can keep that pretty simple.

MR. SCHNACK: Your Honor, we have no objection to what he suggests in making it specific to Kendrick.

THE COURT: Right. I should make it even simpler by just simply saying: The criminal and sexual misconduct of Jonathan Kendrick falls outside the course and scope of agency and should not be imputed to -- and you can say "defendant's" here or "principle."

MR. SCHNACK: I would mention the defendants by name.

MR. SIMONS: I agree.

THE COURT: I do too, and make that simple.

MR. SCHNACK: Could we also have a special instruction that Jonathan Kendrick is not an agent of either of the entity defendants?

THE COURT: I was just going to go to that. That's Number 2. And I have no objection to that. Just keep it simple.

MR. SIMONS: Well, yeah the instruction as proposed is --

THE COURT: I can tell you, it is too wordy for my taste.

And the wording instructions on this stuff,

you heard what I said about the first one, and I would be as simple on Number 2 as basically saying that Jonathan Kendrick was not and is not the agent of the named entities.

You know, keep it simple without explanation. I always try to walk through the jury's shoes on these things.

MR. SIMONS: My concern is there may be circumstances where he could be considered to be an agent, for example, if he is in field service where they collect money that goes to Watchtower New York, and he robs a house, and there is all kinds of scenarios that have nothing to do with this. So I don't want to make it overbroad. I want to say when he sexually molests somebody, he is not an agent.

MR. SCHNACK: But there is no evidence that Mr. Kendrick ever did that.

MR. SIMONS: Right.

THE COURT: Good argument by Mr. Simons, but my evidentiary record doesn't have him going out of the agency. I will entertain being very simple on these things. I think you are right. I want it very simple. I don't want it predicated, and if I have to write it myself, I will do it. But it should be only one or two sentences each.

MR. SCHNACK: What would you prefer, your Honor? Do you want us to submit something or would you --

THE COURT: I want you to talk about it after this little discussion. I'm really only going to give two lines, name the defendants, the sexual misconduct is not imputed, and he was not the agent of the defendant entities based upon his conduct here. Whatever way you want to word it is fine with me.

All right. Special relationship. I fully understand the dynamic there.

MR. SCHNACK: We preserved our record that we, the defense, wants --

THE COURT: You may, and I technically denied it. So you have your record. You presented Special Jury Instruction Number 3. The court declines to give that.

Special Jury Instruction Number 4. That will contextually ride on what I do with other entity parties, but it does highlight. And look -- I could have taken this case and put it out in bold for a tort class and a candidly tort question.

The request and the dealing, the dealings of -- I mean, a lot of things follow from putting in play as effectively, un-named parties to this action,

people like the parents.

MR. SCHNACK: Your Honor, and that goes to what Neal and Kathy Conti are alleged to have done.

THE COURT: Or not done for that matter, because it just goes right back to 400 in terms of failure to take action.

MR. SCHNACK: Because if the jury believes that the parents allowed her to leave with Kendrick, that puts them on the verdict form.

MR. SIMONS: Well, I disagree with that most strenuously.

THE COURT: Well, Mr. Simons, you don't need to say that, because it is really kind of a spin we have been spinning ever since we started discussing the breadth and the width and the duty argument. And so far we have done pretty well with that. Because, I believe when you mentioned Palsgraf -- you know, this just continues to raise, where does the buck stop in terms of issues like this for definition of imposition of the duty. I fully understand the nature. So I will reserve the request at this time, pending my ruling as to the duty aspects as to -- and your briefs as to the un-named parties.

Now, add 1 -- I know I have read it. I'm going to deny that as to being responsible only for

abuse on church property or during a church-sponsored activity.

Number 2, that will go to our ultimate standard of care instruction, the duty to warn.

All right. Now, is Special Number 1, Plaintiff Special Number 1, duty to protect?

MR. SIMONS: Yes. I think there are two, however, supplemental or additional requests from defense.

THE COURT: Okay. I was going to ask that. I think there were additional mentions from the Plaintiff, too in terms of what I'm looking at here.

MR. SIMONS: Yes.

THE COURT: So let's go to the defense first.

MR. SCHNACK: Let me find the supplemental.

THE COURT: And that's what I'm doing. There is a lot of stuff that has been delivered to me.

MR. SCHNACK: Here they are. I have them. Should I just read them into the record.

THE COURT: Why don't you do that because I'm looking for them. I'm not sure where they are. And I have them all segregated up here.

MR. SCHNACK: These were the supplemental special jury instructions that the defense proposed. One reads:

"Defendant Watchtower and Defendant North Fremont Congregation can be found negligent only if you find that they failed to act reasonably to prevent Plaintiff from being injured by Kendrick; one, on church property; or two, during a church-sponsored activity."

THE COURT: Denied. Go ahead.

MR. SCHNACK: Second one reads:

"I direct you that under California and United States law, elders have no legal duty to warn or inform other members of the congregation that a child molester attends religious meetings or participates in church-sponsored activities. Therefore, you cannot find either Defendant Watchtower Bible and Tract Society New York, Incorporated, or Defendant North Congregation of Jehovah's Witnesses Fremont, California, liable based upon the elders' failure to warn or inform plaintiff or the congregation that Jonathan Kendrick was an alleged child molester or had committed an act of child sexual abuse."

THE COURT: I will reserve on that pending the final definition of duty.

MR. McCABE: Your Honor, we have a proposal.

But Dr. Salter testified that she believed the 1993 the law made elders mandatory reporters. And that's clearly not the law.

THE COURT: I agree.

MR. McCABE: It is outside her province to make that statement. And I think we have to have an instruction that the law for clergy for mandated reporters did not come into effect in California until January 1st, 1997.

MR. SIMONS: That was not her testimony. Her testimony was persons in groups -- persons in youth groups as advisors and supervisors had a duty to report. And it could be construed that clergy would be included in that, since they didn't consider that they were involved in that, and we had to specifically name them to get them to do it. And that's a little different.

THE COURT: Well, it goes to your request for me to take judicial notice, which I am prepared to deal with. But I don't want to get off center right now of the instructions. I will deal with that when I go right to the request for judicial notice and deal with that. Okay. I'm prepared to deal with that when I have thought that through.

I did interpret her testimony, and I will review the testimony as to the duty to report

circumstances. What your view or testimony was that she inferred to the jury that the clergy had a duty to report in 1993?

MR. SCHNACK: Absolutely.

MR. McCABE: Yes, sir. And she said the 1997 law made that clear by specifically naming...

MR. SCHNACK: I believe the court has the obligation to instruct on the law.

THE COURT: Well, I was just thinking of the irony of all this in my work in this case. And noting the objection, depending upon which side the ball lands on this.

If that were her testimony -- I'm going to clean up the record. Okay. I am going to review it in a minute -- if she said there was a duty.

In the same vein, I would clear up any inference as to privilege being involved in this case at all.

And if you had seen my conduct at all these other jury trials, I do that with the greatest reticence -- but I'm an activist about it. I don't want the jury mislead by anybody in terms of these cases.

So I'll look forward to hearing everyone about Dr. Salter and the duty to report.

When did she testify? On what day?

MR. SIMONS: Dr. Salter was here on Monday morning. So that would have been June 4.

MR. SCHNACK: And it would have been during my cross-examination of her that she testified to that.

THE COURT: I can make everybody's job a little easier on that. If that's what she testified to and inferred, I will clean that up. But I'm not going to answer your question yet as to the statute. Okay. And that's a different application and a certain argument under the circumstances.

MR. SCHNACK: I believe the court reporter had a question. Do you want that portion of her testimony, then, printed out?

THE COURT: That would be nice just so that I don't have to look for that myself.

But that was, I think, easier to relate to a jury as to duty to report and when and the nuance of communication and inference and judicial rulings. That was no easy job to this judge, but that was easier than the other one.

MR. SIMONS: Although, we did have Dr. Applewhite testify that no one had any duty to report anything before 1998.

THE COURT: Well, and they did.

MR. McCABE: She did not testify to that.

MR. SCHNACK: She did not testify to that.

THE COURT: Well, they both -- you know, I get the cases brought to me, and they are both talking about standard of care and duty. But the answer is I'm going to clean that up if that existed.

MR. SIMONS: There is one other twist to this, your Honor, which is Dr. Applewhite based her opinions upon the law, not requiring anyone to report or community notification, whereas Dr. Salter said, "I don't base my opinion on the law, I base my opinion on what the standard of practices were."

MR. SCHNACK: And we can disagree about what she testified to as well, because that's not what she said.

THE COURT: We can. But I'm going to have that little printout just to see if she said that. And then, again, without attributing it to her, I'm just going to simply -- because this jury has taken a lot of notes. I could see somebody writing that down and relying on it.

MR. SIMONS: And I would, from the Plaintiff's side, feel the jury would be being misled if they were told or left with the impression that youth supervisors and administrators in 1993 had no duty to report. That would be a misstatement of the Penal Code.

THE COURT: And I'm not even sure I'm going to wrestle with that. I'm just going to try to limit it to clergy. Okay.

Let's go to -- and I will give you my preliminary thoughts, subject to the extension of duty argument.

I think we have taken care of all the requests for defense at this point. Am I correct?

MR. SCHNACK: I believe so, with the addition of Mr. McCabe's motion. Yes.

THE COURT: Okay.

(Brief Break)

THE COURT: We are back on the record. The Plaintiff requested Special Instruction Number 1. It is framed, "A duty to protect." And of all that I reviewed in this case in terms of proposed instructions, this is the closest to what I have been thinking in terms of dealing with --

First of all, I believe it should be framed as "A duty to protect," rather than otherwise. And, of course, at line 13, the presence or absence of any warning, again, will basically be in play as to other defense and/or circumstances, but I will say on the record in terms of what I have been thinking about for the last few days, this is the closest to the way I have

been considered framing "the duty."

I understand the argument about clergy malpractice. And I'm going to consider the same contextually in terms of these arguments as to duty to others, obviously including warning or not. And so I'm going to leave that there.

Number 2 from the Plaintiff is the duty to protect. What I did like about that, and why I have been centering on one as a basic starting spot is the inference in 2 is, you know, Houston or Juarez, that there was that status of being placed in a position of trust, which in this case would have been a ministerial servant rather than congregant. And Juarez, for instance, was a scout leader.

And this case, my first appearance was different because -- and this was the nuance of the case -- we have largely gotten rid of punishment on constitutional grounds.

So I am more inclined to frame the duty to protect very much like and substantially like Number 1 rather than Number 2, because I think this case is different.

I mean, in the congregation, the elders took action. They removed him from a position of trust and responsibility. They did not remove him from the

congregation. That, I understand.

So when I come back at you and reply on Saturday, I'm going to be working diligently on Number 1 to see how I end up on how to define the duty including whether to warn or not.

MR. SIMONS: I should be the first to speak?

THE COURT: You should.

MR. SIMONS: Your Honor, it does not mention trust.

THE COURT: I understand.

MR. SIMONS: But it does say placing the person in a function or environment which contact with children is inherent. That would apply not only to ministerial servant, but in this case it would apply to field service. And there is evidence that the elders sent Kendrick to field service with Candace Conti.

MR. SCHNACK: There is not.

THE COURT: Well, the defense is on one side of the table, I think.

MR. SCHNACK: Well, just a version of the evidence that there is no testimony that the elders sent him on field service with Candace. There is no evidence whatsoever.

THE COURT: Well, you know, it is kind of like that directed verdict. You know, the inferences

are that he was doing field service, based on testimony, and that provided him --

MR. SCHNACK: Your Honor, there is also no special relationship that has been established between Candace Conti and either of the entity defendants. And we have briefed that, and --

THE COURT: Everybody has briefed that ad infinitum. And, basically, I have come down, in these cases under these circumstances, understanding the evolution of special relationship doctrine, largely started with land owners and others, effectively, I'm finding that there is a relationship, a special relationship that gives right -- and it is a statement -- kudos to Mr. Simons -- I thought his brief on that issue was spot on -- understanding -- two things -- and I'm going to make it very clear on the record, the defense has very appropriately said, "Hey judge, there is not a single case in the State of California that you are aware of --"

And candidly, after incredibly diligently researching it online, it specifically holds that there is a duty to warn here.

Okay. And I understand that. And I understand the constitutional umbrella of arguments and whatnot.

But what is the consequence of finding otherwise?

Sounds of silence are deafening. I think we all understand. So...

MR. SCHNACK: If I could be heard briefly, too, your Honor. Juarez was very different. And that's what this proposed one is, on Juarez, commented that the Boy Scouts had these educational materials, but because -- the only reason summary judgment was reversed was because they had not been provided to the plaintiff and his family in Spanish.

THE COURT: That was a part of it. Also, you remember, that was a summary judgment grant, candidly, against the judge of this county, who is now an appellate justice, not related to me.

But there was also broad comments about on the reversal they knew or should have known about Mr. Juarez and his proclivity.

This case -- and this is a move for plaintiff -- is different from Juarez because defendants here knew. It wasn't knew or should have known, and Juarez basically flipped the judge because should have known.

Now, what is different here, and I fully acknowledge the same as the judicial officer is, we are

not dealing with the Boy Scouts, we are dealing with religion.

And so a lot of my rulings here, I have had to be very, both, respectful and trite and act upon and respond to arguments that separate out the application of church and state.

At a certain point -- you know, the first time you said that, I made that decision about whether it was a penitential communication. I would have loved to have somebody go up -- although, I think there is an inference what would happen -- but go up to the start and better define the separation -- and this is a case that really based the question in a number of ways.

But I have come down where I am using what I call just kind of basic fundamental duty analysis. One of my favorite quotes is "This case does have a coat like Joseph's in the Bible." And it has got a lot of colors to it. And part of my responsibility is to separate the colors where applicable.

So, yeah, I knew of Juarez well before I got involved in this case. And I have reread it three times for application. And I don't actively disagree with what you said, but to me Juarez said a lot more, understanding it was a motion for summary judgment view.

MR. SIMONS: Your Honor, I believe that

Juarez does included the Roman Catholic Church as defendant and does discuss the church's liability and does say they didn't have notice and therefore --

THE COURT: It does. And that was one of the very strong reasons why I'm coming down where I'm coming down, because I think notice gets rid of a lot of academic discussion.

MR. SCHNACK: Which would apply equally to the police department and these other agencies we are talking about.

THE COURT: And I'm going to bully on the point, because it is -- it's not an easy analysis, but without seeking to appear as glib. That's why I jumped right into Palsgraf, because I didn't see the orbit out there as to where does one draw the line as defendants in these cases and duty to report.

And I don't need to repeat myself, but I am concerned about, basically, putting on everybody in the State of California duty to report analytically, if not practically.

MR. SIMONS: If I may offer one more comment that may have already occurred to everyone, but just in abundance of caution.

Juarez does not change anything. Unilaterally, it applies to all cases. But what it does

say is the Rowland versus Christian analysis is the framework to apply it to other cases.

THE COURT: Nice work, Mr. Simons, because I certainly took that out of Juarez also, which by the way, I read Juarez after I read your trial brief with Rowland v. Christian and restatements.

But as I went down the line of legal research here, I was pleased to see the settlement reference to Rowland v. Christian and the restatement.

MR. McCABE: Your Honor, I know a record was made, and I got a drift, I think, of where you are going with Plaintiff's Number 1, but there is still some other problems we haven't talked about I wanted to point them out.

THE COURT: Please.

MR. McCABE: First one is volunteers.

THE COURT: I have it highlighted.

MR. McCABE: The second part is the presence or --

THE COURT: I already have that circled.

MR. McCABE: Okay. There is no evidence Mr. Kendrick was a volunteer for either of the defendants.

THE COURT: Well, representative of my jagged way of thinking, because I have already highlighted that

from my way of thinking. If we do not describe him as a volunteer -- I'm going to open this up. I'm having a very open discussion with very good lawyers, what would be the description? Because if you saw my sheet here, it says question as to description.

MR. McCABE: Members or others. He is only a member.

MR. SCHNACK: I think rank and file member.

MR. McCABE: He is not a member of Watchtower, he is a member of the North Fremont Congregation.

THE COURT: Well, I can tell you, I already underlined your "volunteer" and have a question, I guess, as to the appropriate characterization.

MR. SIMONS: I scratched out the word "volunteers" in my proposed one and wrote "persons."

THE COURT: Well, if I were you, I would take the suggestion of "members," but you know, we are having an open discussion here.

MR. SIMONS: And I have scratched out "persons" and put in "members."

THE COURT: Oh, my goodness. If I keep you through lunch, I can get you all to agree to anything I suggest.

All right. And Mr. McCabe, do you have other

thoughts.

MR. McCABE: We would leave out the classification all together and just say "by Kendrick."

The other thought I had, moving along as to the Roman Numeral 1, the presence or absence of any warning.

THE COURT: Well, that's crucial. And I have that with about three stars to it.

MR. McCABE: It just highlights and points the jury into a direction which I don't know as of yet -- I don't know what instruction they are going to have on that particular subject. But there are certainly a lot of other things you can do other than warn. And there is evidence in this case that those things happened, that the elders admonished Mr. Kendrick, told him to stay away from children and watched him like a hawk thereafter. So there is a longer litany of things that could be put in here.

THE COURT: If I were in your shoes, I would look at Number 4, "Such are the facts and circumstances contained in the evidence," because I think you have to have a logical starting spot as to duty what is the nature of duty to do what.

What I liked about this was presence -- the reason was the jury is going to consider here, and the

presence or absence of any warning. Candidly, I liked that. Before I even saw this or looked at it, I was playing with it, and I would have done something like that.

"For such other facts and circumstances contained in the evidence," that can be broad a little bit.

So you can play with this as far as I'm concerned, because I want the jury to weigh. I'm going to find a duty here. And I'm going to let them consider everything that should be considered in determination of breach.

We are doing as well as we could under a very complex circumstance. I'm not going to get the request for judicial notice yet.

I have other supplemental requests from the Plaintiff, but I think we agreed on three -- oh, no. And I can assure you, I'm going to -- and I have invited you to do so also, but I am getting the sense as to 3. As to being entirely neutral and making the jury understand that a penitent communication is a question of privilege decided ultimately by me, and not giving them any inference that should affect them in any way.

MR. SCHNACK: Was the result of the search that the word "privilege" was never mentioned with

expect to penitent --

THE COURT: It was actually mentioned twice, by contextually different than Mr. Simons believed.

I think Mr. Shuster said it was a privilege to do something. I think he was asked whether he was paid money. And I think he said something to the equivalent it was a privilege to serve.

MR. SIMONS: He did.

THE COURT: And I'm saying that out of respect for Mr. Shuster. We are not into evidence privileges at this point. But in terms of what Madame Reporter told me, it was not used as a make way for not disclosing.

MR. SIMONS: Well, he did not use the word "privilege." Apparently, Mr. Clarke did not -- do we have Mr. Clarke's testimony?

THE COURT: Yes.

MR. SIMONS: Because I'm trying to remember whether or not -- I don't believe Mr. Shuster's deposition was on the same day as Mr. Clarke's testimony.

THE COURT: Not according to what I have here in terms of what is in the record.

MR. SIMONS: So did we search Mr. Clarke's testimony from May 29th?

THE COURT REPORTER: I searched every day for the word "privilege."

MR. SIMONS: What he said is, it is just like a Catholic priest receiving confession in a confession booth.

THE COURT: All right. I wanted to be fair here. Is that Clarke?

MR. SIMONS: I think it was Clarke.

MR. McCABE: It was Clarke. He was just trying to make an analogy illustration.

THE COURT: That's the line we are walking. All right.

MR. SIMONS: So on the Court's thinking on this, your Honor, how do we avoid allowing the jury to either be:

A, determining itself whether or not these specific communications were confidential or not?

And then:

B, how do we determine whether or not the jury is notified that they are not confidential under the law?

THE COURT: Well, the second prong of your concern, I don't think is that difficult, when I would tell them that the application and consideration of the determination of privilege is exclusively provinced to

the Court.

The first prong is one I shared as to concerns for everybody here as to how and what they will do.

I don't want any -- what I'm trying to avoid -- and I'm a pretty good wordsmith, but I want to do it when I'm well rested and analytical -- is any inference that they would get that because the confidential communication is not privileged, that somehow that is a breach --

Okay. I can say it better I'm sure. But I think you get my drift .

-- is a breach of duty. That's what I want to really work in separating out.

MR. SIMONS: A breach of duty to Kendrick? I'm not sure where it is going.

THE COURT: No. To the Plaintiff. The inference. That's why -- that wasn't clear. I want to deal with it. I want to deal with it. I want to deal with any expert who said what the law was on the reporting, I want to clean that up. And I just want that as clean as I can present to a jury, leaving them in a neutral fashion to weigh, themselves, the reasonableness, the duty and any argument based on breach.

And that's my goal and that's simple as I can say it. And it is not a simple thing to say.

Do we agree that the deposition substance evidence is fine? I believe we do.

MR. SIMONS: Yes.

MR. SCHNACK: I believe there was a Casey on that that we agreed --

THE COURT: Yeah, Casey 208 is modified.

All right. Now, that, I think, takes care of the instruction question.

So let's kind of rehearse where we are.

And look, I'm going to deal with the request for judicial notice. And that is a very interesting circumstance, too.

But before I do that: Here is where I believe we are. Effectively, for the presentation of several instructions yet, we need to consider the addition of un-named, un-served parties that you are going to brief. That is going to dovetail into Plaintiff's Supplemental 1.

I'm going to direct you to meet and confer, based upon my ruling to strike the verdict as to several punitive damages instructions that are in play here.

I would welcome any language so I can make my record, but as to having heard my remarks, any further

presentation as a matter of instruction as to --

Let's talk about the limiting instruction. Try to do the limiting instruction as to the testimony as to Kendrick's criminal conduct, the grooming of a ten year old. There were four that I had on my notebook.

MR. SCHNACK: I can list at least five for you.

THE COURT: I get to be the judge of that. It is the number 5, I believe.

MR. SCHNACK: The black bra incident.

THE COURT: That's the grooming of the 10 year old, so we are on board there.

MR. SCHNACK: Kendrick rollerblading with Candace.

THE COURT: That's not agreed. That's another time.

MR. SCHNACK: Kendrick being seen in a photo with children.

There was no evidence that was conveyed to the elders.

MR. SIMONS: That's correct.

THE COURT: I was just reflecting and thinking about that. Okay.

MR. SCHNACK: Kendrick buying gifts for children.

THE COURT: I agree. Absolutely. Okay.

MR. SCHNACK: And Kendrick holding Candace on his lap at a Bible study in 1991 or 1992. That was from Carolyn Martinez.

MR. SIMONS: That's a little different. The elders were at the Bible study.

MR. McCABE: There was no evidence, though.

THE COURT: I haven't heard evidence of who was there.

MR. SIMONS: Well, the testimony of -- who was it? The elder's wife who said that the Contis, that they hosted -- no actually, I think it might have been Mr. -- I'm not sure who said, "Oh, yes, the Bible study group met at my house for a year or two years, and then we stopped having it at our house." That might have been...

MR. SCHNACK: Carolyn Martinez said it was at her house.

MR. SIMONS: Well, somebody else said is was at their house for a year or two, and the elders were always there, and her husband was an elder.

THE COURT: There was a disconnect as to when. That's the problem with it.

Okay. So I heard six, not five.

MR. SCHNACK: Black bra, rollerblading,

photo, buying gifts, holding plaintiff on his lap at the Bible study.

THE COURT: Five. Okay.

MR. SIMONS: Photo.

THE COURT: And basically the content of the limiting instruction refers specifically to that evidence and its use and purpose, which is to be limited to the jury's determination and consideration of any liability of Jonathan Kendrick.

MR. SIMONS: The one exception I have to that is the things where Claudia Francis said, "I thought it was weird at the time but I didn't connect the dots until I heard."

THE COURT: Right.

MR. SIMONS: Which does go to causation.

THE COURT: I agree with that.

MR. SIMONS: So I don't want to be precluded from arguing that people saw things that if they had known would have had more significance.

MR. McCABE: She didn't connect the dots until she heard about it in 2004.

MR. SIMONS: Yeah. And she learned Kendrick was a molester.

THE COURT: Right. I will let the jury listen to that.

MR. SCHNACK: That defeats the limiting instruction, your Honor.

THE COURT: It is going to be very specific as to Kendrick and those incidents. Okay. Anything you propose, I will make my decision as to the exact nature.

MR. SCHNACK: My suggestion is if he is allowed to argue that, that goes counter to the limiting instruction.

MR. SIMONS: No. It doesn't go counter to the part where it limits to whose liability it is, it does go to causation, which is a different issue.

THE COURT: Well, it certainly is a different issue.

MR. SIMONS: It doesn't go to negligence, it goes to causation.

THE COURT: Well, causation goes to liability. I mean you have the duty --

MR. SIMONS: Right. But it is relevant to causation, it is just not relevant to negligence. So the limit cannot be -- you can't consider it that people who saw nothing suspicious, but didn't know the background, and if they had, may have done something differently. That's a little bit of a stretch.

THE COURT: Well, here we go again.

MR. SCHNACK: Causation is a part of

liability. I don't see how it separates the two. And if he is allowed to argue that these five things that we listed can be used to prove causation, then the limiting instruction is worthless.

MR. SIMONS: Well, it is not worthless, it is just limited to the issues that the evidence is not relevant to, and that would be negligence.

MR. SCHNACK: As to the liability of Kendrick. It only goes to the liability of Kendrick. It can't go to the liability of the entity defendants and causations of elements of that.

THE COURT: I suspect -- I don't think you can separate duty and liability for purposes of instruction.

MR. SIMONS: Evidence is frequently limited to a purpose, and in this case it would be limited to the purpose for which we are talking about, and that's negligence.

THE COURT: I'm going to consider it. But I'm troubled in terms of whether they can really effectively split the entity. It is like when you read the legal duty stuff we read in this case, and just as the client says, legal duty is public policy on the left, and then causation based on the right as to legal duty, which I thought was a very smart writing.

But then, of course, as we are all taught in law school, we have the causation itself is an element of the tort, not generally separated out.

So, again, I will make it pretty simple. I will make a simple ruling after some considerable thought on the limitations. But you have got the acts nicely lined up.

I'm concerned with -- I'm going to deal with it now -- about the back door aspects of some of this stuff.

I want to listen to Mr. Simons in terms -- and I have got to frame it, because when you asked me yesterday to take judicial notice of the text of California Penal Code Sections 1116517(a) and 11166 as, far as the Court is concerned, it is almost mandatory I take judicial notice of a statute.

However, I'm going to listen to you as to what you are trying to do and why.

But let me read you this, because it was when I was trying to explain how meticulous I try to be on those occasions.

> "When the Court has reviewed certain source material and decided to take judicial notice of some fact, it should convey that fact to the jury if it relates to a matter

that would otherwise have been for determination by the jury."

Okay. So we had a very quick reparteed, because I didn't know what you wanted to do with it, but clearly, I was going to be difficult, relative to it being used as negligence, per se, under the state of the law at that time and how it subsequently changed.

So certainly you want the debate on judicial notice. I do that every time the lawyer asks me to take judicial notice of a statute.

Now, how is it going to relate to something -- and I might add, that was People versus Archerd, how is it going to relate to something that this jury is going to determine?

MR. SIMONS: The credibility of conflicting expert opinion.

THE COURT: You know, as soon as they started talking about that stuff, I knew I was going to get to this.

Okay. Well, I'm going to try to avoid a conflict in terms of what the law was at the time. Okay. And that is, I think, a conflict that needs to be addressed.

I have a very specific concern if I started putting in front of a jury specific statutes that

inform, if not, in fact, they start using it as a basis as though it was negligence per se because the statute says.

Everything I'm doing in this case is like separating fine wheat from fine chaff or mercury pouring through my hands.

MR. SIMONS: Can it be part of the judicial notice instruction that you are not to consider this statute on the issue of evidence but limited to the issue of credibility of conflicting expert testimony on the issue of standard of care, or some other explanatory duty?

THE COURT: I think that is difficult to do. And I haven't -- every time I have experts inferentially doing this, we have the same problem, which is the problem we are dealing with here now, which is putting in play -- and you know it is -- I'm not chiding you at all on this. I expected this discussion earlier today. But I'm very concerned if it gets bootstrapped more than it should be.

MR. SCHNACK: Your Honor, I think to keep it simple, the easiest thing to do, the clergy, they were or were not mandated reporters at the relative time period. And the answer is clearly they were not. And if that is going to be an instruction, that's what it

should be.

MR. SIMONS: That's not the conflict of the evidence, though.

THE COURT: We have gone full circle on that in terms of what the conflict of the evidence is. And I wanted to avoid conflict. I want to clean the record up if there was testimony that if there was a duty to report, and I'm going to clean that up.

MR. SIMONS: The conflict in the evidence -- and, your Honor, we objected to Applewhite testifying on the basis of law to begin with.

THE COURT: I understand.

MR. SIMONS: So once she gets to testify that based on what the law is, there were no reporting requirements for anyone until 1998, and that's just not right.

And that's why we get to Salter saying -- well, how that was interpreted may differ, but you were included in reporting requirements. That was her testimony as I recall it, basically.

MR. SCHNACK: They asked specifically about clergy. You will have to wait for the transcript.

THE COURT: And that's what I'm going to do.

MR. McCABE: Talks about community notification.

MR. SIMONS: That was covered by both.

MR. SCHNACK: The mandated reporting that was struck from Opinion Number 8, that was the part that was deleted from her testimony based on --

THE COURT: I'm always sensitive to these issues. Okay. Anything else?

If I keep you here until 1:00 o'clock, can we get it all resolved?

MR. SCHNACK: What about the verdict forms?

THE COURT: Where are we? Because I'm not sure I have seen the latest.

MR. SCHNACK: Well, I think we submitted one this morning.

MR. SIMONS: This one here? I haven't seen the cleaned up one.

MR. SCHNACK: So just for us to further meet and confer on punitive damages instructions and the limiting instructions regarding Kendrick? Those two items?

THE COURT: You did a verdict form. Actually, you have done two, because I saw a prior one. So this morning or sometime this morning --

MR. SCHNACK: We have added the police department and some other entities to it. That's the substantive change.

MR. SIMONS: And I think -- well, I don't know if you want to talk about it. One of the issues about the verdict form that the defendant submitted this morning is it doesn't actually ask about whether the defendants were negligent or not, it asks about Gary Abrahamson, Michael Clarke, Gary Lamerdin. Not the defendants in this case.

MR. SCHNACK: Corporations only act through agents. I think that's the only way you can have it.

THE COURT: Well, I can give you this little ad hominem. I have been pretty rigorous in scrunching down these verdict forms and getting rid of more players than -- I wanted less, so we get rid of possibilities of very inconsistent verdicts, particularly in a case like this. But I will take a look at that stuff. Remind me, though.

I haven't seen yours, but I have seen the prior one. And so when I resolve the question as to these other un-named defendants, hopefully that will take care of a huge issue there.

And I believe I got one with your original papers. But I will tell you all that in a case more complex than this, we started out with 37 pages and we came up with two and a half pages on a verdict form, and that's where I'm going with this.

MR. SIMONS: Mine is seven questions.

There is a bit of a problem with regard to whether -- well, how to separate the negligence of Mr. Abrahamson and Mr. Clarke that is not only in the course and scope of their duties with Fremont, but is, by admission, within the course and scope of their duties as agents with Watchtower.

So it would be -- and that's kind of joint negligence, if you will. You can't allocate the fault between the defendants. They are both a hundred percent responsible for that.

THE COURT: Right.

MR. SIMONS: Versus an allocation of fault for any other conduct which the agents may have engaged in, not in the course and scope of their agency with both defendants. And it is an interesting intellectual issue.

THE COURT: Well, isn't the admission that they were acting in the course and scope? I mean is there any argument what they undertook was outside the course and scope? Not in the evidence before me or what I heard to be the admission. So is there any real concern that -- certainly a jury could find on the evidence that one may be more responsible than the other in terms of what they did, but when the dust settles,

does that really matter?

MR. SIMONS: Because I proposed there is one line of percentage on the verdict form for the defendants because all of the conduct of the elders is all to do within the course and scope of the agency with both entities.

THE COURT: And you picked up on what I just said.

MR. SCHNACK: Except that in the instructions, you are going to see it also references negligence of elders in the Service Department. And I think Mr. McCabe might object to being lumped with those.

MR. McCABE: Absolutely.

MR. SCHNACK: And that's an instruction that they, apparently, have agreed to.

MR. SIMONS: Yes. And so that's the non-issue about some of it is overlapping and some of it is not. How do you segregate that, intellectually?

THE COURT: Well, I could do it probably intellectually, but more important to me is practically. All right.

MR. SCHNACK: We could eliminate the elders of the Service Department from the instruction, and we could argue that from there.

THE COURT: All right. Bring at me anything you want to do before 9:00 on Saturday. I will be very active in replying. I am a little bit concerned about getting all this done. Tell me what weekend plans are everybody.

Well, we are going to use our computers as a basis for communication.

MR. SIMONS: By Saturday if we have a final set of instructions and a final set of special verdict form, you know, I can have it all prepared.

THE COURT: Well, I can tell you, I'm just going to be ready -- I'm looking forward to those limiting instructions. I'm looking forward to any further choices or changes you want to make in the supplemental Plaintiff's on the duty. And then I'm looking forward to your briefs in terms of expansion to the un-named parties. And then I'm going to be -- I have heard enough argument.

MR. SIMONS: That may answer the question I'm about to impose. May I submit a page or two or on the variations, if you will, of limiting instructions, sometimes limiting only to a specific issue as to --

THE COURT: Sure.

MR. SIMONS: And just a page or two.

THE COURT: I will just tell you, I will

consider what you write.

(Proceedings were adjourned at 12:31 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD,CSR 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

JUNE 11, 2012

DAY 7

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A605B8A

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: kellyk@fjslaw.com

Email: rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

JACKSON LEWIS, LLP
BY: ROBERT SCHNACK, ESQ.
801 K Street, Suite 2300
Sacramento, CA 95814
Tel: (916) 341-0404
Fax: (916) 341-0141
Email: Schnackr@jacksonlewis.com

--oOo--

INDEX

	PAGE
JURY INSTRUCTIONS BY: JUDGE McGUINESS	51
CLOSING ARGUMENT BY: MR. SIMONS	91
CLOSING ARGUMENT BY: MR. McCABE	130
CLOSING ARGUMENT BY: MR. SCHNACK	176
REBUTTAL STATEMENT BY: MR. SIMONS	209

--oOo--

INDEX OF EXHIBITS:

NUMBER ADMITTED

(NO EXHIBITS WERE MARKED OR ADMITTED)

--oOo--

JUNE 11, 2012 7:47 A.M.

PROCEEDINGS

THE COURT: All right. We are back on the record in the matter of the Candace Conti versus the Watchtower New York Bible and Tract Society of New York, Inc.

The Court is going to take a moment -- first of all, I would like to thank counsel -- and the record should reflect, a fairly intense weekend between court and counsel -- to continue the discussions and efforts as to -- in one case, mutually agreed upon jury instructions in this matter, and secondly, for any issues that were unresolved for the Court's decision.

I'm going to go through the jury instruction meet and confer table that we used last Wednesday. But more importantly, I'm going to go through the Exhibit -- or I'm sorry -- the jury instructions that have been presented to me for reading to the jury this morning.

And I will comment where either I have made a decision for these purposes, and then after I am through reciting the series of instructions that I have and my comments otherwise, I will invite comments from anyone as to -- from either side -- as to the state of jury instructions at this time.

All right. In order, Casey 200: Obligation

to Prove.

It is the Court's understanding that is a mutually agreed upon instruction. Correct?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: Casey 201?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: Casey 202?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: And these are again, instructions I will read to the jury.

Casey 203?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: Let me ask for record purposes, in the packet this morning was Casey 204, willful suppression, I believe it is agreed that that was withdrawn?

MR. SIMONS: Yes. It was not offered to Plaintiff. It was withdrawn.

THE COURT: 205?

MR. SIMONS: Yes.

THE COURT: All right. Evidence -- 206:

Evidence for a limited purpose?

MR. SCHNACK: As modified, yes.

THE COURT: And I believe it has been modified, the one I'm looking at.

MR. SIMONS: Correct.

THE CLERK: 207. Let me make note of this. I have indicated, pursuant to the defense requests, that I am going to issue a limiting instruction as to certain evidence presented in this matter as to Mr. Kendrick only.

Now what I'm reading, we need to retool 207. It provides in pertinent part as follows:

> "Then read limited instruction regarding consideration of certain evidence only against Jonathan Kendrick and not Watchtower North Fremont Congregation."

In terms of preparing what is going to go into that instruction, I can tell all of you that I'm going to listen to a little argument as to Ms. Martinez and the field service aspects here. But I'm going to direct that the proposed limiting instruction presented by defendants on Friday will be the instruction I'm going to give as to four incidents related thereon. The only one in play is the incident regarding Martinez and field service.

So Mr. Simons, as simply as I can say it, what I got on Friday is a proposed instruction from defense, and I don't have it directly in front of me, but there were four incidents. I can remember the black bra incident. Pictures with children, there were four in total on that instruction, which I'm going to give exactly as redacted with the exception of it being a little bit -- the dealings with Ms. Martinez and her testimony as to field service.

Okay. So that's 207 to be modified.

208. I dealt with this contextually. First of all, I believe it is as modified. There was a supplemental request for jury instruction by the Plaintiff to add effectively or video and I think now, as modified, it is agreed. Correct, counsel?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: Casey 210?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 212?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 218?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 219?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 220?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 221?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 223?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: Casey 400. I think this was agreed upon. It's 401, there was an issue. 400? Casey?

MR. SIMONS: Yes.

THE COURT: That is just essential factual elements?

MR. SIMONS: Yes.

THE COURT: All right. 401, at plaintiff's request, I'm going to give 401 a basic standard of care. I spoke to counsel yesterday. I think contextually in terms of the duty instruction, which I'm going to talk about in one moment, that I have to give framework as to

basic standard of care. So over defense objection as to 401?

MR. SCHNACK: That's correct. Over our objection.

THE COURT: Noted for the record. Okay. 401.

Let me talk about the duty instruction, which follows next.

First of all, I will be very clear on the record that throughout -- and I will let the defense make a record, once I'm done.

The defense has made a number of arguments. Basically, first of all, I'm hoping I'm going to state it as succinctly and directly as I can, that under the factual circumstances here, there was no duty of care, relative to the defendants.

There was also a second argument that contextually, that to allow a duty of care would result in the creation of the tort of clergy malpractice.

Now, I'm going to let you go on the record in a minute. I issued an email yesterday that was fairly succinct -- and I'm taking responsibility for the duty instruction in a very nuance case -- but first of all, I denied Plaintiff's request as drafted. Plaintiff presented two supplementals as to duty. I denied the

request as to Number 2 because it was filtered and littered with Mr. Kendrick being a volunteer.

And under the factual circumstances of this case, clearly defendants, upon learning of the incident, were quick and concerned, went through their process, and Mr. Kendrick was stripped of his ministerial servant status.

So I think, continuing to use and characterize him as a "volunteer" under Juarez was and would be misleading to the jury.

Once I can print it out, I'm going to put in the email that I wrote to counsel as to why I was finding a duty of care, and I will deal right now, since it is timely, as to why on the jury verdict form I did not include unserved, un-named parties.

As to duty, I wrote in the email of counsel quotes from Tarasoff, which of course was a quintessential duty case, actually arising in Alameda County.

But the Court's analysis of Delgado, which followed in Juarez, I did, in effect, find a special relationship of a minor child contextually under the circumstances alleged here.

The Court is fully aware of the legal doctrine -- of the general legal doctrine of no duty to

warn. I'm fully acquainted with it; I'm acquainted with the evolution of exceptions to that doctrine.

I read candidly, probably 30 cases or more, and I have very skilled lawyers here, including a number of out of state cases.

Even in the out of state cases, those courts that were finding no duty under these circumstances, often would talk in a sense or two about vulnerable Plaintiffs.

And I'm imposing a duty under the circumstances here for the reasons related in my email, but clearly an evolution of the doctrine, perhaps the best example not involving a church was Juarez, as to the duty inherent to adults and their organizations vis-a-vis the taking care of children.

So the duty ruling is mine for the reasons I related.

As to un-named parties, un-served parties, I was the one who raised the Prop 51 aspects possibility in this proceeding. And I did it because of the evolving nature of Prop 51 and un-named, un-served defendants.

I requested counsel to submit further briefing on the matter, and I ruled effectively on it Sunday by email -- which, again, I'm going to run it and

put it into the record -- that I wasn't, for purposes of the verdict form here, added the trio of the Fremont Police Department, the District Attorney of Alameda County and Child Protective Services, largely for the cases and the reasons related in Plaintiff's brief that I referenced contextually in the email.

The parents, that being the Conti's's, were also asked to be added as un-named, un-served defendants for purposes of the verdict form. I declined to do so and ruled accordingly.

I would ask the question on Wednesday as to, for instance, when in the evidentiary record here, when did Mr. Conti learn about the disclosure.

And the cases that I think are fairly uniform as of logic, that it is tough to impose a duty under circumstances like these if one is not aware and has any reason to be aware of and react to the nature of the circumstances here.

So I declined under several cases related, and I'm going to reference, again, on the record, the brief submitted by Plaintiff as to both the trio of public agencies, and then the parents themselves, which are different in terms of legal reasons for denying same, but I referenced the reasons in the email, which I'm going to put in the record.

So the duty instruction, the Court understanding -- I'm going to let the defense in a moment make their record, but I think it is certainly clear in terms of the number of briefs, the number of discussions between the counsel and the Court that -- and their position has been very well brought, as I said earlier on in this case, it is a difficult case on the parties, the judge, the jury and counsel.

412, by agreement, Casey?

MR. SIMONS: Yes.

MR. SCHNACK: A lot of your comments you just made, I question the validity here, but we will say yes.

THE COURT: 413. I don't think there is any question about that, I'm hoping.

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 430: Causation?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 431: Multiple causes causation?

MR. SIMONS: Yes.

MR. SCHNACK: Let me look at the wording just to make sure we changed -- yes, as modified.

MR. SIMONS: I don't have my hard copy here. I'm looking around, did we do nonparties?

THE COURT: Yes. But since you were kind enough to give me a hard copy.

MR. SIMONS: Yes.

THE COURT: Then we have agreement?

MR. SIMONS: Yes, we do.

THE COURT: 434: Alternative causation?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 1306: Sexual battery, essential factual elements?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: All right. After that, I indicated to counsel on Wednesday, I was concerned about some of the testimony serving as a basis for --

Well, I have already told the jury they are going to get limiting instructions.

I was concerned and I want to say on the record that I reviewed the transcript because I requested whether the word "privileged" was used by anybody in this proceeding.

And I want to be very clear, I thought counsel were very professional, as were the witnesses, preparing on this issue; however, there was testimony as to privilege being used as a basis for not disclosing.

So I wrote an email to counsel yesterday. I'm going to read it into my record, because I'm going to read this to the jury on the privilege issue, and then I'm going to take the opportunity to talk about the statutory duty to report, because we had an interplay with one of the experts as to whether there was a statute and whether there was a duty to report, and candidly, I'm going to characterize her testimony as a mixed bag.

So I'm going to read to the jury:

"In this particular matter, you heard the use of the word, quote, privilege, end of quote. Under the California Evidence Code certain communications are privileged such that they may not be disclosed upon the assertion of a claim of privilege by the holder and the same. Whether a particular communication is privileged is a matter for decision by the trial court. Your deliberations are to be based solely upon the evidence presented and the instructions given without any consideration whatsoever as to whether any communication within the evidence presented in this matter was privileged under California law."

Now, I got an email from Plaintiff's counsel saying that was, I think, okay with Plaintiff?

MR. SIMONS: Yes. It wasn't what we asked for, your Honor. But --

THE COURT: Be careful in this court what you ask for.

MR. SIMONS: But we basically said, "Okay, the Court has ruled and we move forward from there."

THE COURT: Counsel, just for a minute on that.

MR. SCHNACK: We do object to this instruction. We think if you are going to give that instruction, you need to get into Evidence Code Section 1034, where the ministers hold privilege separate and apart from the penitent.

And if you read through the law revision commission comments -- I would like to read this into the record, if you don't mind. Again, this is Section 1034 of the California Evidence Code, and the Law Revision Commission comments state that:

> "The law will not compel a clergyman to violate, nor punish him for refusing to violate the tenets of his church which require him to maintain secrecy as to confidential statements made to him in the course of his

religious duties."

Further along in those Law Revision Commission comments states that:

"The extent to which a clergyman should keep secret or reveal penitential communication is not an appropriate subject for legislation. The matter is better left to the discretion of the individual clergyman involved and the discipline of the religious body of which he is a member."

We think this instruction basically is an area which the Court should not go, but if you are going to give it, we also think the instruction needs to be given that says that the clergyman holds a separate privilege. We don't think there should be any instruction on privilege.

THE COURT: And the only reason I'm doing it is because of the record, it being used as a justification.

MR. McCABE: And could I just add for the record, your Honor, that the only indication of anyone using privilege, I think was the testimony of Michael Clarke, who was not a lawyer, was not claiming the privilege not to testify in this court or any other proceeding, but was using the word in delayed vernacular

of confidentiality.

THE COURT: Well, I read what he said. And the problem as to the hearer, I'm not sure that they would understand that, because it is part of, in my view, the use of the term itself.

When you use the term "privilege" it inevitably raises issues as to what and why. And I tried to limit my comments to the process itself.

See, that argument, in use of 1034, is not very different from kind of the subliminal argument as to whether there is a spiritual privilege not to disclose, which I have largely avoided, seeking to avoid confusion to the jury.

I have broken it out to make sure it is very clear that it is a matter of evidentiary privilege -- and this court has determined, by the way, early on that the nature of the discussions here did not come within the penitent clergyman privilege.

So you have made your record. Now, let's go.

MR. SCHNACK: And, your Honor, to that extent you have up until time of trial here to change what we consider an incorrect ruling in that regard, because if you go through Section 1032 of the Evidence Code, which defines penitent privileges, it says that it requires a communication confidence in the presence of no third

person as far as the penitent is aware to a member of the clergy.

Here, there's been no evidence that Jonathan Kendrick was aware of any third person there.

Again, I wasn't involved in this case when that was briefed and the matter was presented to the Court.

But within the Jehovah's Witnesses faith a wife and family members are not considered third persons to such penitential communications.

Here, the penitent, again, was Kendrick. He could have had the belief his wife and stepdaughter were third persons under Section 1032. So we would urge that you correct the prior ruling.

THE COURT: Thank you, Mr. Schnack.

Early on, before we even got into trial here, I said, if I may quote myself, "I wish somebody would have taken that to the court of appeal."

I haven't made a glib decision in this case. My thoughts are succinct. But I gave a lot of thought to that because I thought it was a threshold question at the time. And candidly, I was thinking if this case goes to trial, certainly I was going to get a replay, which I just did, of the nature of it.

And I think everybody has the sense this

judge doesn't pretend beyond admission in these matters, but I made that ruling on a very extensive presentation of process, who was there, what happened when it goes to New York, the letter and all of that. So good or bad, you know --

And I actually reviewed that ruling twice, early on in this case to reassess what I did then and why I did it. And I'm going to stick with the ruling.

Number 2. You have heard two -- and let me say -- I want to be very clear as to why I didn't use the Plaintiff's instruction -- the Plaintiffs's instructions talk about privilege or confidentiality. Okay. And the way I framed it for the jury in my instruction, I want to talk about evidentiary privilege to hopefully avoid any confusion they would have there. I wouldn't have and did not use confidentiality because of the nature of the presentation --

I will go with you a little bit on this in terms of the expectations when one goes through that process. So I have limited my comments to privilege.

Number 2, I'm going to read to the jury the following:

> "You have heard two experts here testify as to the standard of care regarding child abuse reporting.

Whether there was a statutory duty to report to lawful authorities a purported incident of child abuse by anyone hearing or reporting the same is a matter of law for determination by the trial court. Your deliberations are to be based solely upon the evidence presented and instructions given without any consideration whatsoever as to whether there was any statutory duty to report an incident of suspected child abuse to lawful authorities at any time involved within the evidence presented here."

Now, I sent that to lawyers yesterday. Plaintiffs's counsel, you can respond. Probably the same way as you did to the other.

MR. SIMONS: Well, your Honor, we said our position on the submissions, so I just rest on that.

THE COURT: All right. And the defense?

MR. McCABE: Our position is that there was no mandatory duty to report in this instance, because that's the law. And I think if you don't tell the jury the law, then you are leaving it up to them to wonder about it and speculate.

Even though if you tell them not to do that, you are leading them down that path and they are

expecting to hear the law from your Honor, and you don't tell them the law.

MR. SCHNACK: And further, your Honor, we submitted a proposed instruction that would indeed instruct the jury that when mandated reporting became the law for clergy in California, and with respect to this case, they should not consider the mandated reporting law because there was no such law in place with respect to clergy in '93 and '94.

THE COURT: There is that old comment, the tangled web, which, again, I will try to walk in the jurors' shoes in a matter such as this.

First of all, I told counsel yesterday, if somebody had objected to the discussion about what the law was at that time, I would have granted it, because it is exactly what I feel and how I would have made the decision.

I would and did let the experts testify as to their opinions as to standard of care. Again, I probably have everybody satisfied here, but if I start to get into mandated, I think that carries inferences into the jury's discussions and deliberations.

I don't think the lawyers or this court have disagreed at all that the duty under that statue to report by church or clergy did not occur until January

1, 1997 as a matter of the statute.

I have already found, over defense objection, that there was a common law standard of care existing in 1993. And in all of my -- not just -- well, a simple way and not so simple case is trying to direct the jury to the evidence.

None of the discussion about what the law was, who it would apply to, whether it was mandated -- I think that gets them off into a territory that I am seeking to close down because I want them to consider this matter from a common law standard of care and the evidence deduced. So I'm going to read that.

So let's get to simpler territory.

3700?

MR. SIMONS: It was briefed.

MR. SCHNACK: Yes.

THE COURT: 3701?

MR. SIMONS: As modified, agreed.

MR. SCHNACK: I'm reading it briefly, your Honor.

THE COURT: Good morning to everyone.

MR. SCHNACK: Yes, agreed as modified.

THE COURT: 3703?

MR. SIMONS: Yes.

MR. SCHNACK: Although, your Honor, with

respect to 3701, we don't waive any of our arguments that there was no duty whatsoever. I guess that's the danger in consenting to this. We don't want to waive any of the arguments we presented on the lack of special relationship, all of those things that we had briefed. By consenting to 3701, we waive those.

THE COURT: I understand what you are saying. Basically, by agreeing that that may be given, it is not in agreement that there is a standard of care. Right? Or a duty?

MR. SCHNACK: Or that there was a duty.

THE COURT: All right. Okay. Noted.

3703: Relationship not disputed?

MR. SIMONS: Agreed.

MR. SCHNACK: Agreed.

THE COURT: 3720: Scope of employment?

MR. SIMONS: Agreed.

MR. SCHNACK: Yes.

THE COURT: 3900: Introduction to tort damages?

MR. SCHNACK: Yes.

MR. SIMONS: Yes.

THE COURT: 3902: Economic and non-economic damages?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 3903: Items of economic damage?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: 3903: Medical expenses, past and future?

MR. SIMONS: Actually, the title is misleading.

THE COURT: We should give it a pass.

MR. SCHNACK: They are going to have them in the jury room. Correct?

THE COURT: Yeah. We should get rid of "past."

MR. SCHNACK: And I think medical expenses should be changed as well in the title.

MR. SIMONS: Actually, there is a typo in here besides.

THE COURT: All right. So let's agree. And this is for our duty, speaking of duty -- so we need to change the title, and I think the temporal -- or time period.

So how would we like to do it? Certainly we get rid of past and -- should we say therapy expenses, future therapy expenses?

MR. SCHNACK: Or therapy and counseling

expenses.

MR. SIMONS: Therapy and counseling.

THE COURT: So let's change the title on that. And I'm going to put this aside. I can read it, I think, into the body. So we need to change the title.

MR. SIMONS: There is a typo in the body, too.

THE COURT: Okay. And I want to -- I will put this on the record. With the magnificent amounts of paper produced by counsel on both sides, this is the first typo I have noticed.

MR. SCHNACK: Also in the last phrase, again, on 3903-A, it says:

"Must prove reasonable cost or reasonably necessary medical care that she has received."

THE COURT: Yeah, that needs to be addressed.

MR. SCHNACK: That's past tense, and it is medical care.

MR. SIMONS: And where in 3903?

MR. McCABE: The second line.

MR. SIMONS: Future therapy and counseling.

THE COURT: That she will receive.

MR. SIMONS: Medical care. Oh, I see. Yes.

MR. McCABE: And then you have to change it to future tense.

MR. SCHNACK: It has past tense.

MR. SIMONS: She will receive. Yes.

MR. SCHNACK: Or may receive.

THE COURT: Actually, "may" is more appropriate in terms of tense.

MR. SCHNACK: So it is going to be future therapy and counseling that she may receive?

THE COURT: Correct.

MR. SIMONS: Okay. Let's see if we can get that back.

THE COURT: 3904-A: Present cash value.

And I will say on the record, as I already have, over defense objection, I am allowing the use of the actuary table. But forgetting that -- or certainly not forgetting that, otherwise agreed?

MR. SCHNACK: Yes. Subject to your comments, agreed.

MR. SIMONS: Agreed, yes.

THE COURT: 3905: Non-economic damage?

MR. SIMONS: Agreed.

THE COURT: 3905-A?

MR. SIMONS: Agreed.

THE COURT: 3924?

MR. SIMONS: Agreed.

MR. SCHNACK: I'm trying to catch up here. I

have been sick over the weekend, Judge.

THE COURT: I won't detail for you my challenges.

MR. SCHNACK: We are up to where?

THE COURT: 3924.

MR. SCHNACK: Agreed.

THE COURT: 3925?

MR. SIMONS: There was no objection.

MR. SCHNACK: Yes.

THE COURT: Life expectancy, 3932?

MR. SCHNACK: We objected, your Honor, no evidence of life expectancy.

THE COURT: With that exception noted.

3934: Damages from multiple legal theories, I believe we all agreed on that.

MR. SCHNACK: Yes.

MR. SIMONS: As it was modified, yes.

THE COURT: 3946: Punitive damages and any independent bifurcated trial, first phase.

I understand we agreed on that?

MR. SCHNACK: The only question I have, your Honor, is the title, if this is going to go into the jury room?

MR. SIMONS: Yes.

THE COURT: Yes. That is a legitimate

comment.

MR. SCHNACK: I think just Casey 3946, period, punitive damages, should be the only thing in the title?

THE COURT: Okay. Let me make a note.

3964: No attorneys fees or costs?

MR. SCHNACK: Agreed.

THE COURT: 5000: Duties of judge and jury?

MR. SCHNACK: Agreed.

THE COURT: I'm just going to go right through it, since I know we agreed on all this.

So I'm just going to go and ask yes.

5042: Evidence.

5043: Witnesses.

5005: Multiple parties.

5006: Non-person party.

5009: Pre-deliberation instructions.

5010: Taking notes.

5011: Reading back.

114: Bench conferences and conferences in chambers.

116: Electronic communications and research being prohibited.

5012: Introduction to special verdict form.

5016: Judges commenting on evidence.

And I might add that I discussed with counsel yesterday leaving in the first two sentences, striking in the next three, telling them to disregard my comments and contextually, I struck the last three sentences of that.

5007: Polling the jury.

5020: Demonstrative evidence.

With the exception of the comment I made, those are agreed?

MR. SIMONS: Yes.

THE COURT: All right. Let's deal first with 2007. I have instructed Mr. Simons to adapt the defense proposed instruction of Friday as to four acts referenced thereon that are to be considered for liability as to Mr. Kendrick only.

All right. So a one-minute debate about Ms. Martinez and her testimony as to field service.

Mr. Simons, to you.

MR. SIMONS: As we stated, your Honor, I think the evidence supports admissible inference that the time frame within which Ms. Martinez saw Ms. Conti is indeed the time that Ms. Conti stated that they were in service together, which was after her parents were no longer attending regularly with her for family reasons, and that would be during time that the abuse was

occurring.

THE COURT: Mr. Schnack?

MR. SCHNACK: What Mr. Simons left out and this is what we emailed to, your Honor. And we can even include that in the record if we have to.

Ms. Martinez also testified that she never saw Candace Conti in field service without either one or both of her parents.

So that undercuts the argument that somehow this is admissible as against either Watchtower or the North Congregation.

MR. SIMONS: And I think that misquotes what she stated.

THE COURT: Well, you are both reasonably accurate. But I read both -- I, of course, listened to Ms. Conti's testimony. I read both transcripts.

I'm not going to instruct them. I'll let the jury consider the time and circumstance. And I will introduce as part of the record, Mr. Schnack, the email you sent me.

But the questioning and the cross-examination started with at the Hall, and then went on to field service. So there are various inferences one could get from the testimony of Ms. Conti to that testimony.

MR. SCHNACK: So the ruling is what?

THE COURT: The ruling is on the limiting instruction, I'm not going to instruct as to Ms. Martinez and her comments about field service. Only to be considered against Kendrick.

MR. SCHNACK: What about her comments about Candace Conti sitting on Jonathan Kendrick's lap from 1991 to 1992 during Bible study?

That was included within the limiting instruction as well, to be applicable only to Kendrick.

THE COURT: I don't think it was within the limiting instruction. So let's get it up.

Do you have it on your computer?

MR. SCHNACK: No. I go by Blackberry, your Honor.

MR. SIMONS: I have it here.

THE COURT: So let's read it in a minute. Hopefully, I can get it up on my computer.

MR. SIMONS: The instruction says five -- Conti/Martinez's testimony that Candace Conti sat on Jonathan Kendrick's lap in about 1991 or '92 during a Bible study.

THE COURT: Okay. Is that in a proposed limiting instruction?

MR. SIMONS: It is. It's the last item, Number 5.

THE COURT: Okay. So can somebody kind of give me a curve ball in terms of her testimony as to the field service? Because that's going to be in as far as I'm concerned.

MR. SIMONS: The field service was separate, that was a separate issue.

THE COURT: Okay. 1991 or '92, I will limit on that. Okay.

MR. SCHNACK: So as the limiting instruction is drafted, then that will be submitted?

THE COURT: Yes. Was that in it?

MR. SIMONS: It was.

THE COURT: All right. Then .5 will be in my limiting instruction as to 1991 and '92.

But -- and Mr. Simons to you, gives you one point; although it wasn't, I guess, part of the limiting instruction.

MR. SCHNACK: I have a copy here, your Honor, if you want to see it.

THE COURT: That would be helpful.

MR. SIMONS: It was part of the original request of limiting instruction. The field service was not, but the sitting on the knee was.

THE COURT: Yeah, and I'm going to go along with that. And I told you in terms of the brief

submitting that was convincing that the field service stuff was in and will not be subject to limiting instruction.

All right. To the defense for a moment, I understand we have some changes to effect, do you want to make a further record about either the duty of care or un-named, un-served parties being part of the verdict form?

And I'm going to deal with the special verdict form as it stands at this point.

MR. SCHNACK: Just briefly, your Honor, we do obviously, follow all the briefing we submitted. And as your Honor has noted in prior proceedings, you are breaking new ground here. There has never been a case in California that anyone could find in which a special relationship was found with respect to a minor with regard to a mere church member like Kendrick was here, but otherwise we will rely on our briefing, which has already been submitted.

With respect to the allocation of fault issue, the cases we've submitted show that we think there is clear error not to include the other parties on the verdict form.

And there has been several reversals of trial courts by the California Appellate Court to allow such

allocation. We think it's clearer here.

MR. McCABE: Especially, your Honor, with regard to the parents. If they allow their child to go hundreds of times with Kendrick, that is just beyond the pale.

That is an inference the jury could draw in this case if they believe Ms. Conti's testimony. And the parents have a duty under the statute of the Welfare and Institution Codes to care for their children, and no parent today, in 1993 to 2012, should or could conscionably allow their child to go hundreds of times with an adult single male, as Ms. Conti testified. And if they did that, our belief is that they should be added to the jury form. And we will submit on that.

THE COURT: And look, I was considering, you know, where -- I guess in terms of the intonation, the buck stops here as a judge, but if I went along with that ruling, I, as a committed parent -- and we were and am and are -- and my best friend whom I have known for forty years, I have no knowledge and no observations of activities that would lead a reasonable person acting reasonably to believe that that person whom I have known -- I can make -- if you want to use a sports figure, Jim Boheim, the Syracuse coach, the coach that was next to him for 36 years, was accused.

But under those circumstances, if I choose to expand duties, then every parent of every child in the State of California is subject to a lawsuit by their children as to not protecting them.

That's why, you know, I have effectively ruled that unless the evidentiary record shows these parents had actual knowledge or -- and I guess under Juarez --

Well, I don't know. That's kind of a volunteer case. But the cases that were cited that I went and did more legal research on, minimally, they would have to have actual knowledge. We could have a debate or reason to believe, but I don't think either standard is met in this case.

MR. SCHNACK: Your Honor, if I could be heard on that just briefly?

THE COURT: Sure.

MR. SCHNACK: There was evidence submitted by the Plaintiff that Neal Conti was on the same train sitting across from a table in the an Amtrak train when Kendrick abused Candace. In his presence, sitting across the table. And yet he allowed her then to go hundreds of times? We think the evidence is there. But we will submit it on the briefing.

THE COURT: And look, I didn't say it wasn't

an interesting question. It was a good job done by lawyers. But I really do have concerns, part public policy and part is specifically contextually within the record here as to reasons for making my ruling.

Okay. So we are working, as far as the Court is concerned, on redoing 207.

3903-A.

There is one more.

3946. I'm going to let counsel do that for a little bit. I told the jury we are going to have them here at 9:00.

MR. SCHNACK: We also have a verdict form, your Honor.

THE COURT: Let's take a pause to refresh and catch up to what we just did.

MR. SIMONS: So here's the updated 3903-A.

MR. McCABE: Can I give you a copy of our proposed special verdict form?

THE COURT: Why don't you give it to Rick?

MR. McCABE: I just did.

THE COURT: So this would be 2000?

MR. SIMONS: Your Honor, can I just call her? It is a lot easier to do it on the phone.

THE COURT: Yeah. What I have is between have to get -- are you with me?

MR. SIMONS: No.

THE COURT: Well, do it with me so we can be productive.

MR. SIMONS: On the limiting instruction on 207, I'm not sure we have a draft. She will have to basically type it up from scratch.

THE COURT: Okay.

MR. SIMONS: (To a person on the phone) So we are in court. Here is the thing, opening up 3903-A, do you see how it says "medical expenses" in the bottom in here?

THE COURT: Yes, here is what I'm going to suggest. Mr. Schnack and Mr. Simons, give me your proposed limited instruction. I'm just going to read that to the jury, and then we will have Mr. Simons' staff --

Mr. Simons, I'm going to make it easier. Give me, in handwriting, your revised 3903. You have to deal with changes on the title and a little bit on substance. But give me your handwritten version and I will read that to the jury, the agreed upon change.

MR. SIMONS: Okay. I think we can do that. And for some reason the public network access just collapsed. Email. Off the record.

(Break taken)

THE COURT: Back on the record. This was presented to the Court, and this Court deals with this.

"Criminal sexual misconduct falls outside the course and scope of agency and should not be imputed to the principle.

A person is otherwise responsible for harm caused by the wrongful conduct of its agent while the agent is acting within the scope of authority given to him."

Now, Mr. Schnack, to you, you want to add a sentence: Jonathan Kendrick --

MR. SCHNACK: I would start:

"I instruct you that Jonathan Kendrick was not an agent of defendant Watchtower Bible and Tract Society of New York or North Fremont Congregation; however, that defendant is being named. Watchtower Bible and Tract Society."

THE COURT: I want to say a little more than that. Not -- because we want to let the jury do their job.

He wasn't an agent -- and I'm going to read the defendants' names. In the event you determine a sexual battery occurred here, okay --

Do you understand the Court's thinking on that one, folks?

Mr. Simons, any comment?

MR. SIMONS: No.

MR. SCHNACK: That's fine, your Honor.

MR. McCABE: That's fine, your Honor.

THE COURT: All right. Further, for record purposes only -- give me a second. Let me take a pause and refresh this.

All right. I'm pleased to relate I have the instructions in good order. We are going off the record for one second.

(Break taken).

THE COURT: On the record.

3903 is in good order. So allow me to -- okay.

Nice work to the defense on -- yeah. Good. All right.

Mr. Simons, we are down to title of 3903-A and the punitive damages title. Now, I'm really ready to instruct. All right.

MR. SIMONS: I think you have the 3903-A.

THE COURT: I do.

MR. SIMONS: So 3946 we just need to print out.

THE COURT: Well, I have 207 ready to go. I have 3903-A ready to go. I have the special duty and

the special instruction that is going to go after 3920. So done.

MR. SCHNACK: I do have one comment, your Honor.

THE COURT: Punitive damages title is what I'm looking for.

MR. SCHNACK: 207, it has the bracket language in there.

THE COURT: I already took that out.

MR. SCHNACK: Okay. That is gone from what will go in the jury room?

THE COURT: Actually, I scratched out. But we need to mechanically do it. I wasn't going to give it to the jury.

MR. SIMONS: 207 is the one you -- basically, the one you submitted, is the one we used.

MR. SCHNACK: I know. But it has bracket, "then read limiting instruction."

If that's going to the jury, that should not be in there.

THE COURT: Well, actually, I think we can just get rid of 207 and deal with the special jury instructions. I was already with you on that one.

MR. SCHNACK: All right.

THE COURT: So we are down to the punitive

damages instruction and the special verdict.

So let's take a pause and refresh us.

I want to make my record on this. There have been a -- my father used to say "a slew of special jury instructions submitted."

So I'm going to go through them as follows:

Plaintiff supplemental Number l, I have effectively dealt with by rewriting the duty and care instruction. So it was denied as presented.

The Plaintiff's supplemental Number 2 went to a volunteer note under Juarez. I denied that.

Number 3 was a retooling of 208 to include the quote or video that was agreed to by counsel all as modified. There have been a series of --

Plaintiff also submitted Number 4, I believe, which talked about confidentiality and privilege. I effectively rewrote -- I denied it in part but not in substance. I have included that within my limiting instruction and explanation to the jury. And we have already put that on the record.

Now, the defense has submitted an entire number of supplemental proposed jury instructions, relative to duty of care. Denied --

Well, let me reframe it this way: I have denied defense's request for supplemental jury

instructions with the exception of the one that has now become the special jury instruction Number 207 as to sexual misconduct not being within the scope and course.

Give me a second in terms of comments; otherwise, I have this all lined up.

And I might add, the one I have just agreed to gives a bit of special jury instruction number -- strike that.

Number 2 about him not acting within the scope.

I denied Number 3. I have found a special relationship existing here such that a duty of care --

This is defense supplemental.

Duty of care does exist.

I have denied request Number 4 in terms of the parents' duty, effectively and contextually.

I note, just in passing, that in the May 16 filing of special instructions, there is no reference Number 1. It is like the 13th floor of the hotel.

All right. That is our record for the minute.

MR. SCHNACK: Your Honor, one additional thing. The appellate lawyers always tell us that in case you didn't specifically mention any special instruction, that the request had been denied due to the

extent we haven't addressed one.

THE COURT: They are denied.

The special verdict form.

Let me make a preface set of remarks. And the record will reflect nice work from the Simons Law Office. 3946 is done.

Okay. There has been -- well, first of all, have we agreed on a special verdict yet? I ask a bullet question.

MR. SIMONS: There is one remaining issue. We are going with the form that the defense prepared because of the Court's decision to include Abrahamson and Clarke on the verdict form.

However, the defense special verdict form as presented has the question of malice on a separate page after the signature line.

THE COURT: You win on that one. I noticed that before we even had a discussion. I want that where you had it.

MR. SCHNACK: Actually, the one we just submitted has the signature line for the presiding juror after the malice question.

Things move quickly here, your Honor.

THE COURT: Well, you are starting to read the judge's mind. That's nice work.

But Mr. Simons, you are going to win that point.

Well, let's see. I just got handed a new one.

MR. SIMONS: Well, it's still a separate question on the new one. And in my view, I think it should go after -- it should be Number 5, and then 5 becomes 6, and 6 becomes 7.

MR. SCHNACK: We think it should come after percentage allocation. That should be the last question on the form.

THE COURT: Well, let me see -- I want to see the latest Simons' version right now.

MR. SIMONS: The latest Simons' version has already been junked. But it is here. This is how I did it.

THE COURT: That was junked with an E-D?

MR. SIMONS: Junked with past tense.

THE COURT: Now, having said that -- okay.

Okay. I will go with -- let me put on the record there were issues as to me to specifically identify the elders/agents. I indicated that -- and that was promoted by defense. And having read the agreed upon instruction 3701, I believe for consistency and explanation purposes that was legitimate on the

verdict form, which apparently has been changed to reflect that.

The question as to malice will be as prepared in the latest version of the verdict form of Mr. Simons.

MR. SCHNACK: Can we see a copy of that?

THE COURT: It is -- and for the future, it looks like to me, but I am reading the handwritten version.

And, counsel, let's be very clear on the record, I'm not saying it's going into that jury room on a special verdict until we see the cleaned up copy of same.

MR. SIMONS: Which I would like to be able to show the jury during closing arguments as well and discuss with them.

THE COURT: Okay. That's not unusual.

MR. SCHNACK: Your Honor, we would ask that question Number 7 regarding malice go at the end of the verdict form rather than before, asking for amount of damages and allocation.

THE COURT: Mr. Simons, I think that I want to keep that portion separate and apart. I don't want to write above it the economic damages question. I want it right after the "before."

MR. McCABE: Your Honor, I have this

electronically in court. We can just take off this section here and make this question Number 7.

THE COURT: That's fine. That's fine. So there is consistency of the questions, but the damages that are not -- with malice --

MR. SCHNACK: Malice at the end.

THE COURT: Okay. So, Hill, go address the jury. Tell them we are still working. We will not be long.

Let's get the special verdict form and go to work.

Mr. Simons, I want to put on the record, all the changes referenced have been made. Nice work, counsel.

Now, let's retool the special verdict form.

(Break taken)

THE COURT: On the record, we are going to review a special verdict form and we are all in agreement with it as structured at this time?

MR. SIMONS: Based on the Court's rulings, yes.

MR. McCABE: Yes, your Honor.

MR. SCHNACK: Yes, your Honor.

THE COURT: Okay. Based upon my rulings. All right.

(Whereupon, the following proceedings were heard in the presence of jurors)

THE COURT: All right. First of all, thank you as always. Hopefully you had a nice weekend.

If I knew then what I know now, I would have brought you in at 9:30. So I apologize for not getting you on board at 8:30.

I can tell you counsel worked this weekend and early this morning, so the time was valuable and used well by everyone.

In a moment, I'm going to give you the instructions in this matter. For those who are going to retire to deliberate, you will have a copy of the instruction in that room with you. So as far as instruction, I don't think you need to take notes.

My preference, particularly in a case of such sophistication, is to give you the instructions before the closing argument.

The studies say, and my observations confirm, that it is often helpful to have you thinking about the instructions as you listen to argument from various counsel in a case like this.

So I'm going to ask you all to relax for a moment. It is going to take a little while to read these instructions. Understanding, of course, that you

are going to have them in the room with you.

You also have -- you can request any exhibits you want, and I will explain to you the process of how you deliberate and under what circumstances in a moment within the context of the instructions.

After I finish, counsel will make closing argument. After innate closing argument my bailiff will be sworn, he will be your steward, the ones who go into deliberating, he will be the access point between court and counsel and yourselves.

And we have had to play a little musical chairs with, you because we have so many juries going on, but I believe you are in the Department 15, in that jury room for as long as you need to deliberate. We will see what your verdict is and then we will go from there.

Having said the same, I'm going to instruct you as follows:

JURY INSTRUCTIONS BY THE JUDGE

THE COURT: Casey 200: Obligation to prove more likely true than not true.

A party must persuade you by the evidence presented in court that what he or she is required to prove is more likely to be true than not true. This is

referred to as, quote, the burden of proof, end of quote.

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it.

You should consider all the evidence no matter which party produced the evidence.

In criminal trials the prosecution must prove that the defendant is guilty beyond a reasonable doubt, but in civil trials such as this one, the party must only prove that it is more likely to be true than not true.

Casey 201: More likely true with clear and convincing evidence.

Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true. I will tell you specifically which facts must be true by clear and convincing evidence.

Casey 202: Direct and indirect evidence.

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be

someone's opinion.

Some evidence proves the fact directly, such as testimony of a witness who saw a jet plane flying across the sky.

Some evidence proves the fact indirectly such as testimony of a witness who saw only the white trail that jet planes often leave.

This indirect evidence is sometimes referred to as "circumstantial evidence." In either instance, the testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether the evidence is direct or indirect. You may choose to believe or disbelieve either account. Whether it is direct or indirect, you should give every evidence weight you think it deserves.

Casey 203: Party having power to produce better evidence.

You may consider the ability of each party to provide evidence. The party providing the weaker evidence, or it could provide stronger evidence, you may distrust the weaker evidence.

Casey 205: Failure to explain or deny evidence.

You may consider whether a party failed to

explain or deny some unfavorable evidence. Failure to explain or deny unfavorable evidence may suggest that the evidence is true.

Casey 206: Evidence admitted for a limited purpose.

Certain evidence may be admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described and not for any other purpose.

Special instruction.

Certain evidence in this case can be asserted only against defendant, Jonathan Kendrick, and not against either defendant, Watchtower, or defendant, North Fremont Congregation.

I instruct you that the following evidence can only be considered against Jonathan Kendrick.

One: Claudia Francis's testimony that Jonathan Kendrick rollerbladed with Candace Conti.

Two: Claudia Francis's testimony that Jonathan Kendrick bought a black bra for Breanna Decker.

Three: Claudia Francis's testimony that she saw a photograph of Jonathan Kendrick with children.

Four: Claudia Francis's testimony that Jonathan Kendrick bought rollerblades for Candace Conti and gifts for other children.

Five: Carolyn Conti Martinez's testimony that Candace Conti sat on Jonathan Kendrick's lap in about 1991 or 1992 during a Bible study at Ms. Martinez's home.

You will have that, but that is a limiting instruction. I told you during the course of evidence I would be giving you a limiting instruction. Those incidences, that evidence goes only as to Mr. Kendrick.

Casey 2008: Deposition and substantive evidence.

During the trial you heard or watched testimony read from a deposition. A deposition is a testimony of a person taken before trial.

At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you or presented by video presentation in the same way as you considered testimony given in court.

Casey 210: Requests for admissions.

Each party has a right to ask another party to admit in writing that certain matters are true. If the other party admits those matters you must accept them as true. No further evidence is required to prove them.

Casey 212: Statements of a party.

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom. When you evaluate evidence of such a statement you must consider these questions.

One: Do you believe that the party actually made the statement?

If you don't believe the party made the statement you may not consider the statement at all.

Two: If you believe that the statements made, you believe it was reported accurately, you should view testimony of that oral statement made by the party outside the courtroom with caution.

Casey 218: Statements made with previously pre-existing condition.

Certain healthcare providers have testified that Candace Conti made statements to them about her medical or mental health history. These statements helped the healthcare providers diagnose the patient's condition.

You can use these statements to help you examine the basis of the healthcare provider's opinions. You cannot use them for any other purpose. However, the statement made by Candace Conti to any healthcare provider about her current medical or mental health condition may be considered as evidence of that medical

condition.

Casey 219: Expert witness testimony.

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise, even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion as to any other witness. It is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part or none of an expert's testimony.

In deciding whether to believe an expert's testimony you should consider:

A, the expert's training and experience;

B, the fact the experts relied on;

C, the reasons for the expert's opinion.

Casey 220: Expert's questions containing assumed facts.

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called "hypothetical questions."

In determining the weight to give the expert's opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

Casey 221: Conflicting expert testimony.

If the expert witnesses disagree with one another, you should weigh each opinion against the other. You should examine the reason given for each opinion and the facts or other matters that each witness relied upon. You may also compare the expert's qualifications.

Casey 223: Opinion testimony of a lay witness.

If a person who is not testifying as an expert gave an opinion during the trial, you may, but you are not required to, accept that opinion. You may give the opinion whatever weight you think is appropriate.

Consider the extent of a witness's opportunity to perceive the matters upon which the opinion is based, the reasons the witness gave for the opinion, and the facts or information on which the witness relied in forming that opinion.

You must decide whether the information upon which a witness relied was true and accurate. You may disregard all or any part that you find unbelievable, unreasonable or unsupported by the evidence.

Casey 400: Negligence, essential factual elements.

Candace Conti claims that she was harmed by Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses North Unit.

Negligence: To establish this claim, Candace Conti must prove all the following:

1, that Watchtower Bible and Tract Society of New York, Inc., or Fremont California Congregation of Jehovah's Witnesses North Unit was negligent;

2, that Candace Conti was harmed;

3, that Watchtower Bible and Tract Society of New York, Inc. or Fremont California Congregation of Jehovah's Witnesses North Unit's negligence was a substantial factor in causing Candace Conti's harm.

Casey 401: Basic standard of care.

Negligence is a failure to use reasonable care to prevent harm to one's self or others. A person or an entity can be negligent by acting or by failing to act.

A person or entity is negligent if he, she, or it does something that a reasonably careful person or entity would not do in the same situation or fail to do something that a reasonably careful person or entity would do in the same situation.

You must decide how a reasonably careful

person or entity would have acted in Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation Jehovah's Witnesses North Unit's situation.

Duty: The defendants Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation Jehovah's Witnesses North Unit have a duty to take reasonable protective measures to protect Candace Conti from the risk of sexual abuse by Fremont Congregation of Jehovah's Witnesses North Unit member Jonathan Kendrick.

In determining whether or not Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses North Unit took reasonable, protective measures, you may consider the following:

1, the presence or absence of any warning;

2, whether or not any educational programs were made available to Plaintiff, her parents or to other Jehovah's Witnesses from the Fremont Congregation Jehovah's Witnesses North Unit members for the purposes of sexual abuse education and prevention;

3, such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures.

Casey 412: Care of children.

An adult must anticipate the ordinary behavior of children. An adult must be more careful in dealing with children than with other adults.

Casey 413: Custom or practice.

You may consider customs or practices in the community in deciding whether persons acted reasonably. Customs and practices do not necessarily determine what a reasonable person would have done in that person's situation. They are only factors for you to consider.

Following a custom or practice does not excuse conduct that is unreasonable. You should consider whether the custom or practice is reasonable.

Casey 430: Causation as a substantial factor.

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote, contributing factor. It does not have to be the only cause of the harm. Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

431: Case of causation, multiple causes.

A person's negligence or fault may combine with another factor to cause harm. If you find that Jonathan Kendrick, Watchtower Bible and Tract Society of

New York, Inc., or Fremont, California Congregation Jehovah's Witnesses North Unit's negligence or fault was a substantial factor in causing Candace Conti's harm, then Jonathan Kendrick, Watchtower Bible and Tract Society of New York, Inc., or the Fremont Congregation of Jehovah's Witnesses North Unit is responsible for the harm.

Jonathan Kendrick, Watchtower Bible and Tract Society of New York, Inc., or Fremont, California Congregation of Jehovah's Witnesses North Unit, cannot avoid responsibility just because some other person was or also a substantial factor in causing Candace Conti's harm.

Casey 434: Alternative causation.

You may decide that one or more of the defendants was negligent or at fault, but the negligence or fault of only one of them could have actually caused Candace Conti's harm.

If you cannot decide which defendant caused Candace Conti's harm, you must decide each defendant is responsible for the harm.

However, if the defendant proves that it did not cause Candace Conti's harm, then you must conclude that that defendant is not responsible.

Casey 1306: Sexual battery essential to

factual harm.

Candace Conti claims that Jonathan Kendrick committed a sexual battery. To establish this claim Candace Conti must prove the following:

1, that Jonathan Kendrick intended to cause a harmful contact with Candace Conti's sexual organs, anus, groin place, or breasts, and a sexually offensive contact with Candace Conti resulted either directly or indirectly;

2, that Candace Conti did not consent to the touching;

3, that Candace Conti was harmed by Jonathan Kendrick's conduct.

Court's duty recessed by issues.

In this particular matter you have heard the use of the word, quote, privilege, end of quote. Under the California Evidence Code, certain communications are privileged such that they may not be disclosed upon the assertion of a claim of privilege by a holder of the same.

Whether a particular communication is privileged is a matter for decision by the trial court. Your deliberations are to be based solely upon the evidence presented and the instructions given without any consideration whatsoever as to whether any

communication within the evidence presented here in this matter was, quote, privileged, end of quote, under California law.

2, you have heard two experts here testify as to the standard of care regarding child abuse reporting. Whether there was a statutory duty to report to lawful authorities in purported incident of child abuse by anyone hearing a report of the same is a matter of law for determination by the trial court.

Your deliberations are to be based solely upon the evidence presented and instructions given without any consideration whatsoever as to whether there was any statutory duty to report an incident of suspected child abuse to lawful authorities at any time involved within the evidence presented here.

Casey 3700: Introduction.

A corporation is responsible for harm caused by the wrongful conduct of its agents while acting within the scope of their authority.

Casey 3701: Tort liability asserted against principle essential factual elements.

Candace Conti claims that she was harmed by the negligence of Elders Gary Abrahamson, Michael Clarke, and elders in the Service Department of the Watchtower Bible and Tract Society of New York, Inc.

Candace Conti also claims that Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses North Unit are responsible for the harm because Elders Gary Abrahamson and Michael Clarke were acting as its agents when the conduct occurred.

Candace Conti further claims that Watchtower Bible and Tract Society of New York, Inc. is responsible for the harm because elders in the Service Department were acting as agents of Watchtower Bible and Tract Society of New York, Inc. at the time of the conduct.

If you find that Elders Gary Abrahamson and Michael Clarke's negligence harmed Candace Conti, then you must decide whether Watchtower Bible and Tract Society of New York, Inc. or Fremont California Congregation of Jehovah's Witnesses North Unit are responsible for the harm.

Watchtower Bible and Tract Society of New York, Inc., or Fremont California Congregation of Jehovah's Witnesses North Unit are responsible if Candace Conti proves both of the following:

1, that Elders Gary Abrahamson and Michael Clarke, or Watchtower Bible and Tract Society of New York, Inc's., or Fremont California Congregation of Jehovah's Witnesses North Unit agents;

And 2, that Elders Gary Abrahamson and Michael Clarke were acting within the scope of their agency when the conduct that caused Candace Conti harm occurred.

If you find that the negligence of elders of Watchtower Bible and Tract Society of New York, Inc.'s Service Department harmed Candace Conti, then you must decide whether Watchtower Bible and Tract Society of New York, Inc. is responsible for that harm.

Watchtower Bible and Tract Society of New York, Inc. is responsible if Candace Conti proves both of the following:

1, that elders in the Service Department were Watchtower Bible and Tract Society of New York, Inc.'s agents;

And 2, that elders within the Service Department were acting within the scope of their agency at the time that the conduct that caused Candace Conti harm occurred.

Casey 3703: Legal relationship not disputed.

In this case, Elders Gary Abrahamson and Michael Clarke were the agents of Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses North Unit.

Additionally, elders in the Service

Department were the agents of Watchtower Bible and Tract Society of New York, Inc.

If you find that Elders Gary Abrahamson and Michael Clarke were acting within the scope of their agency when their conduct that harmed Candace Conti occurred, then Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses North Unit are responsible for any harm caused by Elders Abrahamson and Clarke's negligence.

If you find that elders in the Service Department of Watchtower Bible and Tract Society of New York, Inc. were acting within the scope of their agency when the conduct that harmed Candace Conti occurred, then Watchtower Bible and Tract Society of New York, Inc. is responsible for any harm caused by the negligence of the elders in the Service Department.

Casey 3720: Scope of employment.

Candace Conti must prove the alleged negligent actors were acting within the scope of their authority when Candace Conti was harmed.

Conduct is within the scope of authority if:

A, it is reasonably related to kind of tasks the agent was authorized to perform;

Or, B, it is reasonably foreseeable in the line of the corporation's business or the agent's

responsibility.

Sexual battery not imputed. Criminal sexual misconduct falls outside the scope and course of agency and should not be imputed to the principle. A person is otherwise responsible for harm caused by the wrongful conduct of its agent while the agent is acting within the scope of the authority given to him.

Jonathan Kendrick was not an agent of the Watchtower Bible and Tract Society or the North Fremont Congregation of Jehovah's Witnesses in the event that you determine a sexual battery occurred here.

Casey 3900: Introduction of tort damages liability contested.

If you decide that Candace Conti has proved her claim against Jonathan Kendrick, Watchtower Bible and Tract Society of New York, Inc. or Fremont California Congregation of Jehovah's Witnesses North Unit, you must also decide how much money will reasonably compensate Candace Conti for the harm.

This compensation is called "damages." The amount of damages must include an award for each item of harm that was caused by Jonathan Kendrick, Watchtower Bible and Tract Society of New York, Inc. or Fremont California Congregation of Jehovah's Witnesses North Unit's wrongful conduct, even if the particular harm

could not have been anticipated.

Candace Conti does not have to prove the exact amount of damages or provide reasonable compensation of the harm; however, you must not speculate or guess regarding damages.

Casey 3902: Economic and non-economic damages.

The damages claimed by Candace Conti or the harm by Jonathan Kendrick, Watchtower Bible and Tract Society of New York, Inc. or Fremont California Congregation of Jehovah's Witnesses North Unit fall into two categories called "economic damages" and "non-economic damages."

You will be asked on the verdict form to state the two categories of damages separately.

Casey 3903: Items of economic damages.

The following are the specific items of economic damages claimed by Candace Conti:

Future therapy and counseling expenses.

Casey 3908: Future therapy and counseling expenses.

To recover damages for future therapy and counseling expenses, Candace Conti must prove the reasonable cost of reasonably necessary future therapy and counseling that she may receive.

Casey 3904-A: Present cash value.

If you decide Candace Conti's harm includes economic damages for future therapy and counseling expenses, then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, promote to a larger amount in the future. Watchtower Bible and Tract Society of New York, Inc. and Fremont, California Congregation of Jehovah's Witnesses North Unit must prove the amount of future damages should be reduced to present value.

To define present cash value, you must determine amount of money back if reasonably invested today will provide Candace Conti with the amount of her future damages.

3904-B: Use of present value tables.

Table A. Use Table A to compute the present value of future therapy and counseling expenses.

1, determine the amount of Candace Conti's future therapy and counseling expenses each year. Enter this amount into Worksheet A, Step 1.

2, determine the number of years that this loss will continue. Enter this amount into Worksheet A, Step 2.

3, select the interest rate you decide

represents the most likely rate of return on money invested today over the period of years. Enter this amount into Worksheet A, Step 3.

4, select appropriate present value factor from Table A. To locate this factor, use the number of years from Step 2 on the worksheet and the interest rate from Step 3 on the worksheet, and find the number that is the intersection of the interest rate column and number of years row.

For example, if the number of years is 15 and the interest 10 percent, the corresponding present factor is 7.61. Enter this factor into Worksheet A, Step 4.

5, multiply the amount of Candace Conti's annual future loss from Step 1 by the factor from Step 4. This is the present value of Candace Conti's total future loss. Enter this amount into Worksheet A, Step 5.

3905: Items of non-economic damages.

The following are the specific items of non-economic damages claimed by Candace Conti.

3905-A: Physical pain, mental suffering and emotional distress non-economic damages.

1, past and future physical pain, mental suffering, depression, anxiety, humiliation and

emotional distress.

No fixed standard exists for deciding the amount of these non-economic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future physical pain, mental suffering, depression, anxiety, humiliation and emotional distress, Candace Conti must prove that she is reasonably certain to suffer that harm.

For future physical pain, mental suffering, depression, anxiety, humiliation and emotional distress, determine the amount in current dollars paid at the time of judgment that will compensate Candace Conti for future physical pain, mental suffering, depression, anxiety, humiliation and emotional distress.

This amount on non-economic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

3924: Punitive damages.

You must not included in your award any damages to punish or make an example of Jonathan Kendrick, Watchtower Bible and Tract Society of New York, Inc. or Fremont California Congregation of Jehovah's Witnesses North Unit. You must award only the

damages that will fairly compensate Candace Conti for her harm.

Casey 3925: Attorney argument not evidence.

The arguments of the attorneys are not evidence of damages. Your award must be based on your reason, judgment applied to the testimony of witnesses and the other evidence submitted and admitted during trial.

3932: Life expectancy. If you decide that Candace Conti suffered damages that will continue for the rest of her life, you must determine how long she will probably live.

According to national vital statistics for June 28, 2010, a 26-year-old female is expected to live another 56.1 years. This is the average life expectancy. Some people live longer and others die sooner.

This calculates how long a person is likely to live, but it is not inclusive. In deciding a person's life expectancy you should also consider, among other factors, that person's known health and occupation.

3934: Damages for multiple legal theories.

Candace Conti's damages from Jonathan Kendrick, Watchtower Bible and Tract Society of New

York, Inc. and Fremont California Congregation of Jehovah's Witnesses North Unit, under more than one legal theory.

However, each item of damages may be awarded only once regardless of the number of legal theories alleged.

You will be asked to determine whether Watchtower Bible and Tract Society of New York, Inc. or Fremont California Congregation of Jehovah's Witnesses North Unit are liable to Candace Conti under the following legal theories:

Negligence. You will be asked to decide whether Jonathan Kendrick is liable to Candace Conti under the following legal theory:

Sexual battery.

The following items are recoverable only once under all legal theories:

1, physical, mental and emotional injuries;

And 2, future therapy and counseling expenses.

3964: Attorneys fees or costs.

You must not consider or include as part of any award attorney's fees or expenses of the parties incurred in bringing or defending this lawsuit.

Casey 3946: Punitive damages.

If you decide that Watchtower Bible and Tract Society of New York, Inc's. conduct caused Candace Conti harm, you must decide whether that conduct justifies an award of punitive damages. The amount, if any, of punitive damages will be an issue decided later. At this time, you must decide whether Candace Conti has proved that Watchtower Bible and Tract Society of New York, Inc. engaged in that conduct with malice.

To do this, Candace Conti must prove one of the following by clear and convincing evidence:

1: That the conduct constituting malice was committed by one or more officers, directors or managing agents of Watchtower Bible and Tract Society of New York, Inc. who acted on behalf of Watchtower Bible and Tract Society of New York Inc.

Or 2: That the conduct constituting malice was authorized by one or more officers, directors or managing agents of Watchtower Bible and Tract Society of New York, Inc.

Or 3: That one or more officers, directors or managing agents of Watchtower Bible and Tract Society of New York, Inc. knew of the conduct constituting malice and adopted or approved that conduct after it occurred.

Malice means that Watchtower Bible and Tract

Society of New York, Inc. actually meant to intend to cause injury or that Watchtower Bible and Tract Society of New York, Inc.'s conduct was despicable and was done with a horrible and knowing disregard of the rights or safety of another.

A person acts with knowing disregard that he or she is aware of the probable dangerous consequences of his or her conduct and deliberately failed to avoid those consequences.

Despicable conduct is a conduct that is so vile or contemptible that it would be looked down on and despised by reasonable people.

An employee is a managing agent if he or she exercises substantial independent authority and judgment in his or her decision-making such that his or her decisions ultimately determine corporate policy.

Casey 5000: Duties of the judge and jury.

Members of the jury, you have now heard all of the evidence and will hear all the closing arguments of the attorneys. You must follow these instructions I have given. Again, you will have a copy of these instructions with you when you go to the jury room to deliberate.

You must decide what the facts are. You must consider all the evidence and then decide what you think

happened.

You must decide the facts based on the evidence admitted in this trial. Do not allow anything that happens outside this room to affection your decision.

Do not talk about this case or the people involved with anyone, including family and persons living in your household, friends and co-workers, spiritual leaders, advisers or therapists.

Do not do any research on your own or as a group. Do not use dictionaries fiction or reference material.

These prohibitions on communications and research extend to all forms of electronic communications.

Do not use any electronic devices or media such as cell phone or smart phone, PDA, computer, Tablet device, the Internet, any Internet service, any text or instant messaging service, any internet chat rooms, social networking sites or websites or online outlets to send or receive any information to or from anyone about this case for your experience as a juror until after you have been discharged from your jury duty.

Again, do not investigate the case or conduct any experiments. Do not contact anyone to assist you

such as a family accountant, doctor or lawyer.

Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop and investigate. All jurors must see or hear the same evidence at the same time.

You must not let bias, prejudice or public opinion influence your decision.

You must follow the law exactly as I have begin it to you even if you disagree with it.

Again, if the attorneys say anything different about what the law means, you must follow what I say.

In reaching your verdict, do not guess what I think you verdict should be from anything I have said or done.

Please pay careful attention to the instructions that I have given you. All the instructions are important because together they state the law used in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions apply. In that case, all the instructions that do apply, you can use that together with the facts to reach your verdict.

If I have repeated any ideas or rules of law

during these instructions, that does not mean that these ideas or rules are more important than others, and in addition, the order in which the instructions are given does not make any difference.

Casey 5002: Evidence.

Sworn testimony, documents or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you have seen or heard during this trial, including any exhibits that I have admitted into evidence.

You may not consider as evidence anything that you saw or heard while the court was not in session, even something done or said by one of the parties, attorneys or witnesses.

What the attorneys say during the trial is not evidence. These are only statements, and in the closing arguments the attorneys talk to you about the law and the evidence.

What the lawyers say may help you understand the law, but their statements and arguments are not evidence. The attorneys questions are not evidence. Only the witnesses answers are evidence.

You must not think something is true just because an attorney's question suggested that it was true.

Each side had the right to object to evidence offered by the other side. If I sustained an objection to a question, you must ignore the question. If the witness denied answering, you must not guess at what he or she might have said or why I sustained the objection. If the witness already answered, you must ignore the answer.

Casey 5003: Witnesses.

A witness is a person who has knowledge related to the case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case.

You may believe all, part or none of a witness's testimony. In deciding whether to believe a witness's testimony, you may consider among other factors the following:

A, how well the witness sees, hears or otherwise says what he or she described;

B, how well he or she remembered and described what happened;

C, how the witness looked, acted and speak relative to testifying;

D, did the witness have any reason to say something that was not true?

Did the witness show any bias or prejudice?

Did the witness have a personal relationship with any of the parties involved in the case?

Does the witness have a personal stake in how this case is decided?

E, what was the witness's attitude towards this case while testifying?

Sometimes the witness may say something that was not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened.

People often forget things or make mistakes in what they remember.

Also, two people may see the same event but remember it differently.

You may consider these differences but do not decide the testimony is untrue just because it differs from other testimony.

However, if you decide a witness deliberately testified untruthfully about something important, you may choose not to believe anything that witness said.

On the other hand, if you think a witness said testified untruthfully about some things, but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there

were more witnesses on one side than on the other. If you believe it is true that the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion or ethnicity, sexual orientation, age, national origin or socioeconomic status.

Casey 5005: Multiple parties.

There are three defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or her own defenses.

Different aspects of the case involve different party defendants. Each instruction will identify the parties and to whom it applies. Pay particular attention to the parties named in each instruction.

Casey 5006: Non-person party.

Two corporations, Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses North Unit are parties in this lawsuit.

Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of

Jehovah's Witnesses North Unit are entitled to the same fair and impartial treatment that you would give to an individual in this case.

You must decide this case with the same fairness you would use if you were deciding the case between individuals.

When I use words like person or he or she in the instructions, it refers to a party. These instructions also apply to Watchtower Bible and Tract Society of New York, Inc. and Fremont California Congregation of Jehovah's Witnesses North Unit.

Casey 5009: Pre-deliberation instructions.

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and consider the views all of the jurors.

Each of you must decide the case for yourself, but only after you have considered all the evidence with the other members of the jury.

Feel free to change your mind if you are convinced your position should be different.

You should all try to agree but do not give

up because others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations or immediately announce how you plan to vote, as it may interfere with an open discussion.

Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense but do not use or consider any special training or unique personal experience that any of you have in matters involved in this case. Your training or experience is not part of the evidence involved in this matter.

Sometimes jurors disagree or have a question about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see any exhibits admitted into evidence that have been not been provided to you.

Also a juror may incur an explanation about the laws as a part of this case. If this happens during your discussions, write down your questions and give them to my court attendant.

I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait on my answer. I will

do my best to answer them.

When you write a note do not tell me how you voted on the issue unless or until I ask for this information in open court.

At least nine jurors must agree on a verdict. When you finish filling out the form, the presiding juror must write the date and sign at the bottom and then notify my court attendant.

Your decision must be based on your personal evaluation or evidence presented in this matter. Each of you may be asked in open court how you voted on each question.

While I know you will not do that, I'm required to advise you that you must not base your decision on chance, such as the flip of a coin.

If you decide to award damages, and you cannot agree in advance, simply add up the amount each juror thinks is right and then without further deliberation make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

Casey 5010: Taking notes during the trial.

If you're taking notes during the trial, you may take your notebooks with you into the jury room.

You may use your notes only to help you remember what happened during the trial. Your independent recollection of the evidence should govern your verdict. You should not allow yourself to be influenced by the notes of the other jurors if those notes differ from what you remember.

At the end of the trial your notes will be collected and destroyed.

Casey 5011: Reading back of trial testimony to the jury.

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you.

You may request that all or part of a witness's testimony be read.

Your request should be as specific as possible. It will be helpful if you state the name of the witness, the subject of the testimony you would like to have read, and the name of the attorney or attorneys asking the questions when the testimony was given.

The court reporter is not permitted to talk with you when he or she is reading the testimony requested. While the court reporter is reading the testimony you may not deliberate or discuss the case. You may not ask the court reporter to read testimony

that was not specifically mentioned in the original request.

If your memory is different from the testimony, you must accept the court reporter's record as accurate.

Casey 114: Bench conferences and conferences in chambers.

From time to time during this trial it was necessary for me to talk with the attorneys outside of your presence, either by having a conference at the bench or by calling a recess to discuss matters outside of your presence.

The purpose of these conferences would not be relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Please do not be concerned with what I might have said or try to guess what was being said.

Casey 116: Why electronic communication and research are prohibited.

I know that many of us are used to communicating and perhaps even more by electronic communications and research.

However, there are good reasons why you must not electronically communicate or do any research on anything having to do with this trial or the parties.

In court, jurors must make important decisions that have consequences for the parties. These decisions must be based only on the evidence that you heard in this courtroom.

The evidence that is presented in court can be tested. It can be shown to be right or wrong by either side, and it can be questioned. And it can be contradicted by other evidence which you might read or if you are on your own, it could be wrong, out of date or inapplicable to this case.

The parties can receive a fair trail only if the facts or information on which you base your decision are presented to you as a group with each juror having the same opportunity to see, hear and evaluate the evidence.

Also, the trial is a public process. It depends upon the disclosure in the courtroom of the facts and evidence. Using information gathered in secret by one or more jurors undermines the public process and violates the rights of the parties.

Casey 5012: Introduction of special verdict form.

You will be given a verdict form with questions you must answer. I have already instructed you on the law which you are to use in answering these

questions. You must follow my instructions and the special verdict form carefully. You must consider each question separately.

Although you may discuss the evidence and the issues that you decide in any order, you must answer the questions on the special verdict form in the order they appear.

After you answer the question, the form tells you what to do next. All twelve of you must deliberate on and answer each question.

At least nine of you must agree on the answer before all of you can move on to the next question. However, the same nine or more people do not have to agree on each answer.

When you have finished filling out the form, your presiding juror must write the date and sign at the bottom and then notify my court attendant that you are ready to present your verdict in the courtroom.

Casey 5016: Judges commenting on the evidence.

In this case, I exercised my right to comment on the evidence. However, you, the jury, are the exclusive judges of all the questions of fact and the credibility of the witnesses.

Casey 5017: Polling the jury.

After your verdict is read in open court, you may be asked individually and indicate whether your verdict expresses your personal vote. This is referred to as polling the jury and it is done to insure that at least nine jurors have agreed to each question.

The verdict forms that you will receive ask you to answer several questions. You must vote, again, separately on each question.

Although nine or more jurors must be on each answer, it does not have to be the same nine for each answer; therefore, it is important for each of you to remember how you voted on each question, so that if you are polled, each of you will be able to answer accurately about how you voted.

Each of you will be provided a draft copy of the verdict form for your use in keeping track of your vote.

Casey 5020: Demonstrative evidence.

During the trial materials have been shown to you to help explain testimony or other evidence in the case. Some of these materials have been admitted into evidence, and you will be able to review them during your deliberations.

Other materials have been also been shown to you during the trial, but they have not been admitted

into evidence. You will not be able to use them during your deliberations because they are not, themselves, evidence or proof of any facts. You may, however, consider the testimony given in connection with those materials.

Mr. Simons, do you have closing argument on behalf of the Plaintiff?

MR. SIMONS: Thank you, your Honor. I do.

CLOSING ARGUMENT BY MR. SIMONS

MR. SIMONS: And, your Honor, and counsel, Ladies and Gentlemen, I would begin by thanking you, not just for your jury service, but also for the attention that you have given to this case.

As the Court has noted and we have all noted as the attorneys, the degree of attention that you have paid to the testimony of the evidence in this case is very much appreciated and very much acknowledged.

We know jury service is a service. It is a manner in which disputes between two parties may be resolved by a mutual voice of the community. It is a way in which the community can pass on whether or not an individual charged with a crime is guilty or not guilty. It is a service.

But occasionally your work as a juror in a

civil case is a larger task. It is a task that involves setting standards that will apply, not just to the parties in a given case, but will be heard and followed as a standard by others who know of the verdict.

It is a way that the community passes judgment on what is or is not a standard. And the community coming together from many different backgrounds, from many different experiences, speaks with one voice.

And in this case there is an opportunity to speak to a very significant issue, and that issue is whether or not the standards that apply to organizations who have activities involving youth together, whether those standards for the prevention of further abuse by a known child sex molester will be applied equally to all.

Now, I think the story that we heard really begins in the home of the Kendricks. In the meeting that was held with Elders Abrahamson and Clarke and with Evelyn Kendrick, Jonathan Kendrick and -- or at least some of the time with Andrea Kendrick.

What the elders took away from that meeting, according to their own testimony here, was that Kendrick had committed an act of sexual abuse on a child, and he had lied about it to them.

Now, it took a little work to get

Mr. Abrahamson to say, "Yeah, Kendrick lied."

I think it took me asking three times. And he said, "Well, it wasn't a complete story."

It was a little misinformation.

I said, "That's a lie?"

"Yes."

They knew he lied about it. And the fact it took so much effort to get Mr. Abrahamson to acknowledge that to me says there is still an element of protecting Mr. Kendrick in the approach that the elders have to this case.

If we are to follow what Evelyn and Andrea Kendrick told us -- and I really do not see any reason that their testimony would not be credible -- there was a lot more that was said during that meeting.

The elders were told that it was skin-to-skin contact and included inside of pants, that Andrea had been given some Vicodin and was under the influence of some drug at the time that the abuse occurred, that the Evelyn and Andrea -- that the Kendricks had come to the elders because that was the Jehovah's Witnesses ways, when there is a problem you go to the elders, and that's what they did.

And they went to the elders not because they wanted this to be private. In fact, they said just the

opposite, they did not want this to be private.

"We wanted to be saved."

And they brought the elders in to help them find safety when they were not able to deal with Mr. Kendrick on their own for sometime after the act of abuse occurred.

And the elders, if you believe Evelyn Kendrick -- and, again, why would she make this up -- did not provide them safety.

In fact, it was a few weeks later there was another incident, and the police were called and eventually, as you heard from Officer Davila, there were criminal charges brought.

And not only were there not elements of safety provided, but Evelyn was told, "This is your fault because you did not have enough sexual relationships with Jonathan Kendrick, and that's why this happened."

And that is such a profound misunderstanding of what child abuse involves.

So the elders reported back to New York, and they received their instructions. And we know what they did to this person who they knew had abused the child and lied about it.

They took away his title of ministerial

servant and they didn't let him pass out books at the Kingdom Hall.

And if you believe the defense, that is a severe and harsh punishment for committing child sexual abuse and lying about it.

But let's look a little closer at what they didn't do. They didn't tell anyone. They didn't tell the parents, the first line of defense, they didn't give any ammunition to them.

And I'm not saying they should be gossipping, you know, "Oh, you know what Jonathan did to Andrea," you know, it's not that kind of telling.

It's, "Jonathan Kendrick has been removed as a ministerial servant because he sexually abused a child."

That is all they had to say and every would know.

Not a single woman in the congregation was aware of his abuse of Andrea.

Not a single mother was aware of the abuse of Andrea.

And so they didn't tell anyone. And that's not all they didn't do. They didn't restrict Mr. Kendrick in any way that was meaningful.

He is still a minister.

He is still Brother Kendrick.

He is still a member in good standing of the congregation.

He is still sitting or sleeping in the back row or whatever it was of the Kingdom Hall there with children and adults all present.

And he is still a baptized publisher going out in the neighborhoods and collecting and spreading the Jehovah's Witnesses message.

He is doing all of that with children.

Now, we heard from Mr. Shuster that there is a policy. "No, he would never have been allowed to go out into field service with a child. That's our policy."

And when I say, "Okay, well, can I see it?"

No policy produced.

Is there really a policy? We heard from all the elders, of course, that would never happen. But we heard from Carolyn Martinez differently.

And again Carolyn Martinez drove up here from San Diego to testify in a case involving a brat who she didn't even like when she was a kid, and when she was married to Candace's father she really didn't have much a relationship with Candace, and she hasn't talked to her now in 13, 14 years, and she came up here to tell us

what she saw, because it's so important that we hear the truth from those who are willing to speak it.

Now, let's look at what else they didn't do. They didn't monitor Mr. Kendrick. They said they did. "Oh, we kept an eye on him. We were watching." We heard that from the elders. But they never discussed Mr. Kendrick, again, in another elder's meeting. Never came up again.

Elders come, elders go, like everyone else, you can change the congregation with new elders and have no information about Mr. Kendrick.

They said, "Well, we kept an eye on him."

But no one had the specific responsibility to monitor Mr. Kendrick. And we know that when no one has the responsibility and everyone just kind of says, "Well, we will do it," that no one does it. No one took that responsibility. No one was assigned that responsibility.

We know that they didn't actually get very involved in Mr. Kendrick's life because we heard a little bit about where that was going. They weren't monitoring Mr. Kendrick and helping him with the problems that he was having, and getting more an idea where he was at and what was going on in his life.

They weren't monitoring in any reasonable

way.

So we have a lot of things that were not done in this case.

When we talk about the standards, which I'm going to get to in a moment and which his Honor just read to you, that is important testimony. That is important evidence to keep in mind.

Now, we know because it is undisputed that the elders are all the agents of Watchtower. They are agents of Fremont because they are the managers of the Fremont Jehovah's Witnesses corporation. They are also agents -- remember I read that first day after Mr. Abrahamson testified that request for admission, that is just a way the instructions cover it for you. That's a way of showing this is not disputed, that these elders are agents of Watchtower Bible and Tract Society of New York when they're acting as elders, so we know that.

We know that the elders must follow all of the policies and instructions provided to them from the Service Department in New York. They have no ability to deviate from that.

And we know that the governing body, seven elders in New York, is the group that sets each and every policy for Watchtower; and therefore for every

elder and every congregation throughout the United States. See, this is the Service Department.

And I would like to show you a couple of quick clips, because Mr. Shuster, remember we had his video deposition, he testified as the Watchtower. He was the designated person at the Watchtower, so this is corporate testimony from Watchtower.

And Mr. Shuster told us that the body of Elder letters, including the policy letter we are going to talk about, that came from the governing body.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. Was this body of elder letter approved by either the committee or the entire governing body prior to its circulation?

A. Yes.

(Whereupon, the video recording was stopped)

MR. SIMONS: And we were told that all the things we learned about in the Awake Magazines were approved by the governing body.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. Were all of the members of the then existing governing body who would review articles from Awake or Watchtower?

A. I can't say for certainty. But what I do say for certainty is that some members of the governing body would review it, yes.

(Whereupon, the video recording was stopped)

MR. SIMONS: And in addition, we were told that the Service Department supervisors are the governing body.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. And how many members of the Service Committee are members of the governing body?

A. All of them.

(Whereupon, the video recording was stopped)

MR. SIMONS: So it is the policies of the governing body that we are here to discuss.

I want to bring up Candace Conti for a moment to talk about why we have this lawsuit.

Candace has emerged from her personal nightmare of years to say that the policy that keeps secret known child molesters in the congregations is wrong and needs to be changed.

She told that to Cliff Williams in the three conversations you heard about, one on the phone, one a couple of months later on the phone, and an in-person meeting.

You notice Mr. Williams never reported anything to New York about the sexual abuse that Candace reported.

But she told him, and she told the elders the same thing when she met with them in Fremont, that this is about protecting children so that what happened to her doesn't happen to someone else.

That's why we are here.

Now, the particular policy that we are concerned with is Plaintiff's Exhibit 1. And I just want to go through it again a little bit now that we have heard so much about it.

Let's take another look.

First of all, I want to note the date, July 1, 1989.

We heard from Dr. Salter that that's the time frame when the public was beginning to be aware of lawsuits against, primarily the Catholic Church. She had that San Jose Mercury news article that she showed us.

That people were beginning to bring lawsuits against the church, Louisiana and other places, for hiding sexual molesters and allowing them to offend again.

So that was in the mind of everyone who ran

these major religious organizations in 1989. That's the timing of it. So if we look at this first paragraph, it says:

"Dear Brothers, we are writing to help you regarding the handling of your duties that involve legal issues or questions."

This is about legal matters. This is about legal issues. This is not a religious policy memo.

Let's look down a little further.

Now the wording is:

"The elders must be careful not to divulge information about personal matters."

That's an interesting set of words, that's a very particular set of words. It doesn't say "privilege matters." It says "information about personal matters."

And it says:

"Improper use of the tongue can result in serious legal problems for the individual congregation and even the Society."

Now, we were told we wouldn't want to be sued by a convicted child molester who accused us of defamation. But, in fact, the only lawsuits of any kind involving this issue that we have heard any evidence about are sexual abuse lawsuits by children who were molested within these institutions. That's the only

lawsuits that were out there then. That's the only lawsuits that are out there now.

And will the persons be quick to resort to lawsuits if they feel their rights have been violated.

Well, again, this is about lawsuits.

Let's go a little further. We will go up to the top.

> "The spirit of the world has sensitized people to their legal rights and what may happen is people may initiate lawsuits against the society."

Further:

"If the elders fail to follow the Society's directions --"

In other words, that all the instructions are coming from the top.

-- in handling confidential matters, such mistakes could result in successful litigation by those offended, substantial money damages."

This is about lawsuits. And the only lawsuits we have heard about are child sex abuse lawsuits.

Let's go to the next page.

Now we heard that child abuse is just a very small part of this policy letter. The first section

involves their internal processes. That's not our concern.

The second section involves child abuse. So there is one subject matter, specific subject matter that it is about. Child abuse.

The third subject matter is search warrants.

Again, that's a process. That's not subject matter.

> "No elder should ever consent to the church of Kingdom Hall or any other place where confidential records are stored."

And then we go down to the next section about crimes and criminal investigations. Well, child sex abuse is a crime. It certainly pertains to that. We don't have a separate section on any other crime.

Let's go to the next page.

"When servants and publishers move" is the next section. All right.

Well, Jonathan Kendrick moved, but that's not a section that talks about a different subject matter. So far the only specific subject matter that we have talked about is child abuse.

And then we have F:

"When the lawsuits are threatened."

I think I might have mentioned this is about

lawsuits.

Let's go to the next page.

"Child custody."

All right, we are still dealing with children, with issues of child custody that come up.

And then we get down to "Points to remember."

So now we talk about all the specific subject matters that are specified and drawn out and emphasized in this policy letter.

It's about child abuse.

"Confidential information about the private lives of others."

There's that strange phrasing again.

"Unauthorized disclosure, confidential information can result in costly lawsuits."

That's because people like Candace Conti will learn that Jonathan Kendrick was known to have molested before.

And let's go from there to the signature page.

The signature, as we pointed out earlier, is the corporate signature. No individual signs it.

And then it says this:

> "Please do not make any copies of this letter, nor should it be read by others.

It should be kept in the congregation's confidential files."

So I guess the question will be: If this is a plain old memo about you have to follow the rules about confessions, then why is this a top secret memo that shouldn't be copied or disclosed to anyone, it should remain only in the files.

What is top secret about keeping confessions private?

Let's take that down. Thank you.

Now, his Honor read an instruction on the issue of privilege. I want to go back over it because it's going to make your job a lot easier.

There is a lot of confusing things that we have had to deal with so the Court has decided to clarify this for us.

You heard the word "privilege" brought up. Whether a particular communication is privileged is a decision for the Court. That is his Honor's job. We don't decide whether a communication is privileged or not.

So you get to decide this case based solely upon the evidence presented and the instructions given without any consideration whatsoever as to whether a communication was privileged. That has all been

decided. That is not your matter to discuss.

The whole privilege issue is not part of what your deliberations are. You are to decide the case based on the evidence you heard in court and the exhibits that will be sent to you.

There is a second part to this, and I'll just detour for you, if I might. And that's about the question about the laws are mandated and reporting and there is questions back and forth about, and you have heard two experts testify about that.

Your deliberations are to be based solely upon the evidence presented and the instructions given without any consideration whatsoever as to whether there was any statutory duty to report an incident of suspected child abuse.

That, again, has nothing to do with what the standards are of care and negligence issues.

To put it another way, there might be a policy that a youth group adopts that says an adult and child cannot be together behind a closed door. That's a standard to prevent child abuse.

But there is no law that says a child and adult can't be together behind a closed door. It's a different set of thinking.

So we are dealing with the evidence of

standards of care, and the instructions -- we will go over them in a minute -- that the Court has given us.

Thank you.

Now, we have sexual abuse in this case. We have an abuse of the concept of what is confidential. And we have something more.

I would like to look at now, if we could, Exhibit 65, which is also 049. This is one of the Awake Magazines that we have seen so much of.

And this quotation, I highlighted it, because Jesus used children as an example of humble innocence. Children are vulnerable to abuse by a scheming adult whom they know and trust. The congregation has a responsibility before Jehovah to protect its children.

And the biblical citation is to Matthew. And that's interesting, because that's the quote that I think every one of us, whether we were religious or not has heard, and that is:

"Who shall offend against the little ones --"

Who shall harm a child.

"-- it is better that he have a millstone hung around his neck and be sunk in the depths of the deepest sea."

That's not quite the same as keeping it quiet and saying he can't pass out the books.

Let's change subjects for a minute and talk about Candace for a minute. Every healthcare provider who testified basically said exactly the same thing about Candace Conti.

And I want to start with Dr. Afruma who saw her one time when she was 16. She doesn't remember it. But we have the record. That survived.

And in that record we see, first of all, up at the top, that "Please call her back. The psychiatrist is saying that can't see her until October."

She is having a hard time getting in. So let's scroll down.

So she sees Dr. Afruma. And Dr. Afruma notes that she's got a low attention span. She's depressed. She's crying a lot. She's complaining of depression. And she discloses to Dr. Afruma sexual abuse from ages nine to question 13.

Dr. Afruma does not discuss it further for reasons that Dr. Ponton talked about.

Let's go to the next page.

We see in this note the Assessment, Question, PTSD. Depression, insomnia. She is encouraged to talk to a psychiatrist or counselor and consider therapy.

Dr. Afruma mentions how about alcohol or

drugs and even prescription medications can be used as a way to numb the experiences, and that it is best to have a diagnosis and treatment plan.

All of that was set out when Candace was 16. And this is before she is using. This is before she has turned to self-medication.

And we know that because one of the pages in Exhibit 55 is a drug test. There it is. And every drug is tested for negative, negative, negative, negative, negative.

She is not able to get into a psychiatrist and soon thereafter she is, as she said, running from the post-traumatic stress and running from the nightmares into other means of self-medicating. So that's Dr. Afruma.

Let's look at what Dr. Walton who is treating her now down at Kaiser said.

(Whereupon, the video recording was played)

A. So addiction, post-traumatic stress disorder, which is chronic, and drug abuse at (unintelligible)

(Whereupon, the video recording was stopped)

MR. SIMONS: And --

(Whereupon, the video recording was played)

A. PTSD, to account her story and to relive it as it has happened. And there is inherent emotional

consequences to reliving a story over and over again.

(Whereupon, the video recording was stopped)

MR. SIMONS: And.

(Whereupon, the video recording was played)

A. PTSD can go into remission, but there is no cure.

(Whereupon, the video recording was stopped)

MR. SIMONS: And one more.

(Whereupon, the video recording was played)

A. Maybe a psychotic disorder and in order to feel normal they will turn to alcohol and drugs until they're diagnosed or treated for PTSD and anxiety or depression and given (unintelligible).

(Whereupon, the video recording was stopped)

MR. SIMONS: Then let's refresh ourselves.

This is what Dr. Laura Fraser said. She said she saw Candace when she was 12 and 13. And 14 years later, now down in San Diego, still remembers her.

Let's see what Dr. Fraser said.

(Whereupon, the video recording was played)

A. She felt like a child who had been sexual abused.

(Whereupon, the video recording was stopped)

MR. SIMONS: And most significantly because this was actually in response to a question that my

colleague asked.

(Whereupon, the video recording was played)

BY MR. SCHNACK:

Q. And yet you still don't find it surprising that Candace would not have told you about her own sexual abuse?

A. I absolutely do not find it surprising. There was no safety for this child. Her parents -- we just discussed so many different things that occurred for this child.

She could not have longer than 20 minutes of safety with a parent.

There was no way she could disrupt -- I mean, there wasn't any safety for her. It had been so disruptive to her.

She was still rescuing both parents. What would they say if she disclosed that this had happened? How -- could she stay connected to her father?

Would her mother say, "Well, my abuse is worse than yours?"

There was a myriad of possibilities. This kid had no safety.

(Whereupon, the video recording was stopped)

MR. SIMONS: And lastly we heard from Dr. Ponton. Dr. Ponton is a professor who has been a

pioneer in sexual abuse trauma. She is a professor at one of the leading medical universities in the world, and she had three very simple things to offer us.

One: She said, you know, we know we are on the right diagnosis with PTSD because the patient is responding to the treatment. If you are treating her for the wrong thing and with the wrong vehicles and the wrong therapies and the wrong medications, she's not going to respond.

So the diagnosis of PTSD is confirmed because the medication and treatment work and she responds, and Candace is doing better, as we heard, and as we are all glad to hear.

She told us secondly that Candace met all the criteria from the DSM, the big book that she had, the diagnostic and statistical manual that mental healthcare providers use in their evaluation of patients, and has all kinds of stuff in it, included in that PTSD.

She mentioned that, and she gave her a test to conclude that. And we heard from Dr. Ponton that Kaiser has been doing a great job but what this young woman really needs is a program of intensive therapy.

She put the bill on it of $160,000, she needs to be able to do more than what they can do and the kinds of programs that she's been able to participate

in.

So all of the healthcare providers agree.

Now, we heard from Dr. Salter that she disagreed with Dr. Williams who examined Candace on behalf of the defense.

And Dr. Williams, Candace told -- she went down there and told him, "Yeah, I was abused in field service," because he asked.

And Dr. Salter said she didn't agree with his testing methods.

And Dr. Williams said, "Well, he will be here to explain them."

But we don't have any Dr. Williams. He wasn't called to testify.

And so don't we think that if there was a single thing that any of the healthcare providers said that could be reasonably disputed in any way, that we would have heard some professional testimony from a mental healthcare expert of some kind to the contrary? But we didn't.

So what do we know? Well, we know Candace was abused in serial fashion in a somewhat very intrusive manner.

We know that she suffered mightily and relived it over and over, because she couldn't tell

anybody, it was trapped inside of her as a nine-year-old, as a ten-year-old, as an 11-year-old, as a 12-year-old, all the way up to 16 and beyond, nightmares, reliving it over and over again, no one to be able to share it with.

In the nightmares over and over again. Even when she might just be awake and see his truck in Fremont until everybody moved away. It is that feeling and reliving that experience of being crushed by this monster.

And so we know as well from Mr. Lewis about Child Sexual Abuse Accommodation Syndrome, and that's that kids are not reliable in the number of times when they say something happened, because they are reliving it over and over again inside them, and they perceive things differently, and they are not keeping a diary, they're not keeping a calendar.

Mr. Lewis is not just a police officer. I mean, he's the state president of the Child Sexual Abuse Protection Professional Association.

He's the state president of all the mental healthcare and child protection. They get together and try to address the issues of child abuse. And so we know that.

And yet, with that knowledge, what we still

have by the defense in this case is a fixation on the number of times it occurred.

And I want to show you some of the cross-examination of Candace.

This is by my colleague Mr. Schnack.

(The following was read by Mr. Simons)

"Question: But your testimony is it occurred several times a month, perhaps over a two or three-year period. Correct?"

Answer: That's what it feels like.

Question: What do you mean when you say that's what it feels like?

Answer: Well, it happened over and over again and didn't stop.

Question: It sounds like you are not certain on the time frame.

Answer: I think that's fair.

Question: So you are saying it could have happened five or ten times and that's it. That's it."

(end of reading by Mr. Simons)

MR. SIMONS: See, here's the thing. If it happened once, that's too many. That's what they don't get. If a perpetrator who has already molested one child in the a small congregation gets to molest a

second, that is unacceptable.

There is no way to erase the harm that is done to a child who is abused.

I think we have all had the common experience of being kids in this age group, and maybe it was a big room, the auditorium at the elementary school or something we would go to and maybe we got to get up on stage or whatever and it seemed like such a big room.

And maybe we got a tree that we would climb and it just so far up to the top of that branch.

And maybe it was a new dress or pair of shoes we got at the time that made us feel so grown up. And the shoes are so big they almost come off our feet.

Maybe it was a baseball bat that we got as a kid.

You know, it seemed like a telephone pole to us at the time, but when you go back and you look at these things as an adult, you know, it's a 27-inch bat. The dress, the kids shoes, the trees, there is the branch. The room is not that big.

This is how children perceive things, and this is how Candace perceives things because she is frozen in time as a nine-year-old and ten-year-old experiencing and re-experiencing and re-experiencing abuse by Kendrick. It doesn't matter if it happened

only -- only -- only ten times.

Now, I would like to look at the jury verdict form that we are going to answer because this is important.

The first question -- can we blowup question one.

Did Jonathan Kendrick sexually batter Candace Conti?

That is under the more likely to be true than not true. And this is where you can consider some of the other stuff that you heard, the black bra for Brianna, the rollerblading, all that stuff, the pictures, all that stuff can come in on this particular question, I think that is more likely than not that he did.

So Question 2 is: Did it cause harm?

We know that sexual abuse of a child causes harm.

And let's go to Question 3. And Question 3 is a long one. And it breaks down whether or not Mr. Abrahamson or Mr. Clarke as the agents of Watchtower and North Fremont were negligent.

And then separately, were the elders in the Service Department in New York negligent?

So to figure out the answer to this question,

you have to look at the instruction that says:

What is the obligation here?

Did they violate their obligation?

Well, let's look at the instruction that addresses that.

So the defendants, Watchtower and Fremont, had a duty to take reasonable protective measures --

Reasonable protective measures.

-- to protect Candace Conti from the risk of sexual abuse by the Fremont Congregation of Jehovah's Witnesses North Unit member Jonathan Kendrick.

In determining whether or not reasonable protective measures were taken you may consider the following:

The presence or absence of any warning.

We talked about that.

Whether or not any educational programs were made available to Plaintiff or her parents for the purpose of sexual abuse education and prevention.

Two parts: Sexual abuse education and prevention.

And I make that distinction because of the testimony that Dr. Applewhite gave on behalf of the defense in which, we kind of heard, at least to me, that she was saying that their sexual abuse education and

prevention programs were exceptional.

And so I asked her in the video about that. And here's what she said.

(Whereupon, the video recording was played)

BY MR. SIMONS:

Q. You talked about the exceptional child abuse prevention program that, in your opinion, the Jehovah's Witnesses had in place.

Can you tell me whether or not you agree that whether a program is effective or not in child sex abuse prevention and education is best evaluated by whether it has reduced or prevented child sexual abuse occurring within the institution?

A. Well, let me begin by saying that what I said was that it was an excellent parent education program, which is different than a sexual abuse prevention program.

(Whereupon, the video recording was stopped)

MR. SIMONS: She never said that they had a reasonable sexual abuse prevention program. It got right by me, but she made it clear. And we went through the numbers that she was paid. If you did the math, it turned out to be $60,000 for the two cases that she worked on this year, and we couldn't get her to say that the child sex abuse prevention program met the

standards. She wouldn't say it.

When I asked her about it and lumped it together, she said, "That's not what I said."

So we don't have any evidence that says their prevention program was up to standard.

Can we go back to the instruction?

Lastly, such other facts and circumstances as contained in the record. And that's where the so-called monitoring comes in.

Did they really watch this guy like a hawk? Or is that something that we hear now in the courtroom?

There is the obligation, I think because that obligation was not met, reasonable measures were not taken, that all of the elders, the ones in the field carrying out the instructions and the ones in the Service Department giving the instructions were negligent.

And it comes from this policy of keeping it secret.

Okay. Let's go a little further down the verdict form.

Next question is: Was that a cause of Candace's harm?

Well, to prevent a known sexual molester within the congregation from being able to figure out

some way to get to the kids.

So that answer I would submit is yes.

Then we go to Number 5. And this is the question of damages. In order to answer this, I'm going to come back to this in a minute because there is two more questions that still pertain to this whole fault and responsibility question, responsibility to the organization.

So let's skip down, first of all, to Number 7. The very last question is an important one.

And that's this question: Do you find by clear and convincing evidence, in other words, that's different than just more likely to be true or not true. It has to be clear to you. You have to be convinced that the negligent conduct of Watchtower that was a substantial factor, was engaged in with malice by a managing agent of Watchtower.

Now, the managing agents are the governing body. They are the ones that give all the instructions. And that part isn't the hard part.

Malice. What does malice mean? Does it mean somebody in New York who never met her meant to specifically harm Candace Conti? Does it mean that?

No. Here is what it means:

Malice means they acted with intent to cause

injury to Candace.

They didn't intend to injure Candace.

Or -- or that the conduct was despicable and was done with a willful and knowing disregard of the rights and safety of another.

A person acts with knowing disregard when he or she is aware of the probable dangerous consequenced and conduct and deliberately fails to avoid those consequences.

So now the question becomes: Did the governing body set policies where the elders had to knowingly disregard the probable consequences of their conduct?

Did the governing body set policies knowing the probable dangerous consequences of hiding known sexual molesters within the congregation?

And I want to show you some of the Awake Magazine articles, which are relative to that point.

Let's go first to Exhibit 59, which is 017.

"What did they know?

Well, in 1985 they knew, "Who would molest a child? Most parents would answer this question wrong.

Parents, the first line of defense? Don't know.

They knew that religious people from

religious church groups would molest.

Let's look then at Exhibit Number 64/037:

They knew that fostering a hush-hush attitude about it, silence gives safe haven to abusers, not to victims.

And they knew it was a general conspiracy of silence that a lot of gross child abuse to persist among Catholics for decades.

They knew this before Jonathan Kendrick was identified positively as a child molester.

Let's look at Number 65/049.

Experience has shown that such an adult may well molest other children. Not everyone does, but many do.

And so they knew that Jonathan Kendrick was at risk to molest another. They knew that individuals who are identified as molesters in their congregation that they were keeping secret were at risk to molest others.

That is deliberate and indifference to the safety of other children in the congregations, and that is despicable.

And so your answer to Question 7, I believe, should be yes.

Now, let's go back up to Question 6 for a

moment.

You are going to be asked to assign percentages of fault between Watchtower, Kendrick and North Congregation.

So Kendrick, he's the abuser. I think everybody should agree that he gets the largest share. He is the molester.

And so Watchtower. Well, Watchtower is certainly complicit, because while Kendrick may be the vicious dog, Watchtower knew he was vicious and let him run around anyway.

And then we have North Congregation. The elders in North Congregation are following the instructions and policies from Watchtower.

So in my view, Kendrick gets 51 percent, Watchtower New York forty percent, Fremont, single digits, nine percent.

The real responsibility here lies with those who are the most culpable, and they are at the top of your form.

Now let's go back to Question Number 5, damages.

Again, the question of how to determine damages is an expression of the community given by a consensus of a jury. It is a statement of values. How

do you value the losses and harm that have been experienced by Candace Conti from her abuse?

How do we say through a number what is important to us in the protection of children?

And we do that by assigning a value to a child who has lost the things that you lose when you are abused as a kid.

She has lost those things of innocence, a healthy relationship and all the things we heard about. She's lost sleep, she's lost happiness, she's lost the ability to have friends. She lived in isolation and depression.

She has lost the sanctity of her own body, both from the abuse itself and the from the toxic substances that she filled it with.

These are all losses. They are the loss of the integrity of a young child for a sustained period of time. That's the harm we are measuring.

So if we value having our children be free from this kind of harm, if that is an important statement for us to make, then the number should reflect that.

And yes, that would be a large number because this is a large issue of great importance in our values. And so we treat harm to a child of this nature

seriously. And that number has to reflect it in this case.

And secondly, the number has to reflect all the different permutations and ramifications of what this young woman has gone through.

Can we see the instruction?

We have to consider, not just her physical pain, but mental suffering, depression, anxiety, humiliation and emotional distress. All of these things.

And we have to consider over four separate time periods. While the abuse is occurring the year, year-and-a-half, and the quiet years the years when she is 11 and 12 and reliving it, no one to tell up until she is 16, 17, the time period when she is in turmoil and flight from herself and from her experience, drug using, and then the rest of her life starting almost two years ago when she went sober.

And you have to consider all four of those time periods. And each one has a little bit different ramifications and each has a little bit different significance.

And I would say that, no, you might say that the actual abuse itself and experience of child abuse is worth a hundred thousand dollars.

But I don't think that would fairly reflect how serious child sexual abuse is and what our values are on that issue.

We could say that's worth a million dollars. You could say it is worth $10 million.

But I think we have to find something that reasonably reflects how our society values it. I would submit that should be a million dollars.

And then the second period of time when she is in turmoil, and the kid that Dr. Fraser told us about. I would submit another million dollars for that time period and another million dollars for the years of her life that were lost and will never become hers again.

And lastly, there is the rest of her life. Over 50 years. She is 26. PTSD, you can treat it, but you can't cure it. And she is at risk the rest of her life.

She is doing well now, but we are still facing nightmares and the long tragedy is not over. The long tragedy will go for many a year to come. And the long tragedy was caused by the organization to which she committed herself to be the best Jehovah's Witness that she could be. She committed herself to that and the organization betrayed her into the hands of Jonathan

Kendrick.

So for that last period of time for the rest of her life, I would say you should submit a figure of $2 million to $3 million. That's a lot of money. I know it. And it's an important statement to make.

And so again, I appreciate the attention that each of you have given throughout the trial. I appreciate you listening to me for such a long time, and I appreciate your service in this case. Thank you.

THE COURT: Let's take a 15-minute break and come back at 11:25.

(Break taken).

THE COURT: All right. To the jury, defense counsel will make their closing argument, and then after that we will swear Mr. Martin to be your steward. We have ordered lunch for all, paid for by counsel, and all twelve jurors and the three alternates.

Now I'm going to deal with the three alternates independently, once the deliberation has commenced.

I think it was set up so you all can have lunch together, including the alternates, but I need an article of faith from you that you will not talk about the case while you're having a simple lunch together.

To the alternates, the members of the jury,

can I have that article of faith with you that you won't start deliberating over sandwiches?

I don't think that's going to take very long. We have already ordered them.

Then the twelve jurors will commence deliberations after a short lunch, and you will continue to deliberate until you reach a verdict. And I have already given you the deliberation instructions and whatnot.

But I wanted to highlight for you that, apparently -- it is a very hot day outside. As a matter of fact, I do not know that, but I do have circumstantial evidence about it, so...

But we decided to do that to accommodate you, to take care of your lunch, and perhaps keep you out of the heat.

And having said that, Mr. McCabe, you have a closing argument.

MR. McCABE: Yes, sir, I do, your Honor. Thank you.

CLOSING ARGUMENT BY MR. McCABE

MR. McCABE: May it please the Court, counsel, members of the jury, thank you very much for your, really your most valuable possession, which is

your time.

And you are giving it to us maybe not entirely freely, but we appreciate that you have been here. And I think the judge commented and Mr. Simons commented you have been a very attentive jury. And we know it is not easy to have your lives disrupted like this, to come into court and take part of this process, but for our system of justice to work, it is essential you do what you do, and we thank you for it. We can't thank you enough for it.

Like I said in my opening remarks, this is an important case. It's important for Mrs. Conti who has been here and bared her soul, and told through medical records, and told you about intimate details of her life and her early upbringing, which was rough, to say the least.

But on every case there is two sides. And on the other side, my clients are represented here by Mr. Abrahamson, Mr. Clarke and Mr. Lamerdin, the Fremont Congregation of Jehovah's Witnesses.

And I think it is an important case to them because their dedication and devotion, not only their faith, but to what they do in their congregation is on trial here.

I know we talked a little bit about during

the -- we were going through the finishing touches of the voir dire process. I asked you if you all were nervous, and I got a lot of head nods. It is not easy to ask questions to a room full of strangers, but we appreciate that you cooperated. I think we have a very good jury here.

Hopefully you are not nervous anymore. But I still am, because I represent some decent people. And I think this is a very important case for them.

It has been hard for them to sit here, too, and hear the claims of things that happened to someone that they cared about, someone that was precious in their congregation when she was a little girl.

It was hard for them because they would have never, ever, wanted anything like Ms. Conti described to happen.

No one ever wants a child to be abused. No one in the Fremont Congregation, no one in this courtroom would want for any child to ever be abused. And that was certainly true of the members of the congregation that came to testify; Bernice Munoz, her daughter-in-law, Sylvia; Pam Figuerido, and even former members like Carolyn Martinez and Claudia Francis.

I think it was kind of the whole feeling that all of us could share and join in with Mr. Shuster's

comment, the last witness who testified when he said Jehovah's Witnesses, abhor child abuse. We all abhor it. We hate it.

But my clients are here to stand up for the good work they do do in their congregation and say to all of you they didn't allow, they didn't condone, and they didn't cover up and they didn't cause, they didn't turn a blind eye.

They didn't perpetrate child abuse or negligently allow it to happen on their watch to Ms. Conti.

But I think as Mr. Simons brought out about the standards in the community, this case is not only important to my clients in the congregation and to Ms. Conti, but it is important to groups who deal with families and children on an everyday basis.

I think it is also important to our sense of confidentiality and the need that human beings have to go to a counselor or pastor, a priest, a therapist, a lawyer, a doctor, and reveal confidential things about themselves, private things to expose their needs, their fears, their insecurities, sometimes their flaws, maybe even sometimes like in this case a serious, serious sin.

So this case is not only important to members of the Fremont Congregation, but I think it is important

to members of all congregations, regardless of religious backgrounds.

I think it is important to other groups like soccer clubs, the Little League, PTAs, anybody who deals with families, with children.

It is important because the allegations here essentially say that an organization, any organization can be held responsible for the sexual abuse committed by a member of that organization, even when the sexual abuse has nothing to do with the organization. It doesn't happen on their property. It doesn't happen while an organization function is going on, and no one from the organization even knows it's happening.

And when Ms. Conti and her attorney had to acknowledge that they worked out a deal with Mr. Kendrick not to pay 1 cent for his alleged crime, I submit that we learned what this case is really about.

What it is really about is not holding the alleged villain, the monster, accountable, but it is for holding the church accountable for what a villain did that they didn't know about.

So the problem with that is, though, it says that an organization, any organization should be held accountable, but Mr. Kendrick, the alleged perpetrator should not, the villain, the monster.

Why? Because they made a secret deal that they won't have to pay.

So the message is not a good message to send to our community. That there are people like this, that Mr. Kendrick did what he did, did what she claims he did, and strike a deal and cover it over enough to punish and pay for it.

Remember what I told you at the beginning of my opening remarks at the beginning of the trial. I told you what this case is not about.

And I think that is important for us to recall for just a minute, that inevitably after this case is over, after you have given your verdict, your friends and family are going to say, okay, what have you been doing? What is going on? Tell us about the case.

And I think you want to remember, you can tell them very succinctly and positively that this was not a case where a pastor or a member of the clergy abused a child and gained that child's trust and confidence.

It is not a case where the abuse happened in the church or in the back room of a church.

It is not a case where a pastor or clergy member saw what was going on and turned a blind eye and let it go.

It is not a case where the church transferred the molester from one location to another.

It is not the kind of case where any of us, friends or relatives, or anyone here in this courtroom have read about in the media.

But what it is about is what I'm hear to talk about today and sum it up with your indulgence. I want to tell you what I think the evidence has revealed in this case and what it's really about.

And I want to stand up for some decent people who I represent who did not know, have a way of knowing or stopping any of the abuse that Ms. Conti may have suffered.

This case is also about our concepts of justice and fairness. In our system, one cannot be responsible for something that they did not know was happening, did not know was occurring, did not cover up, did not cause.

What I believe, to review the evidence with you -- I would just like to mention that -- before I do that, the burden of proof, as the judge has instructed you, rests with the Plaintiff. They have that responsibility.

And if after weighing all the evidence that you decide the fact is probably true, more likely true

than not true, then that is a fact.

But if you can't make that decision, then you must decide that the Plaintiff has failed to meet their burden of proof.

My clients have no responsibility to produce any evidence in this case. They start off on that level playing field we have talked about, and they don't have any obligation to produce evidence.

But they did so. About nine members of the Jehovah's Witnesses testified in this trial. Most of them were called by me to tell you their story and to round out the evidence for your review.

So the question is: How do you discharge your duty to decide the facts in this case?

Well, it is not rocket science. It is just the simple way that you make important decisions in your own personal family affairs. You make those decisions every day and you need to make those decisions in this case, and we look forward to you coming to those conclusions.

When we selected you as jurors in this case, we did talk about that level playing field. It is simply of way of saying the scales of justice. There is nothing on the scale coming into the trial. Most parties start off with zero. And the evidence comes in

in bits and pieces, and we have to put it together.

So what I would like to do and I'm going to do it within an hour is kind of tie up in what I think is logical fashion of what the evidence shows in this case and do it logically, because it's not like the television dramas where we see everything is tied up in a neat, little package within 60 minutes, less the commercials. Everything you have seen comes in in bits and pieces.

But if you will bare with me, these are four things that I want to discuss with you, which I think are the crux or the heart of this case. And we will walk through them to see if the Plaintiff met their burden of proof in this case.

The first question is: Did Plaintiff prove that her abuse happened as she testified?

And I'm going to spend the majority of my time speaking about that issue, and the other three issues will be less time.

The second one is: Did Plaintiff prove that the situation with Andrea has any bearing on this case, and the claims of this case.

And Number 3 is: Did Plaintiff legally prove that keeping a private family matter private following a Biblical standard somehow proves that the elders were

negligent in allowing the abuse of Ms. Conti.

And my fourth one is going to be simply: Did Plaintiff prove that any act or any failure on the part of the elders might be due to negligent really cause Plaintiffs's damage?

First, did Plaintiff prove that the abuse happened as she said?

Well, what's the evidence?

Let's put it on a scale.

Plaintiff says she was abused, and admittedly this trial is a pretty hard thing to put yourself through if it didn't happen.

So you might think, well, that's more probably true than not true just the mere fact she has gone through the trial.

So we can put her testimony, her direct testimony on the scale, and it begins to weigh down.

You might think even because we are here in court today discussing this, it is probably more true than not true.

But remember in our opening discussions, we talked about a criminal case and a civil case.

The criminal case goes through filters before it gets in front of a judge and a jury.

A civil case is just you file a lawsuit, and

it will end up here.

So filing a lawsuit does not make the claims true.

And also as the judge instructed you, you can't be swayed by emotion, sympathy, conjecture or guesswork.

Everyone hates child abuse. Everyone feels emotional for someone who has been the victim of a child abuse.

For Ms. Conti, the horrible upbringing she had. We all feel sympathy for her. If she was abused on top of that, it is not only horrible, it is tragic.

But this is an extremely emotional issue. So it's important that you as the arbiters of the facts of this case follow the facts. Because we all feel for Ms. Conti. We can't guess what happened to her.

So what are the facts?

Well, on Plaintiffs's side we have Ms. Conti's testimony, and it weighs on the scale.

On direct examination, Ms. Conti told you what she had experienced as a child with the abuse that she suffered.

She mentioned that it was several Sundays a month at the Kendrick home.

Ms. Conti stated her mom and dad let Jonathan

Kendrick take her to his home week after week, and he abused her several hours and then returned her to her parents, either at the Kingdom Hall or at the family home.

Now Plaintiff would have us believe that because she's now told her therapist and others that the abuse was more likely to happen.

When she told Dr. Ponton, she said the same thing. Basically, she started of in her testimony and, of course here, that it happened hundreds of times over a two- or three-year period.

She also told the Kaiser doctors that she was abused repeatedly.

She also testified in a deposition, just before she met for the first time with Dr. Ponton.

And I would like to read to you what she said on Page 28, line 6, I asked her:

"Did the abuse ever increase to be more than bear hugs?"

She said yes.

"When did it increase to be more; how old were you?"

"Still nine," was her answer.

"QUESTION: What happened?"

"ANSWER: He would take me to his house after

meetings."

"Were those day meetings or night meetings?

"ANSWER: Sunday meetings."

"QUESTION: Sunday meetings? What happened when he would take you to his house after Sunday meetings?"

And she answers.

And then the question: "How many times did this incident take place where he would use pens?"

She said, Answer: "Several times a month."

"Over what a period of time? A number of years or all within one year?"

"ANSWER: A couple of years."

"When did the abuse stop?"

"When he moved."

"QUESTION: He moved at about 1997 when your parents divorced?"

"ANSWER: Yes, that's correct."

So the abuse started when she was nine in 1994 and continued until sometime in the year 1997.

But if we look at the scales, the testimony is really all Ms. Conti.

What she told me in the deposition is the same that she told on her direct examination. It is the same thing that she told her doctor. So really it is

100 percent her testimony.

The doctors take history. They base their treatment and diagnosis based on solely what the patient tells them.

So really when we start looking at the scale we need to take off the deposition, the Kaiser therapist, the doctor, Dr. Ponton, and we still just have Ms. Conti's testimony.

But what about the other side of the scale? What about the Defendant's side?

First of all in the Defendant's presentation, you heard Mr. Simons already talk about Plaintiffs's cross-examination, when she was asked how many times it took place after hearing all the testimony in the court.

And she backed off "hundreds of times."

She said it might have been five or ten, and it seemed like more.

And the reason that testimony is important is because it comes in after we examine the living situation of Jonathan Kendrick.

Jonathan Kendrick did not live alone. He was not a bachelor. He lived with his wife, Evelyn, and their stepdaughter, Andrea.

And when you think about it, that's very important because they lived together in the same house.

Week after week, month after month. They lived together.

So where is the evidence that Jonathan Kendrick could have access to her week after week at his house? Going home after the Sunday meetings?

I submit to you, ladies and gentlemen, that it couldn't have happened that way. It just couldn't happen that way.

Think about that. They were only separated from October 11, 1996. He only lived alone for a month before moving to the Francis home.

We have heard about shady testimony from Mr. Abrahamson. But I think the Plaintiff started shading her testimony when she saw all the evidence when Mr. Schnack cross-examined her. It had only been five to ten times.

But then we have to add to that, cross-examination experience. We have to add to the testimony of Kathy Conti. We have to add the testimony of Neal Conti. We have to add the testimony of the three elders who have testified. We have to add the testimony of the women who came forward from the congregation testify.

And none of them, not one of them saw the things happen which Ms. Conti described as happening

week in and week out.

Namely, Ms. Conti leaving with Jonathan Kendrick in his truck to go to his home to be abused by him.

None of them saw Ms. Conti testify to that it happened on a weekly basis, the big bear hugs, the squeezing and holding her until she would answer the question "Who loves you" and saying "You do," then he would let her go. The sitting on his lap.

Then we have the testimony of Carolyn Martinez, Claudia Francis, their own witnesses did not see any of these things happening at the Kingdom Hall.

You might wonder what the parents were doing.

I think it is shaded that Neal Conti might have been a little cold and not caring so much.

That isn't what I saw when he testified. He had a very difficult situation dealing with a very ill and emotional life. He was struggling to keep his job, keep his family together, and then he had to flee the family home when she came back from a suicide attempt so angry. He had to leave to protect the children.

I remember, though, Kathleen Conti when Mr. Simons asked her, "Did you let your child go alone with anyone, to service, to Kingdom Hall, to Bible studies?"

And remember the look she gave? She was

stunned, she was incredulous. She couldn't believe that he would even think that she allowed that to happen.

Yet we are supposed to believe it happened week after week after week.

Now Carolyn Martinez said the same thing. She said that it did not happen. She didn't see it when she was at the Kingdom Hall.

It is very troubling, especially because if we think about mom. The Plaintiff lives with her mom. She's helping to take care of her mom right now. Her mom a hundred percent supports her in this lawsuit. She's even testified she has been to counseling sessions with her.

If the mom let Ms. Conti go with Jonathan Kendrick once, twice, a dozen times, why wouldn't she just come out and tell us?

But she didn't because it didn't happen. She wouldn't allow it.

And if she didn't do it but she knew that Neal did it, he allowed Ms. Conti to go with Jonathan Kendrick week in and week out, well, why not point the finger at him?

And again, she didn't do that because it didn't happen.

Additionally, when the elders of the church

came in and told you that they had admonished Jonathan Kendrick to stay away from children, to be careful because they were watching him, there was no evidence that they did not watch him. They all said that they watched him.

And they watched. And they did not see Jonathan Kendrick take Candace Conti from the Kingdom Hall in his truck week after week after week. Not even once.

The three elders testified they didn't see it. We could have brought all twelve of them in, but three is a significant number.

If you need more reason and more evidence to see that this didn't happen in the way Ms. Conti testified to, we have Sylvia Munoz's testimony, Bernice, her mother-in-law, we have Pam Figuerido. Each of them told you that they did not see Ms. Conti being taken away from the Kingdom Hall every week for years. And these are women with children. Grandchildren.

Now, one of them Sylvia, has a child, has a son who is now the same age as Ms. Conti. They were in the congregation together. They did not see what Ms. Conti testified to happening week after week or even once.

They did not see the bear hugs, the

squeezing, the sitting on the lap.

Now, if they had seen it, they would have talked about it.

If they had seen it, they would have commented on it to the elders.

If they had seen it, Pam Figuerido stated it wouldn't have been tolerated. It wouldn't be appropriate congregation activity.

The things that Ms. Conti told me, told Dr. Ponton would happen for a couple of years week in and week out just didn't happen.

Now, if the evidence does not allow for that conclusion, but it shows that Ms. Conti has PTSD, well, where does that come from? Could it have been from having to flee the home when the father and mother attempted suicide? Was it something else?

We heard some of the other things it possibly could be, eight years of drug abuse.

Has Ms. Conti confused reality with some of the nightmares that she has experienced?

I don't know and I'm not going to say because I just don't know.

But I think it shows us that there is a lack of proof there. She hasn't proved it by the evidence.

But remember, it is her burden. She has the

duty to prove the evidence of what caused her PTSD.

And I want to make something very, very abundantly clear -- I think it is clear, but just to go on the record with all of you.

I do not represent Jonathan Kendrick. I have nothing to do with Jonathan Kendrick. I'm not arguing he is not guilty of horrible crimes, all I'm saying is that Plaintiff has not met the burden of proof.

Plaintiff calls this man a monster. So even if we assume that Jonathan Kendrick did abuse Ms. Conti, as counsel said, one time, that's horrible. That's too many times.

But I'm pointing all this out because we need to question Ms. Conti's credibility on this point. It is extremely important because it tells us something about my clients. It points out how little the elders knew. How little the congregation could have known that abuse was taking place, how their actions could not have been negligent because they didn't see bear hugs, sitting on the lap, be ferried away from the congregation week after week, because whatever happened between Ms. Conti and Jonathan Kendrick did not happen because of their involvement in the congregation of the Jehovah's Witnesses in North Fremont.

Only one person said that she ever saw Ms.

Conti sit on Jonathan Kendrick's lap. That was Carolyn Martinez. She said that it happened at her home when Ms. Conti was four, five or six years old in 1991 and 1992.

And there was no testimony that there were any elders present at that event. And anyone else that saw it would have considered that it was not unusual for a little girl to be sitting on a man's lap.

But I think it is important that we look at that in view of the testimony that she gave me last August in her deposition.

Here is what she said about the bear hugs, the lap sitting.

I asked her: "Where did this abuse take place?"

She answered: "The Kingdom Hall, the North Fremont Kingdom Hall Congregation."

"Where in the Kingdom Hall?"

"Just in the Kingdom Hall."

I asked her: "Was it in the main auditorium?"

She said yeah.

"What took place in the Kingdom Hall; what did he do to you?"

"He would grab hold of me, on to me."

"Where would he grab you?"

She answered: "Just like a bear hug and hold me."

I asked her: "Were there people present when this happened?"

She said yes.

"QUESTION: Who was present?"

She answered: "The attendees of the North Fremont Congregation."

And I asked: "During the meeting?"

She answered yes.

"During the time the meeting was going on? Before or after?"

And she answered: "Before and after."

"Other than the bear hug, what did he do?"

"ANSWER: He used to make me sit on his lap during meetings."

"Where were your parents? Were they at these meetings?"

She answers: "My dad was."

"QUESTION: So the first time this took place was when you were about nine years old?"

And she answered by shaking her head affirmatively.

"How many times did this take place, these

bear hugs?"

"ANSWER: I couldn't give you a number."

I asked: "Frequently?"

She said: "Very frequently."

I asked: "At every meeting?"

She said: "I would -- I could safely say that it happened at every meeting."

The hugs, the sitting on the lap, but why didn't everybody else see it?

And that's what is important why we look at her story, why we look at her credibility. Why didn't anyone else see it? And equally important why didn't anybody, if they saw it, tell the elders?

Well, because this is not a case where a clergyman was transferred from one church to another or where the elders buried their heads in then the sand, or where the entire group in the congregation, the mothers, the grandmothers and the elders together looked on while Ms. Conti was being ferried away from Kingdom Hall week after week.

The congregation did not know or have a reason to know that Jonathan Kendrick had targeted Ms. Conti.

So the evidence in this case demonstrates that any sexual abuse could not have taken place the way

Ms. Conti said it did.

If Mr. Kendrick abused Ms. Conti, it happened in some other way that we have seen in this trial. And no one could have known about it or stopped it but Jonathan Kendrick.

If Jonathan Kendrick abused Ms. Conti in any way, at any time, just one time, then he is at fault. Not the elders, not the congregation, not the church.

But here is where I'm really having a hard time with Ms. Conti's evidence. Not Ms. Conti herself. I'm talking about the evidence. She called Jonathan Kendrick a monster.

I don't know. Maybe he is. We just haven't had enough evidence on that.

And then she told me and you that she wanted the monster, Jonathan Kendrick, to pay for her future therapy and counseling, and she wanted him to pay for her pain and suffering.

And she said she wanted the money. She filed a lawsuit asking for money damages against him. He wasn't just another necessary party, he was the principal defendant. He was the one who intentionally and criminally touched her.

But then that changed when I brought out the agreement. Notice it wasn't brought out in her direct

testimony. Mr. Simons didn't bring it up. I brought it up.

I had to bring it up and say, well, do you have an agreement with Mr. Kendrick that no matter what the jury awards in this case, no matter what how many millions of dollars you may award, she will not try to collect 1 penny from Mr. Kendrick.

Why?

Because they had a secret deal, a secret deal they didn't tell us about directly and openly.

So doesn't that make you wonder as a juror in this case, why are we here?

If you look at the document, the exhibit, you will take it in the jury room, you will see both Mr. Simons' signature on it and Ms. Conti's signature on it. It is not just something that the lawyer did on his own. They did it together. They agreed on this.

But doesn't that make you wonder why we are here? We are letting this man off.

I think -- remember Mr. O'Brian in the Voir Dire? He was kind of colorful. He said he didn't think this case should be here in this court. It is the wrong court. It should be in criminal court.

I think that Ms. Conti and Mr. Simons agree. If he doesn't want money from them, then he should be

prosecuted. He should have to pay in some way for what she is claiming he did.

Mr. Simons refers to a policy of secrecy on the part of Jehovah's Witnesses, and this document shines the light really on the policy of secrecy. It is a secret deal that the Plaintiff has made with the monster.

Now, Jonathan Kendrick is responsible for Ms. Conti's damage. If he is not, who is?

And really, you heard the testimony that he was a man that had a serious problem. He had sexually touched his stepdaughter in 1993.

But if he went on from there to abuse Candace Conti, I think what he really is, is not a monster but a chameleon, a man who changes his personality to fit his audience and circumstances to get what he wants.

Remember some of the testimony? Some witnesses said he was quiet and contemptible; others said he was loud and outrageous and full of life. He was a rough and tumble iron worker; yet he played the violin.

Like a lizard changes colors, Mr. Kendrick did these things. He changed colors. He would be what he could be in front of whoever he needed to fit into his audience to get what he wanted.

And isn't that what child abusers do? They hide what they want, they bury themselves in organizations. They hide what they want. They hide in society, they hide in the local church or the soccer club, the Boys and Girls Club and the local church.

But in all of this do you see what is missing? The evidence. We just have Ms. Conti's testimony and it doesn't stack up against any of the other evidence in the case.

Now, maybe you think Claudia Francis saw something. She saw and talked to you about the rollerblading incident. But it is interesting because Ms. Conti doesn't say she was abused when she went rollerblading with Mr. Kendrick.

And, you know, when she saw this, Claudia Francis didn't think it was some part of a dirty plot on Mr. Kendrick's part to abuse Ms. Conti. They came rollerblading over to her home. And I think her testimony was that Mr. Kendrick was then living at their home.

You heard testimony that Ms. Conti lived a few blocks away. They rollerbladed over. Significantly, she didn't report this event to the elders.

She didn't say, I saw Mr. Kendrick with

Ms. Conti and I think it's suspicious."

Had she done so, the elders would have dome something about it. They would have looked into it. They would have told Mr. Kendrick he wasn't supposed to be around children.

And Ms. Conti didn't tell us anything about that. And that's why the judge just gave you a limiting instruction that this incident and the other incidents involving Mr. Kendrick, they were outside of the purview of the elders. They weren't done in the Kingdom Hall. They weren't done on the Congregation's watch. It cannot be used against them.

So we need to take Claudia Francis off that side of the table, because you cannot legally, intellectually put that testimony on my clients. And that is because of our system of justice.

It is simply because they didn't know that it happened. No one told them. You can't be held negligent for things that you did not cause or that you did not know were happening or that you did not cover up.

So where is negligence on the part of Mr. Clarke and Mr. Abrahamson? It doesn't exist.

The plaintiff on this key issue, really the only issue in this case is still back on her side of the

scale without tipping it at all, she has her testimony sitting on his lap, getting the bear hugs, leaving the Kingdom Hall.

No one else supports that testimony. No one else has any evidence to support it at all.

Now if Ms. Conti was abused by Mr. Kendrick, it's horrible, and we all feel sorry for her. But we can't give her a verdict because we feel sorry for her. She has the burden of proving it and she hasn't met that burden.

So what did the elders do to allow this abuse? How were they negligent in not protecting Ms. Conti?

There is no question about it that they relied on their understanding of the Bible principle and they kept the matter of the home visit at the Kendrick family confidential.

But it didn't stop there. That wasn't the end of the evidence. They came back to the body of elders, they removed Mr. Kendrick as a ministerial servant, they announced it, and they said they watched him, and they admonished him to stay away from children.

And there is no evidence that they didn't watch him. They watched him.

There is no evidence that Ms. Conti was in

danger from this man.

Had they seen any event, they would have acted to protect her.

Jonathan Kendrick simply did not have the access to Ms. Conti that she claims that he had every week, several times a month for a number of years.

So the evidence in this case demonstrates that any sexual abuse could not have taken place the way Ms. Conti said it did.

If Mr. Kendrick did abuse Ms. Conti, it happened some other way than we have heard in this courtroom, and no one could know about it or stop it, except Mr. Kendrick.

Now if Mr. Kendrick abused Ms. Conti in any way, at any time, it's his fault, not the elders' fault, not the congregation's fault, not the church's fault.

And that brings us to our second and shorter question that I want to ask. It is a question that Plaintiffs's counsel has made one of the primary issues in this case.

Has Plaintiff proved anything about the situation with Andrea? Does it have any bearing on this case? Or does it prove that the elders were negligent concerning in the abuse of Ms. Conti?

I submit to you it is really a smoke screen.

It is a false clue. It is designed to divert attention from the real issue or the real problems in this case.

This trial is not the end. You didn't see anywhere on the verdict form where it said Jonathan Kendrick abused Andrea. He confessed to that.

Instead, this information just diverts our attention.

When talking about Andrea, there is only one important question that needs to be asked, and that is: Did the elders respond appropriately to the private allegations raised by the Kendrick family at that time?

I think you heard Mr. Simons' argument and my argument. You remember what the evidence is. But it wasn't Evelyn Kendrick that called the elders over to the house, it was Mr. Kendrick. He testified that he called Mr. Clarke and asked if they would come over and address the family.

And what happened? Mr. Clarke and Mr. Abrahamson, fathers themselves, workers, volunteers they took their bibles on a Thursday afternoon, and in 1993, in November, they went to the Kendrick family home.

They were invited in, they sat down at the kitchen table, and they opened with prayer, and they used the Bible after they listened to the family.

Jonathan Kendrick disclosed what he did, the

family was sitting there. He -- Kendrick said it was inadvertent. You don't confess to something that is inadvertent. They weren't fooled.

And what was the confession? That four months earlier this event had taken place near Andrea's birthday in July. The family had kept it confidential until November.

Four months later, the elders met with them, going to the police was discussed as an option.

No hush-hush here by the elders, no counsel not to talk about it to anybody else, not to go to the police.

And remember, no one told the elders anything until November. Remember, it happened four months earlier.

Well, after they did what they did with Mr. Kendrick, admonished him, told him to stay away from children, be careful, they were going to watch him.

They went back to the congregation and met with the rest of the body of elders. And they had a meeting and they all agreed that Mr. Kendrick was no longer qualified to be in the menial task of being a ministerial servant.

But they kept the matter confidential. They thought they should.

You heard conflicting testimony from Evelyn and Andrea that they didn't consider the matter confidential, they didn't care. But they didn't tell anybody else other than the two elders until late February when they went to the Fremont Police and made a report about the abuse.

Now, I told you at the beginning, this event took place 20 years ago, 19 years ago, that memories would be different. People would say different things happened. And that's what happened in this case.

Evelyn says that more was disclosed, but Evelyn couldn't remember whether Andrea was at the entire meeting. Andrea didn't remember being at the meeting at all. So memories fade.

But the important think is, it is not whether she had a Vicodin before the incident or whether it took place in the bedroom or the living room. The important thing is that the elders knew and understood what this was. This was child abuse. And they called it exactly what it was. It was child abuse. And they acted accordingly.

They wrote a letter to Watchtower and said it was child abuse. And they said that they removed him from being a ministerial servant in the congregation. And they asked for some spiritual clarification,

direction.

If there was an incident about Vicodin or if there was something about the bedroom or if there was something about skin-to-skin contact or more contact than just the touching of the breast, why would they withhold it when they are asking for guidance of counsel two days after the incident was reported to them?

Well, of course, they had no reason to falsify their letter to Watchtower, so they reported what they were doing.

But the important thing is, what the elders knew is that Mr. Kendrick had a problem with his stepdaughter, and it was inappropriate child abuse.

They reported it as it was. They removed him as a ministerial servant. They didn't cover over the matter.

They didn't tell the victim to be silent, not to go to the police. In fact, they told her she had an absolute right to. The congregation did not shield Jonathan Kendrick from the authorities.

In fact, when you think about it, think about the terms of the family wanting to keep something quiet, they continued to live -- Andrea and her mother, Evelyn, continued to live with Mr. Kendrick for another two years, six, seven months. They did not separate until

almost three years later from the report being given to the elders in October of 1996.

But then think about this. As was their absolute right, they went to the police in late February. They went to Fremont Police, reported it. Child Protective Services investigated it.

Officer Davila's testimony is interesting because he knew the elders were involved prior to his involvement and he saw no reason to follow up.

Why not?

Because the elders didn't do anything wrong. They were ministers. They did their job as ministers.

He was a policeman and he was doing his job as a policeman. And regardless of whether some of the things the policeman was told or not, it doesn't really matter because they removed him as a ministerial servant and his position because of child abuse.

As much as this Plaintiff would like to focus this case on what happened with the Andrea situation, it's really just a smoke screen.

The only important issue is: Did the elders respond to it? They acted appropriately. They, along with the other elders, continued to watch Mr. Kendrick after this point.

Again, this is not about Andrea, what

happened to her. That case was dealt with by the elders, by the Fremont Police, by the Child Protective Services, by the District Attorney's office. Where is this cover up? Where is this conspiracy of silence? Where is the smoking gun? Where is the hush-hush that Mr. Simons just talked about on the part of Evelyn or Andrea?

On the contrary, it is out in the open. That leads me to our third question: Does Plaintiff's attack on confidentiality somehow prove that the elders were negligent in allowing the abuse of Ms. Conti?

Now, Plaintiffs say that the elders kept the abuse confidential. I don't think they did. It is clear they did not stand Mr. Kendrick up in the middle of the congregation. You see the pictures of what their hall looked like. Four seats on one side, about six in the middle, and four seats on the other end. They didn't stand him up the next Sunday and say, "Mr. Kendrick, I want everybody in the congregation to know that he sexually touched his stepdaughter in July, about 5 months ago."

They didn't do that. But confidentiality is a policy that's promoted by Dr. Salters, their expert. Confidentiality is not a four letter word. It is not identified by Jehovah's Witnesses. It is practiced by

religion, doctor, therapist, social worker and so forth.

Now, we talked a lot about, from Mr. Simons, this July 1, 1999 letter, which was Exhibit 26. And when we talked about that, we didn't talk anything about Laura Fraser.

I bring her up not as any attack on her at all. She was a good therapist who was doing a job to try to help a very troubled child going through a very acrimonious divorce.

But think about this: Laura Fraser kept confidential the things that Ms. Conti was telling her about her mother, walking around naked in front of her and doing other outrageous things with alcohol and drugs. She did not tell the divorce mediator in the case. She did not tell the father, Neal, so he could protect his daughter. Why not? Confidentiality.

These are concepts that we live with in our society.

Dr. Applewhite testified about that. And she also said that it is important for all organizations. So this policy letter that's been picked on by Plaintiffs, this July 1, 1989 letter to all bodies of elders, I invite you to read it because it really has only one paragraph about child abuse. It is on Page 3, paragraph B.

And maybe we can make it a little bigger. This is the policy that Watchtower handed down to the congregation. It says:

> "Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. Victims of such abuse need to be protected from further danger."

What is the cover up there?

We have, as we heard, child reporting laws. Every state has a different one. They need to get legal advice to find out what they need to do in response to this allegation.

Now you read the letter as a whole, and along with the rest of evidence before you, and I think you will see that the Defendants care a great deal for children.

Like Mr. Lamerdin testified on Cross-Examination, they were precious, they were the future.

So confidentiality is not a nasty word, it is not a concept that is unique to Jehovah's Witnesses, and it is not a concept that caused the elders to be negligent in this case.

No one. No one. Not Ms. Conti's mom, not her dad, not her therapist, not others in the congregation, not her grandmother, no one saw or heard anything that showed them that Candace Conti was in danger of being abused by Mr. Kendrick.

Confidentiality has nothing to do with the complete lack of evidence on this point.

Now, Mr. Simons' tells you it was the standard. But that if Jonathan Kendrick was stood up in the middle of the congregation and was labeled as a child abuser, it wouldn't have changed the facts in this case.

No one saw him holding her on his lap, a 9, 10, 11-year-old girl. No one saw him giving the big bear hugs in the middle of the congregation, squeezing her.

No one saw them leaving week after week from the congregation meetings alone together in the vehicle.

The evidence in this case just demonstrates that any sexual abuse could not have taken place the way Ms. Conti said it did.

Jonathan Kendrick, if he did abuse her, it happened in a way that hasn't been presented as evidenced in this courtroom. It hasn't been before you.

No one could have known about it or stopped

it but Mr. Kendrick, and only he can be responsible for it.

Which brings me to my final question. The link between negligence and causation. And the judge just read you the causation instruction. It mentioned that to be responsible, the elders' negligence, and I submit that I don't think the evidence leads there, but if you see that it does in some fashion, it must be contributed to the harm.

It must be more than a remote or trivial factor. It doesn't have to be the only cause of harm. Conduct is not a substantial factor in causing harm if the same harm would have occurred without the conduct.

So the only negligent conduct that Mr. Simons talks about is the elders didn't reach their responsibility to keep this matter confidential. They didn't stand Mr. Kendrick up in the congregation labeling him as a child abuser.

So what does that mean?

Well, if you believe that there is evidence that it is more likely than not that they were negligent, you need to next find that their negligence, their not standing him up in the middle of the congregation and labeling him as a child abuser caused harm to Ms. Conti.

But to answer that question, you need to look at two issues. And the first one is since Plaintiffs spent so much time -- like the situation we had with Andrea. What the elders did or did not do is a substantial factor in causing of her harm. Not Andrea's harm, but the Plaintiffs's harm.

But if that's the case, if they didn't label him as a child abuser in the congregation, and that's the negligence that we are looking at here, what would you say about Officer Davila and the Fremont Police?

They knew the congregation was involved. They didn't go down there and start telling people. Child Protective Services didn't, the District Attorney's Office didn't.

Were not any of these the cause of the Plaintiff's harm?

Well, you might look to me and say, "Well, that's pretty much of a stretch."

And I say it is a stretch, too, for the elders.

Why is Mr. Simons only pointing to the church and the elders, and not to these other agencies?

Well, I think we know, why isn't he pointing to Mr. Kendrick?

He's saying he's only 51 percent responsible

for the horrible abuse that he perpetrated over a two- to three-year period?

Well, I think we know the answer to that. It is the covenant. It is the covenant not to go after him no matter what your jury verdict is.

You can award the $260,00 or the $160,000 in special damages. You can award the, what did he say? $5 million to the $8 million in damages? But we won't go after Mr. Kendrick.

That's just hard to understand.

And the only substantial factor in the cause of Ms. Conti's abuse was the criminal acts of one man, the chameleon, the iron worker, the violinist, the quiet, contemplative man, the extrovert, the man who could be what he wanted to be.

And if he did this abuse just one time to Ms. Conti, he is the monster, he is the true villain, not Michael Clarke, not Gary Abrahamson.

If he did this he should be held 100 percent responsible. You should put the blame where it goes. If you say he is only 99 percent liable, what message are we sending to the community about the child abuse that's out there?

You can shift your responsibility. You can blame your institution, your organizations. We don't

blame you for causing abuse.

If he did this, he has gotten away with it for far too long, and he should be finally be held accountable for what he's done. But Ms. Conti and her lawyer have made a secret deal to take your power away.

I sincerely believe that this case, like Mr. Simons says, has more far reaching implications than for the two parties before you, or the three parties before you.

It is not just a case that has implications for churches, but it has implications for all organizations that deal with families.

It basically says that if you have knowledge that any member of your organization has ever committed a sexual battery before, even when you have no knowledge that he is doing anything currently or presently, even if what he's doing doesn't happen on your organization's property or your organization's functions, you are going to be held responsible.

Now, I'm not saying this to shirk responsibility. If Mr. Kendrick had been an elder, I wouldn't be here defending the congregation, I would advise them to settle this case, pay, whatever they want.

If this abuse had happened in the middle of

the Kingdom Hall or in the back room, I think that would be inexcusable, it would be on their watch. I would not be here defending them.

But this is not a case where that happened. This is not that case. It's going too far to attribute responsibility to these good men and to their congregation.

Now, you can disagree with their faith. Many of us do. We disagree with their teachings. We may find it irritable if they showed up on our door step on Saturday morning. But I think we can all agree that they are decent people trying to do what is right. They are not here covering up. They are not here condoning. They are not here encouraging child abuse.

So I would like to conclude by just asking you to tell Mr. Simons that you don't care for his secret deal that he made with Jonathan Kendrick.

Don't let your time be wasted here. Don't let Mr. Simons and Ms. Conti take away the power that you have to really send a message in this case.

Stand up for what is right and not what is craftily devised by a clever lawyer. Use your power to send a message back to all the congregations and the groups that work with children, the Little League coaches, the soccer coaches.

The congregations of elders who shepherd their flocks. Tell them coach the kids, encourage them to excel, to do better.

Do your job. Just let all these groups do the good they do in the community without the fear that they will be held responsible for what a monster did that they didn't know was happening. They didn't cause and they didn't cover up.

Justice really is about affixing blame. And I think what this trial has shown to all of us is that if anyone is to blame, it is Jonathan Kendrick. He is absolutely 100 percent to blame and not Jehovah's Witnesses.

Plaintiff and her attorney are looking for the wrong sort of justice. I think they are in the wrong court.

If she called him a monster, she should charge him with a crime. She said she went to the Fremont Police, but we don't know when. It wasn't revealed to us.

We are here today deciding about money, money for a crime. Not time in jail like it should be. But money. Money that actually wouldn't come from a criminal. And I think this is an abuse of our system of justice.

It would be an injustice to make good people pay on this set of facts and on this set of evidence. This is simply the wrong court and the wrong defendant.

And I encourage you. I know you will do your duty as the judge has instructed you on competence, that you will feel a great satisfaction of sending a message to child molesters that if you operate like they do in secret, we won't let you make a secret deal with the Plaintiff so you can shift your responsibility, your accountability to some organization or institution.

Send a message to the Plaintiff's bar association, to the lawyers out there, don't make secret deals with people who operate in secret.

Child abuse is a horrible thing. Ms. Conti suffered enough. I don't think she should have been manipulated the way she has been in this case, and I encourage you to send that message, that good people should do what they do best, and let them coach, shepherd, inspire.

I thank you for your time.

MR. SIMONS: May we approach?

THE COURT: Sure.

(sidebar discussion)

THE COURT: Mr. Schnack?

MR. SCHNACK: Thank you, your Honor.

CLOSING ARGUMENT BY MR. SCHNACK

MR. SCHNACK: Like the other two lawyers have talked to you, I appreciate your time and energy that you devoted to this.

It is difficult to disrupt your lives and we sincerely appreciate it, and you have paid undue attention without question.

I'm not going to be as smooth in my presentation as Mr. Simons or Mr. McCabe. I'm more of in-the-trenches type of lawyer. So don't hold that against me or my client.

I think you have heard a number of witnesses now, and you have seen a number of exhibits in the case.

And the question can be, as Mr. McCabe suggested, why are we here?

This really appears to be the wrong court and the wrong defendants.

Again, it is going to be somewhat repetitive of what Mr. McCabe said, but this is not a situation where a priest abused a child, this is not a situation where the elders in the congregation, or an elder from Watchtower abused a child. This isn't a soccer coach who abused a child, this isn't a scout leader. This is a rank and file member of the congregation who allegedly abused Ms. Conti. And that's what brings us here.

But what is missing? The claimed sexual abuser isn't here. They struck a deal. Candace Conti and her attorney struck a deal. And you saw it before. It was on the screen. And you will have it in the room.

Candace Conti signed that agreement herself. And rather than ask you to hold him responsible for what he did, they decided to let him off the hook.

As a result of this deal -- and again, you'll see the deal. It says, if you don't show up here, I agree not to pursue, I will not try to collect any money that the jury might award. That's what it basically says.

And what was really strikingly absent, Mr. Simons talked for over an hour to you this morning, he didn't read it.

You can ask yourself why? Why didn't he address it so that Mr. McCabe and I could respond?

Now he is going to have a rebuttal so he can address it then, and we don't get a chance to respond.

Is that fair?

That's for you to decide.

But nonetheless, let's be clear. Mr. Kendrick is not here because Plaintiff struck a deal that if he did not appear at trial, if he did not participate in depositions, if he didn't show up at

court hearings, then we won't pursue you for any money no matter what you as a jury might decide.

As Mr. McCabe says -- we need to be clear. No one who is here in court today wishes any harm on Candace Conti.

She has had many challenges in her life. Laura Fraser's testimony, you hear what happened to her as a result of what her mother did. It shouldn't happen to anyone.

But for there to be justice in this case here on the evidence that was presented, the information on which you base your verdict has to be done with reliable and trustworthy testimony.

Keep that in mind. With accusation comes responsibility. That's the burden of proof. If you accuse people of things, you have the responsibility to prove it.

You were here when Candace Conti said in open court that she wanted money from Mr. Kendrick. The monster she called him.

You will also hear just minutes later, she said, yes, I have an agreement with him that I won't take any money from him.

Why did she contradict herself within minutes?

We probably would never know.

Perhaps she thought she could get away with not telling the truth on that first question.

I think Mr. Simons, when he talked about Mr. Abrahamson, he said he had to press Mr. Abrahamson, did Mr. Kendrick lie to you?

Well, can we ask the question? Did Candace Conti lie to you when she said she wanted money from Kendrick?

Again, we won't know the reasons why she said what she did, but she showed right in that minute that she's not always reliable and trustworthy in her testimony.

Let me turn to the burden of proof. And, again, this has been addressed. But I want to reiterate what Mr. McCabe told you and what the Court instructed you.

Watchtower, my client, has no burden of proof here. They don't have to prove anything. It is the Plaintiff who has the burden of proof by a ponderance of the evidence. Again, an accusation, no responsibility.

After reviewing and weighing the evidence, I think you as a jury -- well, let me just go into the evidence. Mr. McCabe addressed that.

Let me address what the evidence shows about

Ms. Conti's claims. First, the evidence is undisputed that Jonathan Kendrick was only a rank and file member of the congregation at the time Ms. Conti says he abused her.

The evidence also showed that he did not have unrestricted access to her. The evidence was undisputed that in the Jehovah's Witnesses faith children are not separated from parents.

They also told you there is no Sunday School for kids, they don't have Vacation Bible School, they don't have any summer camps. The children are not separated from their parents.

Mr. Kendrick did not have any unique or special assess to Candace Conti or any other children. You heard Dr. Applewhite testify to that in her trial testimony.

It is also undisputed that Candace Conti never went to the Kingdom Hall without one or both of her parents. She even confirmed that in her deposition testimony and she testified to that here in trial as well. So, again, she was never at the Kingdom Hall unless either one or both of her parents were there.

She also testified, Ms. Conti did, that Jonathan Kendrick bear hugged her at the Kingdom Hall at every meeting.

You can show Candace Conti's deposition, Page 27, lines 5 through 11.

It says on the screen.

"How many times did it take place, the bear hugs?"

She answered: "I couldn't give you a number."

"Frequently?"

She said, "Very frequently."

"Every meeting?"

Then she said, "I could safely say that it happened at every meeting."

She also testified that Jonathan Kendrick made her sit on his lap at the Kingdom Hall. Again, she testified that her parents were present every time she went to the Kingdom Hall.

She also testified that she was allowed to leave the Kingdom Hall alone with Jonathan Kendrick when Kendrick took her to his house. And that's where she says Kendrick sexual abused her.

She claims this happened hundreds of times, like Dr. Ponton testified.

Let me go through what Dr. Ponton said that Candace Conti told her. I'm going to read this. This came from Dr. Ponton's report.

Dr. Ponton said that for three years she had been abused, quote, more than twice per month, and often it happened four to six times a month, close quote.

And then upon further questioning, Dr. Ponton said she had written, quote, in summary, Candace's sequence of abuse by Jonathan took place over three years and involved hundreds of episodes of sexual abuse, close quote.

Now that's what Candace told Dr. Ponton.

Did she ever tell Dr. Ponton, "Well, I was only 9 to 11, I wasn't sure." You know, it could have been more, it could have been less? No. She was very resolute. Dr. Ponton testified she told her that it was basically hundreds of episodes of sexual abuse.

Candace's parents -- again, I'm going to talk about a lot of things that Mr. McCabe talked about. But Candace's parents, both Neal and Kathy Conti both testified that they never allowed Candace to sit on Jonathan Kendrick's lap at the Kingdom Hall, and that they never saw Kendrick bear hug her at the Kingdom Hall.

Candace's parents also testified that they never allowed her to leave the Kingdom Hall alone with Jonathan Kendrick.

Neal Conti testified that Candace never went

on field service unless he was with her. And, indeed, Carolyn Martinez who is, again, like Mr. Simons said, drove up here from Southern California to testify for Candace. Let's see what she said and what she saw Candace in field service.

It's at Page 36, lines 1 through 3.

She was asked:

"Did you ever see Candace Conti come to field service without one or both of her parents?"

And Carolyn Martinez said no.

So any suggestion that Candace was in field service alone with Kendrick based on what Ms. Martinez said is just false. The testimony just isn't there.

You also heard the three elders, and they are sitting here today, Mr. Abrahamson, Mr. Clarke, Mr. Lamerdin. They each testified that they kept an eye on Mr. Kendrick. They didn't see anything. They didn't see the hugs at the Kingdom Hall, they didn't see Kendrick having Candace sit on his lap. They didn't send children out in field service without their parents.

The four women from the congregation, Claudia Francis, Bernice Munoz, Sylvia Munoz, Pam Figuerido, they all came and testified, well, they didn't see any bear hugs at the Kingdom Hall. They didn't see Candace

sitting on Kendrick's lap at the Kingdom Hall. They didn't see Candace leave the Kingdom Hall alone with Kendrick.

That's a count of nine different witnesses. And I think they were on the scales there that Mr. McCabe showed, but nine different witnesses. All regular attenders at the Kingdom Hall, none of them saw any of this happen that Candace said happened.

If, indeed, it happened, why didn't Mr. Simons bring in witnesses? Why didn't he bring in people that said, you know, what Candace said is true. I saw it happen. He didn't do that.

Why?

You are going to have to ask yourselves that.

You know, I earlier talked about Ms. Conti's testimony and how she contradicted herself about the secret agreement she had with Mr. Kendrick.

Again, that testimony in and of itself is not reliable, not trustworthy. And as the judge instructed you, if you are false in part of your testimony, then you're entitled to disbelieve the other parts of the testimony.

But there were other inconsistencies that she presented to you. Again, when Dr. Ponton testified about the, her words, hundreds of instances -- or what

was the word again? "Hundreds of episodes of child abuse." Candace told that to Dr. Ponton.

She also testified in deposition -- go ahead and show that clip. It is Page 30, lines 13 to 14, counsel. It says, and the question:

"Can you tell me about how many times this incident took place where he would use pens?"

And again you recall she testified that Jonathan Kendrick used pens to violate her.

She said: "Several times a month."

"QUESTION: Over what time period? Number of years? All within one year?"

Candace said: "After it escalated?"

"QUESTION: Yes."

"A couple of years," she said.

"When did the abuse stop?"

"When he moved. When Kendrick moved."

Now, I showed you the deposition transcript and indeed what the instructions from the judge about depositions -- that's sworn testimony as if it occurred in court. So you should treat that just as if it was live on the witness stand.

Two, you saw in the deposition testimony, as well, she was told that she had the right to change that transcript if the testimony was incorrect.

She and her attorney knew that, but they never changed it. They didn't even try to qualify that. They didn't say, "Well, that might have been wrong," but she was only 9 to 11. They didn't change that testimony. So keep that in mind.

She also testified in her deposition that the abuse by Kendrick occurred at his house when he lived alone after his marriage to Evelyn Kendrick had ended.

Can you show that? It's at Page 43, line 23, to 44, line 5, counsel.

It says:

"QUESTION: Referring to the abuse that took place at Kendricks's home, was anyone else present during any of those instances?"

"ANSWER: No."

"QUESTION: Was he married at the time?"

"ANSWER: No."

"QUESTION: Did he live alone?"

"ANSWER: Yes."

Again, that was Candace Conti's testimony back in August of last year, and she had the absolute right to change that testimony if she thought she had testified incorrectly. She and her attorney made no changes to that testimony whatsoever. Again, they didn't try to qualify it to say it wasn't totally

accurate. Again, they let that evidence stand.

Here at trial, though, what did we learn?

Again, Mr. McCabe touched on this. The evidence became clear that Jonathan Kendrick only lived at his house alone for three, maybe four weeks.

Evelyn came in -- Mr. Simons called her as a witness -- and she testified that they separated on October 11, 1996. That's when she and Andrea moved out of the house.

It also came out from the next witness, Claudia Frances, that Mr. Kendrick then moved into her and her husband's home in early November. So that's three weeks plus. Maybe four weeks.

Evelyn also testified, when Mr. Simons asked her, "Oh, yeah. We were gone every weekend."

At least that's what Mr. Simons wanted you to believe.

When I went back in on cross-examination, what came out?

In '94, in '95 and January 1 of '96, she moved out in the winter of '96, she and Andrea were out of the home, what, five to eight weekends during that approximately two years and nine months.

It wasn't that Jonathan had free reign of that house on weekends. It's just not what she

testified to. It's not what the Plaintiff would like you to believe.

She did say they were out one or two hours on some Sundays. But again, for what Candace alleges Jonathan Kendrick did, the violations of her that she said he did, the photographing of her when she was naked, all the things that you heard, within an hour or two? Ladies and Gentlemen, I just submit it doesn't add up.

Again, I apologize. I'm not feeling that well today. I kind of came down with a cold. So let me apologize here.

And again, let's talk about the secret agreement that came up. They didn't tell you about that. It didn't come up in opening. The agreement didn't come up in Mr. Simons' direct examination of Ms. Conti.

What also didn't come up was that either during the opening or Ms. Conti's direct examination was that she said she reported Kendrick to the police.

If it was so important to her that Kendrick be stopped, why didn't they bring that up in opening argument? Why didn't she testified to that in her direct examination?

It was only after Mr. McCabe got her to admit

that, "Oh yeah, I forgot, I do have this agreement. I don't want money from Kendrick."

Then she brought up, "Oh well, it was important for me to go to the police."

Well, did they bring a police officer in here to verify that?

They certainly knew how to bring the police in. Officer Davila testified about his 1994 investigation. But they didn't bring anybody in here to confirm that.

And I asked, why?

So what does all this evidence show? I submit to you that the evidence shows that Jonathan Kendrick did not have the unrestricted access to Candace that she said he did.

No other witnesses corroborate what Ms. Conti said happened at the Kingdom Hall. Like I said, there were regular attenders who said they did not see anything like what Ms. Conti said happened.

Neal Conti said that given what his wife had been through, he was even more vigilant with protecting his daughter.

You recall that Kathy Conti said she had been abused as a child. Neal said that as a result of that, he was even more vigilant in protecting his daughter.

Has Plaintiff met her burden of proof here? That's for you to decide. And again, I'm not going to speculate why Candace Conti has given the various versions of events here today. But this does raise questions that you as a judge of fact, I think, should ask and should consider.

Again, I want to be clear, like Mr. McCabe mentioned -- and Mr. Simons suggested that I was being glib with the phrasing of a question, that somehow I condone child abuse?

Don't be fooled by his deliverance on that. Everyone here abhors child abuse. And if Jonathan Kendrick abused Candace Conti, he is the one who should pay. Not the church. Not the congregation.

And to suggest for some reason I condone child abuse is just -- it is just off the charts.

Another point on this case. This case in my experience -- again, I'm probably the spring chicken of the three lawyers here at 59, but this is an unusual case, because I have never seen one of these agreements made with the child abuser like this, that they don't want money from him.

This is a very unusual set of circumstances to have the Plaintiff who said she was abused hundreds of times let the child abuser off the hook. It just

makes no sense.

Were they going to tell you about it? You know, the way this has been handled in this courtroom, I think probably not.

Why? Is there an answer for that?

I'm not sure there is.

Perhaps it is because they wanted to shift the blame.

To who? To the church? To the congregation?

They want to have the church and the congregation do what the Fremont Police didn't do, what the Child Protective Services didn't do, what the DA's office didn't do.

They are asking the same thing. Think about it. The Fremont Police and the Child Protective Services had the same information that the local elders had about Candace Conti.

But who do they want to pay? They want the church, they want the congregation, they do not want Mr. Kendrick to pay.

And I think that -- is that justice?

Let me move to the claimed policy of secrecy that Mr. Simons refers to. And I think far from any policy of secrecy what we presented to you shows that Watchtower, through its publications, through its body

of elder letters exposed the issue of child abuse in our society, not try to hush it up.

The July 1, 1989 letter that reminded the elders the importance of maintaining confidentiality in their church duties, they had to maintain the trust of their congregation members.

The letter specifically dealt with subpoenas, child custody matters, search warrants, criminal matters.

And even when Mr. Simons -- and you will have this letter in the jury room -- Mr. Simons kind of glossed over when he showed you the criminal matters. "Oh, that's child abuse."

Well read that. It says theft, it says assault, it says various things. This was not a letter focused on child abuse.

The one short paragraph that addresses child abuse -- and you have seen it a number of times, we don't have to put it up on the screen here. But first it said call the Legal Department.

Why?

Because Watchtower wants you to comply with your legal obligations in every state. Every state has different reporting laws. So call and see what you have to do in your state.

Second they want to protect the children.

That's what those two or three sentences in that paragraph say.

Mr. Simons tried to portray this letter as some sinister policy of secrecy to avoid lawsuits.

Was this secrecy?

Let's look at the facts.

In November 1993, when the elders met with the Kendrick family, what was the evidence? That they told Evelyn Kendrick and Andrea Kendrick that you could report this to the authorities. You go to the police.

Was that secrecy?

Clearly, the answer is no.

Watchtower was ahead of the curve, not only within religious organizations, but also within organizations at large that deal with youth by publishing and distributing information so that parents or the church members could learn how to protect their children, how to educate them.

You have seen the 1995 Awake article. It says parents should go so far to question your ministers even, that it could be a leader in your church, it could be someone you know down your street, it could be neighbor.

Is that a policy of secrecy?

I don't think so.

Those Watchtower articles also said that victims and parents have the absolute right to report this to authorities.

Is that secrecy?

Go report it to the police?

I think not.

Watchtower also has a longstanding policy that child abusers cannot serve as either ministerial servants or elders.

You heard Mr. Shuster testify on behalf of Watchtower. I think he said he's been an elder since 1979, and that policy draft has been in place at least that long. So that's, what, 30 years plus or more, if my math is correct?

Again, the article helped to educate parents and families about child molesters, what methods they use, what parents can do to protect their children, how parents can work with their children so the molesters don't get access to them.

Clearly this is no policy of secrecy.

What the testimony also shows is that the elders in the local congregation deal with many confidential matters in their role as elders. They deal with couples who have had marital problems, with

families that have issues.

There is a lot of other issues that come up. And the whole function of the elders in those situations is to provide spiritual guidance, direction, spiritual assistance, all based on the teachings of the Bible.

The relationship between elders and the congregation members has to be based upon trust and confidentiality. That is no different than other religious organizations.

And, indeed, it's just like therapists and counselors, who testified in this case about the issue of trust and confidentiality in their relationships.

Remember Laura Fraser? She testified about trust and confidentiality.

You saw the clip of the psychiatrist Dr. Wolfe down in Downey, down at Kaiser. You recall her testimony too, that was videotaped and presented. She addressed the issue of trust within the relationship with a client.

The bottom line is, if members of the congregation thought elders would disclose their information to the others in the congregation, would those members ever go to the elders again?

The answer, I think, is clearly no.

You can call that Dr. Applewhite testified

about that in her testimony, and that's precisely the issue here, is should the elders breach their confidentiality and do certain things?

Also, as of the time this July 1, 1989 letter, confidentiality was already a longstanding Bible-based policy that was needed to protect the privacy of the congregation members.

And let's go to the second page. And if you blowup that highlighted paragraph.

It says:

"The need for elders to maintain a strict confidentiality has been repeatedly stressed."

And then it references the Watchtower of April 1, 1971.

And then it goes to September 1, 1987.

There is also reference to a September 1977. So is this a new policy of confidentiality like Mr. Simons suggests?

This is Bible-based policy, and to suggest that liability can be imposed for a Bible-based policy? That's not what we are here about.

There is also evidence before you that other religious organizations did not undertake educational efforts for families until the Catholic Church crisis was ten, twelve, 15 years ago. But Watchtower was

providing educational material in the 1980s.

Watchtower actually published an article on child abuse itself, separate from sex abuse, in the mid-'70s.

Dr. Applewhite testified that Jehovah's Witnesses far exceeded the standard of care for organizations in educating parents and members on child sexual abuse.

She also testified that the congregation of elders did not fall below the standard of care by not informing the congregation members that Kendrick molested his stepdaughter.

Think about it. If you go to the church, and you know, if there is Catholic confessional, what are they supposed to do?

Mr. Simons suggested, "Oh, we removed Mr. Kendrick. He's a child molester."

So you go to Catholic Church. Do you want the priest to stand up and say, "Well, Mr. Kendrick in pew four, stand up, everyone should know he is a child molester."

Does any church do that?

Does any church organization do that?

Does a PTA do that? Go to parent/teacher association at school. Are they going to stand someone

up and say, "Oh, stand up. Please, identify yourself as a child abuser."

That just doesn't happen.

What is also interesting here, as I mentioned, the police and Child Protective Services are trained professionals, and they have the same information that the elders did. But they aren't here today, they aren't sitting at the table with us.

The bottom line here is that there is simply no evidence that this July 1, 1989 letter is some policy of secrecy. That's purely Mr. Simons' spin on it. And again, it's a smoke screen by the Plaintiff here to suggest that this July 1, 1989 letter somehow affects this case.

What is the other evidence that even suggests that Watchtower is negligent here, that Plaintiff has satisfied her burden of proof with proving that Watchtower is negligent?

Again, Mr. Kendrick was a rank and file member of the congregation. He wasn't an elder. And we probably beat that to death, but that is a key fact here.

He wasn't an agent of Watchtower when Ms. Conti -- when he sexually abused her. The judge instructed you on that. Mr. Kendrick was not an agent

of Watchtower.

Ms. Conti and her lawyer will have you believe that Mr. Kendrick's confession to the elders in November of 1993 creates liability here because they did not announce Mr. Kendrick's sin to the congregation.

What he is suggesting is they should announce, "Oh, by the way, he has been removed, and he did it because he committed the sin of child abuse."

That's what he suggests should have been done.

But remember the role of the elders. They were not police, they were not Child Protective Services. They had no role to protect the public there. The elders were religious leaders within the congregation. Their role was to listen in confidence when Jonathan Kendrick confessed and to assist the families by providing spiritual comfort.

That's the reason they were called to the Kendrick home. And they did their best by opening that meeting with prayer. They had their Bibles with them. They gave spiritual counsel and comfort to the family.

But again, what did they tell Evelyn?

What did they tell Andrea?

You have the absolute right to report this to the authorities.

And within a couple of months that's what they did.

That's not secrecy. That's not negligence.

The elders also took immediate steps. They removed Jonathan Kendrick as a ministerial servant. They announced his removal to the congregation. They monitored him there.

And there is no evidence that anyone in that congregation saw what Ms. Conti said happened there.

No one saw her sitting on Kendricks's lap.

No one saw her being bear hugged against her will by Kendrick, or even with her will.

No one saw a bear hug.

No one saw her leave the Kingdom Hall with Jonathan Kendrick.

Also, it is interesting, I think, about this case. The people most involved with Candace Conti's life in '94, '95, '96, her parents; you have Laura Fraser, her therapist; you have Dana Takamoto, who was her school counselor. We haven't heard from any school teachers. Her grandmother, none of those people suspected she was being abused at that time. And yet the elders are supposed to be responsible? It just doesn't add up.

I submit to you that the elders in this case,

whether it is Watchtower or the congregation, should not be held negligent because they asked the congregation, the elders and whom -- the members of the congregation, that they instilled their trust and confidence in them, that the elders should not be held liable because they followed what the Bible states on confidentiality.

The is scriptural reasons for what the elders did here, and that's been explained to you from the witness stand.

Let's turn to the actual claim that Ms. Conti is making here against the local elders. They say the local elders should inform the congregation that Kendrick sinned by inappropriately touching his stepdaughter.

If they had done that, how would the evidence be different here today?

Remember, no one testified that they saw Kendrick give Candace a bear hug.

No one testified that they saw Kendrick put Candace on his lap.

No one testified that they saw Candace leave the Kingdom Hall by herself with Jonathan Kendrick.

No one testified to any of the things she saw. There were indeed nine witnesses who disputed that.

Would other testimony have presented that the elders breached their vow of confidentiality?

Plaintiff would have you speculate about that. But if those witnesses were out there, they would have been here to testify in this trial the last couple of weeks. They weren't.

They had the opportunity to call witnesses to support their case. You can assume because they didn't bring them in, they don't exist.

Let me try to wrap up here so we can move on. I know you are all pretty eager to get into the jury room with this.

Let me address the issue of punitive damages. As the judge advised you during the instructions this morning, Candace Conti seeks punitive damages only against Watchtower.

Have you thought about that?

Why are they not seeking punitive damages against Jonathan Kendrick?

If he did what Candace alleges, these hundreds of incidents of abuse, why would they not want to punish him?

Punitive damages, by their nature, are to punish. But they don't want to punish Jonathan Kendrick?

It must be a theme from that side of the table. We don't want money from him, and we don't want to punish him, even though if he did these vile things to my client. That's what he's saying.

Does that make sense?

Now, the judge instructed you on the burden of proof for award of punitive damages. It is not preponderance of the evidence; it is clear and convincing evidence. It is much higher burden of proof; it's a much higher standard.

And if you recall, Mr. McCabe illustrated the preponderance of the evidence with the scales. Well, if one scale is slightly longer, that is a preponderance, but that is not clear and convincing evidence. It is more than just the judging of the scale on one side. You have to make a fact highly probable. You have to be persuaded that it is, indeed, a fact.

Now, if you decide that Watchtower's conduct caused Candace Conti harm -- again, I don't think you should do that -- but if you do make that finding, then you have to decide that she and her attorney proved by clear and convincing that Watchtower's conduct justifies an award of punitive damages.

But as I discussed, if you decide that Watchtower was not responsible, that Plaintiff, Candace

Conti, has not met her burden of proof, then there is no need to even address the last question on that verdict form.

And that's what I do ask you to do here. There is no finding of negligence on the part of Watchtower here.

But again, turning to punitive damages, if you do get to that issue, there is three things they have to prove. They have to prove, one, that by clear and convincing evidence. That's Number 1.

Two, that Watchtower acted with malice through a managing agent of Watchtower.

So what does that mean?

Proving negligence is not enough.

Also, proving negligence by a mere agent is not enough.

What does that mean? A mere agent?

Well, the local elders that we talked about, Mr. Shuster, those are agents, but they are not managing agents.

The judge instructed you on what a managing agent was. They have to be able to effect corporate policy, create corporate policy. So any suggestion that any of the elders sitting there in that front row, that their conduct could lead to punitive damages is just

wrong.

The judge defined the term malice for you. And even as Mr. Simons put that up there, I think in reading that, I think that answers the question for you. Malice means that Watchtower acted with the intent to cause injury in issuing that July 1, 1989 letter.

That's quite a statement. Just a statement makes it sound just absolutely false.

The second element of that: Was Watchtower's conduct despicable and done with a willful and knowing disregard?

It has to be despicable and then "and" going to what Mr. Simons talked about with the willful and knowing disregard.

Now, the judge also defined despicable conduct for you. And, again, you are going to have these instructions in the room with you. But if you get to this point -- again, I don't think you should -- but if you get to this point, look at the instruction.

The judge defined despicable conduct to mean conduct that is so vile, contemptible, that it would be looked down on and despised by reasonable people.

That July 1, 1989 letter, does that meet that?

I think clearly not.

And, again, Mr. Simons made it clear. He relies totally on this July 1, 1989 letter. There is nothing else that he relies on to suggest that this was malice as defined by the judge.

We have looked at that letter. We can go through it again? Again, with time moving on, I am going to try to cut this short. But I don't believe there is any evidence in this case that that letter, even with the preponderance standard, meets the malice standard.

But that's not the standard. It is by clear and convincing evidence, you would have to find by clear and convincing evidence that letter was malicious, it was malice, in the way it was, it was despicable. And the evidence just isn't there. It hasn't been presented to you.

Indeed, I think, the only testimony in that letter was favorable testimony from these folks. No one from the Plaintiffs testified about that letter. It is purely a spin from Mr. Simons.

Just in closing -- well, let me just move to closing, so we can move this on. Mr. Simons is going to have the opportunity to give a rebuttal. He gets the last word. The reason the court procedures have it is the party with the burden of proof gets to have the last

word. We can debate whether that is fair or not. But that's what is going to happen.

What you should do when he gives you his rebuttal, think to yourself what questions would Mr. McCabe, what questions would I ask? What information would we have to counter that?

We are not going to be able to get up and talk again after Mr. Simons' rebuttal. So keep those types of things in mind.

Just a few more remarks, as Mr. McCabe mentioned, this case on the Plaintiff's side is about holding the organization responsible for conduct about which it did not know, didn't know what was going on. It didn't happen on its premises; it didn't happen at any organization sponsored activity.

That doesn't just affect this church. It affects other churches, it affects Little League, it affects public schools, it affects Boy Scouts, Girl Scouts, Boys and Girls Clubs, you name it. So this case has implications well beyond this.

I would submit to you that holding any organization responsible under these facts just creates a wrong precedent.

Is that the message you want to send to the community?

I don't think it is.

Particularly when you have got a Plaintiff who is in cahoots with the perpetrator, and saying, well, we are just going to try to shovel fault off and shift it over to the organization.

Fifty-one percent. I don't know how that strikes you, but what Mr. Simons is suggesting you do with 51 percent is, "Hell, Mr. Kendrick, you know 49 percent of what you did wasn't your fault."

Does that make sense to you? Telling a child abuser that 49 percent of what he did wasn't his fault?

I think you can send a message clearly that in this case if something happened to Candace Conti, Mr. Kendrick should be a 100 percent at fault.

I ask you to return a zero percent verdict that, again, Watchtower was not negligent, that the congregation was not negligent, and then we can all move on.

Again, I appreciate your time. I know it has been a long drill for you. We are getting to the end of it. Thanks for your attention. God bless.

THE COURT: All right. And the call is my initiative. I am going to allow Mr. Simons to do his rebuttal now. And there is many reasons for that, including just continuity of argument.

I can assure you we have lunch for you. And again, once he is finished, and it is a rebuttal argument, and there are some inherent limitations to that, we are going to swear Hill. He will become your steward and we are going to set you up for lunch.

I need a couple of minutes with our alternates. I need to address you independently. After which you are going to huddle for lunch together without talking about the case until we put the twelve in the room to commence deliberation. Again, we all have that understanding.

Mr. Simons, to you for rebuttal argument.

MR. SIMONS: Yes, your Honor. May we inquire if anyone needs a quick restroom break?

THE COURT: Would anyone like to take a five-minute break?

Let's take a five-minute comfort break.

Back at 1:20. We will be ready to roll.

(Break taken)

THE COURT: All right. Mr. Simons rebuttal on behalf of the Plaintiff.

REBUTTAL ARGUMENT BY MR. SIMONS

MR. SIMONS: Thank you. Ladies and Gentlemen, this is my opportunity to reply to the

arguments that you have just heard from my colleagues on the defense side.

And first of all, let me say that I am not offended by the kind of, what you might say, attack-type of arguments that we have heard, and particularly once you focus on me, because I understand and I think you should understand that that is part of the give and take of our system.

And it does give you the opportunity to hear everybody's perspective candidly so that you can get a better understanding of what the real dynamics are on the case.

But I want to talk a little bit about the secret deal. Now, first of all, I always thought if it is a secret deal, nobody knows about it. But if the lawyers all know about it, it is not really a secret deal.

But let's go a little further than that.

First of all, let's take a look at Exhibit 18/106. And this is the letter about Jonathan Kendrick sent out to the Oakley Congregation in '09 about Mr. Lamerdin and Mr. Clarke after they met with Candace Conti and she talked a little bit about what the things were that were on her mind, and in particular if we go down to the paragraph there at the very bottom of the

page that is almost all blacked out, her biggest concern seems to be protecting other children from harm.

That was her biggest concern in 2009.

But the reason that letter is interesting is because, as his Honor pointed out, when we had the testimony about the secret agreement that Mr. Kendrick had defaulted on this lawsuit, he had failed to appear and lost all right to be part of the lawsuit, and wasn't in the lawsuit at all until January of this year when, as our May trial date approaches, suddenly out of Oakley comes Mr. Kendrick saying, "I want to have my default vacated, set aside. I want the right to appear in this case and to confront all of the witnesses."

Now, who put him up to that? We don't know. But there he was. And it was quickly decided by Ms. Conti that we were not about to let this case and the important witnesses who had things to say be hijacked by Jonathan Kendrick.

And so the important part of the agreement, if we could see it, is right here. In exchange for not collecting any money against Mr. Kendrick, there is no evidence that he has any, there is evidence he lost his house, but no evidence he has any. Neither he nor his attorneys shall in any way harass, molest, intimidate, contact or annoy Plaintiff, and not only the Plaintiff,

but also Evelyn Kendrick, Andrea, Claudia, Kathleen and Carolyn Martinez.

In other words, Mr. Kendrick was pushed out of this case so that you could hear the truth from these witnesses without being subject to intimidation.

And where was he pushed to? He was pushed to the Fremont Police Department where his plan to stalk whoever he was going to stalk here could be stalked. And that's where the case is, for active investigation.

And so all this secret agreement stuff is really a smoke screen to distract us from what the case has always been about, and that's the policy with regard to known childhood sexual abusers.

So on that question: There were two words that I did not hear from my colleague, Mr. McCabe. One is "field" and the other is "service." He never spoke of the words at all.

And field service is where they are out in the neighborhoods. And Candace was out with Mr. Kendrick. And that's where he got the best opportunity to abuse her.

Now, that is actually related to the Jehovah's Witnesses because field service is what they do. But Mr. Schnack, who did address this subject said, but Carolyn Martinez said she never went to field

service without her parents, and he showed you a book and her testimony about going to the field service meetings before they go out into the field.

Here's what was not mentioned in that particular part of the argument.

Here's Carolyn Martinez:

"And you saw Jonathan Kendrick and Candace Conti together in field service?"

"Yes."

"And more than once?"

"Yes."

"And that was during the time that Candace was still living with her parents? They were married together?"

"Yes."

Well, someone did see something. We heard all the things that people said they didn't see. But we also heard, Number 1, that nobody had any reason to look.

Why would you be looking at Jonathan Kendrick out of all the people in the congregation?

No one knows he is an abuser except a few people at the time, and New York.

So all the nice women who came and testified:

"Did you have any reason to keep an eye on

Jonathan Kendrick?"

"No. Just seemed like another nice man from another nice family," I think one them said, "in the congregation."

And what about not seeing things like, oh, the stuff that Claudia Francis testified about?

You know, if somebody had seen something, we heard from Mr. McCabe, they would have said something.

Well, yeah, but remember Claudia Francis told us at the end of her testimony that it was only after she learned that he had molested Andrea that she then "connected the dots." Those were the words in the question.

And so it is not really fair to say nobody saw anything, therefore, it didn't happen. Nobody looked for anything because they did not have the information that they needed to be able to see what was in front of them.

We have heard a lot of argument about confessions. Actually, what we heard in the testimony was this was not a confession. Kendrick lied to them. He didn't confess anything. They didn't believe him. That's not a confession.

This isn't in some booth like a -- maybe an analogy of a Catholic priest. This is five people. And

it's not a confession. And if it was, something that had the privilege attached to it, it wouldn't be in evidence.

But the instruction we reviewed earlier said all the evidence before you, you may consider. The judge is the gatekeeper here on this issue. And so that argument justifies you of the right to listen to the evidence and consider it, and that's what you should do.

Now, it was also said that it is just like Laura Fraser. But remember what Laura Fraser said about her very first meeting with Candace Conti.

And she said:

"I told her right at the very beginning. There are some things I can't keep in confidence. And if you tell me about sexual abuse, I can't keep that confidential."

So not everything that is said is confidential. And, in fact, "confidential" is, in this case, an excuse to keep secret child sex abuse.

We have heard every major religion, from Dr. Salter, about Methodists, and all the others had adopted resolutions by this time about transparency and reporting and not keeping child sex abuse a secret, except one. And that's the defendants, whose policies are before you now.

We heard that the police should have gone around and done something. Well, you know, Mr. Shuster said it best. He said the Jehovah's Witnesses congregation is like family, and it is a family of people who are together and close and spend a lot of their time together.

The police aren't part of that family. Child Protective Services isn't part of that family. It is not their job to go around and warn the congregation. The congregation already knew.

Officer Davila said the congregation already knew, he knew all the elders knew. Why did he know? He didn't have any evidence from them. He had sufficient evidence to do his job, and he did his job.

The people who did not do right, who did not take the responsibility, and still will not take the responsibility for letting a known child molester in a small family, congregation, get a second kid. That's the folks who are before us in this case.

We heard a little bit about Exhibit 1, and I went through it in such detail. And, again, I just want to raise a question that wasn't answered. Why, if this was nothing secret and nothing new, and just sort of a restatement of the old rules we always had and everyone always knows.

And why, Number 1, is it about lawsuits, about twelve times.

And why, Number 2, is it to be kept locked in the safe, confidential, no one is supposed to see it?

If it is just the average thing that we all deal with, why is it top secret?

It just doesn't make sense. It is like what we said about Mr. Kendrick's supposed confession. He said it was inadvertent, but he was feeling like he needed to confess it.

Why would you confess to something that's inadvertent? They don't fit together.

This doesn't fit together, and that's because the shine that is being put on it isn't true.

What we are seeking to do in this case is to impose responsibility on the people -- on an organization that knew of important information and didn't act on it.

The instruction I went through with you is very clear on what the duty is.

The instruction I went through with you is very clear on what you should consider in terms of the duty.

The instruction that we went through is very clear on what you don't consider.

And all you have to do is read and follow those instructions and apply the evidence, and you will find the responsibility on an organization that refuses to join with every other organization in the country and expose known child molesters before they molest again.

That's what our case is about. That's what our case is about from day one. That's what our case was about before there even was a case. And that's what our case would be about when you have completed your deliberations.

Let me see 60/29 please.

Here is one of the Awakes.

"Overwhelming, damaging and humiliating assault."

Let's see the other quote, please.

"The helpless child cannot run, dare not scream, and dare not tell anyone, but yet she may have to face her abuser every day and act as if nothing happened."

That's the evidence in this case. That, from Awake Magazine, is what happened to Candace Conti.

And Ladies and Gentlemen, to say that it has nothing to do with us when the one piece of information that could have protected her was withheld from her parents.

And believe me, since Kathy Conti had been abused herself, there is no way if she knew about that, she would have ever let her kid anywhere near Jonathan Kendrick. And that's before she became so dysfunctional.

To blame her in '95 and '96 when the abuse was going on and as she said couldn't take care of herself, that's attacking the victim and her family.

To say, well, Mr. Kendrick's house, he was still living Andrea and Evelyn. Well, they were living pretty separate lives, as we heard that Mr. Kendrick knew just how to get them out of the house, start a fight, get them out of the house, he knew when he could bring a kid over here. He knew when the house was empty.

As Candace said, she thought they were already divorced. Evelyn and Andrea were never there. So to take that kind of shot at the victim, that's attacking the victim.

I think in every way that we have heard the numbers of times it happened, numbers of perceptions how this happened and when it happened, when there is corroborating evidence, and we heard people who saw things, but didn't have the information. It is all just a way to attack the victim rather than take

responsibility for what happened, and should never have happened, and should never happen again. Thank you.

THE COURT: Madame Clerk, would you swear our attendant, please.

(Attendant Mr. Hill Martin was sworn)

THE COURT: All right. Mr. Attendant, will you take our jury, and you can all stay for a minute, and I will get you down for lunch in three minutes.

(Whereupon, the following proceedings were heard outside the presence of jurors)

THE COURT: All right. To our alternate jurors, please be seated.

First of all, all the juror admonitions in terms of not discussing the case between yourselves, as a set of alternate jurors or with the jurors, particularly in a moment you will have lunch.

It is my rule that -- let me say this, because I want to say it to all twelve jurors whenever they return a verdict. Each of you was most impressive in terms of your diligence and attention throughout this trial. I always try to walk in other people's shoes. I know with alternate jurors, sometimes it is more difficult because there is a sense you are in a little more different zone.

But each you was very impressive in terms of

your commitment to listening to the evidence and being in a position to judge as a juror.

I want to be very clear in terms of history, and I believe in history, oftentimes we need to replace jurors. So what I do in this department is give you an option. Certainly you are going to have lunch with the jury in a moment. You can be at the courthouse if you would like to be close in the event you are needed.

Or alternatively, if I can have your assurance, if you give me a method of contacting you, whether it is by handheld device or telephone, and that you can return to court within 30 minutes, then I will set you free for that period of time so that you can get back to some normalcy in your everyday life, as long as we have an understanding if I were need to call you that I would be able to get you back here in a reasonably short period of time.

I generally use 30 minutes. If it is 45, we can work with it. But we have 12 jurors, we have the lawyers, we have a number of interested witnesses and participants otherwise here.

So the choice is each of yours whether -- if you are around the courthouse, by the way, we have some very interesting trials going on here. You can do that as long as I know where you are. Or alternatively, go

back to your lives and your daily circumstances.

I can assure each of you if you choose the latter course, that we will call you and make sure you are brought up to speed as to what the jury does in terms of rendering a verdict. I think common courtesy dictates that.

So I can assure you that were you to choose to leave and go otherwise, that we can keep in contact with you and make sure you are fully informed as to what the ultimate result is.

So what would you like to do? Of course, we have this afternoon. The jury can deliberate as long as it takes. I am not the steward of that.

ALTERNATE JUROR: I could be available because I live eight minutes away in a car, 15 minutes on a bus. I can hang around. How long would I be hanging around for?

THE COURT: As long as you want, as long as I can contact you.

ALTERNATE JUROR: But today, not tomorrow, just any time?

THE COURT: Give me your number and then you are fine.

And then gentlemen, what would you guys like to do?

ALTERNATE JUROR: You can call me. I can still be here.

THE COURT: And sir, what would you like to do.

ALTERNATE JUROR: I will just be around here.

THE COURT: Okay. Why don't the two of you come on up here and give my clerk the contact numbers, and then you can keep in contact with Hill as to where you are going to go, and otherwise go and enjoy your lunch.

(Proceedings were adjourned at 3:47 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD, CSR No. 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

JUNE 12, 2012

DAY 8

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A605B8B

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: Kellyk@fjslaw.com

Email: Rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: Jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

JACKSON LEWIS, LLP
BY: ROBERT SCHNACK, ESQ.
801 K Street, Suite 2300
Sacramento, CA 95814
Tel: (916) 341-0404
Fax: (916) 341-0141
Email: Schnackr@jacksonlewis.com

--oOo--

JUNE 12, 2012 8:36 A.M.

PROCEEDINGS

THE COURT: All right. Back on the record that the matter of Conti versus The Watchtower Bible and Tract Society New York, Inc. et al. The jury has -- first of all, Mr. Huey is your foreperson.

He has requested the court as follows:

> "On May 29th, Elders Michael Clarke and Gary Abrahamson were directly examined by the Plaintiff's attorney. The congregation sent a letter, Plaintiff's Number 9 letter, from North -- and then Congregation Body of Elders -- The Watchtower Body of Elders for direction and guidance.
>
> What were the documented and/or undocumented responses and instructions from the Watchtower Body of Elders to the North Congregation?"

I haven't had a chance to research this. I recall the letter in December of 1993. Was there not a response letter that's in evidence?

MR. SIMONS: The response letter is not in evidence because after the redactions there is really nothing left of it.

MR. SCHNACK: I think the answer is "no, it

is not in evidence."

MR. SIMONS: So, no, it is not in evidence then.

THE COURT: Okay. So -- I have got my shoulders squared up. Nice work, Mr. Simons. So let's go back.

And I will go to the Plaintiff first. What would be your suggestion as to how to respond to that request?

MR. SIMONS: Your Honor, there is testimony from Mr. Abrahamson at page 90, of the transcript, line 25, to page 91, line 18.

THE COURT: You're a little quick, Mr. Simons, this morning. So page 90.

MR. SIMONS: Ninety, line 25, to 91, line 18. And there is testimony from Mr. Clarke on the subject at page 183 of the transcript, line 24 through -- page 184 line 5; 183, line 24 to 184, line 5; and also from page 190 from lines 4 through 8.

THE COURT: Defense counsel, any thoughts?

MR. SCHNACK: There is no letter. There is no exhibit. We haven't seen the testimony.

THE COURT: Well, you got me centered. I was just going by memory, non-admissibility as to letter of December of 1993 is my recollection.

The way I would answer it is to say that -- I would refer them that there is testimony regarding the same without necessarily directing onto whom. That may be the subject of read back if they were to request it.

Now, is there any objection if I answer it that way?

And I will give the defense a little time to take a look at that testimony that they asked for because -- you know, I have already given instruction how to ask for a read back, if they have a witness in mind or a specific topic or whatnot.

But, if you would like, we can -- certainly Mr. Simons could help direct you to the quotes he gave you.

MR. SCHNACK: If we could see it, that would be great.

MR. SIMONS: Yes. Sure. I have got it right here.

THE COURT: But the way I would answer it is to say, there has been testimony about the body of elders' reply which may be requested on read back.

MR. SCHNACK: I would like to see whether there was testimony first, so...

THE COURT: Fair enough. So let's take a moment.

(Off the record)

THE COURT: Back on the record. I would reply as to documented responses, that there are no documented responses in evidence. Do we agree on that?

MR. SIMONS: Yes.

MR. SCHNACK: Yes.

THE COURT: All right. Now, there's the second prong as to whether there is undocumented responses and instructions; i.e., testimony as to how I will interpret that.

So I have not seen the referenced testimony from Mr. Simons to defense counsel.

MR. SCHNACK: Your Honor, Mr. Simons referenced testimony to Mr. Abrahamson on page 90, line 25, to page 91, line 18.

That is not responsive.

But the testimony he referenced from Mr. Clarke at page 183, line 24 to page 184, line 5; and on page 190 lines 4 to 8 is responsive.

THE COURT: Mr. Simons. Do you agree or disagree as to --

MR. SIMONS: Well, agree with the part where they agreed with me. I disagree on the Abrahamson testimony, because he says -- the question is:

"Why were you reporting this to Watchtower

New York?"

And the answer was:

"To get direction."

And then:

"In all of your work as an elder that involves anything in this type of matter, you would get your direction and instruction from New York. Correct?

And the answer was:

"In a lot of these cases that legal matters are involved, we are always encouraged to call the legal department because how could we know all the laws?

And the testimony continues:

"You said you were encouraged to call New York. Were you required?"

And he said:

"You might put it that way."

THE COURT: You were what?

MR. SIMONS: Required. He said "encouraged."

And I said:

"You actually were required to call New York?"

And he said:

"You might put it that way."

I said:

"I didn't put it that way. Do you agree?"

And he said:

"I agree that you put it that way."

And I said:

"Do you agree that you were required to call New York?"

And he said: "Yes."

MR. SCHNACK: So the difference, I think, is this conversation is about calling New York. And the question comes from the jury about a document.

THE COURT: Well, it's not. It says undocumented also.

MR. SCHNACK: But an undocumented response, It says, not that the call was made.

THE COURT: I think we are splitting hairs a little bit on that. Give me a second and I will tell you how I'm going to respond to this.

And, again, I'm not looking at the written terms, that was testimony from Messrs. Clarke and Abrahamson?

MR. SIMONS: Yes. Actually, Clarke is the one we agreed on. Abrahamson is the one --

THE COURT: There are no documented responses

in evidence as to undocumented responses.
Messrs. Clarke and Abrahamson testified about saying, and you can request read back as related and the instructions given which say person, content and whatnot.

MR. SCHNACK: Your Honor, perhaps the way to short-circuit, just so we don't have to come back in an hour and have that read back. They're so short. Why not read the responses -- have the court reporter read the responses to the jury?

THE COURT: That's fine with this judge. Now, that goes to process as to how we do read back. And do you have any druthers?

What I generally do, in a request like this, as long as we agreed as to what you read to the jury directly, if you agree as to what she will read.

MR. SIMONS: I find it easier for the court to take the court reporter to the jury rather than take the jury to the court reporter.

THE COURT: I can't have that every which way. And if it is really sophisticated stuff and content is really at issue, I will do that. But on a request like this where we have been provided very specific read back, I have no objection.

Any objection to madame reporter reading the

responses referenced? I wanted to make the record right now as to reference so it is clean, because I know that there is translation in page and lines.

MR. SCHNACK: That was going to be my point that. It really needs to be specific.

THE COURT: We're going to do that right now, because of the translational stuff. So I would reply otherwise now as follows:

> "There are no documented responses in evidence. Madame reporter will read back the germane responses of Messrs. Clarke and Abrahamson."

All right. Now, part of the burden is now on you for a moment, madame court reporter, to be specific as to the -- what you are going to read as to Messrs. Abrahamson and Clarke.

(Brief break)

THE COURT: Back on the record for a minute. I'm looking at the hard copy that was provided to each and all of us.

As to the Clarke testimony it starts with:

> "A. We felt the important thing was that he was an admitted child abuser. He touched his stepdaughter in a sexual way."
>
> Q. And you communicated that?"

A. In a letter, yes."

I think the context is okay. Of course I can't say what is ahead of that.

MR. SCHNACK: That's fine. And that would be on this hard copy, page 190, line 1.

THE COURT: That's up on the top left.

MR. SIMONS: Yeah, lines 1 through 8. Line 9, then becomes a different subject matter.

MS. KRAETSCH: Your Honor, this is page 189.

THE COURT: All right. So let's keep talking for a minute. I have another page here.

MR. SIMONS: I have taken out the pages reduced it to five pages with the testimony highlighted. Maybe that will help us. It is highlighted for our reference.

THE COURT: Why don't you show it to defense counsel, because we are making progress, belatedly.

(Brief Break)

THE COURT: All right. Back on the record. We have taken a bit of time to assess testimony of Messrs. Clarke and Abrahamson in response to the jury foreperson's question. As to Clarke's testimony, it is my understanding it is agreed that Madame Reporter may read Mr. Clarke's testimony to the jury as follows:

"Q. And because of that, you took

certain actions afterwards?

A. Yes. We advised our branch office and told them our position was to remove him as a ministerial servant and immediately responded. They confirmed our assessment and it was announced that he was no longer a ministerial servant."

That's the first aspect of the Clarke testimony.

Second prong of the Clarke testimony:

"Q. The fact that he minimized it or lied about the nature and extent of it, was that important for you to communicate to Watchtower?

A. We felt the important thing was that he was an admitted child abuser. He touched his stepdaughter in a sexual way.

Q. And you communicated that?

A. In a letter? Yes.

Q. And The Watchtower did respond to the letter and he was removed as ministerial servant?

A. Correct. And we announced that."

That is my understanding that that's the

agreed upon Clarke testimony; is that correct?

MR. SIMONS: That's correct.

THE COURT: And, Madame Reporter -- and, actually, counsel have organized, in order, the pages and the testimony. It is yellow highlighted testimony starting "As presented to you."

Going on to the Abrahamson testimony.

"Q. Why were you reporting this to Watchtower New York?

A. To get direction.

Q. And in all of your work as an elder that involves anything in this type of matter, you would get your direction and instruction from New York?

A. Correct. In a lot of these cases that legal matters are involved, we are always encouraged to call the Legal Department because how could we know all the laws. And the laws change from state to state. But our Legal Department could help us through this.

Q. And you used the word "encouraged," but, actually, you are required to call New York.

A. You might put it that way.

Q. I did put it that way. Do you

agree?

A. I agree you put it that way.

Q. Do you agree that you were required to call New York?

A. Yes."

THE COURT: And that is the Abrahamson testimony. Correct?

MR. McCABE: Yes. You could put it that way.

THE COURT: All right. We have worked through that.

So what I'm going to ask you to do, Madame Reporter, is, I'm going to hand you these so you can see them, but you can probably just read it from your machine, whatever you want to do. But we have them lined up person-to-person highlighted testimony. Certainly, anything that has an "X through it is redacted material.

MR. SCHNACK: I have no objection to her reading it from the page, your Honor, just to be safe.

MR. SIMONS: And I agree.

THE COURT: I have no objection either. We can agree that we agree on that.

MR. SCHNACK: You could put it that way.

THE COURT: All right. We are off the record.

(Off the record from 9:17 to 2:56)

MR. McCABE: Back on the record. All counsel are here. The jury requested Reference Table A of 3904 Casey, (B), and we agree that it should be included, I believe. Correct?

MR. SIMONS: We do.

MR. McCABE: Yes. It is hard to read, your Honor. I wonder if we should copy it off the book.

MR. SIMONS: At the risk of being technically dinosauric, I agree.

THE COURT: Okay. Hill, here it is.

MR. SCHNACK: Your Honor, the reporter did not read the entire record.

THE COURT: Apparently Madame Reporter did send me an email, but I was writing decisions so I wasn't looking for it.

MR. SCHNACK: My understanding is she sent us the entire testimony, but the jury asked her to stop at a certain point. And I understand you did stop at that point; is that correct?

THE COURT: Define what point we started and what point we stopped.

MR. SCHNACK: Are we on the record? This is one of the problems with not having it read back in the courtroom is that the court reporter makes decisions

based on what the jury wants, not what your Honor wanted to decide.

THE COURT: We reacted to "We want to hear Dr. Ponton's testimony." It wasn't limited in terms of substance or terms. So were I to get that request again, I might bring the foreperson out just to see if there was any more specific, but we marked what we read to the jury for record purposes.

(Proceedings adjourned at 3:30 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD,CSR 5955

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE, Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al., Defendants.	No. HG115588324 ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

JURY TRIAL

JUNE 13, 2012

DAY 9

JURY VERDICT

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A605B8C

A P P E A R A N C E S:

FOR THE PLAINTIFF:

FURTADO, JASPOVICE & SIMONS

BY: RICK SIMONS, ESQ.

BY: KELLY KRAETSCH, ESQ.

22274 Main Street

Hayward, CA 94541

Tel: 510-582-1080

Fax: 510-582-8254

Email: kellyk@fjslaw.com

Email: rick@fjslaw.com

FOR THE DEFENDANTS:

THE NORTH FREMONT CONGREGATION OF

JEHOVAH'S WITNESSES

THE McCABE LAW FIRM

BY: JAMES M. McCABE, ESQ.

4817 Santa Monica Ave, Suite B

San Diego, CA 92107

Tel: 619-224-2848

Fax: 619-224-0089

Email: jim@mccabelaw.net

(CONTINUED)

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

THE WATCHTOWER BIBLE AND TRACT SOCIETY

OF NEW YORK, INC.

JACKSON LEWIS, LLP

BY: ROBERT SCHNACK, ESQ.

801 K Street, Suite 2300

Sacramento, CA 95814

Tel: (916) 341-0404

Fax: (916) 341-0141

Email: Schnackr@jacksonlewis.com

--oOo--

JUNE 13, 2012 2:41 P.M.

PROCEEDINGS

THE COURT: To our jury foreperson, has the jury reached a verdict?

JUROR: Yes, we have your Honor.

THE COURT: Would you be kind enough to secure the verdict?

COURT ATTENDANT: Here is the verdict as presented.

THE COURT: Madame clerk, would you please read the verdict.

THE CLERK: Ladies and Gentlemen of the jury, you will now listen to the reading of the verdict, omitting the title of the court and cause.

Special verdict.

Number 1: Did Jonathan Kendrick sexually batter Candace Conti?

Answer: Yes.

Number 2: Was the sexual battery by Jonathan Kendrick a cause of harm to Candace Conti?

Answer: Yes.

Number 3: Was Gary Abrahamson as an agent of Watchtower and the North Fremont Congregation negligent?

Answer: Yes.

Was Michael Clarke, as an agent of Watchtower

and the North Fremont Congregation negligent?

Answer: Yes.

Were the elders in the Service Department as agents of Defendant, Watchtower, negligent?

Answer: Yes.

Number 4: For each person or persons who received a yes answer in Question 3, answer the following:

Was Gary Abrahamson's negligence as an agent of Watchtower and the North Fremont Congregation a substantial factor in causing harm to Plaintiff, Candace Conti?

Answer: Yes.

Was Michael Clarke's negligence as an agent of Watchtower and the North Fremont Congregation a substantial factor in causing harm to Plaintiff, Candace Conti?

Answer: Yes.

Were the elders in the Service Department's negligence, as agents of Watchtower, a substantial factor in causing harm to Plaintiff, Candace Conti?

Answer: Yes.

Number 5: What are Plaintiff, Candace Conti's total damages?

A: Future counseling and therapy, $130,000.

B: Non-economic damages, $6,870,000.

Total of A and B $7 million.

Number 6: What percentage of responsibility for Plaintiff, Candace Conti's harm do you assign to the following?

Insert a percentage only for those who received yes answers to Questions 2 and 4.

Jonathan Kendrick, 60 percent.

Watchtower Bible and Tract Society of New York, Incorporated, 27 percent.

North Congregation of Jehovah's Witnesses Fremont, California, 13 percent.

For a total of 100 percent.

Number 7: Did you find by clear and convincing evidence that any of the negligent conduct of Watchtower that was a substantial factor in causing harm to Plaintiff, Candace Conti, was engaged in with malice or by managing agent of Defendant Watchtower?

Answer: Yes.

Signed, Presiding Juror, Hugh Huey, dated June 13, 2012.

THE COURT: Mr. Huey, is that the verdict of the jury?

JUROR: Yes, your Honor.

THE COURT: Would any counsel wish to have

the jury polled?

MR. McCABE: Yes, your Honor.

MR. SCHNACK: Yes, your Honor.

THE COURT: All right. Let's do it collectively, rather than one-by-one.

But as I explained to you in the original instructions, we are going to ask how jurors voted. And as part of the process, to the extent the clerk asked the question as to who voted yes, please raise your hands so we can calculate that, and then we will go question-to-question.

We are going to poll, effectively, each of you through raising your hands.

Okay. All right. Madame Clerk.

THE CLERK: As to Question Number 1: Did Jonathan Kendrick sexually batter Candace Conti?

Please raise your hand if you answered yes.

(Jurors raised hands)

THE COURT: All right. The record should reflect as to Question Number 1, 12 jurors voted yes.

THE CLERK: Number 2: Was the sexual battery by Jonathan Kendrick a cause of harm to Candace Conti?

If you answered yes, please raise your hand.

(Jurors raised hands)

THE CLERK: Twelve.

THE COURT: And the record should reflect, the jury voted 12 yes to Question Number 2.

THE CLERK: Number 3: Was Gary Abrahamson as an agent of Watchtower and the North Fremont Congregation negligent?

If you answered yes, please raise your hand.

(Jurors raised hands)

THE COURT: All right. It appears that 11 jurors voted yes to that.

Do we have one no vote on that?

JUROR: Yes.

THE COURT: Okay. So 11 to 1 vote by the jury. Okay.

THE CLERK: Was Michael Clarke, as an agent of Watchtower and the North Fremont Congregation, negligent?

If you answered yes, please raise your hand.

(Jurors raised hands)

THE CLERK: 11 to 1.

THE COURT: All right. Let me just confirm. One no vote answer?

JUROR: Yes.

THE COURT: All right. Thank you.

THE CLERK: Were the elders in the Service Department, as agents of Defendant, Watchtower,

negligent?

If you answered yes, raise your hand.

(Jurors raised hands)

THE CLERK: 11 to 1.

THE COURT: And it was one no?

JUROR: Yes.

THE COURT: Thank you.

THE CLERK: Number 4: For each person or persons who received a yes answer in Question 3, answer the following:

Was Gary Abrahamson's negligence as an agent of Watchtower and the North Fremont Congregation a substantial factor in causing harm to Plaintiff, Candace Conti?

If you answered yes, please raise your hand.

(Jurors raised hands)

THE CLERK: 11 to 1.

THE COURT: And again, one no vote.

Sir, one no vote?

JUROR: I didn't vote.

THE COURT: Okay. So one abstained?

THE CLERK: Was Michael Clarke's negligence, as an agent of Watchtower and the North Fremont Congregation, a substantial factor in causing harm to Plaintiff, Candace Conti?

If you answered yes, please raise your hand.

(Jurors raised hands)

THE CLERK: 11 to 1.

THE COURT: Juror, did you abstain or no?

JUROR: I didn't vote.

THE COURT: No?

JUROR: Because it is not required.

THE COURT: Okay.

THE CLERK: Were the elders in the Service Department's negligence as agents of Watchtower a substantial factor in causing harm to Plaintiff, Candace Conti?

If you answered yes, please raise your hand.

(Jurors raised hands)

THE CLERK: 11 to 1.

Number 5: What are Plaintiff, Candace Conti's total damages?

Total: $7 million.

If that's correct, please raise your hand.

JUROR: We have a question about that.

THE COURT: Okay.

JUROR: By majority, the jury did vote and agree upon $7 million.

THE COURT: Okay.

JUROR: But if there were others who actually

voted for a different amount, how would you like for us to answer?

THE COURT: We will treat that as a no. But in terms of $7 million, how many voted for $7 million?

(Jurors raised hands)

THE COURT: Okay.

THE CLERK: 9 to 3.

MR. SCHNACK: Can we see the hands again?

THE COURT: Just get them up so there is no question.

(Jurors raised hands)

THE COURT: Thank you.

THE CLERK: Number 6: What percentage of responsibility for Plaintiff, Candace Conti's harm do you assign to the following:

Insert a percentage only for those who received yes answers to Questions 2 and 4.

Jonathan Kendrick, 60 percent.

(Jurors raised hands)

THE CLERK: 11 to 1.

THE COURT: Okay.

THE CLERK: Watchtower Bible and Tract Society of New York, Incorporated, 27 percent.

(Jurors raised hands)

THE COURT: Ten votes for.

THE CLERK: North Congregation of Jehovah's Witnesses Fremont, California, 13 percent.

(Jurors raised hands)

THE CLERK: 10 to 2.

THE COURT: Correct.

THE CLERK: Number 7: Did you find by clear and convincing evidence that any of the negligent conduct of Watchtower that was a substantial factor in causing harm to Plaintiff, Candace Conti, was engaged in with malice by a managing agent of Defendant, Watchtower?

If you answered yes, please raise your hand.

(Jurors raised hands)

THE CLERK: 10 to 2.

THE COURT: Okay. Did you ask about the economic damage, $130,000?

Did we take care of that?

How many voted for the economic damages of $130,000? Can I have hands on that?

MR. SCHNACK: That wasn't asked. Future.

THE COURT: I didn't think it was asked. That's why I'm asking.

Okay. Let's go back in time, because I was just picking up as to whether it had been asked.

I believe the economic damages was $130,000.

Those of you who voted for $130,000 can you raise your hands please?

(Jurors raised hands)

THE COURT: All right. And that was 12 hands.

Can I have counsel up here for a moment.

(Sidebar discussion)

THE COURT: All right, to the jury, I want a show of hands, if I might, as to those who voted for $6,870,000 in non-economic damages.

If I could have a show of hands.

(Jurors raised hands)

THE COURT: Let's see that appears to be 9 to 3 for the record.

All right. Let me address the jury.

In light of your verdict, we need a little bit more help from you in terms of how you answered the last question. It will be a -- by a series of orders, I have made a very -- well, we will certainly be within what I told you in terms of being done with this case by the 15th.

Because of the nature and length of the deliberations that you have just gone through, I'm going to again meet with counsel, and there is going to be -- I hasten to use this term -- a mini trial .

And because you are the jury and just rendered the verdict and you answered the last question that the fashion that you did, there will be a presentation here tomorrow.

And it has to be you because you are the jury. You are the jury for this matter.

In light of the nature and the length of the deliberations to this portion of the verdict, I'm going to ask that you arrive here at 10:00 tomorrow morning.

In the meantime, again, I will be working with counsel to fashion the proceeding contextually within the framework of a mini trial.

I expect the case to be finished this week in terms of what I told you originally. I need to work with counsel a little bit on the detail, but I'm going to request each of you to be here at 10:00 tomorrow morning, and we will work through the course of the rest of the day to assure a presentation in a mini trial tomorrow.

I will look forward to seeing each you each of you in the morning. With the understanding that, again, I have been doing much of the work outside, and I will continue to do so with the view that this case will be presented to you tomorrow.

So thank you all for your time, and I will

look forward to see seeing you at 10:00.

THE CLERK: Your Honor, the verdict has been recorded.

THE COURT: Thank you, Madame Clerk.

(Proceedings were adjourned at 3:09 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this____ day of _____, 2012.

_____

KATHRYN LLOYD,CSR 5955

A136641

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION 3

JANE DOE
Plaintiff and Respondent,

v.

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.
and
FREMONT CONGREGATION OF JEHOVAH'S WITNESSES
Defendants and Appellants

APPEAL FROM THE SUPERIOR COURT, COUNTY OF ALAMEDA
THE HONORABLE ROBERT McGUINESS, JUDGE
Case No. HG11558324

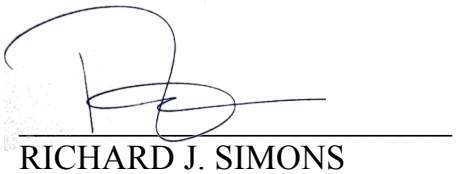
RESPONDENT'S BRIEF

Furtado, Jaspovice & Simons
A Law Corporation
Richard J. Simons, Esq. SBN 72676
6589 Bellhurst Lane
Castro Valley, CA 94552
510/582-1080 Telephone
510/582-8254 Facsimile
Rick@fjslaw.com
Attorneys for Plaintiff/Respondent
JANE DOE

CERTIFICATE OF INTERESTED PERSONS

I know of no entity or person that must be identified under Rule 8.208(d)(1) or (2) of the California Rules of Court.

Dated: June 3, 2013



RICHARD J. SIMONS

TABLE OF CONTENTS

TABLE OF AUTHORITIES v

INTRODUCTION 1

STATEMENT OF FACTS 4

- **A. Defendants Are Aware That Children Participate In Congregation Activities Without Their Parents.** 4
- **B. Defendants Are Aware Child Abusers Are Difficult to Identify, Often Reoffend, And Thrive On Secrecy.** 6
- **C. In 1993 Defendants Learn That Kendrick Had Molested His Stepdaughter Andrea.** 8
- **D. Despite This Knowledge, Defendants Allow Kendrick To Continue To Participate In Congregation Activities Without Taking Steps To Protect Children From Him.** 10
  1. **Pursuant to Watchtower policy, defendants do not inform congregation members that Kendrick is a child molester.** 10
  2. **Although the elders claim to monitor Kendrick, he openly holds and hugs Candace at the Kingdom Hall.** 12
  3. **In fact, defendants assign Candace to perform field service with Kendrick; he uses the opportunity to molest her.** 14
- **E. Defendants Give Improbable And Conflicting Reasons For Their Policy Of Keeping Child Abuse Secret.** 15
- **F. Plaintiff Presents Substantial Evidence That The Real Reason For The Policy Of Secrecy Is So Defendants Can Avoid Litigation And Liability.** 18
- **G. As A Result Of Her Molestation, Candace Suffers Severe And Permanent Emotional And Psychological Harm.** 20

TRIAL COURT PROCEEDINGS 22

ARGUMENT 24

I. DEFENDANTS' SPECIAL RELATIONSHIPS WITH PLAINTIFF AND KENDRICK IMPOSED A DUTY TO PROTECT PlAINTIFF; IN ANY EVENT, THEY COMMITTED ACTUAL *MIS*FEASANCE BY ASSIGNING HER TO FIELD SERVICE WITH KENDRICK. 24

A. Standard Of Review. 24

B. Regardless Of Whether Defendants Owed An Affirmative Duty To Protect Plaintiff, They Committed Misfeasance By Assigning Plaintiff To Perform Field Service With Kendrick. ... 25

C. Defendants' Special Relationships With Plaintiff And Kendrick Imposed On Them A Duty To Protect Plaintiff. 27

1. There was substantial evidence that defendants exerted custody or control over plaintiff. 28

2. There was substantial evidence defendants took charge of Kendrick. 30

3. Defendants' cases are inapposite. 31

D. The Imposition Of A Duty To Protect Plaintiff Is Also Supported By Application Of The *Rowland v. Christian* Factors. 33

1. Forseeability of harm. 34

2. Degree of certainty that plaintiff suffered harm. 35

3. Closeness of the connection between the harm and defendants' conduct. 36

4. Moral blame. 37

5. Policy of preventing future harm. 37

6. Social and financial burdens. 37

7. Societal consequences. 38

II. IMPOSING A DUTY TO WARN DOES NOT VIOLATE THE CONSTITUTION. 38

A. The 1993 Report Was Not A Confidential Or Spiritual Communication. 39

1. Standard of review. 39

2. Substantial evidence established the report was not confidential. 39

B. Imposing A Duty To Warn Of Kendrick's Admitted Prior Acts Would Not Violate His Constitutional Rights. 44

III. THE INSTRUCTIONS ON DUTY TO WARN, THE MANDATORY REPORTING STATUTE, AND ALLOCATION OF FAULT TO OTHERS WERE NOT PREJUDICIALLY ERRONEOUS. 46

A. Standard Of Review. 46

B. The Duty-To-Warn Instruction Was Not Erroneous And Even If It Was The Error Was Waived And Was Harmless. 46

1. The instruction was properly phrased. 47

2. In any event, any defect in the instruction was waived by defendants' failure to request a clarifying instruction. 47

3. Moreover, because it was undisputed that defendants gave *no warning at all*, any error in failing to instruct on the scope of an adequate warning was obviously harmless. 48

C. The "Mandated Reporter" Instructional Error Is Actually A Claim Of Evidentiary Error That Was Invited By Watchtower, Waived By The Congregation, And Was Harmless. 49

D. The Evidence Was Insufficient To Permit The Jury To Allocate Fault To Law Enforcement Agencies Or Plaintiff's Parents. 53

1. Defendants' burden of proof. 53

2. There was no evidence plaintiff's parents had actual knowledge of Kendrick's propensity to abuse children, which is required for imposition of a duty. 54

3. There was no evidence of a special relationship that would support imposition of a duty on the law enforcement agencies. 56

IV. THERE IS NO EVIDENTIARY OR CONSTITUTIONAL BASIS TO VACATE OR FURTHER REDUCE THE PUNITIVE DAMAGE AWARD. 59

A. Substantial Evidence Established Watchtower Was Guilty Of Malice In Keeping Kendrick's Abuse Secret And In Assigning Plaintiff To Field Service With A Known Child Molester..... 59

1. Standard of review. 59

2. Trial court proceedings. 59

3. Substantial evidence supported the finding of malice. 60

B. The Remitted Punitive Damage Award Was Not Excessive And Did Not Violate Due Process Standards. 65

1. Standard of review. 65

2. The jury was properly permitted to consider that the harm to plaintiff resulted from a national policy; the punitive damage award was not based on harm to persons other than plaintiffs. 66

3. The reprehensibility of Watchtower's conduct amply justified the 3:1 punitive-to-compensatory damages ratio. 67

V. DEFENDANTS' FAILURE TO FOLLOW THE RULES OF COURT PREJUDICES THEIR APPEAL. 69

CONCLUSION 70

TABLE OF AUTHORITIES

Cases

Agarwal v. Johnson (1979) 25 Cal.3d 932 48

Alcaraz v. Vece (1997) 14 Cal.4th 1149 25

Amerigraphics, Inc. v. Mercury Casualty Co.
(2010) 182 Cal.App.4th 1538 ..... 65, 68

Bankhead v. ArvinMeritor, Inc. (2012) 205 Cal.App.4th 68 ..... 65, 69

Bickel v. City of Piedmont (1997) 16 Cal.4th 1040 59

Bly-Magee v. Budget Rent-A-Car Corp. (1994) 24 Cal.App.4th 318 58

Bohn v. Dakota County (8th Cir. 1985) 772 F.2d 1433 45

Breland v. Taylor Engineering & Manufacturing Co.
(1942) 52 Cal.App.2d 415 64

Bullock v. Philip Morris USA, Inc. (2008) 159 Cal.App.4th 655 66

C.A. v. William S. Hart Union High School Dist. (2012) 53 Cal.4th 861 ... 34

Cabral v. Ralph's Grocery Co. (2011) 51 Cal.4th 764 24

Chakalis v. Elevator Solutions, Inc. (2012) 205 Cal.App.4th 1557 53

Chaney v. Superior Court (1995) 39 Cal.App.4th 152 ..... 54, 70

Cristler v .Express Messenger Systems, Inc. (2009) 171 Cal.App.4th 72 ... 46

Denton v. City of Fullerton (1991) 233 Cal.App.3d 1636 ..... 57, 70

Doe v. Lincoln Unified School Dist. (2010) 188 Cal.App.4th 758 22

Doe v. Poritz (N.J. 1995) 662 A.2d 367 45

Egan v. Mutual of Omaha Ins. Co. (1979) 24 Cal.3d 809 59

Eric J. v. Betty M., (1999) 76 Cal.App.4th 715 32

Federico v. Superior Court (1997) 59 Cal.App.4th 1207 54

Ferris v. Gatke Corp. (2003) 107 Cal.App.4th 1211 51

Ford v. Polaris Industries, Inc. (1997) 139 Cal.App.4th 755 53

Fry v. Pro-Line Boats, Inc. (2008) 163 Cal.App.4th 970.....51

Giraldo v. Dept. of Corrections & Rehabilitation
(2008) 168 Cal.App.4th 231 .....28, 58

Gombiner v. Swartz (2008) 167 Cal.App.4th 1365 .....27, 49

Grimshaw v. Ford Motor Co. (1981) 119 Cal.App.3d 757.....60

Humphries v. County of Los Angeles (9th Cir. 2009) 554 F.3d 1170 45

In re the Clergy Cases I (2010) 188 Cal.App.4th 1224 .....39, 42, 44

Johnson & Johnson v. Superior Court (2011) 192 Cal.App.4th 757....60, 63

Johnson v. Ford Motor Co. (2005) 35 Cal.4th 1191 66

Juarez v. Boy Scouts of America
(2000) 81 Cal.App.4th 377 .....29, 33, 34, 37, 54

Kleveland v. Siegel & Wolensky LLP (2013) 215 Cal.App.4th 534.....70

Louis & Diederich, Inc. v. Cambridge European Imports, Inc.
(1987) 189 Cal.App.3d 1574 61

Lugtu v. California Highway Patrol (2001) 26 Cal.4th 703 26

Major v. Western Home Insurance Co. (2009) 169 Cal.App.4th 1197.....64

Margaret W. v. Kelley R. (2006) 139 Cal.App.4th 141.....54

Mesecher v. County of San Diego (1992) 9 Cal.App.4th 1677 50

Mitchell v. Gonzales (1991) 54 Cal.3d 1041.....53

Nally v. Grace Community Church (1988) 47 Cal.3d 278.....31

Neal v. Farmers Ins. Exchange (1978) 21 Cal.3d 910 60

New York v. Ferber (1982) 458 U. S. 747.....43

Pamela L. v. Farmer (1980) 112 Cal.App.3d 206 30

People v. Heitzman (1994) 9 Cal.4th 189 30

People v. Rolon (2008) 160 Cal.App.4th 1206 55

People v. Swanson-Bierabent (2003) 114 Cal.App.4th 733.....55

Reynolds v. U.S. (1878) 98 U.S. 145.....43

Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257 ...31

Roby v. McKesson Corp. (2009) 47 Cal.4th 686.....68

Roman Catholic Archbishop of Los Angeles v. Superior Court
(2005) 131 Cal.App.4th 417.....41, 42, 43, 44

Roman Catholic Archbishop of San Diego v. Superior Court
(1996) 42 Cal.App.4th 1556.....32

Romero v. Superior Court (2001) 89 Cal.App.4th 1068.....54, 70

Rowland v. Christian (1968) 69 Cal.2d 108.....33, 34, 38, 47

Santillan v. Roman Catholic Bishop of Fresno
(2012) 202 Cal.App.4th 708.....54, 56

SCC Acquisitions, Inc. v. Central Pacific Bank
(2012) 207 Cal.App.4th 859.....46

Simon v. San Paolo U.S. Holding Company, Inc.
(2005) 35 Cal.4th 1159.....65

Soule v. General Motors Corp. (1994) 8 Cal.4th 548 .....46, 53

Spriesterbach v. Holland (2013) 215 Cal.App.4th 255.....46

State Farm Mutual Auto Insurance Co. v. Campbell
(2003) 538 U.S. 408 .....67, 68

Strong v. State of California (2011) 201 Cal App.4th 1439.....24, 27, 29

Thompson v. County of Alameda (1980) 27 Cal.3d 741 .....57, 70

Transport Ins. Co. v. TIG Ins. Co (2012) 202 Cal.App.4th 984 50

Valmonte v. Bane (2nd Cir. 1994) 18 F.3d 992.....45

Weirum v. RKO General, Inc. (1975) 15 Cal.3d 40 25

White v. Ultramar, Inc. (1999) 21 Cal.4th 563 48

Whiteley v. Philip Morris, Inc. (2004) 117 Cal.App.4th 635 59

Wilson v. Ritto (2003) 105 Cal.App.4th 361 .....53, 70

Statutes

Civil Code

section 3294 60

Evidence Code

section 352 23

section 353 51

Penal Code

section 11165.7 52

Other Authorities

9 Witkin, Cal. Procedure (5th ed. 2008) Appeal

section 433 49

Hamilton, *"Licentiousness" in Religious Organizations*

(2010) William & Mary Bill of Rights Journal 953, 967-968.....43

Restatement Second of Torts

sections 315 28

sections 315-320 28

section 319 30

section 320 28

Rules

California Rules of Court

rule 8.204 ..... 69, 72

Constitutional Provisions

California Constitution

article I, section 4 44

INTRODUCTION

Plaintiff Jane Doe (Candace Conti) was nine years old when the elders of defendant North Fremont Congregation of Jehovah's Witnesses ("Congregation") repeatedly assigned her to participate with Jonathan Kendrick, a man known to them as a child molester, in the Congregation's door-to-door ministry known as "field service." For nearly two years, Kendrick took advantage of this opportunity, taking Candace to his home where he repeatedly sexually abused her.

Before Candace was abused the Congregation elders and the national Jehovah's Witnesses organization, defendant Watchtower New York ("Watchtower"), had *actual* knowledge that Kendrick had sexually abused at least one child. In 1993, Kendrick's wife Evelyn and his 13-year-old stepdaughter Andrea told the elders Kendrick had molested Andrea, placing his hands under her clothing when he thought she was asleep. The elders blamed Evelyn for this, telling her she was not performing her "wifely duties."

Despite knowing the risk Kendrick posed to other children in the Congregation, Watchtower, pursuant to its national policy embodied in Exhibit 1 (8 AA 1973), instructed the Congregation to keep Kendrick's molestation secret. The elders nevertheless continued to allow Kendrick to participate with children in all Congregation activities—including field service.

Ignoring all contrary evidence, defendants minimize their misconduct. They argue they had no special relationship with Candace and hence owed no affirmative duty to protect her. However, regardless of whether defendants owed an affirmative duty to protect plaintiff, their conduct in actively assigning her to participate in field service with a man they knew to be a child molester constituted a *mis*feasance that separately supports the verdict. Furthermore, the trial court's finding of the existence of a special relationship (and hence an affirmative duty to protect) is supported by evidence that defendants (1) exercised custody and control over Candace and (2) undertook to control Kendrick.

Defendants also argue that the affirmative duty imposed by the trial court impinges on their religious freedom. However, it is well established that a religious organization cannot insulate itself from liability by designating legally-proscribed *conduct* as "religious belief." Moreover, the duties imposed on defendants apply equally to similarly-situated secular defendants and hence do not violate the First Amendment.

Defendants assert a variety of instructional errors. First, they claim error in the trial court's refusal to instruct the jury on the requirements of California's mandatory child abuse reporting statute in effect in 1993. The claimed error is actually *evidentiary*, not instructional, because defendants contend the refused instruction was necessary to "correct" expert testimony concerning the mandatory reporting statute. Watchtower invited this error

by eliciting the allegedly improper testimony and the Congregation waived it by failing to object to the testimony. In any event, mandatory reporting responsibilities were not part of the case and thus the trial court properly instructed the jury not to consider the statute or the expert's testimony concerning it in deciding defendant's liability.

Defendants claim error in the court's decision to exclude plaintiff's parents and law enforcement agencies from the special verdict form as potential tortfeasors. However, the evidence was insufficient to raise a prima facie case of liability as to any of these nonparties.

Finally, Watchtower attacks the punitive damage award. First, it contends that the evidence was insufficient to establish malice. Substantial evidence, however, established that Watchtower consciously disregarded the risk that Kendrick, a known child molester, posed to children of the Congregation, including plaintiff. Although Watchtower knew child molesters are difficult to identify and often reoffend, it nevertheless chose to keep secret from Congregation members the fact that Kendrick had abused a child in order to protect itself from civil liability. Furthermore, it actually assigned plaintiff to perform field service with Kendrick.

Second, Watchtower contends the punitive damages were unconstitutionally excessive. The jury awarded $7,000,000 in compensatory damages and $21,000,001 in punitive damages, the latter being remitted by the judge to $8,610,000. The punitive damages were

firmly supported by the reprehensibility of Watchtower's conduct. They were not based on evidence of harm to others because no such evidence was admitted; furthermore, the jury was instructed not to consider any such harm in assessing punitive damages. Finally, the remitted amount was only three times the "base level" of compensatory damages as found by the judge (7 AA 1938)—well within constitutional limits.

Defendants fail to demonstrate any error, much less prejudicial error. Their selective and highly inaccurate reporting of the facts along, with their failure to cite relevant and controlling authority, are tacit admissions that the appeal is without merit. The judgment must be affirmed.

STATEMENT OF FACTS

A. Defendants Are Aware That Children Participate In Congregation Activities Without Their Parents.

Watchtower is the national corporation that establishes, supervises, and implements the legal and administrative policies and procedures for all Jehovah's Witnesses entities in the United States. (WNY AOB 4-5.) The men who make and approve all policies for the many corporate organizations of Jehovah's Witnesses worldwide, including Watchtower, is a group of elders in New York called the "Governing Body." (5 RT 531. (WNY AOB 4-5.)

Local congregations, such as North Fremont Congregation, are separate entities from Watchtower; nevertheless, local congregations have

no discretion to depart from Watchtower's policy mandates. (3 RT 141-142, 229-230.) Local congregation elders may not interpret those policies other than as prescribed by Watchtower. (3 RT 230-231.)

Watchtower appoints the administrators and supervisors of the individual local congregation corporations. (2 RT 139, 141.) The Congregation had about eight to twelve elders. (3 RT 139; 4 RT 405-406.) Watchtower admitted that the Congregation's elders, including Elders Gary Abrahamson, Michael Clark, and Larry Lamerdin, acted as agents of Watchtower in regard to all matters of their activities and duties. (3 RT 205-206.)

Only men are allowed to hold appointed positions within Jehovah's Witnesses, so no mothers or wives could serve as either elders or ministerial servants (the title given to the elders' helpers). (3 RT 147, 149.)

In the 1990s, the North Fremont Congregation had about 120 total members; approximately 25 percent of them were under the age of twelve. (3 RT 139-140, 189.) The Congregation supervised and sponsored numerous activities including field service; both adults and children as young as six participated together. (3 RT 139-140; 5 RT 548-550.) The elders knew that on some occasions children would participate in these activities—including field service—without their parents. (3 RT 140-143.) They also knew there would "undoubtedly" be occasions when parents

would have other Congregation members transport their children to church activities. (3 RT 145-146; 4 RT 437-438.)

Candace and her parents were active members of the Congregation; Candace had been a member "since she was a baby." (6 RT 660-661.) When she was nine and ten years old she spent 15 to 20 hours a week performing field service (5 RT 549; 6 RT 665), trying to be "the best Jehovah's Witness I can be" (6 RT 726).

Field service is the door-to-door ministry of Jehovah's Witnesses. It is preceded by a brief meeting at the Kingdom Hall, after which members go into neighborhoods to "publish" the "Good News." (3 RT 139-140, 142-143, 183-184, 184-185.) Elder Abrahamson, the Congregation's Service Overseer, supervised the assignments of partners for field service. (3 RT 184-186; 6 RT 666, 727.) Members were assigned in pairs to knock on doors in specified neighborhoods. (3 RT 184-185; 6 RT 665.)

B. Defendants Are Aware Child Abusers Are Difficult to Identify, Often Reoffend, And Thrive On Secrecy.

Watchtower published magazines called *Awake!* and *Watchtower* that were distributed to all Jehovah's Witnesses members and made available to the general public. (8 AA 2015; 3 RT 160-161; 5 RT 544-545.) The magazines' articles were approved by the Governing Body. (RT 555-556.) The Congregation's elders read and studied these publications. (3 RT 160-161, 188, 238-239; 4 RT 439.)

Beginning as early as 1985, a number of articles were published in *Awake!* and *Watchtower* concerning child abuse. (8 AA 2014 [1985], 2024 [1991], 2034 [1993], 2047 [1997].) The articles demonstrate that Watchtower, its Governing Body, and the Congregation elders all knew that sexual abuse of children was a widespread problem with as many as 27 percent of girls and 16 percent of boys being sexually molested. (8 AA 2014, 2016, 2025, 2036; 3 RT 258.) They knew it caused "overwhelming, damaging" injury, including "depression, … guilt, shame, and rage" as well as alcohol and drug abuse and post-traumatic stress disorder. (8 AA 2026-2027, 2030.)

They also knew child abusers operate in secret and take advantage of trust relationships (8 AA 2036, 2045; 3 RT 168; 4 RT 436) and that the usual child molester is not a "weird stranger" but a trusted or well-liked person who may hide in a church group and is likely to use "sophisticated and cunning tactics" (8 AA 2017, 2019, 2038; 3 RT 161-162, 168, 258-259; 4 RT 436). They warned parents that at the outset abuse is often disguised as "playful or affectionate conduct." (8 AA 2018; 3 RT 162.) They advised them to "avoid situations that leave our children vulnerable" (8 AA 2019) but acknowledged that "parents cannot always keep … a close watch on their children" and "cannot always be with them" (8 AA 2020).

Defendants knew that many child molesters reoffend—and that it was impossible to predict which would do so. (8 AA 2052.)

Defendants also knew that adults often unwittingly collaborate with child abusers by "fostering a hush-hush attitude about it." (8 AA 2037; 3 RT 165; 4 RT 439.) They recognized that silence gives a "safe haven to abusers, not their victims." (8 AA 2037; 3 RT 165; 4 RT 439.) A "conspiracy of silence," they observed, allowed gross child abuse to persist in the Catholic Church. (8 AA 2037; 3 RT 167, 169; 4 RT 439.)

C. In 1993 Defendants Learn That Kendrick Had Molested His Stepdaughter Andrea.

In 1993, two years before Kendrick began his abuse of Candace, Congregation Elders Abrahamson and Clarke learned that Kendrick had sexually molested his 13-year-old stepdaughter Andrea. (8 AA 1992, 1993; 3 RT 247.) Kendrick gave Andrea Vicodin, then, when he thought she was asleep, entered her bedroom and put his hands down her pants and under her shirt on her breast. (4 RT 342-343.) Andrea was awake enough to roll over, get up, and go into the bathroom; she then immediately told her mother Evelyn (Kendrick's wife) what had happened. (4 RT 293, 343.)

At the time, the Kendrick family belonged to the Congregation. (4 RT 291-293.) Evelyn and Andrea, however, had stopped participating. (8 AA 1992; 3 RT 194.) Nevertheless, after trying for a time to "fix it" herself, Evelyn called an elder because she believed they "were the ones to help us," "they would protect us." (4 RT 293, 294, 301.)

Soon after, Elders Clarke and Abrahamson met with Evelyn, Andrea, and Jonathan at the Kendrick home. (4 RT 294-95.) Evelyn and Andrea informed them that there was skin-to-skin contact beneath Andrea's clothes and that Kendrick had drugged Andrea with Vicodin. (4 RT 294, 295.)

At trial, the elders claimed they were not given this information. (3 RT 158, 159.) They said that at the meeting Kendrick stated he had "inadvertently" touched Andrea's breast over her bra while she was asleep on a couch. (3 RT 152, 153, 191, 216.) Evelyn disputed that Kendrick described the touching as inadvertent. (4 RT 302.) In any event, both of the elders admitted they knew Kendrick's characterization of the touching as inadvertent was a lie. (3 RT 156, 157, 216, 240-241.)

Elders Clarke and Abrahamson also admitted it was "clear" that Kendrick was a child abuser. (3 RT 218.) In keeping with the administrative procedures required upon receipt of a report of child sexual abuse, Elder Clarke immediately called Watchtower for direction and instruction. (3 RT 154, 230, 246.) Elders Clarke and Abrahamson then sent a written report to Watchtower documenting Kendrick's child abuse. (8 AA 1992, 1923; 3 RT 217, 218.)

The written report did not mention that that they believed Jonathan Kendrick had lied in describing the touching as inadvertent. (See 8 AA

1992, 1993 [Exhibit 9].) It stated that Andrea was "now using [the incident] as a tool to threaten with when she wants something." (8 AA 1992.)

Elders Abrahamson and Clark did not seem to be overly concerned about the incident. (4 RT 295, 296.) At the meeting, Jonathan expressed repentance for what he had done and promised he wouldn't do it again. (3 RT 190.) Although the elders knew Kendrick had lied to them and knew child molesters often falsely claim to be repentant, they believed that Kendrick was sincere in his repentance and not a threat to children. (3 RT 166, 191, 203, 204, 219.) They told Evelyn that the molestation was her fault because she had stopped sharing a bed with Kendrick and had stopped performing her "wifely duties." (4 RT 296.)

A few months later Evelyn and Andrea reported Jonathan to Child Protective Services and the Fremont Police. (4 RT 303; 6 RT 646-648.) He was ultimately convicted of a misdemeanor. (4 RT 307; 6 RT 648.)

D. Despite This Knowledge, Defendants Allow Kendrick To Continue To Participate In Congregation Activities Without Taking Steps To Protect Children From Him.

1. Pursuant to Watchtower policy, defendants do not inform congregation members that Kendrick is a child molester.

Pursuant to Watchtower's written policy, the Congregation did not share with members of the Congregation its knowledge that Kendrick had sexually abused a child. (3 RT 222, 230.) The policy was embodied in a July 1989 letter from Watchtower to the bodies of elders of all

congregations. (8 AA 1973-1978 [Exhibit 1]; 3 RT 223-225.)[1] (3 RT 223-225.) A "body of elder letter" was one method used by the Governing Body to communicate administrative policy to local congregation elders. (5 RT 542, 543.) It was undisputed that Exhibit 1 stated Watchtower's national policy on child sexual abuse. (4 RT 423, 424.)

Pursuant to this policy, reports of child sexual abuse within the Jehovah's Witnesses were required to be kept secret. (3 RT 222, 230.) Accordingly, the elders never warned any of the Congregation's members, including those with children, that Kendrick had sexually abused a child. (3 RT 222.)

The elders removed Kendrick from his position as a ministerial servant. (3 RT 166.) Ministerial servants do "administrative and physical things," such as distributing literature to the congregation, handling microphones, seating latecomers, and parking cars in the parking lot. (7 RT 909.) At the time Kendrick molested Andrea he was serving as a ministerial servant, having been recommended for that position by the Congregation elders. (3 RT 147, 221.) His appointment to ministerial servant had been approved by Watchtower. (3 RT 177, 178, 233, 234.) (WNY AOB 7.)

Although the elders announced to the Congregation Kendrick had been removed as a ministerial servant, they did not announce the reason for the removal. (3 RT 244.) Removal of a ministerial servant had occurred

[1] A copy of Exhibit 1 is attached to this brief.

several times before in the Congregation. (4 RT 281, 282.) Servants could be removed for any number of reasons unrelated to child abuse. (3 RT 148.) Removal did not in any way communicate to members the fact that Kendrick had molested a child or that he was at risk to do so again. (3 RT 147, 148; 4 RT 281, 282, 409.)

Dr. Anna Salter, a psychologist who has performed research and child sexual abuse prevention training for organizations in all 50 states, testified that defendants' failure to warn parents violated applicable standards of care for organizations "that sponsor or promote activities that involve adults and children together," (6 RT 671-672, 678, 684, 685, 687, 707.)

2. Although the elders claim to monitor Kendrick, he openly holds and hugs Candace at the Kingdom Hall.

Despite the fact that he was a known child molester, Kendrick was allowed to continue to participate in Congregation activities, including field service, home Bible study groups, and Kingdom Hall meetings; he also continued to hold the titles of "Minister" and "Brother." (3 RT 171; 7 RT 933.)

Elders Clarke and Abrahamson said they placed Kendrick on "restrictions"; they said he was instructed he could not show affection to children, put them on his lap, work with them in field service, or work with

them at the Kingdom Hall. (3 RT 166, 250.) They said he was told the elders would be watching him. (3 RT 250.)

The elders said that in fact they did watch Kendrick, monitoring his relations with children to make sure he was not "too friendly." (3 RT 165, 247-250; 4 RT 420-421.) They asserted he was not a threat to abuse children because they were "keeping an eye on him." (4 RT 435.) They said that if they had observed Kendrick getting "close" to a child they would have informed the parents. (3 RT 165.)

Although the elders claimed they never saw Kendrick violate the restrictions (3 RT 247-249, 253; 4 RT 420-421), there was evidence that he did. At the Kingdom Hall he often hugged Candace, held her hand, held her on his lap, and put his arm around her. (6 RT 663, 723, 738, 739.). In addition, he often isolated her in an open parking lot area next to the Kingdom Hall where children went to play while elders were occupied with pre- or post-meeting greetings and talk (4 RT 280, 281; 6 RT 723-725).

Nevertheless it was undisputed that the elders never informed plaintiff's parents about Kendrick. (3 RT 222.) He was never the subject of discussion at any elders' meeting after the report of his abuse of Andrea. (4 RT 408.)

3. In fact, defendants assign Candace to perform field service with Kendrick; he uses the opportunity to molest her.

Elders Clarke and Abrahamson denied that Candace or any child would ever be assigned to perform field service with Kendrick. (3 RT 171, 248.) Elder Alan Shuster, Assistant Overseer of Watchtower's Service Department, said he "believed" Watchtower had a written policy prohibiting molesters from performing field service with children; no such policy, however, was ever produced. (5 RT 526, 527; 7 RT 933-935.) Elder Abrahamson said he would never assign a child to work with an adult of the opposite sex in field service because it would not be "appropriate." (3 RT 186.) Elder Clarke acknowledged that it would have been "suicidal" to assign Kendrick to perform field service with a child knowing that he had molested Andrea; he claimed the Congregation would not have allowed it. (3 RT 248.) In fact, he claimed Kendrick was not allowed to perform field service without an elder being present. (3 RT 248.)

Nevertheless there was plenty of evidence that in fact Candace *was* assigned to perform field service with Kendrick. She testified that sometimes, when neither parent was available, she went to field service without them and that on some of those occasions she was assigned to perform field service with Kendrick. (6 RT 726-728.) Her testimony was corroborated by Congregation member Carolyn Martinez, who saw Kendrick and Candace in field service together. (6 RT 662, 663, 666.)

Kendrick seized these opportunities to molest Candace. When their field service group began to spread out, Kendrick, saying, "Let's go play," would take Candace in his truck to his house. (6 RT 727-730.) There he would sexually abuse her; the abuse included nudity, oral sex, groping, and insertion of foreign objects into her. (6 RT 729-731.) This routine was repeated many times. (6 RT 730, 731.) Afterwards, Kendrick would take Candace and rejoin the field service group or drive her back to the Kingdom Hall. (6 RT 731.)

E. Defendants Give Improbable And Conflicting Reasons For Their Policy Of Keeping Child Abuse Secret.

Defendants proffered a number of justifications in support of their policy of keeping secret from Congregation members the fact that there was a known child molester among them. Even though defendants viewed parents as the primary protectors against child abuse (3 RT 167), and even though they knew child molesters operated in secret and could be difficult to identify (3 RT 168, 258, 259; 4 RT 436), they nevertheless took the improbable position that knowing the identity of a child molester would not place parents in a better position to protect their children (3 RT 165, 168, 169; 4 RT 438). Elder Lamerdin testified:

> Q. . . . Wouldn't the parents be able to make a better decision of who to trust to take their child somewhere if they knew that one member of the congregation was a known child molester?
>
> A. I would have to say no.

(4 RT 438.)

Elder Abrahamson took the position that providing parents with the traits and warning signs of child molesters was just as effective as telling them a molester's actual identity:

> Q. And so the best way to allow parents to protect their children in the congregation is to identify for them the individuals who are positively identified already as having sexually molested a child.
>
> Don't you agree?
>
> A. How about identifying the traits of individuals. And you can look at a person, and if he shows those traits, and then you have a suspicion, don't let your child go with that. If you have a suspicion, you are under no obligation to let your child go with that person.
>
> Q. Well, from the last Awake Magazine that we looked at, we know that one of those traits might be they are a pleasant, well-liked church group leader?
>
> A. That's true. That has happened.
>
> Q. Wouldn't it have been much more helpful to the parents in the congregation to know what to look for with Jonathan Kendrick and to protect their own children if they knew that he had sexually molested a child?
>
> A. I think this information gives them good ammunition to look at individuals to see how they line up to these situations, and if they would want to trust their children with them. And they can make a call on that.

(3 RT 168-169.)

Defendants also claimed that keeping this information secret was necessary in order to protect the privacy and confidentiality of members. Elder Clarke testified that the confidentiality they sought to protect was that

of the *victims*, not that of the perpetrator; he claimed that it was Andrea and Evelyn—not Jonathan—who requested that Jonathan's molestation of Andrea be kept confidential. (3 RT 226, 227.) But both Andrea and Evelyn disputed this. Andrea said that she did not want it kept private—that she wanted it "out," and that she told others about it soon after it happened. (4 RT 344, 345, 347.) Evelyn testified that at the meeting with the elders neither she nor Andrea asked the elders to keep the matter private, saying, "I wanted them to do something, so I wouldn't have said keep it quiet…." (4 RT 296.)

The Assistant Overseer of Watchtower's Service Department, on the other hand, testified that it was Watchtower's policy to keep reports of child sex abuse secret even if those reporting it did *not* wish it to be confidential. (7 RT 938.)

Furthermore, the report of Kendrick's abuse of Andrea was not kept confidential from everyone. At least some of the elders in the Congregation were told, as were administrators at Watchtower, a separate corporation. (8 AA 1992, 1993; 3 RT 223, 224, 241.) And if a perpetrator moved to another congregation the elders were instructed to notify that congregation's elders of the perpetrator's prior abuse. (8 AA 1995.)

Finally, defendants' position that the overriding reason for the policy was to protect the confidentiality of those involved was inconsistent with

the fact that in certain circumstances they *would* disclose the information to parents. Elder Abrahamson testified:

> Q: And did you tell anyone in the Congregation, the parents in the Congregation who have an obligation to protect their children, that Jonathan Kendrick had sexually molested a child?
>
> A: There was no need to. If we, upon observing Jonathan Kendrick, we saw him isolating a child, we saw him getting close to a child, *then we would inform the parents*.

(3 RT 165, italics added.)

F. Plaintiff Presents Substantial Evidence That The Real Reason For The Policy Of Secrecy Is So Defendants Can Avoid Litigation And Liability.

Exhibit 1 belies defendants' contentions that the purpose of keeping reports of child abuse secret was to protect the confidentiality of those involved. Nowhere does it state that the purpose was to protect either the victims or the abusers. Nowhere does it state such reports were to be kept secret regardless of the desires of the victim. (8 AA 1973-1978.)

Instead, it establishes that the real reason for this policy was to benefit *defendants* by helping them avoid litigation and liability. This theme is repeated throughout the document. Exhibit 1 cautions that those who oppose the Kingdom's work may take advantage of legal processes in order to "interfere with it or impede its progress." (8 AA 1973.) It states, "In recent years, this matter has come to be a cause for increasing concern. The spirit of the world has sensitized people regarding their legal 'rights'

and the legal means by which they can exact punishment if such 'rights' are violated." (8 AA 1974.) It warns,

> If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended. Substantial monetary damages could be assessed against the elders or congregation.

(8 AA 1974.)

The final section of Exhibit 1, entitled "Points to Remember," reiterates this theme. It states, "Unauthorized disclosure of confidential information can result in costly lawsuits." (8 AA 1977.) It directs elders to be careful about putting things in writing and not to make statements to secular authorities without first consulting the Legal Department. (8 AA 1977.)[2]

Watchtower asserts that no witness testified that Exhibit 1 constituted a policy of secrecy. (WNY AOB 54.) But in fact Elder Clarke expressly did so. (3 RT 224.) He testified:

> Q. [B]ut parents were not separately warned that [Kendrick] had committed an act of child sex abuse?
>
> A. No. We don't do that.
>
> Q. And you don't do that because there is a policy that Watchtower New York has provided to you and provided to

[2] Indeed, Exhibit 1 even suggests that the policy of confidentiality may be important to avoid criminal prosecutions: "In some cases where the authorities are involved, certain complications could lead to a fine or imprisonment. These possibilities underscore **the need for elders to be discerning and to follow carefully directions provided by the Society**." (AA 1974, original boldface.)

you before this that says that information is not to be divulged to the congregations?

A. Yes. . . .

(3 RT 222.)

Furthermore, the elders were directed that the policy of secrecy embodied in Exhibit 1 was itself to be kept secret. It was marked "**CONFIDENTIAL**." (8 AA 1973, original emphasis.) A postscript directed that it was not to be copied or read by others and that it was to be kept in the congregation's confidential files. (8 AA 1978.)

Exhibit 1 by itself supports an inference that the true purpose behind the policy of keeping reports of child abuse secret was to further defendants' self-interest in avoiding legal liability for damages, and was *not* to protect the privacy or confidentiality of those involved in the abuse as claimed by defendants.

G. As A Result Of Her Molestation, Candace Suffers Severe And Permanent Emotional And Psychological Harm.

A high percentage of abused children often do not report their abuse for many years. (6 RT 688-690.) Carl Lewis, a retired law enforcement child abuse investigator and trainer, testified as an expert on Child Sexual Abuse Accommodation Syndrome. (5 RT 456.) He explained that children in the 9- and 10-year-old age range often do not know the number of times the were abused, that a victim's normal range of responses to abuse includes "helplessness" when she has no safe person to whom to disclose

the abuse, and that "far and away the most common accommodation mechanism" is to pretend nothing is wrong. (5 RT 464, 467-469.) He said delayed disclosure was a common feature of abused children. (5 RT 465, 466.)

Candace fit these patterns. She did not disclose her abuse for many years; her first instinct was to act like nothing happened. (6 RT 731.) She kept her abuse secret while it was occurring because she was afraid of Kendrick. (6 RT 718-719.) After her parents separated in 1996, she went to family counseling with LCSW Laura Fraser for eighteen months. (5 RT 589-591, 593.) Although Ms. Fraser thought Candace "felt like a child who had been abused," she was "absolutely" not surprised that Candace did not disclose the abuse. (5 RT 607, 608, 632, 633.)

Not until August 2002 did Candace, then 16, tell a physician (Dr Afruma) about the abuse; Dr. Afruma's notes for that date state, "sexual abuse from age 9-?13." (8 AA 2009.) He requested expedited counseling services because the psychiatrist "can't see her until October." (8 AA 2009.)

Although Candace was not using drugs at that time (8 AA 2012), she began to self-medicate with drugs soon after. (6 RT 715.) For several more lost years she was in and out of drug use, having neither real relationships nor steady employment. (6 RT 715, 716.)

All of the mental health experts agreed she suffered from chronic post-traumatic stress disorder (PTSD) secondary to her sexual abuse. (8 AA 2010 [Dr. Afruma]; 5 RT 563 [Dr. Harmatz]; 5 RT 578, 581, 585, 586, 588 [Dr. Walton]; 7 RT 802-806, 810, 811 [Dr. Ponton].) Dr. Ponton diagnosed Candace as suffering from major depressive disorder and concluded that her years of drug use arose in large part from Kendrick's abuse. (7 RT 811-813, 816.)

Candace's chronic PTSD is permanent; it will present episodically for her lifetime. (5 RT 585, 586; 7 RT 815, 816.)

TRIAL COURT PROCEEDINGS

Ms. Conti filed this action in 2011 (1 AA 4), initially appearing as Jane Doe. (See *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 765.) Against Watchtower and the Congregation she alleged negligent supervision and control of Kendrick, negligent failure to warn, and negligent failure to protect plaintiff and other minors participating in religious activities at the Congregation from the risk of sexual abuse by Kendrick. (1 AA 6 [¶7].)

Over defendants' objections of confidentiality and privilege the trial court compelled production the Congregation's 1993 report of Kendrick's abuse Andrea. (2 AA 492, 495.) Defendants did not seek a writ despite the judge's invitation to do so. (2 AA 495.)

The trial granted plaintiff leave to amend her complaint to allege punitive damages against Watchtower. (2 AA 497, 498.)

At the commencement of trial the court again ruled that the report of Kendrick's sexual abuse of Andrea was not confidential and was not protected by a "spiritual privilege." (1 RT 8, 9, 25, 26.) It also partially granted defendants' motion to exclude evidence of Kendrick's sexual abuse of children after he left the North Fremont Congregation in 1997. (1 RT 14.) It also excluded under Evidence Code section 352 Kendrick's 2004 felony conviction for molesting an 8-year-old child in the Oakley Jehovah's Witnesses Congregation. (1 RT 14-16.) Finally, it granted defendants' motion to exclude evidence of other lawsuits or claims against the Jehovah's Witnesses involving child sexual abuse (1 RT 33, 34), reaffirming this ruling during trial (RAB 99-101).[3]

Certain testimony was admitted only as to Kendrick's liability. (3 RT 264; 9 RT 1049.) This included Congregation member Claudia Francis's testimony (1) that she had observed "odd" conduct and heard affectionate terms used by Kendrick towards Candace and (2) that Kendrick had bought a black bra for another young Congregation girl named Brianna, saying "every young girl needs a black bra." (4 RT 324-327.) It also included Evelyn Kendrick's testimony as to Kendrick's fetish for "little girl" sexuality. (4 RT 293.)

[3] "RAB" refers to Respondent's Appendix.

The jury found unanimously that Kendrick abused plaintiff and caused her harm. (5 AA 1285; 10 RT 1216.) They found the Congregation elders and the Watchtower Service Department elders negligently caused harm to plaintiff. (5 AA 1285-1286.) And they found Watchtower guilty of malice. (5 AA 1286.) They awarded compensatory damages of $7,000,000, allocating 60 percent fault to Kendrick, 27 percent to Watchtower, and 13 percent to Congregation. (5 AA 1286.) They awarded $21,000,001 in punitive damages against Watchtower. (5 AA 1299.)

The defendants made a motion for new trial and for judgment notwithstanding the verdict. The motion for new trial was conditionally granted unless plaintiff accepted a remittitur of punitive damages to $8,610,000; the motions were otherwise denied. (AA 1936-1939.) The remittitur was accepted. (7 AA 1941.) This appeal followed.

ARGUMENT

I. DEFENDANTS' SPECIAL RELATIONSHIPS WITH PLAINTIFF AND KENDRICK IMPOSED A DUTY TO PROTECT PLAINTIFF; IN ANY EVENT, THEY COMMITTED ACTUAL *MIS*FEASANCE BY ASSIGNING HER TO FIELD SERVICE WITH KENDRICK.

A. Standard Of Review.

Duty is a question of law for the court and is reviewed de novo on appeal. (*Cabral v. Ralph's Grocery Co.* (2011) 51 Cal.4th 764, 770-71.) However findings of fact giving rise to a duty are reviewed for substantial evidence. (*Strong v. State of California* (2011) 201 Cal App.4th 1439,

1452-53 [appellate court will not "disturb" trial court's "credibility determination" of facts underlying the existence of special relationship]; see *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1162, fn. 4 [court determines legal questions of existence and scope of duty, trier of fact determines existence of facts giving rise to legal duty].)

B. Regardless Of Whether Defendants Owed An Affirmative Duty To Protect Plaintiff, They Committed Misfeasance By Assigning Plaintiff To Perform Field Service With Kendrick.

The rule that, absent a special relationship, an actor has no duty to control the conduct of a third person or warn of that conduct has no application where the actor's negligence consists of misfeasance rather than mere nonfeasance. (*Weirum v. RKO General, Inc*. (1975) 15 Cal.3d 40, 48-9.) Watchtower contends that the trial court did not instruct the jury on liability for misfeasance and that "doing so would have been contrary to the entire record, since there is no evidence that Watchtower interfered in plaintiff's affairs to bring a new harm to her." (WNY AOB 27.) The contention is wrong on both counts.

Contrary to Watchtower's first contention, the trial court in fact instructed on *both* misfeasance and nonfeasance:

> A person or an entity can be negligent by acting or failing to act. [¶] A person or entity is negligent if he, she, or it does something that a reasonably careful person would not do in the same situation or fail[s] to do something that a reasonably careful person or entity would do in the same situation.

(9 RT 1053, 1054; see CACI No. 401.)

Contrary to its second contention, the evidence clearly supported a finding of misfeasance. It showed that field service was a church-sponsored activity that included "publishers" as young as 6 years old (3 RT 140, 184.) When Candace's parents were occupied with her mother's mental disability Candace often participated in field service without them. (6 RT 726, 727.)

The evidence further showed that Elder Abrahamson, as Service Overseer, supervised the Congregation's field service, presiding over field service meetings, systematically assigning members to neighborhoods, and assigning field service partners. (3 RT 184-186; 6 RT 665, 666.) On numerous occasions, Kendrick was assigned to perform field service with Candace. (6 RT 665, 666, 728.) On at least some of these occasions, Kendrick took Candace to his house, molested her there, then returned her either to the Kingdom Hall or to field service. (6 RT 728-731.)

Finally, the evidence showed that Kendrick was paired with Candace despite knowledge (1) that Kendrick had previously molested his stepdaughter and had lied about it (3 RT 152-154, 156, 157, 216, 240, 241, 247; 8 AA 1992, 1993) and (2) that molesters often reoffend, act in secret, and use the trust of a religious setting to accomplish abuse (8 AA 2017, 2019, 2036, 2038, 2045, 2052; 3 RT 161, 162, 168, 258, 259; 4 RT 436).

"Misfeasance" means performing an act that makes "the plaintiff's position worse, i.e., defendant has *created a risk*." (*Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716, italics added.) Defendants

made Candace's position worse by assigning her to field service with a man they knew was a child molester—thereby obviously creating a risk that he would seize the opportunity to molest her.

"When two independent bases exist to support a jury's verdict, one of which is lawful and one is not, a reviewing court presumes the jury's verdict rested on a lawful basis unless the record affirmatively shows otherwise." (*Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1376.) Assuming arguendo that defendants did not owe plaintiff an *affirmative* duty to protect or warn against Kendrick, the verdict should nevertheless be upheld on the basis of plaintiff's independent theory that defendants committed actual misfeasance by sending plaintiff into field service with Kendrick.

C. Defendants' Special Relationships With Plaintiff And Kendrick Imposed On Them A Duty To Protect Plaintiff.

Defendants attack the trial court's findings as to the facts supporting the existence of a duty, specifically the facts giving rise to a special relationship. Watchtower argues that the trial court's factual determination of a special relationship was erroneous. (WNY AOB 23.) The Congregation argues that the trial court's determination lacked "factual support." (NFC AOB 14.) These findings are reviewed for substantial evidence. (*Strong v. State of California, supra*, 201 Cal App.4th 1439, 1452-53.)

Restatement Second of Torts, section 315, states that there is no duty to control the conduct of a third person unless there is a special relation between either (a) the actor and the third person or (b) the actor and the potential victim. (See *Giraldo v. Dept. of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 245 [Sections 315-320 of the Restatement Second of Torts govern imposition of affirmative duty arising out of special relationship].) Here, there was substantial evidence that the defendants had a special relationship with both the third person (Kendrick) and the victim (plaintiff).

1. There was substantial evidence that defendants exerted custody or control over plaintiff.

Watchtower argues that it "did not place the Plaintiff in the care, custody, or control of Kendrick … for any church sanctioned event," (WNY AOB 31) and that Candace "was not entrusted to either Watchtower's or Kendrick's custody." (WNY AOB 32.) The Congregation asserts that "the record is devoid of evidence that Fremont Congregation" "put the Plaintiff in Kendrick's company" or placed her "in a zone of danger." (NFC AOB 36.) These claims misrepresent the record. There was substantial evidence that defendants exerted custody and control over Candace by assigning her to perform field service with Kendrick.

Restatement Second of Torts section 320 states that a special relationship exists where an actor voluntarily takes custody of another and

subjects her to association with persons likely to cause harm. Comment b to section 320 observes that one "who takes custody … of a child is properly required to give him the protection which the custody or the manner in which it was taken has deprived him." Comment c emphasizes the applicability of this rule where the victim is exposed to a person "likely to do him harm from which he cannot be expected to protect himself."

These principles have been applied to impose a duty to protect a child from sexual abuse in schools, homes, and day care centers. (See *Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377, 410 ("*Juarez*"), and cases cited therein.) The key element in these cases is taking custody or control of a child—which carries with it an obligation to care for the child's safety.

Here, substantial evidence supports the trial court's determination that Watchtower and Congregation took custody and control of Candace by assigning her into field service, thereby creating a special relationship with her. (See *Strong v. State of California, supra*, 201 Cal App.4th 1439, 1452-53 [findings of facts giving rise to duty reviewed for substantial evidence].) The trial court properly concluded that this special relationship imposed a duty on the Congregation to protect Candace from Kendrick. That duty obviously extended to Watchtower by virtue of its admission that the Congregation elders acted as its agents. (3 RT 205-206.)

2. There was substantial evidence defendants took charge of Kendrick.

"One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." (Rest.2d Torts, § 319.) To "take charge" of a person within the meaning of section 319 one must possess the ability to control that person. (*People v. Heitzman* (1994) 9 Cal.4th 189, 213.)

The Congregation argues that Kendrick was not in its "care, custody, or control" and that it "lacked the ability to control" him. (NFC AOB 18, 20.) The evidence, however, was decidedly to the contrary. For one thing, defendants clearly took charge of Kendrick when they determined where and with whom he was to perform field service.

In addition, the elders' own testimony established that defendants had the ability to control Kendrick. They testified they placed Kendrick on "restrictions," instructing him as to what he could and could not do. (3 RT 166, 250; see p. 13, *ante*.) They kept an eye on him and would have warned parents if he was "getting close" to a child. (3 RT 166, 247, 249; 4 RT 435.)

In short, there was substantial evidence defendants had the ability to control Kendrick and undertook a duty to protect children from him—even if they failed to adequately perform that duty. Their situation mirrors that in *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206, 210-212, where the

defendant was held to have a special relationship with minors she allowed to use her pool without protecting them against her husband, whom she knew to be a molester. Here the elders brought a known child molester into association with Candace and failed to protect her.

3. Defendants' cases are inapposite.

The cases relied on by defendants are inapposite. Neither *Nally v. Grace Community Church* (1988) 47 Cal.3d 278 nor *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257 involved a minor plaintiff. In *Nally*, a wrongful death case by the parents of an adult suicide victim, the court held that unlicensed non-therapist religious counselors who exercised no custody or control over the decedent owed no duty to refer him to licensed mental health providers. (47 Cal.3d at pp. 293-295.) The court observed that the closeness of the connection between the failure to refer and the suicide was "tenuous" at best, where the religious counselors were aware that the decedent had been under the care of multiple physicians and a psychiatrist. (*Id*. at pp. 296-297.)

Richelle L. involved a suit by an adult parishioner who had an illicit sexual relationship with her priest. There was no counseling relationship between the two and no condition or characteristic of the plaintiff (such as old age or youth) rendered her particularly vulnerable. (106 Cal.App.4th at pp. 280-281.)

Roman Catholic Archbishop of San Diego v. Superior Court (1996) 42 Cal.App.4th 1556 is also factually inapposite. In that case the court affirmed summary judgment against a 15-year-old plaintiff molested by a priest. The undisputed evidence showed that the church "had no prior knowledge or reason to know the priest was a risk to engage in a sexual relationship with a minor." (*Id*. at pp. 1559, 1565.) Furthermore, there was no evidence "the church somehow placed [plaintiff] in [the priest's] custody or control." (*Id*. at p. 1567.)

Finally, in *Eric J. v. Betty M.,* (1999) 76 Cal.App.4th 715, an eight-year-old boy was molested by his mother's boyfriend. The court held that the molester's family had no duty to warn the mother of the molester's prior convictions for child sexual abuse, even though some of the molestations occurred on family members' property. The court held that no special relationship existed between the family members and the mother that would give rise to a duty to warn and that the mere fact the molestations occurred on property owned by the family members did not give rise to such a duty. (76 Cal.App.4th at pp. 727-728.)[4]

[4] The result in *Eric J.* was different for one of the defendants—the molester's sister, Dorothy. She was found to have breached a duty to the molested child by once leaving him alone in her house with her brother. (*Id.* at p. 718, fn. 2.) In the case at bar, defendants' conduct in assigning plaintiff to field work with Kendrick is much more similar to Dorothy's—although much more egregious than Dorothy's.

D. The Imposition Of A Duty To Protect Plaintiff Is Also Supported By Application Of The *Rowland v. Christian* Factors.

Many recent authorities argue that the special relationship duty analysis should be eliminated completely in favor of the traditional duty analysis set forth in *Rowland v. Christian* (1968) 69 Cal.2d 108. (See *Juarez*, *supra*, 81 Cal.App.4th at p. 411 & fn. 10.)

Juarez involved a claim by a youth molested by a scoutmaster during camping trips and other Scout-sanctioned activities, as well as at the scoutmaster's home. (*Id.* at p. 385.) Because there was no evidence the defendants were aware of the scoutmaster's risk to abuse (*id.* at p. 395), summary judgment was upheld on the plaintiff's claims of respondeat superior liability and negligent hiring and supervision (*id*. at pp. 395-397).

Summary judgment, however, was reversed on the plaintiff's claim of negligent failure to take reasonable protective measures to prevent the abuse. (*Juarez*, 81 Cal.App.4th at pp. 397-410.) Division Two of the First District held that the *Rowland* factors supported "imposition of a duty of care on the Scouts to have taken reasonable protective measures to protect Juarez from the risk of sexual abuse by adult volunteers involved in scouting programs…." (*Id.* at p. 409.)

The Jehovah's Witnesses had many activities, including field service, where adults and children participated together. The elders were aware that children, for many reasons, might associate with other

Congregation members in their church activities. The logic of *Juarez* concerning the duty of youth-oriented groups to protect against molestation by adult volunteers applies equally to groups that sponsor and supervise activities in which adults and children participate together, even though the overall purpose of the organization is not exclusively youth-oriented.

The *Rowland* factors are appropriately applied to determine duty in cases of third party institutional liability involving child sexual abuse. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 877 & fn. 8.) Application of those factors to the case at hand overwhelmingly supports the imposition of a duty of protection.

1. Forseeability of harm.

The Congregation argues there is no high degree of foreseeability that Kendrick would molest another girl in the Congregation. (NFC AOB 28-31.) This argument utterly ignores the evidence that defendants knew (1) that persons who abuse a child are at risk to abuse again (8 AA 2052) (2) that Kendrick had abused Andrea and had lied to them about it (3 RT 156, 157, 216, 240-241), (3) that molesters use positions of trust and participate in religious organizations to cloak their intentions (8 AA 2017, 2019, 2036, 2045; 3 RT 161, 162, 168, 258, 259; 4 RT 436), and (4) that molesters are adept at acting in secret so that persons in authority cannot detect them (3 RT 168; 4 RT 436).

This knowledge made it highly foreseeable that sending Candace into field service with Kendrick put her at grave risk of being molested by him. Elder Clarke called it "suicidal" to send a known molester into field service with a child. (3 RT 248.)

The Congregation argues that there was no foreseeability because of the many precautions the elders claimed to have taken to prevent further molestations by Kendrick. (NFC AOB 31.) But the recognition such precautions were needed merely demonstrates the foreseeability of the harm posed by Kendrick.

2. Degree of certainty that plaintiff suffered harm.

Congregation's analysis of the degree of certainty of harm avoids the issue completely. (NFC AOB 32-33.) It attempts to impugn the jury's unanimous finding that Candace was abused by Kendrick and suffered harm as a result by rearguing the evidence. (NFC AOB 33 ["Only the Plaintiff testified that Kendrick acted inappropriately; no one else saw it or knew about it"].) It asserts that the elders "did not observe Kendrick acting inappropriately with the Plaintiff…." (NFC AOB 32.)

The Congregation's argument is not relevant to the question of the certainty of harm. There was no dispute that Candace suffered greatly as a result of the abuse. Every mental health care provider who testified confirmed she suffered serious harm. There was no contrary evidence.

Watchtower implies there is no certainty of harm because Candace "made no mention of this sexual abuse [i.e., the abuse during field service] at her deposition." (WNY AOB 11.) Watchtower does not mention that Candace was *not asked* about abuse during field service at her deposition. (See 6 RT 767.) Candace described her abuse during field service to defense medical examiner, Dr. Williams. (6 RT 767.) Defendants, however, chose not call Dr. Williams to testify at trial.

3. Closeness of the connection between the harm and defendants' conduct.

There was a direct cause-and-effect connection between Congregation elders assigning Candace to field service with Kendrick and his abuse of her during field service. Both Watchtower and Congregation dispute that Candace was abused "during" field service because the abuse occurred at Kendrick's home. The argument is sophistic. The evidence established that the two were assigned to perform field service together and that instead of performing field service Kendrick often took her to his home, molested her, then returned her to field service or to the Kingdom Hall. (6 RT 728, 729, 731.) There can be no doubt that it was defendants' conduct in assigning the two to perform field service together that provided Kendrick the opportunity to molest Candace.

4. Moral blame.

The elders sent Candace into field service with Kendrick with actual knowledge that he had previously molested another child and had lied to them about it. They also knew that molesters are likely to molest again. They acted with both actual knowledge of the risk and reckless indifference to it. They affirmatively placed Candace in a zone of danger. The moral blame is substantial.

5. Policy of preventing future harm.

"Our greatest responsibility as members of a civilized society is our common goal of safeguarding our children…" (*Juarez, supra*, 81 Cal.App.4th at p. 407.) The policy of preventing future harm is best served by imposing on organizations that sponsor and supervise activities in which children and adults participate together a duty to warn and protect against known child molesters.

6. Social and financial burdens.

Congregation paints a doomsday picture of what it terms the "extremely burdensome" responsibility of protecting its members and their children from further acts of molestation by a known child molester in their Congregation. (NFC AOB 40.) The Congregation's scenario is highly exaggerated. The actual burden and can be summed up in three minor responsibilities: (1) actually keep a "watchful eye" on the molester (which defendants claim was done anyway), (2) don't send a known child molester

out into church activities with a vulnerable child, and (3) use the power Elder Abrahamson admitted he had to inform parents of the presence of a known child molester.

7. Societal consequences.

The Congregation warns of "unbridled liability in all instances" and of infringement on the First Amendment right to free exercise of religion if a duty to protect children against a known child abuser is imposed. (NFC AOB 42-44.) It vastly overstates the nature of the duty.

On the other hand, the societal consequences of failing to impose a duty—of tolerating, protecting, and enabling known child molesters to find new victims—are clear. Sexual abuse causes devastating injuries to the victim and to all of society. Child sexual abuse has for too long been seen as a minor problem to be ignored, one unworthy of soiling the public image of important social institutions such as football programs, churches, school districts, the BBC, the Boy Scouts, swim clubs, and others.

In sum, in the circumstances presented here, *all* of the *Rowland* factors favor imposition on defendants of a duty to protect children from an individual they actually knew to be a child abuser.

II. IMPOSING A DUTY TO WARN DOES NOT VIOLATE THE CONSTITUTION.

Watchtower argues that imposing upon it a duty to warn violated its First Amendment right to freedom of religion as well as Jonathan

Kendrick's privacy, liberty, and due process rights. Both arguments are without merit.

A. The 1993 Report Was Not A Confidential Or Spiritual Communication.

1. Standard of review.

The standard of review for rulings rejecting claims of confidentiality and privilege is whether or not substantial evidence exists to support the trial court's determination that the information was not confidential. (*In re the Clergy Cases I* (2010) 188 Cal.App.4th 1224, 1240.)

2. Substantial evidence established the report was not confidential.

Watchtower argues that imposing liability for Candace Conti's molestation during field service violates their First Amendment right to free exercise of religion. It argues that "disclosing information received in confidence from Kendrick, his wife, and stepdaughter would have violated defendants' Bible-based religious beliefs, practices, and policies on confidentiality." (WNY AOB 42.) It further argues, "Maintaining the confidentiality of Congregation members is a fundamental religious precept which defendants believe is directly derived from Scripture." (WNY AOB 46.) Neither the evidence nor the law supports these arguments.

The evidence demonstrated without contradiction that the report of Kendrick's sexual abuse of Andrea was not received in confidence and was not intended to be confidential. The report of Andrea's abuse came from

Andrea and Evelyn—not Jonathan Kendrick. Although defendants characterize it as a "confession," it was not a confession; in fact, Kendrick lied about the incident, saying he had "inadvertently" touched Andrea—implying that he had done nothing intentionally wrong. (3RT 156, 157, 216, 240, 241.)

Neither Andrea nor Evelyn testified that the report was made as part of "religious-based counseling" or as a "confidential communication." In fact, both *denied* requesting the elders to keep the report private. (4 RT 296, 344, 345.) They wanted the elders to do something to stop Kendrick and protect them. (4 RT 293, 294.) When the elders did nothing, Andrea and Evelyn went to the police. (4 RT 303; 6 RT 646-648.)

Furthermore, Elders Clarke and Abrahamson did not in fact keep this "confidential" information confidential. They reported it to both the Legal and Service Departments of Watchtower, a separate corporation, receiving from them "instructions" on how to proceed administratively in the case. (8 AA 1992; 3 RT 154, 230, 246.) They also shared it with other Congregation elders. (3 RT 243.) And, when Jonathan Kendrick changed to a different Jehovah's Witness congregation, if the elders followed Watchtower policy they would have shared the information with that new congregation. (See 8 AA 1995.)

Lastly, Elder Abrahamson admitted that the elders would have shared the information with parents had they observed Kendrick getting too close to a child. (3 RT 165.)

Watchtower cannot "put the genie back in the bottle" by claiming information neither received in confidence, kept in confidence, nor believed to be confidential can be made confidential now simply by labeling it "religious-based." A similar argument was rejected in *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417 ("*RCALA*"). There the Catholic Church sought to overturn a referee's findings and to quash subpoenas issued by the district attorney for records of priests who had sexually abused children. The Church argued that its religious beliefs required the records be kept secret (*id*. at pp. 427-428) and that disclosure would violate the Church's First Amendment right of free exercise of its religion (*id*. at p. 430.)

The Court of Appeal rejected the arguments, observing that the freedom to believe is absolute, but the freedom to act is not. "'Conduct remains subject to regulation to protect society.' [Citation.]" (*RCALA, supra*, 131 Cal.App.4th at p. 430.) The First Amendment, the court said, does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the basis that to do so would violate a religious belief. (*Ibid*.) Reviewing United States Supreme Court cases, the Court stated that laws which burden a particular religious practice but are of

neutral and general applicability do not require justification by a compelling state interest. (*Id*. at p. 431.) The law does not permit anyone to become "a law unto himself" by designating otherwise proscribed conduct as religious belief. (*Id*. at pp. 431-432.)

The *RCALA* court also rejected the argument that production of the priest's records violated the First Amendment's Establishment clause. (131 Cal.App.4th at pp. 434-436.) There is no religious doctrine aspect to the issue of child molestation. (*Ibid*.) Some entanglement between church and state is unavoidable, and as long as it is not excessive it does not violate the constitutional protections religions accept. (*Id.* at pp. 435-436.)

In *Clergy Cases I*, *supra*, the Court of Appeal held that psychiatric counseling records of individual perpetrator-priests of the Franciscan Order must be disclosed publicly over constitutional privacy and therapist privilege concerns. The Court observed that "members of the Catholic Church throughout California have a compelling interest in knowing what treatment the Individual Friars received for their predatory proclivities, and whether it was adequate to protect young parishioners whom they may have encountered in their ministries." (188 Cal.App.4th at p. 1236.) The "compelling social interests in the disclosure of information relating to sexual predators of children" outweighed any constitutional privacy interests. (*Id*. at p. 1235.)

First Amendment protection of religious belief does not protect the practice of polygamy (*Reynolds v. U.S.* (1878) 98 U.S. 145, 164-166) or child pornography (*New York v. Ferber* (1982) 458 U. S. 747, 774). Like child molestation, such practices were never expected by the Framers to be entitled to First Amendment religious protection, as they were never part of established religious practice. As stated in *RCALA, supra*, the issue whether children were molested by priests who worked for the Archdiocese "has no comparable religious doctrine aspect." (131 Cal.App.4th at p. 435.)

Legal commentators have agreed. (See Hamilton, *"Licentiousness" in Religious Organizations* (2010) William & Mary Bill of Rights Journal 953, 967-968.) (See RAB 55-56.)

A defendant's obligation to warn or protect children against molestation by a known child abuser involved in activities sanctioned or sponsored by the defendant is secular, neutral, and not based on religious doctrine. It applies equally and neutrally to both secular and religious defendants. It does not require a jury to interpret religious doctrine or evaluate religious beliefs. In the case at hand, the duty would be the same even if the defendant were the Girl Scouts sending adults and children out to sell cookies or a political group sending them into a neighborhood to solicit signatures on a petition. Imposition of the obligation does not violate the First Amendment.

The argument that the California Constitution, article I, section 4, is violated by a finding of duty in this case is also without merit. The same argument was rejected in *RCALA*, whether based on the compelling state interest test or a lesser standard. (131 Cal.App.4th at pp. 437-440.) Indeed, the language of Section 4 itself recognizes that its protections do not "excuse acts that are licentious or inconsistent with the peace or safety of the State." (Cal. Const., art. I, § 4.)

B. Imposing A Duty To Warn Of Kendrick's Admitted Prior Acts Would Not Violate His Constitutional Rights.

Watchtower argues that imposing "a duty upon defendants to warn members of the congregation that Kendrick had molested a minor" in the absence of their knowledge of his criminal conviction "would violate the fundamental constitutional rights of citizens to privacy, liberty, and due process, and deprive citizens of procedural safeguards…." (WNY AOB 48-52.) The argument is without merit.

As noted earlier, *In re the Clergy Cases I, supra*, 188 Cal.App.4th 1224, upheld the public release of psychological evaluations and progress reports concerning Franciscan friars alleged to have committed child abuse, rejecting a claim that the release violated constitutional privacy interests. (*Id.* at pp. 1234-1236.) The court held that compelling social interests in the disclosure of information relating to "sexual predators of children" outweighed the friars' constitutional privacy interests. (*Id*. at p. 1235.) It

concluded that members of the Catholic Church had a compelling interest in knowing the treatment the friars had received and "whether it was adequate to protect young parishioners." (*Id.* at p. 1236.)

The cases cited by Watchtower are inapposite. They all deal with the governmental disclosure of child abuse by an individual who disputes the government's finding of child abuse. None stands for the blanket proposition that disclosure of such information violates the due process, privacy, or liberty rights of the individual. (See *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170, 1200-1201 [California statute violated due process rights of parents who continued to be listed as child abusers on central index even after being found factually innocent of child abuse]; *Valmonte v. Bane* (2nd Cir. 1994) 18 F.3d 992, 1003-1004 [county's procedure for identifying child abusers on central register violated due process because of demonstrated high risk of misidentification]; *Bohn v. Dakota County* (8th Cir. 1985) 772 F.2d 1433, 1439 [Minnesota statute requiring mandatory reporting of suspected child abuse to and maintenance of records by county authorities did not violate due process]; *Doe v. Poritz* (N.J. 1995) 662 A.2d 367, 372-373 [upholding New Jersey's "Megan's Law"].)

Here, Watchtower has made no showing, either factually or legally, that requiring it to warn parents that Kendrick had inappropriately touched a child would have violated any constitutional right of Kendrick.

III. THE INSTRUCTIONS ON DUTY TO WARN, THE MANDATORY REPORTING STATUTE, AND ALLOCATION OF FAULT TO OTHERS WERE NOT PREJUDICIALLY ERRONEOUS.

A. Standard Of Review.

The propriety of the giving of a jury instruction is a question of law that is reviewed de novo. (*Cristler v .Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 82.) If an instruction is found to be erroneous, reversal is required only when "'it appears probable that the improper instruction misled the jury and affected its verdict. [Citation.]' [Citation.]" (*SCC Acquisitions, Inc. v. Central Pacific Bank* (2012) 207 Cal.App.4th 859, 863; *Spriesterbach v. Holland* (2013) 215 Cal.App.4th 255, 263.)

In determining whether a jury was likely misled the court must evaluate (1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indications by the jury itself that it was misled. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580-581; *Spriesterbach*, *supra*, 215 Cal.App.4th at p. 263.)

B. The Duty-To-Warn Instruction Was Not Erroneous And Even If It Was The Error Was Waived And Was Harmless.

Congregation contends the trial court erred in instructing the jury as follows:

> In determining whether or not Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit, took reasonable protective measures, you may consider the following:
>
> 1. The presence or absence of any warning;

> 2. Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses from the Fremont Congregation of Jehovah's Witnesses, North Unit, members for the purpose of sexual abuse education and prevention; and
>
> 3. Such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures.

(8 RT 987, 988; 9 RT 1054.)

Congregation argues that this instruction was "impermissibly vague regarding the *scope* of the duty" because it "did nothing to clarify" "what a reasonable and proper warning would or should look like." (NFC AOB 46-47, italics added.) The argument is without merit; in any event, any claimed error was (a) waived by a failure to request clarifying instructions and (b) plainly harmless.

1. **The instruction was properly phrased.**

Whether based on their special relationship with Candace, with Kendrick, or with both, or based instead upon general principles of duty arising from a *Rowland v. Christian* analysis, the language of the duty instruction is fairly and accurately phrased. Defendants had a duty to protect Candace from molestation by Kendrick that arose from or occurred during church-sponsored events that their joint agents supervised.

2. **In any event, any defect in the instruction was waived by defendants' failure to request a clarifying instruction.**

Assuming arguendo that the challenged instruction was defective for failing to clarify what a proper warning would be or to otherwise define the

scope of the duty, defendants waived the right to assert that error on appeal. "It is settled that a party may not complain on appeal that an instruction correct in law is too general or incomplete unless he had requested an additional or qualifying instruction." (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 948, cits. omitted, overruled on other grounds in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 574, fn. 4.) Defendants do not contend that the instruction is *incorrect*, only that it fails to adequately clarify the contours of a required warning. Because they requested no additional or qualifying instructions to cure this alleged infirmity the claimed error has been waived.

3. Moreover, because it was undisputed that defendants gave *no warning at all*, any error in failing to instruct on the scope of an adequate warning was obviously harmless.

Assuming arguendo the instruction was erroneous as claimed the error was obviously harmless. First, it was undisputed that defendants never gave a warning of any sort. Consequently, the jury was never called upon to determine "what a reasonable and proper warning … should look like." A failure to instruct on this point therefore could not possibly have affected the verdict.

Second, there was substantial evidence that defendants committed both a misfeasance (by affirmatively assigning plaintiff to perform field service with Kendrick) and a nonfeasance (by failing to protect plaintiff). Nothing in the record, however, suggests that the jury's finding of

negligence was based only on the latter theory. An instruction erroneous on a particular issue is considered harmless "where on another controlling issue or cause of action the verdict or judgment is sustained by the evidence." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 433, pp. 487-488; see *Gombiner v. Swartz, supra*, 167 Cal.App.4th at p. 1376; [if verdict supported by lawful basis and unlawful basis, court will presume it rested on lawful basis unless record affirmatively shows otherwise].) Here, the jury was properly instructed on—and substantial evidence supports—defendants' negligence for misfeasance and. Consequently, any error in the duty-to-protect instruction was rendered harmless.

C. The "Mandated Reporter" Instructional Error Is Actually A Claim Of Evidentiary Error That Was Invited By Watchtower, Waived By The Congregation, And Was Harmless.

Defendants contend the trial court erred in refusing to instruct the jury that clergy members were not required by statute to report child sex abuse to the authorities in 1993. They claim such an instruction was necessary in order to "correct" testimony by plaintiff's expert, Dr. Anna Salter, which (so the argument runs) "confused the jury." (NFC AOB 48-49; WNY AOB 21.) Dr. Salter explained that although California's 1993 mandatory reporting statute did not specifically address the clergy it nonetheless mandated reporting by "people who were involved with children"—which could include the clergy; the clergy was not specifically included in the statute "until a later period of time." (6 RT 693.)

Defendants contend this testimony was improper because "it was not the expert's job to tell the jury what the relevant law required" but was instead "exclusively the province of the trial court to tell the jury what the relevant law required." (NFC AOB 49.)

In short, defendants' *true* complaint is not instructional error but evidentiary error—i.e., that Dr. Salter's testimony should not have been admitted. Defendants admit that the only purpose of the instruction they sought was to correct this error. (NFC AOB 48-49.)

Defendants, however, are precluded from asserting such error because (1) *Watchtower*—not plaintiff—elicited this testimony and thus invited the error and (2) the Congregation failed to object to it or move to strike it, thereby waiving its right to challenge it on appeal. (See 6 RT 693-694.)

Under the doctrine of invited error, a party who by its own conduct induces the commission of error may not claim on appeal that the judgment should be reversed because of that error. (*Transport Ins. Co. v. TIG Ins. Co* (2012) 202 Cal.App.4th 984, 1000) "[W]here a deliberate trial strategy results in an outcome disappointing to the advocate, the lawyer may not use that tactical decision as the basis to claim prejudicial error." (*Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677, 1686.) Here, because Watchtower chose to ask the questions, it should not be heard to complain merely because it did not like the answers. Watchtower invited the alleged

error by introducing the evidence it now claims should not have been admitted.

Furthermore, the Congregation waived the error. Failure to timely object to evidence bars a party from challenging its admissibility on appeal. (Evid. Code, § 353; *Fry v. Pro-Line Boats, Inc.* (2008) 163 Cal.App.4th 970, 974.) Indeed, during colloquy concerning the defendants' proffered instruction, the trial judge commented, "[I]f somebody had objected to the discussion about what the law was at that time, *I would have granted it*…." (9 RT 1022, italics added.) (See *Ferris v. Gatke Corp.* (2003) 107 Cal.App.4th 1211, 1225, fn. 7 [trial judge felt blindsided by party's failure to make timely objection on procedural issue].)

In any event, any error in admitting this testimony was rendered harmless by the instruction the judge ultimately gave. It charged that the mandatory reporting statute was irrelevant to the jurors' determination of the case and they were not to consider it:

> Whether there was a statutory duty to report to lawful authorities a purported incident of child abuse…is a matter of law for determination by the trial Court. Your deliberations are to be based solely upon the evidence presented and instructions given without any consideration whatsoever as to whether there was any statutory duty to report …."

(9 RT 1057, 1058.)

In effect, this instruction was a belated admonishment to the jury not to consider expert testimony (including Dr. Salter's) on the mandatory

reporting statute—and it was belated only because *defendants* failed to request it sooner. It effectively placed defendants in the same position they would have been in had they requested an admonishment at the time the testimony was given. They were entitled to no more.

Moreover, in point of fact Dr. Salter's testimony was factually correct and hence did not need "correcting." Although defendants' record does not include it, plaintiff requested judicial notice of the 1993 version of Penal Code section 11165.7, subdivision (a), a request the trial court eventually denied. (RAB 102-103.) The plain language of the 1993 version specifically included obligations to report on the part of "administrators and employees" involved in "contact and supervision of children" or in "public or private" "youth programs." The law did not exclude ministers or members of the clergy who fell within these more general categories.

The Congregation also erroneously claims—without a supporting record cite—that its instruction was required because plaintiff's counsel argued in closing that the Congregation elders were mandatory reporters. (NFC AOB 49.) In fact, no such argument was ever made.

In any event, any conceivable instructional error on this point was harmless. The testimony devoted to mandatory reporting was minimal. The jury did not request a rereading of any instructions, no other instruction on duty or negligence referred to the mandatory reporting issue, plaintiff's counsel did not argue the issue, and the jury's 11-1 verdict on negligence

(11 RT 1216-1217) was not close. (See *Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1055 [10-2 verdict "not particularly close"].) There is absolutely no indication that the jury was misled or that it found liability against either defendant based on its failure to report Kendrick's molestation of Andrea. None of the factors for assessing prejudice of instructional error is met. (See *Soule v. General Motors Corp., supra*, 8 Cal.4th at pp. 580-581.)

D. The Evidence Was Insufficient To Permit The Jury To Allocate Fault To Law Enforcement Agencies Or Plaintiff's Parents.

1. Defendants' burden of proof.

Defendants claim prejudicial error in the trial court's refusal to instruct on the allocation of fault to "other parties" and to include on the special verdict form Candace's parents (Neil and Kathleen Conti) and law enforcement agencies who were aware in 1994 of Kendrick's molestation of Andrea.

A nonparty may be included on a special verdict form as a person to whom fault may be allocated only if a prima facie case has been presented establishing that person's legal duty, breach of the duty, and causation of the injury. (*Ford v. Polaris Industries, Inc.* (1997) 139 Cal.App.4th 755, 778-780; *Chakalis v. Elevator Solutions, Inc.* (2012) 205 Cal.App.4th 1557, 1569-1570.) The burden is on defendants to present a prima facie case. (*Wilson v. Ritto* (2003) 105 Cal.App.4th 361, 369-70.)

2. There was no evidence plaintiff's parents had actual knowledge of Kendrick's propensity to abuse children, which is required for imposition of a duty.

Defendants claim that plaintiffs' parents owed plaintiff a legal duty to protect her from Kendrick's abuse. (WNY AOB 40; NFC AOB 51.) They point out that the parents had received *Awake!* and *Watchtower* articles on child abuse which informed them of steps they could have taken to protect plaintiff from child abusers. (WNY AOB 40; NFC AOB 51.) They contend actual knowledge by the parents of Kendrick's propensity to molest children was not required.

The contention is without merit. In fact, a prima facie case against parents for failing to protect their child against abuse by a third party requires proof of *actual* unambiguous knowledge of the perpetrator's assaultive propensities. (*Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1080; *Chaney v. Superior Court* (1995) 39 Cal.App.4th 152, 157-158; see also *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 719-721, citing *Federico v. Superior Court* (1997) 59 Cal.App.4th 1207, 1216; *Juarez, supra*,. 81 Cal.App.4th at p. 396; *Margaret W. v. Kelley R.* (2006) 139 Cal.App.4th 141, 152, 159-160 [host of sleepover had no duty to prevent rape of teenager where host had no actual knowledge of assaultive propensity of boys teenager left with].)

The fact that Neil and Kathleen Conti allowed Kendrick to drive their daughter places at times when they were absorbed with Kathleen's

mental health disability fails to establish their actual knowledge of Kendrick as a molester and hence fails to support imposition of a duty on them to protect Candace from Kendrick. It is in fact consistent with Elder Abrahamson's unsurprising testimony that parents would sometimes get other Congregation members to drive their children to an event the parents were unable to attend. (3 RT 145, 146.) This evidence supports the need for elders to warn parents of a child molester in the small congregation.

The authorities cited by defendants are inapposite. Although Watchtower contends plaintiff's parents violated a "statutory duty," it cites no authority in support. (See WNY AOB 40.) The Congregation cites only two criminal cases, *People v. Swanson-Bierabent* (2003) 114 Cal.App.4th 733 and *People v. Rolon* (2008) 160 Cal.App.4th 1206, neither of which applies. In both, a parent was convicted of aiding and abetting child abuse based upon evidence of the parent's contemporaneous *actual* knowledge of the abuse. In *Swanson-Bierabent*, the evidence showed that the victim's mother was watching when her boyfriend molested the victim. (114 Cal.App.4th at pp. 741-742.) Similarly, in *Rolon*, a mother not only watched the father throw their child against a wall and punch him in the chest, she actually helped cover up the child's death by helping to burning the body. (160 Cal.App.4th at pp. 1210-1211.)

Defendants also argue that Neil Conti was negligent because he "was present" when Kendrick abused Candace on an Amtrak train and did

nothing to protect her from it. (NFC AOB 51; WNY AOB 11.) The Congregation, misquoting the record, claims this occurred "in plain view" of Mr. Conti. (NFC AOB 5, citing 6 RT 745-746.)

In fact, the evidence established only that plaintiff was "running from table to table or something" when Kendrick grabbed her and stuck his hand up her shirt while Mr. Conti was sitting "across the way from us" on the other side of the table. (6 RT 745-746.) Plaintiff did not say her father was watching them or even looking in their direction. Nor did the evidence show whether his view was clear or whether it may have been obstructed by the table or by Mr. Kendrick himself. Plaintiff testified only to where he was sitting.

Furthermore, even if Mr. Conti had seen Kendrick stick his hand up plaintiff's shirt, the evidence failed to establish that this could be perceived only as intentional, unambiguous sexual conduct as opposed to, for example, an inadvertent act.

In short, the evidence was insufficient to establish Mr. Conti's actual knowledge of unambiguous sexual conduct on the part of Kendrick. (See *Santillan, supra*, 202 Cal.App.4th at pp. 719-720.)

3. There was no evidence of a special relationship that would support imposition of a duty on the law enforcement agencies.

Watchtower and Congregation argue that the Fremont Police Department, Child Protective Services, and the Alameda County District

Attorney were at fault because each knew in 1994 that Jonathan Kendrick had abused his stepdaughter and did not warn plaintiff or her parents. (WNY AOB 37.) Both claim that the failure to include these agencies on the verdict form was a violation of the First Amendment, because it "*singled out the Defendants for special treatment*." (WNY AOB 41, original italics; NFC AOB 52.)

Absent a "special relationship," law enforcement or other public agencies have no duty to warn citizens of an individual who presents a danger to others. (*Denton v. City of Fullerton* (1991) 233 Cal.App.3d 1636, 1640-1641.) In *Denton*, the Court of Appeal held that police officers aware of a sexual assault in an apartment complex laundry room had no duty to warn residents of the risk of sexual assaults on the property. *Denton* relied on *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, where it was held that, absent a threat "to a readily identifiable victim or group of victim," county employees had no duty to warn neighbors that a juvenile released from detention might constitute a danger to them. (*Id.* at p. 758.)

Here, there was no evidence that any public entity had any relationship at all with Candace or her parents or that they placed her in Kendrick's custody of Mr. Kendrick. The trial court properly observed that under these circumstances imposing a duty on law enforcement agencies would be "incredibly burdensome." (8 RT 966-967.)

Watchtower's argument that it is being treated differently than law enforcement agencies in violation of the First Amendment is without factual or legal support. First, unlike the law enforcement agencies, Watchtower's liability was based not only on its failure to protect plaintiff but also on its affirmative negligence in assigning plaintiff and Kendrick to perform field service together. Second, Watchtower's duty to protect Candace arose from its special relationships with her and with Kendrick; in contrast, as set forth earlier, the law enforcement agencies had no special relationship with either of these individuals. There was no disparate treatment.

Defendant's reliance upon *Bly-Magee v. Budget Rent-A-Car Corp.* (1994) 24 Cal.App.4th 318, is misplaced. There, law enforcement officers and agencies were properly included on the verdict form because the plaintiff claimed she was assaulted by another while incarcerated. (*Id.* at p. 321.) Obviously, the fact that the plaintiff was under the officers' and agencies' custody and control by virtue of her incarceration gave rise to a special relationship and hence to a duty. (See *Giraldo v. Dept. of Corrections and Rehabilitation, supra*, 168 Cal.App.4th 231, 250-251.)

IV. THERE IS NO EVIDENTIARY OR CONSTITUTIONAL BASIS TO VACATE OR FURTHER REDUCE THE PUNITIVE DAMAGE AWARD.

A. Substantial Evidence Established Watchtower Was Guilty Of Malice In Keeping Kendrick's Abuse Secret And In Assigning Plaintiff To Field Service With A Known Child Molester.

1. Standard of review.

A jury's finding of malice is reviewed for substantial evidence. (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 821.) Under that standard

> the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below. We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.

(*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, internal cits. & quotation marks omitted; see *Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635, 678 [party claiming insufficiency of evidence assumes a "'daunting burden'"].)

2. Trial court proceedings.

The jury found by clear and convincing evidence that Watchtower was guilty of malice. (5 AA 1286.) Watchtower moved for a new trial and judgment notwithstanding the verdict, arguing that the evidence of malice was insufficient and that the $21,000,001 award of punitive damages was excessive. (5 AA 1357, 1366-1370.) The trial court upheld the jury's finding of malice but conditionally granted a new trial unless plaintiff

accepted a reduction of the punitive damages to $8,610,000. (8 AA 1936-1939.)

3. Substantial evidence supported the finding of malice.

Watchtower's argument that no substantial evidence supports the jury's finding of malice essentially credits its theory of the evidence and ignores plaintiff's. In fact, the evidence easily supports the finding of malice.

"Malice," in the context of punitive damages, means "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code § 3294, subd. (c)(1); *Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 765-766 [evidence of malice sufficient where it showed defendant had responsibility to warn of drug side-effect but failed to warn despite knowing such failure could cause harm].) It is well established that malice may be proved by circumstantial evidence. *(Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 923, fn. 6; *Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 787 [circumstantial evidence admissible to establish motive since direct evidence on such facts rarely available].)

Here, substantial evidence established that Watchtower knew that child abusers are difficult to identify, operate in secrecy, frequently reoffend, and can cause "overwhelming" injury. (Statement of Facts, § B, *ante*.) It also established that Watchtower, upon being informed that

Kendrick had abused his stepdaughter, directed the elders to keep this information secret from Congregation members pursuant to its national policy as embodied in Exhibit 1. (Statement of Facts, § D1, *ante*.) And it established that Watchtower's purpose in doing so was to evade liability for damages. (Statement of Facts, § F, *ante*.)

Based on this evidence, the jury could justifiably conclude that Watchtower, knowing there was a risk Kendrick might molest a child of the Congregation and thus cause overwhelming injury to the child if parents were not warned about Kendrick, nevertheless consciously chose not to warn in order to promote its own self-interest in keeping incidents of child abuse quiet. In short, there was substantial evidence that Watchtower willfully and consciously disregarded the rights and safety of the Congregation's children and engaged in despicable conduct.

Watchtower contends that the "primary thrust" of Exhibit 1 "was to remind elders of Scriptural direction concerning confidential communications." It argues that another purpose was "to protect victims of child abuse and comply with all applicable legal obligations." (WNY AOB 55.) The jury, however, was entitled to reject these contentions and conclude that the true purpose of Exhibit 1 was to insulate the Jehovah's Witnesses from adverse legal claims. (*Louis & Diederich, Inc. v. Cambridge European Imports, Inc.* (1987) 189 Cal.App.3d 1574, 1584-1585 [it is for jury to determine which of multiple inferences is to be

accepted and reasonable inference from circumstantial evidence may be accepted over direct evidence to contrary].)

The evidence supported an inference that the "primary" if not *sole* purpose of Exhibit 1 was not to provide "Scriptural direction" but was instead to promote defendants' own monetary interest in avoiding legal liability for damages. (See Statement of Facts, § F.) Its opening sentence provides, "We are writing to help all of you as individual elders be aware of a growing concern regarding the handling of your duties that may involve *legal* issues or questions." (8 AA 1973, italics added.) It states, "Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society." (8 AA 1973.)

Furthermore, elders were directed to keep the contents of Exhibit 1 a secret. (See 8 AA 1973 ["**CONFIDENTIAL**"], 1978 [postscript].) Why would it be necessary to keep "Scriptural direction concerning confidential communications" secret from Congregation members? Wouldn't they also benefit spiritually from this information?

Substantial evidence established that, in deciding to keep secret the presence of a known child molester, Watchtower willfully and consciously disregarded the safety of its child members and subordinated that safety in favor of promoting its own interest in avoiding potential civil liability. Such evidence is no less a valid basis for punitive damage liability than evidence that a manufacturer willfully and consciously chose to keep secret an

injury-causing defect in one of its products. (See *Johnson & Johnson v. Superior Court, supra*, 192 Cal.App.4th at p. 767.)

In asserting an absence of malice Watchtower points to its conduct in advising victims concerning reporting violations and in educating parents concerning the scourge of child molestation. (WNY AOB 55-56.) This evidence, however, was irrelevant to plaintiff's claim of malice. Plaintiff claimed malice based on the failure to warn about Kendrick—not on a failure to report him to authorities or to educate parents generally about child abuse. In any event, as the trial judge concluded, "The net effect of defendant's decision not to disclose was to imperil the safety of each child in a small congregation and thoroughly undermine defendant's teachings and understanding of child molesters and the methods of dealing with them as reflected in their writings distributed to the congregants on a national basis." (8 AA 1938.)

Finally, separate and apart from Exhibit 1, the evidence that defendants assigned Candace to perform field service even though they knew he had molested his stepdaughter also supports the finding of malice. The elders obviously knew that assigning a child to perform field service with Kendrick would pose a grave risk to the child. (3 RT 248 [such an assignment would be "suicidal"].) Although the Congregation elders testified that Kendrick was never assigned to perform field service with a child and indeed was not allowed to perform it without an elder (3 RT 186,

248), the jury necessarily rejected this testimony in favor of plaintiff's evidence that in fact she was assigned to field service with Kendrick. (6 RT 662-663, 666, 726-727, 728.)

The jury was also entitled to conclude that Elder Abrahamson, who oversaw field service assignments for the Congregation and was admittedly an agent of Watchtower, was a "managing agent" for the purpose of assigning field service partners. (See *Major v. Western Home Insurance Co.* (2009) 169 Cal.App.4th 1197, 1220-21.) Although Elder Shuster testified he "believed" Watchtower had a written policy against assigning molesters performing field service with children, the policy was never produced. (5 RT 526-527; 7 RT 933-935.) The jury was therefore entitled to conclude that Watchtower had no such policy (see *Breland v. Taylor Engineering & Manufacturing Co.* (1942) 52 Cal.App.2d 415, 425-426), and thus entitled to further conclude that the policy on this subject was left to the local congregation elders responsible for field service assignments. Finally, the fact that Candace was assigned to perform field service with Kendrick on multiple occasions supported an inference that defendants' policy permitted a child to be assigned to field service with a known child molester.

In short, substantial evidence supported a finding that assigning Candace to field service with Kendrick constituted malice.

B. The Remitted Punitive Damage Award Was Not Excessive And Did Not Violate Due Process Standards.

Watchtower argues that the reduced punitive damage amount of $8,610,000 is unconstitutionally excessive for two reasons. (WNY AOB 58, 59.) First, it asserts that the compensatory award "itself is so astronomically high" that it likely was punitive. (WNY AOB 58, 59, citing *Simon v. San Paolo U.S. Holding Company, Inc.* (2005) 35 Cal.4th 1159.) Second, it argues that punitive damages may not be based on a national policy, even where that policy has caused injury to the plaintiff before the court. (WNY AOB 59-61.) Neither argument has merit.

1. Standard of review.

Whether an award of punitive damages is constitutionally excessive is reviewed de novo. (*Simon v. San Paolo U.S. Holding Co. Inc.* (2005) 35 Cal.4th 1159, 1172.) However, the court's obligation to conduct a due process review of punitive damages does not create an opportunity for the defendant to make "an end run" around the jury's factual findings. (*Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 86.) Thus, the reviewing court conducts its de novo review with deference to the jurors' role as the determiner of the facts. (*Amerigraphics, Inc. v. Mercury Casualty Co.* (2010) 182 Cal.App.4th 1538, 1560.)

2. The jury was properly permitted to consider that the harm to plaintiff resulted from a national policy; the punitive damage award was not based on harm to persons other than plaintiffs.

Watchtower argues that any and all reference to a national policy as a basis for punitive damages is an unconstitutional due process violation, because it awards damages for harm to persons other than the plaintiff. (WNY AOB 59-61.)

In *Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, 1202-1203, the California Supreme Court recognized that evidence "describing out of state transactions" may be relevant to the determination of the degree of reprehensibility. The court specifically recognized the distinction between punishing a defendant for harm to others, which is improper, and a consideration of the defendants' conduct in the context of "a business practice or policy," where the individual plaintiff can demonstrate that the conduct toward her warrants a stronger penalty to deter continued or repeated conduct of the same nature. (*Id.* at p. 1206, fn.6.)

Any fair reading of *Johnson v. Ford Motor Co.* must recognize a state's legitimate interest in punishing or deterring a defendant whose national policy or practice harms a state resident; accordingly, admission of evidence of national policies on the issue of reprehensibility is obviously proper. (*Bullock v. Philip Morris USA, Inc*. (2008) 159 Cal.App.4th 655, 693-694.)

Here, the trial court did *not* admit evidence of harm to persons other than plaintiff. It limited the admissibility of evidence of Kendrick's sexual "grooming" of another girl from the Congregation to Kendrick only. (9 RT 1049.) Furthermore, the trial court excluded both general and statistical evidence of the abuse of other Jehovah's Witnesses children. The court specifically instructed that "punitive damages may not be used to punish a defendant for the impact of its alleged misconduct on persons other than Candace Conti." (9 RT 1229, 1230.) Nothing in the record suggests that the jury failed to follow this instruction or that it awarded punitive damages to punish Watchtower for harm to others.

3. The reprehensibility of Watchtower's conduct amply justified the 3:1 punitive-to-compensatory damages ratio.

The U. S. Supreme Court set forth five factors to be considered in evaluating reprehensibility for punitive damage purposes. (*State Farm Mutual Auto Insurance Co. v. Campbell* (2003) 538 U.S. 408, 419.) Applied here, these factors show: (1) there was physical, not just economic, harm; (2) there was evidence of reckless disregard and indifference to children exposed to abusers, including Candace; (3) there was vulnerability (youth) of the victim, albeit not financial vulnerability; 4) the conduct was not repeated as to Kendrick but was part of a national policy; and 5) the decisions to keep secret Kendrick's risk to abuse and to assign him to field service with Candace were intentional, even though the molestation was not

intended. As in *Amerigraphics, supra*, consideration of comparable civil penalties is inapplicable. (182 Cal.App.4th at pp. 1565-1566.)

Here, the trial court fully analyzed the factors of reprehensibility in its new trial order and concluded they justified a 3:1 ratio. (7 AA 1937, 1938.)[5] Three of the factors support a higher punitive damages ratio, and two are equally weighted. In *Amerigraphics,* the presence of only one factor of the five was held to support a punitive-to-compensatory damages ratio of 3.8:1. (*Amerigraphics, supra*, 182 Cal.App.4th at p. 1567.)

In some cases compensatory damage awards have been deemed punitive in nature, resulting in a reduction of the ratio of punitive-to-compensatory damages for due process purposes; none of those cases, however, remotely resembles the case at hand. For example, in *State Farm, supra*, there was no physical assault or trauma and the emotional distress claimed against the insurance company arose from the same conduct that supported the punitive damages—refusal to pay the claim. (538 U.S. at p. 426.) In *Roby v. McKesson Corp*. (2009) 47 Cal.4th 686, there was no physical harm and the compensatory damage awards overlapped each other.

[5] Because the jury expressly found an agency relationship between Watchtower and the Congregation, the trial court ruled that the "base level" for Watchtower's compensatory damages should be 40 percent (Watchtower's 27 percent plus the Congregation's 13 percent) of the total compensatory damages of $7,000,000, or $2,800,000. (7 AA 1938.) The defendants do not challenge this ruling on appeal. The remitted punitive damage amount is 3.07 times this base level.

Furthermore, in *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 90, the court upheld a 2.4:1 ratio despite acknowledging that the emotional distress award was "high enough that it appears to include a punitive component."

Here the reprehensibility of the conduct and the undisputed severity of the injury are far more compelling than in *Bankhead*. Plaintiff was subjected at a very young age to repetitive sexual abuse during which she was trapped inside the perpetrator's vehicle and forcibly taken to his home (6 RT 729-731.) She suffered chronic, permanent PTSD, substance abuse, and depression as a result. (5 RT 563, 578, 581, 585, 586, 588, 7 RT 794, 802-808, 810, 811.)

Defendants did not dispute these injuries. In view of them, the compensatory damages were reasonable and not inherently punitive in nature. The 3:1 ratio was within due process standards.

V. DEFENDANTS' FAILURE TO FOLLOW THE RULES OF COURT PREJUDICES THEIR APPEAL.

Rule 8.204(a)(1)(2)(C) of the California Rules of Court requires an appellant's opening brief to provide a summary of the significant facts limited to matters in the record. The opening briefs of both Watchtower and the Congregation violate this rule. Each omits critical facts, including the fact that the elders assigned Jonathan Kendrick and Candace Conti together

in field service, the expert testimony of Dr. Salter and Carl Lewis, and the testimony of Carolyn Martinez and Evelyn Kendrick.

Furthermore, defendants fail to cite controlling authorities relied on by the trial court. (See, e.g., RAB 1-3, 6, 7, citing *RCALA*; 6 AA 1607, 1608; 7 AA 1810, citing *Johnson v. Ford Motor Co.*; RAB 105, citing *Wilson v. Ritto, Denton v. City of Fullerton* and *Thompson v. County of Alameda*; RAB 106, citing *Romero v. Superior Court* and *Chaney v. Superior Court*.)

Defendants' tactics are not unlike those in *Kleveland v. Siegel & Wolensky LLP* (2013) 215 Cal.App.4th 534, 539-540, where misrepresentation of the record and refusal to discuss established case law without explanation or justification justified sanctions. Here, defendants' omission of critical evidence and failure to discuss controlling law is a tacit acknowledgment that their appeal has no merit.

CONCLUSION

For the reasons stated above, the judgment should be affirmed in full.

Dated: June 3, 2013

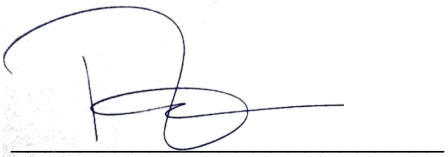
FURTADO, JASPOVICE & SIMONS
A Law Corporation

By _____
RICHARD J. SIMONS
Attorneys for Plaintiff/Respondent
JANE DOE

WORD COUNT CERTIFICATE

Pursuant to the California Rule of Court, Rule 8.204(c), I certify that the foregoing brief is proportionally spaced, has a typeface of Times New Roman 13 points, is double-spaced, and contains 16,076 words based upon the word count feature contained in the word processing program of Microsoft Office Word 2007 used to produce this brief.

Dated: June 3, 2013



RICHARD J. SIMONS

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A. PHONE (718) 625-3600

July 1, 1989

TO ALL BODIES OF ELDERS IN THE UNITED STATES

CONFIDENTIAL

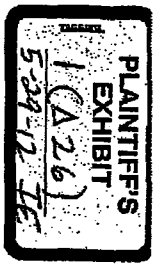
Dear Brothers:

We are writing to help all of you as individual elders be aware of a growing concern regarding the handling of your duties that may involve legal issues or questions. **Due to its importance, the presiding overseer should arrange for a special meeting of the body of elders to read and consider this letter carefully.**

In spreading the Kingdom message, it is appropriate that we be bold and outspoken. Jesus commanded that "what you hear whispered, preach from the housetops." (Matthew 10:27) Even when worldly authorities demand that we keep silent, we reply as did the apostles: "We cannot stop speaking about the things we have seen and heard." (Acts 4:20) The Christian congregation will continue to declare the Kingdom message boldly until Jehovah says the work is done.

Elders share the obligation to shepherd the flock. However, they must **be careful not to divulge information about personal matters to unauthorized persons.** There is "a time to keep quiet," when "your words should prove to be few." (Ecclesiastes 3:7; 5:2) Proverbs 10:19 warns: "In the abundance of words there does not fail to be transgression, but the one keeping his lips in check is acting discreetly." Problems are created when elders unwisely reveal matters that should be kept confidential. Elders must give special heed to the counsel: "Do not reveal the confidential talk of another." (Proverbs 25:9) Often the peace, unity, and spiritual well-being of the congregation are at stake. Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society.

While we as Christians are ready to forgive others who may wrong us, those in the world are not so inclined. Worldly persons are quick to resort to lawsuits if they feel their "rights" have been violated. Some who oppose the Kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress. Thus, elders must especially guard the use of the tongue. Jesus faced opposers who tried to "catch him in speech, so as to turn him over to the government." (Luke 20:20) He instructed us to be "cautious as serpents and yet innocent as doves" in such situations. (Matthew 10:16) Where such a threat exists, our position as elders should be in line with David's words: "I will set a muzzle as a guard to my own mouth, as long as anyone wicked is in front of me."--Psalm 39:1.



In recent years, this matter has come to be a cause for increasing concern. The spirit of the world has sensitized people regarding their legal "rights" and the legal means by which they can exact punishment if such "rights" are violated. Hence, a growing number of vindictive or disgruntled ones, as well as opposers, have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the Society. **Many of these lawsuits are the result of the misuse of the tongue.** As elders, remember that ill-advised statements or actions on your part can sometimes be interpreted legally as violating others' "rights."

The need for elders to maintain strict confidentiality has been repeatedly stressed. Please see *The Watchtower* of April 1, 1971, pages 222-4, and September 1, 1987, pages 12-15. The September 1977 *Our Kingdom Service*, page 6, paragraph 36, and the *ks77* textbook, page 65, also provide helpful direction and counsel. That material strongly emphasized the elders' responsibility to avoid revealing confidential information to those not entitled to it.

The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended. Substantial monetary damages could be assessed against the elders or congregation. In some cases where the authorities are involved, certain complications could lead to a fine or imprisonment. These possibilities underscore **the need for elders to be discerning and to follow carefully directions provided by the Society.**

I. WHAT TO DO IN SPECIFIC CASES

A. Judicial Committee Matters

Judicial committees must follow carefully the Society's instructions in carrying out their duties. (Note *ks77*, pages 66-70; *ks81*, pages 150-70.) Anything submitted in writing to the committee by the alleged wrongdoer or by witnesses should be kept in strict confidence. If it is necessary to continue at a later time a committee hearing, the members of the committee should submit to the chairman any personal notes they have taken. The chairman will keep these notes in a secure place to prevent breaches of confidentiality. The notes may be returned to the individual elders when the hearing resumes. Upon conclusion of the case, the chairman should place only necessary notes and documents, a summary of the case, and the S-77 forms in a sealed envelope for the congregation file. Nothing should be preserved outside of this sealed envelope (including unnecessary personal notes) by any elder on the committee. Obviously, no committee will ever allow judicial proceedings to be tape recorded or allow witnesses testifying before the committee to take notes.

B. Child Abuse

Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. Victims of such abuse need to be protected from further danger. See "If the Worst Should Happen," *Awake!* January 22, 1985, page 8.

C. Search warrants and Subpoenas

1. A search warrant is a court order authorizing the police to search premises to locate evidence that may be used in a criminal prosecution. No elder should ever consent to the search of a Kingdom Hall or any other place where confidential records are stored. However, armed with a search warrant the police do not need consent and may even use force to accomplish their task. Likely before obtaining a search warrant, the police or other governmental officials will make inquiries regarding confidential records, make request to obtain the records, or indicate that they will seek a search warrant if the elder(s) involved does not cooperate. In any such situation, the Society's Legal Department should be called immediately.

At any time an elder is confronted with a search warrant (whether given advance notice or not), the elder should first ask to read the warrant. After reading it he should ask if he can call for legal guidance and then call the Society's Legal Department. If for some reason the Legal Department cannot be contacted, the elders involved should make every effort to obtain the assistance of a local attorney for the purpose of protecting the confidentiality of the records. It may be impossible to stop determined officers from conducting the search authorized by the warrant. Conscientious elders will want to do all they reasonably and peaceably can to preserve the confidentiality of the congregation in harmony with the principle set out in Acts 5:29.

2. Subpoenas are demands for records or for the appearance of an individual at a trial or deposition to give testimony. Subpoenas may be issued by a court or in some cases by a governmental agency or an attorney. If an elder receives a subpoena, he should contact the Society's Legal Department immediately. Never turn over records, notes, documents, or reveal any confidential matter sought by subpoena without receiving direction from the Legal Department.

D. Crimes and Criminal investigations

In some cases the elders will form judicial committees to handle alleged wrongdoing that also could constitute a violation of Caesar's criminal laws (e.g., theft, assault, etc.). Generally, a secular investigation into a matter that is a concern to the congregation should not delay conducting a judicial hearing. To avoid entanglement with the secular authorities who may be investigating the same matter, the strictest confidentiality (even of the fact that there is a committee) must be maintained.

If the alleged wrongdoer confesses to the sin (crime), no one else should be present besides the members of the committee. When evidence supports the accusation but genuine repentance is not displayed resulting in a decision to disfellowship, this should be handled in the normal course regarding advice of appeal rights and announcements to the congregation. In cases of serious criminal wrongdoing (e.g., murder, rape, etc.), or where the criminal conduct is widely known in the community, the body of elders should contact the Society before proceeding with the judicial committee process.

E. When Servants and Publishers Move

A considerable number of publishers, including **elders and ministerial servants move from one congregation to another.** Sometimes the circumstances surrounding their departure are unsettled. Some appointed brothers may be experiencing problems that have brought their qualifications into question. It is not uncommon for a body of elders to hold back in giving counsel, allowing a brother to move without discussing his problem. Thereafter, they decline to recommend his reappointment in his new congregation. Often such a brother protests, requiring extensive correspondence between the bodies of elders. Much personal, and sometimes embarrassing, information must then be passed on. Such mishandling of things greatly increases the potential for serious repercussions. Problems can be avoided by the body of elders assuming its responsibility to inform a brother that he will not be favorably recommended, fully explaining the reasons why. **Every effort should be made to resolve any difference before he leaves, eliminating any need for controversy involving his new congregation.** The body should assign two elders to meet with him before he moves, letting him know whether they are recommending him to the new congregation.

This would likewise apply to publishers who move at a time when their personal conduct requires investigation by the elders. **If serious accusations of wrongdoing have been made against an individual and he moves to another congregation before matters are finalized, usually it is best for the elders in the original congregation to follow through in handling matters, if possible and if distance permits.** They are acquainted with the individual and the circumstances surrounding the alleged wrongdoing; this ordinarily puts them in the best position to get the facts and to handle the case. Handling matters in this way will eliminate the need to reveal confidential information unnecessarily about the private lives of individuals.

F. When Lawsuits Are Threatened

If the congregation or the elders (in their capacity as elders) are threatened with a lawsuit, the Society's Legal Department should be contacted immediately. No statements should be made by any member of the body of elders about the merits or validity of an actual or threatened lawsuit without authorization from the Society.

G. Child Custody

Elders may learn that a publisher is facing a dispute over child custody in a divorce proceeding. If the parental rights of such is challenged on the basis of our Christian beliefs, or on the assertion that our beliefs are harmful to a child's best interests, the elders should immediately write to the Society's Legal Department. In a rare emergency, a telephone call may be necessary. The Legal Department will assess the facts and determine the degree of its involvement, if any. Elders have no authority to make any promises about the Society's paying legal fees or handling specific cases. There is no need to contact the Society if there is no indication that the beliefs and practices of Jehovah's Witnesses will be attacked in a child custody dispute.

When you write to the Society's Legal Department about a specific case, please provide the following information:

1. The names of the parents and their attorneys.

2. The number of children involved and their ages.

3. A brief description of the facts, including the presence of any apostates.

4. An assessment of the Christian parent's spiritual condition-Is he or she new in the truth? Active? Inactive? Balanced?

5. The status of the legal proceedings-Has the matter gone to trial? Has the trial date been set? If so, when?

II. POINTS TO REMEMBER

A. Appreciate the Importance of Maintaining Confidentiality

Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out favorably, valuable time and energy that could have been devoted to Kingdom interests will be lost.

B. Do Not Make Statements to Secular Authorities Until You Receive Legal Advice from the Society

You are not legally required to make immediate responses to secular authorities about matters that could involve the disclosure of confidential information. Voluntarily allowing the Kingdom Hall or confidential records to be searched, where no search warrant is produced, could infringe on the legal rights of the congregation or of others. No statements should be made until you have an understanding of your legal position from the Society's Legal Department.

C. Be Extremely Careful with Written Material

All material related to judicial matters should be kept in a safe place, accessible only to elders. **Final reports on the handling of judicial matters should be placed in a sealed envelope in the congregation file.** A judicial committee should avoid sending to an individual any kind of correspondence that accuses him of specific wrongdoing. (Note *ks77*, pages 68-9.) **Nothing should be put in writing to any disfellowshipped person to advise him of his status or the reasons for it without specific direction from the Society.** The rules and procedures of Jehovah's Witnesses do not require such written disclosures. Anything in writing submitted to a judicial committee should be kept in strict confidence. If a judicial committee disfellowships an individual, he should be informed **orally** of the action taken and of the right to appeal. If the wrongdoer refuses to attend the hearing, two members of the judicial committee should attempt to contact the individual at his home and inform him orally of the decision. If this is not possible, the two elders may be able to inform him by telephone.

D. Guard the Use of Your Tongue

Think before you speak. Do not discuss private and judicial matters with members of your family, including your wives, or with other members of the congregation. Be extremely careful not to inadvertently disclose private information when others are present, such as when speaking on the telephone with others listening in or nearby. (Note *ks77*, page 65.) At times, complicated judicial cases may necessitate consultation with an experienced, mature elder in another congregation or with the circuit overseer. Unless the circuit overseer is the elder consulted, only the pertinent details should be discussed and names should not be used.

Elders bear a heavy responsibility in ministering to the needs of the Christian congregation, and observing confidentiality as they do so. (1 Corinthians 16:13) We trust that the information in this letter will help you carry this burden. Please be assured of our love and prayers, and may Jehovah continue to bless you as you shepherd his flock.-1 Peter 5:1-3.

Your brothers,

Watchtower B. & T. Society
OF NEW YORK, INC.

P.S. Due to the importance of the information that is presented herein it is suggested that the body of elders jointly read and consider this letter as soon as possible after its receipt in the congregation. Please do not make any copies of this letter, nor should it be read by others. It should be kept in the congregation's confidential files for any future reference that may be required by the body of elders.

PROOF OF SERVICE (C.C.P. 1013a 2015.5)

I am a citizen of the United States and reside in Contra Costa County; I am over the age of eighteen years and not a party to the within entitled action; my business address is 6589 Bellhurst Lane, Castro Valley, CA 94552.

On June 6, 2013, I served the within RESPONDENT'S BRIEF and RESPONDENT'S APPENDIX on interested parties in said action by the following means:

[X] By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for deposit in the United States mail in Discovery Bay, California, addressed as shown below.

[ ] By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] By Facsimile Transmission – By transmitting a true copy thereof by facsimile transmission from facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown below. The facsimile transmission was reported as complete and without error.

[X] By Email By transmitting a true copy thereof to the email address(es) shown below.

Robert J. Schnack, Esq.
Jackson Lewis LLP
801 K Street, Suite 2300
Sacramento, CA 95814
(Brief and Appendix)

Attorneys for Defendant and Appellant WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.

James M. McCabe, Esq.
The McCabe Law Firm
4817 Santa Monica Avenue, Suite B
San Diego, CA 92107
(Brief and Appendix)

Attorneys for Defendant and Appellant FREMONT CONGREGATION OF JEHOVAH'S WITNESSES

///

Jon R. Williams, Esq. BOUDREAU WILLIAMS LLP 666 State Street San Diego, CA 92101 ***(Brief and Appendix)***	*Attorneys for Defendant and Appellant* *WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.*
Mario Moreno, Esq. Watchtower Bible & Tract Society of New York, Inc. Legal Department 100 Watchtower Drive Patterson, NY 12563-9204 ***(Brief and Appendix)***	*Pro Hac Vice* *WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.*
Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797 ***(Brief Only, Via Electronic Submission http://www.courts.ca.gov/7423.htm)***	*Supreme Court*
The Honorable Robert McGuiness, Judge c/o Clerk of the Superior Court of California, County of Alameda ***(Brief Only)*** 1221 Oak Street, Department 22 Oakland, CA 94612	*Trial Court*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 6, 2013, at Discovery Bay, California.



ELAINE T. LANDRO

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

A136641

HG11558324

JANE DOE
Plaintiff and Respondent,

v.

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.
Defendant and Appellant.

Appeal from the Superior Court of Alameda County
The Honorable Robert McGuiness, Judge

OPENING BRIEF OF APPELLANT, NORTH FREMONT CONGREGATION OF JEHOVAH'S WITNESSES

James M. McCabe, Esq.
THE McCABE LAW FIRM
4817 Santa Monica Avenue
San Diego, California 92107
(619) 224-2848

Attorneys for Defendant and Appellant,
NORTH FREEMONT CONGREGATION OF
JEHOVAH'S WITNESSES

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION THREE	Court of Appeal Case Number: A136641
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* James M. McCabe, Esq./CSBN: 51040 The McCabe Law Firm, APC 4817 Santa Monica Ave., Suite B San Diego, CA 92107 TELEPHONE NO.: (619) 224-2848 FAX NO. *(Optional):* (619) 224-0089 E-MAIL ADDRESS *(Optional):* jim@mccabelaw.net ATTORNEY FOR *(Name):* Fremont California Congregation of Jehovah's Witnesses, North Unit	Superior Court Case Number: HG11558324 ***FOR COURT USE ONLY***
APPELLANT/PETITIONER: The Watchtower Bible and Tract Society of New York Inc., et al. RESPONDENT/REAL PARTY IN INTEREST: Jane Doe	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Fremont California Congregation of Jehovah's Witnesses, North Unit

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 26, 2013

James M. McCabe, Esq.
(TYPE OR PRINT NAME)

▶ James M. McCabe
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2009]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488

Legal Solutions Plus

TABLE OF CONTENTS

		Page
Table of Authorities		iv
I.	**INTRODUCTION**	1
II.	**STATEMENT OF FACTS AND PROCEDURAL HISTORY**	2
A.	Background of the Parties	2
B.	Plaintiff's Allegations of Abuse	5
C.	No Evidence Corroborated Plaintiff's Testimony	5
D.	Court Proceedings	7
1.	Jury Instructions	8
2.	Verdict and Post-Verdict Proceedings	11
III.	**APPEALABILITY AND STANDARDS OF REVIEW**	12
IV.	**DISCUSSION**	12
A.	The Trial Court Erred in Finding Fremont Congregation Liable for Kendrick's Abusive Acts Because the Congregation Did Not Owe the Plaintiff a Legal Duty of Protective Care	13
1.	Standard of Review: *De Novo*	13
2.	Application to This Case	13
a.	A Special Relationship Is Not Created Merely by Church Membership, or By the Providing of Spiritual Counsel by a Minister	15

TABLE OF CONTENTS
(continued)

		Page
b.	An Expansion of the Special Relationship Doctrine Cannot Occur Absent Evidence of Custody or Control	17
c.	Neither *Tarasoff*, *Delgado*, Nor *Juarez* Support the Trial Court's Expansion of the Special Relationship Doctrine Under These Facts	20
d.	Once It Is Established that There Is No Special Relationship Between the Parties, the Duty Analysis Must Stop	25
e.	Fremont Congregation Does Not Owe a Duty to Protect Plaintiff Even Under *Rowland*	27
	i. No High Degree of Foreseeability	28
	ii. No Degree of Certainty of Harm to Plaintiff	32
	iii. No Close Connection Between Fremont Congregation's Conduct and the Plaintiff's Injury	33
	iv. No Moral Blame Attaches to Fremont Congregation's Conduct	35
	v. Policy of Preventing Future Harm	37
	vi. Significant Social and Financial Burden	38
	vii. Significant Societal Consequences	42

TABLE OF CONTENTS
(continued)

		Page
B.	A New Trial is Required Because the Trial Court's Jury Instructions Prejudiced the Outcome	45
	1. Standard of Review: *De Novo* and Prejudice	45
	2. Application to This Case	46
	a. Scope of Any Duty to Warn Instruction	46
	b. Mandatory Reporter Instruction	48
	c. Allocation of Fault Instruction	50
V.	**CONCLUSION**	53
CERTIFICATE OF COMPLIANCE		54

TABLE OF AUTHORITIES

Page

Cases

Aaronoff v. Martinez-Senftner
(2006) 136 Cal.App.4th 910 19-20

Adams v. City of Fremont
(1998) 68 Cal.App.4th 243 17, 31, 35

Ann M. v. Pacific Plaza Shopping Center
(1993) 6 Cal.4th 666 16

Baldwin v. Zoradi
(1981) 123 Cal.App.3d 275 37

Ballard v. Uribe
(1986) 41 Cal.3d 564 28

Berry v. Watchtower Bible and Tract Soc. of New York, Inc.
(N.H. 2005) 879 A.2d 1124 15

Bly-Magee v. Budget Rent-A-Car Corp.
(1994) 24 Cal.App.4th 318 50, 53

Bryan R. v. Watchtower Bible and Tract Soc. of New York, Inc.
(Me. 1999) 738 A.2d 839 15

C.A. v. William S. Hart Union High School District
(2012) 53 Cal.4th 861 27

Cabral v. Ralphs Grocery Co.
(2011) 51 Cal.4th 764 13

Carpenter v. City of Los Angeles
(1991) 230 Cal.App.3d 923 36

Castaneda v. Olsher
(2007) 41 Cal.4th 1205 27, 38

TABLE OF AUTHORITIES
(continued)

College Hospital Inc. v. Superior Court
(1994) 8 Cal.4th 704 — 45

DaFonte v. Up-Right, Inc.
(1992) 2 Cal.4th 593 — 50

Delgado v. Trax Bar & Grill
(2005) 36 Cal.4th 224 — 13, 16, 23

Doe v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints
(Utah App. 2004) 98 P.3d 429 — 15

Doe 1 v. City of Murrieta
(2002) 102 Cal.App.4th 899 — 29

Eric J. v. Betty M.
(1999) 76 Cal.App.4th 715 — 25-26

Garcia v. Superior Court
(1990) 50 Cal.3d 728 — 12, 14

Giraldo v. Dept. of Corrections and Rehabilitation
(2008) 168 Cal.App.4th 231 — 17-18

Henderson v. Harnischfeger Corp.
(1974) 12 Cal.3d 663 — 46

Juarez v. Boy Scouts of America, Inc.
(2000) 81 Cal.App.4th 377 — 21, 23-24

Kentucky Fried Chicken of Cal., Inc. v. Superior Court
(1997) 14 Cal.4th 814 — 16

Lambert v. Word of Faith Ministries
(La.Ct.App. 1996) 673 So.2d 1150 — 15

Margaret W. v. Kelley R.
(2006) 139 Cal.App.4th 141 — 25

TABLE OF AUTHORITIES
(continued)

Martinez v. Bank of America
(2000) 82 Cal.App.4th 883 — 28

McGarry v. Sax
(2008) 158 Cal.App.4th 983 — 13

Megeff v. Doland
(1981) 123 Cal.App.3d 251 — 18

Melton v. Boustred
(2010) 183 Cal.App.4th 521 — 13, 17, 28, 43

Merenda v. Superior Court
(1992) 3 Cal.App.4th 1 — 35

Meyer v. Lindala
(Minn.Ct.App. 2004) 675 N.W.2d 635 — 15

Mize-Kurzman v. Marin Community College Dist.
(2012) 202 Cal.App.4th 832 — 45

Morris v. De La Torre
(2005) 36 Cal.4th 260 — 14, 27

Nally v. Grace Community Church
(1988) 47 Cal.3d 278 — 15

Olson v. Children's Home Society
(1988) 204 Cal.App.3d 1362 — 17

Pamela L. v. Farmer
(1980) 112 Cal.App.3d 206 — 36

Parsons v. Crown Disposal Co.
(1997) 15 Cal.4th 456 — 28, 31, 47

Paul v. Watchtower Bible and Tract Society of New York, Inc.
(9th Cir. 1987) 819 F.2d 875 — 44

TABLE OF AUTHORITIES
(continued)

People v. Rolon
(2008) 160 Cal.App.4th 1206 — 51

People v. Swanson-Birabent
(2003) 114 Cal.App.4th 733 — 51

Peterson v. San Francisco Community College Dist.
(1984) 36 Cal.3d 799 — 16

Potter v. Firestone Tire & Rubber Co.
(1993) 6 Cal.4th 965 — 13

Quigley v. First Church of Christ Scientist
(1998) 65 Cal.App.4th 1027 — 22

Richelle L. v. Roman Catholic Archbishop
(2003) 106 Cal.App.4th 257 — 15, 16

Rowland v. Christian
(1968) 69 Cal.2d 108 — 25, 28, 32

Roman Catholic Bishop of San Diego v. Superior Court
(1996) 42 Cal.App.4th 1556 — 13, 15

Roslan v. Permea, Inc.
(1993) 17 Cal.App.4th 110 — 50

Sakiyama v. AMF Bowling Centers, Inc.
(2003) 110 Cal.App.4th 398 — 33-34

Seo v. All-Makes Overhead Doors
(2002) 97 Cal.App.4th 1193 — 26

Soule v. General Motors Corp.
(1994) 8 Cal.4th 548 — 45

Suarez v. Pacific Northstar Mechanical, Inc.
(2009) 180 Cal.App.4th 430 — 26

TABLE OF AUTHORITIES
(continued)

Sturgeon v. Curnutt
(1994) 29 Cal.App.4th 301 — 28

Tarasoff v. Regents of University of California
(1976) 17 Cal.3d 425 — 13, 22

Thompson v. County of Alameda
(1980) 27 Cal.3d 741 — 47

Thompson Pacific Construction, Inc., v. City of Sunnyvale
(2007) 155 Cal.App.4th 525 — 45

Weirum v. RKO General, Inc.
(1975) 15 Cal.3d 40 — 33

Wiener v. Southcoast Childcare Centers, Inc.
(2004) 32 Cal.4th 1138 — 38

Wise v. Superior Court
(1990) 222 Cal.App.3d 1008 — 17

Statutes & Codes

Civil Code

§ 1431.1 — 50

§ 1431.2 — 50-51

Code of Civil Procedure

§ 904.1 — 12

TABLE OF AUTHORITIES
(continued)

	Page
Other	
Stats. 1996, ch. 1081 (A.B. 3354)	48

Defendant and Appellant FREEMONT CONGREGATION OF JEHOVAH'S WITNESSES ("Freemont Congregation" or "the Congregation") hereby files this Appellant's Opening Brief challenging: (a) the trial court's original Judgment following jury trial, entered on June 27, 2012; (b) the Amended Judgment entered on September 17, 2012; and (c) the trial court's related rulings of August 24, 2012, in favor of Plaintiff, JANE DOE ("Plaintiff"), on various post-trial motions.

I.

INTRODUCTION

Childhood sexual abuse is an abhorrent, wicked act that must not be tolerated. That does not mean, however, that trial courts can ignore law and reason to compensate abuse victims. Yet, that is what the trial court did to the Fremont Congregation of Jehovah's Witnesses even though the congregation had neither custody of the minor victim in question, nor control over the perpetrator. Indeed, the congregation was unaware of the abuse when it occurred, did not condone that abuse, and did not cover it up.

California has long held to the principle that when allegations are founded upon nonfeasance, one has no duty to protect another from the criminal acts of a third party absent a special relationship. To establish a special relationship, there must be an element of "custody or control" between the parties. As this appeal demonstrates, the undisputed evidence in the case below shows that: (1) the Plaintiff's claims against Fremont Congregation are based on nonfeasance; (2) the Plaintiff's parents

and her abuser were all rank-and-file members of Fremont Congregation; and (3) Fremont Congregation never had custody or control over the Plaintiff or her abuser, Jonathan Kendrick ("Kendrick"). Thus, Fremont Congregation owed no legal duty to Plaintiff as a matter of law.

The trial court, however, deliberately departed from those firmly entrenched principles and erroneously created a new duty for religious organizations – and by extension to all volunteer organizations – that requires them to protect a member 24 hours a day from another member's tortious or criminal acts, whether committed on or off church property. Such a result cannot stand.

II.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Background of the Parties.

The Fremont Congregation is a not-for-profit religious corporation. Fremont Congregation is made up of men and women who attend religious services with their children at a place of worship called the "Kingdom Hall" ("Kingdom Hall" or "church"). (3 RT 142, 208-209; 5 RT 548.)[1] Most attendees actively engage in the public ministry for which Jehovah's Witnesses are known ("field service" or "field

[1] All facts in this brief are supported by reference to the companion Appellants' Joint Appendix, abbreviated as: ([volume] AA [page]); the Reporter's Transcript, abbreviated as: ([volume] RT [page]); and the exhibits identified on the record and/or admitted into evidence in the trial court, abbreviated as ([Offering Party] Exh. [number]).

ministry"), and all consider themselves "ministers." (5 RT 553; 7 RT 911, 913-14; 8 AA 2054 [Def. Exh. 131].) Fremont Congregation does not have paid clergy; activities are overseen by elders who are appointed by Co-Appellant Watchtower Bible & Tract Society of New York, Inc. ("Watchtower") to serve as congregation "elders." (3 RT 139; 7 RT 908-909.) Elders receive assistance handling mundane congregational duties from men who are appointed to serve as "ministerial servants." (3 RT 147; 4 RT 402; 7 RT 909.)

Like all other congregations of Jehovah's Witnesses, Fremont Congregation does not separate children from their parents; they do not arrange Sunday School classes, overnight trips, or any other activity that would place children in the "custody" of the elders. (3 RT 140; 4 RT 277, 321, 421; 5 RT 495, 547; 6 RT 705; 7 RT 873-874.) Rather, in all congregations of Jehovah's Witnesses, children attend meetings and participate in religious activities *with their parents*. (3 RT 143, 185-187; 4 RT 277, 421; 6 RT 705; 7 RT 874, 912.) Indeed, the Plaintiff informed the trial court that she never went to Fremont Congregation meetings or to field service without at least one of her parents. (6 RT 725-726, 737-738.)

As a child born in 1985, the Plaintiff attended religious meetings with her parents, Neal and Kathleen Conti, at Fremont Congregation. (4 RT 350, 352, 367-368; 6 RT 713.) Kendrick also attended Fremont Congregation's religious meetings and served as a ministerial servant. In November 1993, Kendrick confessed to two congregation elders, Michael L. Clarke and Gary Abrahamson, that four months earlier, in July 1993, he had touched the breast of his then 15-year-old stepdaughter,

Andrea, in the privacy of his own home. (3 RT 138-139, 151-160, 177, 180-181, 183, 207, 210-211, 214-217, 219-222, 239-240, 250-251; 4 RT 302; 7 RT 879-880.) Because of that one act, Kendrick was stripped of his position as a ministerial servant in the Freemont Congregation, and the congregation was publicly informed that Kendrick was no longer a ministerial servant. (3 RT 163, 166, 192, 218, 241, 244, 247; 5 RT 484; 7 RT 880.) Freemont Congregation elders also spoke with Andrea and her mother, Evelyn (Kendrick's wife), and ensured that they knew of their absolute right to report the incident to civil authorities.[2] (3 RT 163-164, 180-181, 190-191, 239-242, 250-251; 4 RT 293, 297, 302; 6 RT 707; 7 RT 880.) In February 1994, Evelyn and Andrea reported Kendrick's July 1993 sexual abuse of Andrea to the Fremont Police Department ("Fremont Police") and to Child Protective Services ("CPS"). (4 RT 296-297, 300-301, 303-306; 6 RT 701, 711-712; 8 AA 1983-1991 ([Pl. Exh. 5]; [Def. Exh. 94].) During the investigation that ensued, Kendrick admitted the July 1993 incident to those authorities. (6 RT 647-649.) Unbeknownst to Fremont Congregation at that time, Kendrick was then prosecuted and convicted of misdemeanor sexual battery. (4 RT 307; 6 RT 654-656.)

Pursuant to Jehovah's Witnesses' religious beliefs and practices, and based upon their Biblical view of confidentiality, the announcement made to the congregation that Kendrick was removed from his position of ministerial servant did

---

[2] Prior to 1997, ministers and clergy members were *not* mandated reporters of child abuse in California. (Stats. 1996, ch. 1081 (A.B. 3354), § 3.5, eff. Jan. 1, 1997 [amending Pen. Code § 11166.]). Thus, in keeping with church policy, the elders left it to the victim and her mother to choose whether or not to report.

not include the reason for that action. (3 RT 222-223, 243-244.) But to this day, Kendrick has never again served in any appointed position in any congregation of Jehovah's Witnesses. (3 RT 243-244; 7 RT 916.) At the time of Plaintiff's alleged sexual abuse, Kendrick was simply a rank-and-file member of the Fremont Congregation. (3 RT 163, 166, 241; 4 RT 356; 5 RT 484; 6 RT 711; 7 RT 872-873, 880; 9 RT 1054.)

B. Plaintiff's Allegations of Abuse.

Plaintiff contended at trial that Kendrick hugged her and made her sit on his lap during congregation meetings at the Kingdom Hall. (6 RT 723, 738-739, 742.) She testified that from 1994 to 1996, Kendrick committed hundreds of sexually abusive acts against her when she was at Kendrick's home (6 RT 742, 744), and one such act while they rode on a train. (6 RT 745-746.) On that latter occasion, Plaintiff stated the abuse occurred in plain view of her father, who occupied the seat facing her and Kendrick. (6 RT 745-746.)

C. No Evidence Corroborated Plaintiff's Testimony.

The Plaintiff made no allegation that Kendrick did anything more than hug her or have her sit on his lap when they were on church property or engaging in church-related activities. (6 RT 723, 738-739, 742.) But no witness – not her own parents, Fremont Congregation elders, nor fellow church members – corroborated Plaintiff's story in any way. To the contrary, Plaintiff's father, Neal Conti, denied that Kendrick ever hugged the Plaintiff at the Kingdom Hall, or that Kendrick ever had

Plaintiff sit on his lap during congregation meetings. Neal also denied that his daughter was taken to Kendrick's home alone, or that Kendrick ever abused Plaintiff in his presence. (5 RT 495-496, 499-501, 513.)

Similarly, the Plaintiff's mother, Kathleen Conti, also testified that she never saw her daughter sitting on Kendrick's lap, or saw Kendrick give her daughter "bear hugs" at the Kingdom Hall. (4 RT 368-369.) She also testified that she never allowed her daughter to go anywhere alone with Kendrick. (4 RT 357, 367-368.)

Fremont Congregation elders Gary Abrahamson, Michael Clarke, and Lawrence Lamerdin kept a watchful eye on Kendrick after the 1993 incident with his stepdaughter. (3 RT 162-163, 247-248, 250; 4 RT 406-409, 412-413, 417, 420; 7 RT 880-881.) Yet they, too, never saw Kendrick hug the Plaintiff or the Plaintiff sitting on Kendrick's lap at the Kingdom Hall (3 RT 195-196, 248-249, 253; 4 RT 420-421), nor did they ever see the Plaintiff leaving the Kingdom Hall alone with Kendrick after congregation meetings. (3 RT 196, 248, 253; 4 RT 420-421, 430.) Likewise, they never saw the Plaintiff alone with Kendrick in field ministry. (3 RT 196, 248, 253; 4 RT 420-421, 430.)

Fremont Congregation members Bernice Munoz, Sylvia Munoz, and Pamela Figuerido likewise never saw Plaintiff at the Kingdom Hall without one of her parents, never saw Kendrick hug Plaintiff or have her on his lap, never saw Kendrick alone with Plaintiff in field service, never saw Kendrick leave the Kingdom Hall in his vehicle alone with Plaintiff, and confirmed that had they seen such

"inappropriate" conduct, they would have reported it to the elders. (7 RT 828-829, 836-837, 852-853.)

In short, no trial testimony corroborated the Plaintiff's claims of sexual abuse. Nonetheless, the uncontroverted fact remains that any acts of sexual abuse that occurred on church property involved hugs and sitting on Kendrick's lap in the presence of other congregation members. (6 RT 723, 738-739, 742.) Any other acts of abuse alleged by Plaintiff occurred either at Kendrick's home or in the presence of the Plaintiff's father. (6 RT 742, 744, 745-746.)

D. Court Proceedings.

The Plaintiff originally commenced legal action on January 28, 2011, and subsequently filed her operative First Amended Complaint for Damages on May 3, 2012. In it she asserted various causes of action for negligence in Fremont Congregation's supervision of Kendrick and its failure to protect the Plaintiff from Kendrick's acts of child abuse on and off church property. Those claims later proceeded to a 10-day jury trial before the Hon. Robert McGuiness.

Notably, during the sixth day of trial, Judge McGuiness ruled that a special relationship existed between Fremont Congregation and the Plaintiff that resulted in a duty of care to protect her from Kendrick's criminal acts of sexual abuse. (8 RT 979-985; 9 RT 1011-1012, 1032-1033, 1054.) In doing so, the trial court acknowledged that its ruling was *not* based on case law (8 RT 982), and that "imposing a duty under

the circumstances [of this case]" was "clearly an evolution of the doctrine." (9 RT 1012.)

1. Jury Instructions.

On June 11, 2012, following six days of testimony, the trial court made erroneous rulings on jury instructions, allowing special instructions related to Fremont Congregation's duty, and denying special instructions related to child abuse reporting requirements, the allocation of fault, and privileged communications. (9 RT 1010-1016, 1021-1024, 1034-1035, 1040-1041.)

The trial court incorrectly concluded that Fremont Congregation had a special relationship based upon its custody and control of the Plaintiff, and thus ruled that Fremont Congregation owed "a duty to take reasonable protective measures to protect Candace Conti from the risk of sexual abuse by Fremont Congregation of Jehovah's Witnesses, North Unit, member Jonathan Kendrick." (8 RT 979-980, 981-985; 9 RT 1011-1012, 1032-1033, 1054.) That instruction did not include limiting language to indicate the *scope* of duty being imposed, *e.g.,* the location and activities under which Fremont Congregation must protect the Plaintiff. Further, the court incorporated into that broad duty of protective care, a duty to warn and instructed the jury as follows:

> In determining whether or not Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit, took reasonable protective measures, you may consider the following:

1. The presence or absence of any warning (8 RT 987-988; 9 RT 1054);

2. Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses from the Fremont Congregation Jehovah's Witnesses, North Unit, members for the purpose of sexual abuse education and prevention (9 RT 1054); and

3. Such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures. (9 RT 1054-1055.)

Notably, the language of that instruction failed to express, as a matter of law, the scope of the duty owed and the concomitant warning required to satisfy that duty of protective care.

The trial court also refused Fremont Congregation's request for a jury instruction stating that ministers were not mandated reporters in 1993. (8 RT 975-979, 991.) That instruction would have correctly explained the law, and would have offset the incorrect and misleading testimony from Plaintiff's expert, Anna Salter, Ph.D., as well as Plaintiff's counsel's misleading closing argument on this critical issue. Specifically, Dr. Salter incorrectly stated that in 1993 clergy in California were "legally obligated" to report child abuse, and that California's amended 1997 law simply clarified that obligation. (6 RT 693-694, 707.) Similarly, during closing argument Plaintiff's counsel asserted that one protective measure North Fremont

Congregation elders could have taken was to report Kendrick's sexual abuse of Andrea to the authorities in 1993. (9 RT 1085-1086.)

Further, the trial court denied Fremont Congregation's request to add unnamed parties to the special verdict form and to instruct the jury on allocation of fault, even though the Fremont Police, Child Protective Services, and the District Attorney's office all had greater knowledge about Kendrick's sexual abuse history than that possessed by Fremont Congregation elders. (8 RT 961-967; 9 RT 1012-1014, 1033-1035.) Despite their superior knowledge, none of these public entities warned the public of Kendrick's criminal conviction. Moreover, the Plaintiff's parents, who had a statutory and common law duty to supervise and protect their daughter, allegedly allowed Plaintiff to spend considerable time alone with an adult man – routinely allowing that man to take their child to his home, where he lived alone. (6 RT 742, 744.) Therefore, the court's ruling on allocation deprived the jury of an opportunity to allocate fault to nonparties and thus reduce North Fremont's liability, especially as to non-economic damages which made up most of the compensatory damages the jury ultimately awarded to the Plaintiff. (11 RT 1214-1215.)

Finally, the trial court denied Fremont Congregation's request to instruct the jury that Kendrick's 1993 confession to congregation elders – that he had touched his stepdaughter's breast – was a privileged communication that cannot provide the basis for finding a breach of duty to warn. That ruling confused the jury into believing that the Fremont Congregation's elders' failure to disclose Kendrick's confession can

provide the basis for negligence. (8 RT 988-990; 9 RT 1016, 1019, 1021-1023, 1057-1058; 5 AA 1239.)

2. Verdict and Post-Verdict Proceedings.

On June 13, 2012, the jury returned its verdict in favor of the Plaintiff and awarded her $7 million in general and special damages. The jury apportioned liability 60% to Kendrick, 27% to Watchtower, and 13% to the Fremont Congregation. (11 RT 1214-1215; 5 AA 1285-1286.) The jury further awarded punitive damages against Watchtower in the amount of $21 million. (12 RT 1242; 5 AA 1299.)

On July 17, 2012, Fremont Congregation moved for a judgment notwithstanding the verdict ("JNOV") and for a new trial. (5 AA 1352-1387.) After a hearing on August 13, 2012 (13 RT 1251-1280), the trial court entered orders on August 24, 2012, denying that JNOV motion, conditionally granting the new trial motion, and amending the original Judgment. (7 AA 1936-1940.)

Fremont Congregation appeals from the trial court's original Judgment, the Amended Judgment, and all related post-judgment orders. Pursuant to Rule of Court 8.200, subdivision (a)(5), Fremont Congregation further joins in and incorporates here by reference all of the additional grounds for reversal asserted in the companion Appellant's Opening Brief filed concurrently by Watchtower.

III.

APPEALABILITY AND STANDARDS OF REVIEW

Freemont Congregation's appeal from the Judgment and Amended Judgment entered by the trial court was properly taken under Code of Civil Procedure section 904.1, subdivision (a)(1). Similarly, its appeal of the trial court's denial of its JNOV motion was also properly taken pursuant to Code of Civil Procedure section 904.1, subdivision (a)(4).

Additionally, to assist the Court in reviewing those challenges, Freemont Congregation discusses the applicable standards of review at the beginning of each sub-section of its brief that follows.

IV.

DISCUSSION

This case turns on the answer to one fundamental question: Did Fremont Congregation owe the Plaintiff a duty of care? The simple answer is "No" – because "[a] special relationship is a prerequisite" in a nonfeasance case such as this one (see *Garcia v. Superior Court* (1990) 50 Cal.3d 728, 734) and no special relationship exists under these facts.

A. The Trial Court Erred in Finding Fremont Congregation Liable for Kendrick's Abusive Acts Because the Congregation Did Not Owe the Plaintiff a Legal Duty of Protective Care.

1. Standard of Review: *De Novo.*

The tort of negligence "involves a violation of a *legal* duty, imposed by statute, contract or otherwise, owed by the defendant to the person injured. Without such a duty, any injury is an injury without wrong." (*Roman Catholic Bishop of San Diego v. Superior Court* (1996) 42 Cal.App.4th 1556, 1564.) Duty is thus "an essential element" of every negligence claim. (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 529, citing *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 984.) The existence of a duty is a question of law. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 237.) Legal questions are reviewed *de novo*. (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770-771.)

2. Application to This Case.

Our Supreme Court has consistently held that "as a general matter, there is no duty to act to protect others from the conduct of third parties." (*Delgado, supra,* 36 Cal.4th at 235; see *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434-435.) Further, "one owes no duty to control the conduct of another, or to warn those endangered by such conduct." (*McGarry v. Sax* (2008) 158 Cal.App.4th 983, 995.) One exception to that general "no duty to protect" rule is found in the "special relationship" doctrine. "A defendant may owe an affirmative duty to protect another from the conduct of third parties, or to assist another who has been attacked

by third parties, if he or she has a 'special relationship' with the other person." (*Morris v. De La Torre* (2005) 36 Cal.4th 260, 269.) In nonfeasance cases like this one, "[a] special relationship is a prerequisite" essential to establish liability. (*Garcia, supra,* 50 Cal.3d at 734.)

Thus, the central question confronting this Court in this appeal is whether Fremont Congregation had a special relationship with the Plaintiff or with Kendrick which would give rise to a duty to protect the Plaintiff from Kendrick's criminal acts. Distilling that question even further requires this Court to examine whether a church has a special relationship with a church member or the child of a church member. Our Supreme Court, this Court, other Courts of Appeal, and the courts from other states have uniformly answered that question with a resounding *"no."*

Yet the trial court improperly ventured into uncharted legal territory when it determined that a special relationship existed in this case between Fremont Congregation and the Plaintiff, which gave rise to Fremont Congregation owing her a duty of care. (8 RT 987-988; 9 RT 1054-1058.) Tellingly, the trial court did not provide a basis in the law to support its ruling, but rather candidly acknowledged that there are no cases in California supporting that ruling. (8 RT 982.) Nor did the trial court detail any factual support for that ruling, as there simply is none. (*Ibid.*) This was prejudicial error.

a. A Special Relationship Is Not Created Merely by Church Membership, or By the Providing of Spiritual Counsel by a Minister.

No legal authority supports the trial court's ruling that a special relationship exists between a religious organization, church, or its clergy and a church member (or a church member's child) merely because of membership. Quite to the contrary, this Court, along with other California courts, has followed courts throughout the nation in consistently holding that there is *no special relationship* between a church or clergy and a church member. (See, *e.g., Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 297 ["Mere foreseeability of the harm or knowledge of the danger, is insufficient to create a legally cognizable special relationship giving rise to a legal duty to prevent harm."]; *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 270 [a priest cannot be liable to a church member for breach of a duty arising out of a special relationship]; *Roman Catholic Bishop of San Diego v. Superior Court, supra*, 42 Cal.App.4th at 1568 ["there is no special relationship here creating a heightened duty of care based on a priest/parishioner relationship"].)[3]

---

[3] See *Doe v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints* (Utah App. 2004) 98 P.3d 429, 432 [membership in church alone insufficient to establish special relationship]; *Lambert v. Word of Faith Ministries* (La.Ct.App. 1996) 673 So.2d 1150 [no special relationship existed between minister and minor children requiring minister to control conduct of third party who was a minor child]; *Bryan R. v. Watchtower Bible and Tract Soc. of New York, Inc.* (Me. 1999) 738 A.2d 839, 847 [a church has no duty to protect members of its congregation from other members]; *Meyer v. Lindala* (Minn.Ct.App. 2004) 675 N.W.2d 635, 640 ["Providing faith-based advice or instruction, without more, does not create a special relationship"]; *Berry v. Watchtower Bible and Tract Soc. of New York, Inc.* (N.H. 2005) 879 A.2d 1124, 1129 ["We decline to hold that the fact of church membership or adherence to church doctrine by the plaintiffs' parents creates

Of note on that very issue is Justice Kline's analysis in *Richelle L.*, where he reasoned that the accused priest "cannot be liable to [the victim] for breach of a duty arising out of a special relationship" because it would be equivalent to a prohibited "clergy malpractice" claim. (*Richelle L., supra,* 106 Cal.App.4th at 270.) Indeed, liability for the criminal acts of third parties has typically been limited to those cases involving the relationship between business proprietors, such as shopping centers, restaurants and bars, and their tenants, patrons, or invitees. (See, *e.g., Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 674 [finding that it is well established that a proprietor has a "general duty of maintenance which is owed to tenants and patrons"]; *Kentucky Fried Chicken of Cal., Inc. v. Superior Court* (1997) 14 Cal.4th 814, 819, 823-824 [a proprietor who has reason to believe, from observation or experience, that the conduct of another endangers an invitee has a duty to take reasonable steps to protect the invitee]; *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 806 [imposing on a possessor of land a duty to "members of the public who enter in response to the landowner's invitation"].) Additionally, special relationships "have been found in other contexts, including those of: (i) common carriers and passengers; (ii) innkeepers and their guests; and (iii) mental health professionals and their patients." (*Delgado, supra,* 36 Cal.4th at 236, fn. 14.) But as Justice Haerle aptly observed, "the special relationship doctrine is reserved for situations in which the authorities have created a relationship of

---

a special relationship between the plaintiffs and Watchtower or [the local] Congregation."].

'dependency' with a 'vulnerable' individual[.]" (*Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 289 [conc. opn. of Haerle, J.].) In this case, however, the Plaintiff was not in the custody or control of Fremont Congregation when her alleged sexual abuse by Kendrick occurred.

b. An Expansion of the Special Relationship Doctrine Cannot Occur Absent Evidence of Custody or Control.

As our Supreme Court made clear in *Nally,* a person "is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a special relationship *of custody or control.*" (*Nally, supra,* 47 Cal.3d at 293 [italics added].) Thus, courts have only hesitantly expanded the field of recognized special relationships to situations involving some kind of dependency, reliance, custody or control. (See, *e.g., Melton, supra,* 183 Cal.App.4th at 535-536; *Olson v. Children's Home Society* (1988) 204 Cal.App.3d 1362, 1366.) Furthermore, before a special relationship can give rise to a duty of care, the liable party must have had the ability to protect the victim or control the wrongdoer. (See, *e.g., Wise v. Superior Court* (1990) 222 Cal.App.3d 1008, 1013.)

Those immutable principles were explored by this Court in *Giraldo v. Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231. There, a transgender prisoner (with a feminine physical appearance) was placed in a cell block with male prisoners and subsequently brutally attacked and raped. This Court was therefore faced with the question of whether a prisoner had a special relationship with the prison system. In holding that such a relationship did exist, the *Giraldo* court

recognized that "a typical setting for the recognition of a special relationship is where 'the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff's welfare.'" (*Id.* at 245-246 [citations omitted].)

In stark contrast, in this case no relationship of dependency existed between the Plaintiff and Fremont Congregation. By her own account, and the testimony of both her parents, the Plaintiff was accompanied by her parents at all congregation meetings and religious activities. (6 RT 725-726, 737-738; 4 RT 357, 367-369; 5 RT 495-496, 499-501, 513.) In other words, the Plaintiff was dependent on her parents and *not* Fremont Congregation, to look after her welfare, consistent with civil law and church practices and doctrine, which does not separate children from parents in any church activities. (3 RT 140; 4 RT 277, 321, 421; 5 RT 495, 547; 6 RT 705; 7 RT 873-876.) Similarly, Fremont Congregation was not aware of Kendrick's conduct towards the Plaintiff, and Fremont Congregation lacked the ability to control Kendrick, especially in his own home where most of the criminal acts were said to have occurred. (6 RT 742, 744.)

That absence of custody and the ability to control "is fatal to a claim of legal responsibility." (*Megeff v. Doland* (1981) 123 Cal.App.3d 251, 261, [citations omitted].) Where, as here, the natural relationship between any of the parties "creates no inference of an ability to control, the actual custodial ability must affirmatively appear." (*Ibid.*)

That legal principle is no different for religious entities, as made clear by the legislative history of California Code of Civil Procedure section 340.1, explained in *Aaronoff v. Martinez-Senftner* (2006) 136 Cal.App.4th 910. *Aaronoff* dealt with an adult abuse victim who sued her father under the revival provision of section 340.1. The court ultimately ruled that the revival provision did not apply to abuse by one's parent, but rather that section 340.1 was:

> [T]argeted at third party defendants who, by virtue of certain specified relationships to the perpetrator (i.e., employee, volunteer, representative, or agent), could have employed safeguards to prevent the sexual assault. It requires the sexual conduct to have arisen through an exploitation of a relationship over which the third party has some control. In other words, the perpetrator's access to the victim must arise out of the perpetrator's employment with, representation of, agency to, etc., the third party, and the third party must be in such a relationship with the perpetrator as to have some control over the perpetrator. (*Aaronoff, supra,* 126 Cal.App.4th at 921.)

The *Aaronoff* court then clarified that its "construction of the statute is confirmed by the legislative history of the 2002 amendment . . . [where] the Senate Judiciary Committee explained that the responsible third party entity to which the legislation is directed is an entity such as 'an employer, sponsoring organization or religious organization . . . .'" (*Id.* at 922, citing Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1779 (2001-2002 Reg. Sess.) as amended May 2, 2002, pp. 4-5].) In identifying those third parties, the Judiciary Committee further clarified that "[g]eneral theories of negligence impose a duty of care where a third person or entity has assumed some responsibility, through a relationship or otherwise, for a person's

conduct or a person's safety . . . . Similarly, a school district, church, or other organization *engaging in the care and custody of a child* owes a duty of care to that child to reasonably ensure its safety." (*Ibid.* [italics added].) Thus, the Legislature has similarly recognized that third party liability for the criminal acts of others necessarily turns on either *custody* or *control* over the victim or the perpetrator.

However, as discussed above, even without evidence of custody or control, the trial court deliberately trod new ground and created a new category of special relationships – *one founded upon church membership alone*. Indeed, in doing so the trial court readily acknowledged that "imposing a duty under the circumstances here" was "clearly an evolution of the [special relationship] doctrine." (8 RT 979-980, 981-985; 9 RT 1011-1012, 1032-1033, 1054.) But such an expansion is neither justified by the facts of this case nor consistent with well-settled law, as neither the Plaintiff nor Kendrick was in the care, custody, or control of Fremont Congregation.

c. Neither *Tarasoff, Delgado,* Nor *Juarez* Support the Trial Court's Expansion of the Special Relationship Doctrine Under These Facts.

Without factual support, the trial court apparently assumed that Fremont Congregation had some undefined caregiving role over the Plaintiff. (8 RT 979-982; 9 RT 1011-1012, 1054-1055.) The court, however, did not explain how Fremont Congregation was a caregiver when the Plaintiff was with her parents during church-related activities, or when Kendrick was alone with the Plaintiff during non-church activities and away from church property.

The trial court apparently extrapolated that unfounded misperception into its finding of a special relationship, citing the High Court's decisions in *Tarasoff* and *Delgado*, *supra,* and this Court's prior decision in *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377:

> As to duty, I wrote in the email of counsel quotes from *Tarasoff*, which of course was a quintessential duty case, actually arising in Alameda County. But the Court's analysis of *Delgado*, which followed in *Juarez*, I did, in effect, find a special relationship of a minor child contextually under the circumstances alleged here. . . . And I'm imposing a duty under the circumstances here for the reasons related in my email, but clearly an evolution of the doctrine, perhaps the best example not involving a church was *Juarez*, as to the duty inherent to adults and their organizations vis-a-vis the taking care of children. So the duty ruling is mine for the reasons I related. (9 RT 1011-1012.)

Yet in this case, the Plaintiff made no allegation that Fremont Congregation was a caregiver or had custody or control over her or Kendrick. (2 AA 501-508.) Nor was any such evidence presented at trial. In fact, the evidence was the *opposite*. The evidence demonstrated that Fremont Congregation did not conduct separate children's activities or Sunday School classes for children. (3 RT 140; 4 RT 277, 321, 421; 5 RT 495, 547; 6 RT 705; 7 RT 873-876.) Indeed, the Plaintiff herself admitted that she would *not* attend congregation meetings without one or both of her parents. (6 RT 725-726, 737-738.) Moreover, according to Gary Abrahamson (an elder in Fremont Congregation), a parent who dropped their child off at the Kingdom Hall for others to look after would be counseled "to help them to appreciate that the

children are their responsibility. They come out with their children. They don't drop them off for someone else to care for." (3 RT 187.)

While the trial court's apparent concern for the welfare of children is noble, courts must be hesitant – even when children are involved – to impose new tort duties when doing so would involve complex policy decisions, especially when such decisions are more appropriately the subject of legislative deliberation and resolution. (See *Quigley v. First Church of Christ Scientist* (1998) 65 Cal.App.4th 1027, 1034 [rejecting the plaintiff's suggestion "to create a general duty of care owed by all persons toward children"].) The trial court erred in creating such a new duty of care under these facts.

Nothing in *Tarasoff, Delgado,* or *Juarez* compels a different result. For example, in *Tarasoff,* our Supreme Court held that mental health professionals have a duty to protect individuals who are threatened with bodily harm by a patient. That duty requires the professional to notify the police, warn the intended victim, or take other reasonable steps. (*Tarasoff, supra,* 17 Cal.3d at 431.) *Tarasoff* did *not* involve a church or child abuse, and church elders are not "mental health professionals." Moreover, Kendrick neither threatened to harm the Plaintiff nor confided in Fremont Congregation elders any intent to commit criminal acts of child abuse. In short, absolutely nothing in the record suggests that Fremont Congregation elders had any information indicating that Kendrick intended to sexually abuse the Plaintiff or any other child. Thus, other than providing general principles of the law surrounding a

duty – which support the position of Fremont Congregation and not the Plaintiff – the facts of *Tarasoff* have no bearing on this case.

Similarly, in *Delgado,* the California Supreme Court again stated that one ordinarily has no duty to protect or warn another from the criminal acts of a third party absent a special relationship. *Delgado* involved a bar patron physically attacked by another patron in the bar's parking lot when bar employees knew of a specific threat against a specific person as well as specific circumstances indicating a current danger to their business invitee. (*Delgado, supra,* 36 Cal.4th at 245-246.) *Delgado* did not involve a minor. It did not involve a church or child abuse. Fremont Congregation was not aware of Kendrick's criminal conduct towards the Plaintiff or Kendrick's intent to commit sex crimes against the Plaintiff. Thus, like *Tarasoff,* other than providing general principles of the law surrounding a duty – which again support the position of Fremont Congregation and *not* the Plaintiff – the facts of *Delgado* have no bearing on this case.

Also factually distinguishable is *Juarez*, which concerned a child abused by a scoutmaster during scouting activities while he was in the scoutmaster's care, custody, and control. Under those unique circumstances, this Court in *Juarez* reasoned that "children engaged in organized group overnight activities are at risk of foreseeable sexual abuse." (*Juarez, supra,* 81 Cal.App.4th at 404.) In doing so, this Court acknowledged that "California courts have frequently recognized special relationships *between children and their adult caregivers* that give rise to a duty to

prevent harms caused by the intentional or criminal conduct of third parties." (*Id.* at 410 [italics added].)

However, the facts here are dramatically different. First, Kendrick was *not* in any appointed position within the congregation when he allegedly abused the Plaintiff; he was simply a rank-and-file member of the congregation. Those circumstances would be akin to one Boy Scout sexually abusing a fellow Boy Scout at times and places unassociated with any scout property or activities, a factual scenario that *Juarez* clearly did not confront.

Additionally, it bears repeating that unlike the situation presented in *Juarez,* the Plaintiff, by her own reckoning, was *not* in the care, custody, or control of the Fremont Congregation at the time the abuse in question allegedly occurred. And any "abuse" at the Kingdom Hall (*i.e.,* "bear hugs" and occasionally sitting on Kendrick's lap) occurred when the Plaintiff, again by her own account, was in the custody of at least one of her parents. (6 RT 725-726, 737-738.) Therefore, any analogy to *Juarez* is woefully mistaken. Instead the trial court should have heeded this Court's explicit warning in *Juarez* that "the reach of this opinion is only intended to extend as far as the record before us today. If we have not yet made it abundantly clear, deciding the question of duty mandates a case-by-case fact and policy analysis." (*Juarez, supra,* 81 Cal.App.4th. at 409.) The trial court's failure to do so constituted error as a matter of law which this Court should now reverse.

d. Once It Is Established that There Is No Special Relationship Between the Parties, the Duty Analysis Must Stop.

This Court has recognized the critical importance of finding a special relationship in any duty analysis. Specifically, in *Margaret W. v. Kelley R.* (2006) 139 Cal.App.4th 141 this Court observed:

> This division has debated the role of a "special relationship" in analyzing duty for purposes of imposing liability in tort. (See *Juarez, supra,* 81 Cal.App.4th at pp. 410-411, 97 Cal.Rptr.2d 12 & fn. 10.) In *Delgado, supra,* 36 Cal.4th 224, 30 Cal.Rptr.3d 145, 113 P.3d 1159 and its companion case, *Morris v. De La Torre* (2005) 36 Cal.4th 260, 30 Cal.Rptr.3d 173, 113 P.3d 1182, the Supreme Court has made it clear that the concept of "special relationship" remains a very important analytic tool in determining duty. (*Margaret W., supra,* 139 Cal.App.4th at 152, fn. 12.)

An important analytic tool must be used skillfully, but the trial court muddled its analysis. Indeed, the court apparently conflated elements of common law duty with special relationship principles and then considered the seven factors outlined in *Rowland v. Christian* (1968) 69 Cal.2d 108. (8 RT 979-980, 981-985; 9 RT 1011-1012, 1032-1033, 1054.) However, the various reviewing courts have clearly stated that once it has been established that a special relationship does *not* exist under the "no duty to aid" rule, it is unnecessary to consider the so-called *Rowland* factors.

For instance, in *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727, the abuse victim's mother married a felon convicted for molesting children. She sued the molester and some of his family members who failed to warn her of her husband's past history. Justice Sills for the Fourth District wrote that "[a]bsent a 'special

relationship,' one cannot be held liable for mere nonfeasance, such as not protecting another from a criminal attack by a third party[,]" and that "[t]he basic idea is often referred to as the 'no duty to aid rule,' which remains a fundamental and long-standing rule of tort law." (*Id.* at 727.) Thus, the Fourth District properly declined the invitation to consider the duty question using the traditional seven *Rowland* factors. To that end, Justice Sills further opined "[t]hat weighing process, however, has already been done by courts over the centuries in formulating the 'no duty to aid' rule." (*Id.* at 729-730.)

Similarly, in *Suarez v. Pacific Northstar Mechanical, Inc.* (2009) 180 Cal.App.4th 430, 438, the plaintiffs were injured by a non-obvious hazardous condition at a construction site. Although the defendant subcontractor was aware of the hazardous condition, it did not create it or cause it to occur. The plaintiffs nonetheless urged this court to extend the concept of a special relationship to that situation. This Court declined to do so or to apply the *Rowland* factors because the allegations in that case – like the Plaintiff's claims here – were based upon nonfeasance. (See also *Seo v. All-Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1203 ["Because the traditional weighing process using the seven factors set forth in *Rowland v. Christian* . . . has already been done by courts over the centuries in formulating the no duty to aid rule in the context of liability for nonfeasance, it is not necessary to engage in the weighing process in a particular case"].)

The trial court should have followed that analytical framework by first performing a special relationship analysis, and then – only if a special relationship is found to exist – undertaken the *Rowland* analysis to determine the *scope* of any duty. (See, *e.g., C.A. v. William S. Hart Union High School District* (2012) 53 Cal.4th 861, 877 [recognizing that the *Rowland* analysis is properly used "to decide the scope of duty" only *after first* determining that a special relationship existed in the first place]; *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213-1218 [deciding scope of duty arising from a special relationship]; *Morris, supra,* 36 Cal.4th at 271 [considering *Rowland* factors *only after* a determination that a special relationship existed]; *Delgado, supra,* 36 Cal.4th at 236 [reviewing seven *Rowland* factors *only after* making a determination that a special relationship existed].) In short, when there is no legally cognizable special relationship between the parties – as was the case here – the duty analysis simply must end.

e. Fremont Congregation Does Not Owe a Duty to Protect Plaintiff Even Under *Rowland.*

Even if this Court decides to create new law and to determine for the first time in California that a special relationship exists between a church and its members absent any custody or control, Fremont Congregation still owed no duty to the Plaintiff under a "*Rowland* factors" analysis. Those factors include: (1) the foreseeability of harm to the one injured; (2) the degree of certainty that the plaintiff actually suffered a harm; (3) the closeness of connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's

conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant; and (7) the consequences to the community of imposing a duty to exercise care, with any potential resultant liability. (*Rowland, supra,* 69 Cal.2d at 112-113.) As the following discussion shows, under the particular facts of this case, Fremont Congregation did not owe a duty of care to the Plaintiff even under *Rowland.*

i. No High Degree of Foreseeability.

"Foreseeability supports a duty only to the extent the foreseeability is reasonable." (*Sturgeon v. Curnutt* (1994) 29 Cal.App.4th 301, 306.) "[A] duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be reasonably anticipated." (*Ann M., supra,* 6 Cal.4th at 676.) When the harm results from criminal conduct by a third party, an extraordinarily "high degree of foreseeability" is required to impose a duty on a landowner, "in part because 'it is difficult if not impossible in today's society to predict when a criminal might strike.'" (*Melton, supra,* 183 Cal.App.4th at 532 [citations omitted].) Moreover, the "foreseeability" examination called for under a duty analysis pursuant to *Rowland* "is a very different and normative inquiry." (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 476.) One test to apply to the facts in determining if the harm was foreseeable is "whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may be appropriately imposed on the negligent party." (*Martinez v. Bank of America* (2000) 82 Cal.App.4th 883, 895; accord *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572-573, fn. 6.)

The negligent act of which the Plaintiff complains is that Fremont Congregation failed to supervise, manage, and control Kendrick and failed to warn her that there was some amorphous "propensity and risk" that Kendrick would sexually molest her under circumstances unknown to anyone except for perhaps Kendrick. (2 AA 503.) Thus, the question becomes whether Kendrick's alleged abuse of the Plaintiff by giving her "bear hugs," having her sit on his lap, putting his hand up her shirt, engaging in oral sex, placing objects in her vagina (6 RT 723, 728-731, 738-739, 746-747, 742) is the direct result of Fremont Congregation's failure to supervise Kendrick, or to announce to the congregation that on one prior occasion, Kendrick inappropriately touched the breast of his stepdaughter in his own home.

As such, these facts are markedly very different from *Doe 1 v. City of Murrieta* (2002) 102 Cal.App.4th 899, where the court found a high degree of foreseeability that sexual exploitation of a minor might occur. There, the defendant knew the perpetrator and victim were spending an unusual amount of time together, going on frequent one-on-one ride-alongs late at night, and engaging in frequent telephone calls, in violation of the defendant-employer's written policies. Here, Fremont Congregation was not aware that Kendrick was spending time alone with Plaintiff, nor was it either Kendrick's or the Plaintiff's employer. Fremont Congregation knew of a one-time event (*i.e.,* Kendrick momentarily touching his stepdaughter's breast), had no idea that Kendrick was subsequently prosecuted for any crime arising from that incident, and had no idea that the Plaintiff's parents were

allowing Kendrick to spend time alone with their daughter, a fact both parents deny, thereby contradicting their own daughter's testimony.

Moreover, the foreseeability that Kendrick would molest a fellow congregation member or their children was also significantly diminished by the immediate and reasonable steps congregation elders took upon learning of Kendrick's inappropriate conduct towards his stepdaughter, as well as by the way congregation meetings and field ministry were conducted. Indeed, the elders reasonably believed that congregation children were protected during those meetings because: (1) children were under the care and supervision of their parents in the Kingdom Hall;[4] (2) children were under the care and supervision of their parents during field service activities;[5] (3) members worshipped as a family, with no separate activities for children;[6] (4) the elders announced to the congregation that Kendrick was no longer a ministerial servant, which let everyone know he had a spiritual problem (3 RT 163, 166; 4 RT 409; 5 RT 484; 7 RT 880); and (5) the elders took the

---

[4] Michael Clarke testified that at congregation meetings, "children are always sitting with their parents" (4 RT 277) and Claudia Francis testified that at congregation meetings "children sit with their parents." (4 RT 321.)

[5] Gary Abrahamson testified about the precautions taken to protect children during meetings and field service: (1) single males are not assigned to work alone with single females (3 RT 186); (2) a child is not assigned to work in field service with an adult of the opposite sex (3 RT 186); (3) parents do not drop off their children for field service, and if it happened, the elders "would talk to the parent to help them appreciate that children are their responsibility." (3 RT 186-187); (4) after Kendrick's November 1993 confession of molesting his stepdaughter, elders would assign him to work in field service with an elder or another adult and did not allow Kendrick to work with children in field service. (3 RT 248.)

[6] Kathleen Conti testified that the Plaintiff never went to the Kingdom Hall by herself (4 RT 357, 367-368) and Neal Conti similarly confirmed "she [the Plaintiff] would always be with me." (5 RT 482, 496, 513.)

precaution of keeping a watchful eye on Kendrick and instructed him that he was not allowed to be alone with, have contact with, or be overly familiar with children; indeed, they never saw Kendrick do any of those things.[7] Those facts do not come close to creating the extraordinarily "high degree of foreseeability" necessary to impose a duty to protect someone from Kendrick's unknown and subsequent criminal conduct. To be sure, the supervision necessary to prevent Kendrick's abusive acts would unreasonably require Fremont Congregation to supervise Kendrick 24 hours a day, every day, on and off church property, and to usurp the parental role of Neal and Kathleen Conti when they engaged in religious activities with their daughter.

Even if, *arguendo*, this Court determines that the foreseeability contemplated in *Rowland* is established here, "foreseeability alone is insufficient to create a legal duty to prevent harm." (*Adam, supra,* 68 Cal.App.4th at 269). Instead, our Supreme Court has steadfastly instructed that "'social policy must at some point intervene to delimit liability' even for foreseeable injury," and that "policy considerations may dictate a cause of action should not be sanctioned *no matter how foreseeable the risk.*" (*Parsons, supra,* 15 Cal.4th at 476 [citations omitted].)

[7] Lawrence Lamerdin testified "we kept an eye on him [Kendrick] to make sure that everything was fine" and gave him specific instructions that he was not allowed to be around children, to work in the ministry with them, to have any contact with them, direct or indirect. (4 RT 417.) Also Gary Abrahamson testified that he was not aware of Kendrick engaging in any playful or affectionate conduct with children. (3 RT 162.)

ii. No Degree of Certainty of Harm to Plaintiff.

Fremont Congregation elders did not observe Kendrick acting inappropriately with the Plaintiff, nor did they learn of the Plaintiff's accusations until *well after* her abuse had ended. Thus, Fremont Congregation had no knowledge with respect to the second *Rowland* factor, "the degree of certainty that the plaintiff actually suffered harm[.]" (*Rowland, supra,* 69 Cal.2d at 113.) Indeed, the testimony adduced at trial never established whether anyone, including the Plaintiff's own parents, knew that Plaintiff was being harmed at any time. Specifically, Neal Conti denied that Kendrick ever hugged his daughter or that Kendrick ever had the Plaintiff sit on his lap at the Kingdom Hall. (5 RT 495-496, 513.) He also disputed his own daughter's testimony that she was taken to Kendrick's home alone after congregation meetings or after field service. (5 RT 496, 513.) He further testified he never would have allowed those things to happen, and he denied that Kendrick ever abused Plaintiff on a train in his presence. (5 RT 499-501.) The Plaintiff's mother, Kathleen Conti, testified similarly. (4 RT 368, 369.) If the Plaintiff's own parents did not know that their daughter was being harmed by Kendrick, how could the Freemont Congregation elders be expected to know that harm was occurring?

Although Fremont Congregation elders Gary Abrahamson, Michael Clarke, and Lawrence Lamerdin kept a watchful eye on Kendrick after the one-time incident with Kendrick's stepdaughter in 1993, they never saw Kendrick hug Plaintiff. (3 RT 196, 253; 4 RT 420, 421.) They also never witnessed the Plaintiff sitting on

Kendrick's lap at the Kingdom Hall, or leaving the Kingdom Hall alone with Kendrick after congregation meetings or field service. (3 RT 162-163, 195-196, 248-249, 250, 253; 4 RT 412-413, 420-421, 430.)

Only the Plaintiff testified that Kendrick acted inappropriately; no one else saw it or knew about it. Fremont Congregation had no reason to believe that Plaintiff would be injured by Kendrick's conduct, and never had any indication that harm was occurring.

iii. No Close Connection Between Fremont Congregation's Conduct and the Plaintiff's Injury.

The Plaintiff has *not* alleged that she was harmed by any affirmative acts on the part of Fremont Congregation. Rather, she claimed damages resulting from abuse at the hands of congregation member Kendrick because Fremont Congregation *failed to act*. No evidence supports a finding that Fremont Congregation created a situation that posed an undue risk of harm to Plaintiff. As discussed above, when claims are based on the failure to act, "an actor is under no duty to control the conduct of third parties." (*Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 48.)

Moreover, as clarified previously in *Melton,* by simply inviting certain attendees to a party, the defendant did not create the peril the plaintiff ultimately suffered, being assaulted and seriously injured by other party-goers. (*Melton, supra,* 183 Cal.App.4th at 540-541.) Similarly, in *Sakiyama v. AMF Bowling Centers, Inc.* (2003) 110 Cal.App.4th 398, the plaintiff alleged that the roller skating rink that sponsored an all-night party contributed to her injuries. The court held, however,

"hosting a rave party does not equate with an unreasonable risk of harm." (*Id.* at 409.)

Here, Fremont Congregation elders held religious services in a protected environment where the Plaintiff attended with her parents. Any harm that she suffered was the result of Kendrick's unknown and unforeseeable criminal acts, not because of Fremont Congregation's actions. Like the situations in *Melton* and *Sakiyama*, Fremont Congregation's "hosting" of congregation meetings did not contribute to the Plaintiff's injuries, and Kendrick's criminal activity was certainly not a "necessary component" of those congregation meetings. Kendrick, again like the scenario in *Melton* and *Sakiyama,* was just one of many attendees who acted inappropriately towards the Plaintiff, primarily off church property and unrelated to any church activity.

This is especially true where Fremont Congregation did not sponsor activities for children or otherwise separate children from their parents. (3 RT 140; 4 RT 277, 321, 421; 5 RT 495, 547; 6 RT 705; 7 RT 873-876.) Nor did Fremont Congregation encourage Plaintiff's parents to leave her with Kendrick, or with any grown man. (7 RT 874-875.) In short, no close connection exists between Fremont Congregation's conduct and the Plaintiff's claimed injuries.

iv. No Moral Blame Attaches to Fremont Congregation's Conduct.

In the legal context, "[m]oral blame has been applied to describe a defendant's culpability in terms of the defendant's state of mind and the inherently harmful nature of the defendant's acts." (*Adams, supra,* 68 Cal.App.4th at 270.) "Moral blame" as a public policy factor is more than the answer to the question "was the defendant negligent?" (See *Merenda v. Superior Court* (1992) 3 Cal.App.4th 1, 10-11.) Instead, courts have required a higher degree of moral culpability such as where the defendant: (1) intended or planned the harmful result; (2) had actual or constructive knowledge of the harmful consequences of its behavior; (3) acted in bad faith or with a reckless indifference to the results of their conduct; or (4) engaged in inherently harmful acts. (*Adams, supra,* 68 Cal.App.4th at 270.)

None of those circumstances are present here. Nor did the evidence demonstrate that Fremont Congregation ignored the societal plague of child abuse. To the contrary, Fremont Congregation used materials from Watchtower's educational program, including written materials, to inform its members how to prevent such abuse. (3 RT 160-165, 188, 208, 235, 237-239; 5 RT 508-510, 547; 6 RT 702-704; 7 RT 876-878, 884-887.) As Dr. Applewhite testified, Jehovah's Witnesses did an exceptional job from the 1970's through the 1990's educating parents about child sexual abuse (7 RT 876-877, 896, 898), exceeding normal standards existing in the mid-1990's. (7 RT 884.) Further, Fremont Congregation elders implemented Watchtower's direction in the July 1, 1989 letter addressed to all

bodies of elders that, upon learning of an allegation of child abuse, elders must protect the victim from further abuse and call Watchtower's Legal Department to ensure compliance with mandatory child abuse reporting laws for ministers in their state. (3 RT 154, 246; 7 RT 924.)

This is a far cry from those situations where a defendant takes *affirmative actions*, or makes *affirmative misrepresentations*, which place the victim in a "zone of danger." For instance, in *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206, the wife of a sex offender was held liable for telling the parents of three children that "it would be safe for them to play at her house." (*Id.* at 212.) The *Pamela L.* court distinguished that case from traditional "nonfeasance cases" because of the nature of the wife's affirmative misrepresentations which increased the likelihood of harm to the three plaintiffs. (*Id.* at 209-210.) In other words, the wife specifically invited the children to her home and thereby "assumed" a "special relationship" with them. (*Id.* at 211; see also *Carpenter v. City of Los Angeles* (1991) 230 Cal.App.3d 923, 931-932 [prosecutors who assured the appellant that the defendant posed no real danger owed a duty of care that required warning of subsequent threats to appellant's life].)

Here, the record is devoid of evidence that Fremont Congregation either took any *affirmative action* that put the Plaintiff in Kendrick's company or made *affirmative misrepresentations* to the Plaintiff or to her parents concerning the level of danger (or safety) that would result from association with Kendrick. As such, Fremont Congregation did not place the Plaintiff in a zone of danger by any affirmative acts.

v. Policy of Preventing Future Harm.

Fremont Congregation agrees that protecting children from sexual abuse is vitally important. But, the Plaintiff provided no evidence that requiring religious organizations to warn congregation members about other members who have committed child sexual abuse is an effective strategy for preventing future abuse.

The case of *Baldwin v. Zoradi* (1981) 123 Cal.App.3d 275 provides a close analogy. In that case, a student sued a university after two fellow students had been drinking and engaged in a speeding contest in which the plaintiff was injured. The *Baldwin* court held that the policy of preventing future harm was not a very strong one because the university officials had not "collaborated" to encourage the drinking, and there was no "direct involvement" by the university in furnishing alcoholic beverages. (*Id.* at 290.) Similarly, there was no collaboration here. Fremont Congregation did not encourage Kendrick to spend private time with the Plaintiff or to sexually abuse her; Fremont Congregation did nothing to facilitate the abuse.

Thus, while the policy of preventing future child abuse is strong, imposing the burden of that policy on defendants like the Freemont Congregation – who have no direct involvement with the conduct meant to be prevented – makes little sense, and in fact could prove to be counter-productive in the fight against child abuse. Indeed, logic dictates that child molesters will not confess to clergy members if they know that their conduct will be announced to the congregation. Without such confessions, elders would lose valuable insight allowing them to closely watch attendees who might pose a danger to other members. And child molesters who do not seek

corrective spiritual assistance will continue their practices without being discovered. If religious organizations are required to issue warnings about congregation members with a history of sexually abusing a child, those members will simply conceal that history or move to a different congregation, to a different religious organization, or to a youth organization where the history remains unknown and where they will not be monitored. This certainly does nothing to promote the policy of preventing that harm in the first place.

vi. Significant Social and Financial Burden.

"Foreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations" in the duty analysis. (*Castaneda, supra,* 41 Cal.4th at 1213.) Indeed, the imposition of a duty of care to protect against criminal activity requires "balancing the foreseeability of the harm against the burden of the duty to be imposed." (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1146-1147 [citations omitted].) To do so, a court must "identify the specific action or actions the plaintiff claims the defendant had a duty to undertake[,]" then "the court must analyze how financially and socially burdensome these proposed measures would be[.]" (*Castaneda, supra,* 41 Cal.4th at 1214.)

Although Plaintiff did not clearly state what action Fremont Congregation should have taken to protect her, her attorney suggested three options: (1) an announcement should have been made that Kendrick had momentarily fondled the breast of his stepdaughter (9 RT 1085-1086); or (2) the elders should have made that

fact known to her and her parents personally (9 RT 1085-1086); or (3) Fremont Congregation should have barred Kendrick from attending church services (9 RT 1085-1086). However, making a public announcement or privately disclosing such confidential information violates the firmly held religious beliefs and practices of Jehovah's Witnesses and was not part of the procedures for disciplining within the church. This is especially true where at the time of that confession, Kendrick had not been convicted (or even charged) with a crime, and Freemont Congregation was unaware of any subsequent criminal prosecution until 1998. As such, neither a civil jury nor a trial judge is privileged to adjudicate whether or not the discipline process of the church was reasonable. (See Watchtower's Opening Brief, Section IV.C.) Even if the Plaintiff's suggestions could meet constitutional muster, the social and financial burdens are too great to justify the imposition of a broad duty to protect, including a duty to warn.

Practical realities similarly underscore the extremely burdensome nature of a duty to protect with its duty to warn. Here, an announcement was made to the congregation that Kendrick was no longer serving as a ministerial servant. (3RT 163, 166, 222-223, 241, 243-244; 5 RT 484; 7 RT 880.) To Jehovah's Witnesses, that announcement was sufficient to let congregation members know Kendrick had a spiritual problem and Fremont Congregation elders had serious concerns about Kendrick. (3 RT 166; 4 RT 409.) Nevertheless, Plaintiff's own father, who knew that Kendrick was no longer serving as a ministerial servant because Kendrick's congregational activities and his congregation duties were greatly curtailed, admitted

that he did not know if he was at the congregation meeting when that announcement was made. (5 RT 484.) It follows that, had the elders made a detailed announcement as to Kendrick's wrongdoing instead, the Plaintiff and her family may never have heard it. Thus, the idea of even how that announcement could be required raises more vexing questions than it answers:

- To ensure every member is aware of important information contained in an announcement, would *one* announcement during a congregation meeting be sufficient?
- Would weekly, monthly, or annual announcements be required?
- Would elders be required to announce each week that Kendrick engaged in wrongdoing in 1993?
- Would an announcement be required every time a new member or family joins the congregation?
- Or would the congregation have to put a written announcement up on the information board in the back of the Kingdom Hall?
- Would families with minor children have to be notified in person or by a written notice?
- Would Fremont Congregation have a duty to protect or warn families with children in other congregations if it learns that Kendrick, or any confirmed child abuser, occasionally attends these other congregations' meetings for worship to visit relatives or for other reasons?
- Would Fremont Congregation have a duty to protect or warn families with children who attend other congregations but whom Kendrick, or another confirmed child abuser, might occasionally visit at their homes for reasons unrelated to the congregation?
- Would Fremont Congregation have a duty to protect or warn families with children even if they received an unconfirmed allegation of child abuse against a congregation member?
- Would Fremont Congregation have a duty to protect and warn families with children about a minor who is alleged to have engaged in sexual misconduct with a younger minor?

- How would Fremont Congregation be able to prove that they took reasonable protective measures or gave a warning when an alleged victim sues 20 years after abuse and alleges that Fremont Congregation breached its duty to protect with its duty to warn?
- When would the duty to protect or warn cease?

From a financial burden standpoint, the duty to protect imposed by the trial court required Fremont Congregation to protect children from the risk of abuse by a rank-and-file congregation member 24 hours a day, 7 days a week. Thus, even if Fremont Congregation issued warnings to congregation members about the risk of abuse by individuals who are alleged to have committed child abuse in the past, Fremont Congregation would still incur an enormous financial burden for lawsuits resulting from the unprecedented duty to protect children around-the-clock, even off church property and during activities unrelated to the church.

Such a broad duty also places an intolerable social burden on Fremont Congregation in violation of its constitutionally protected religious beliefs and practices regarding confidentiality and internal church discipline. Those beliefs and practices are based on Fremont Congregation's understanding of the Bible, which requires that congregation elders keep strictly confidential the sensitive and private matters they learn in confidence from congregation members. It also burdens and impacts directly the ability of congregation members to obtain spiritual advice and counsel without their most sensitive and private matters being made public. Indeed, confidentiality benefits the spiritual health of the congregation as a collective body. To that end, Freemont Congregation elder Clarke testified that "[the congregants]

have to be comfortable coming to us to talk with us about their problems so we can offer them Scriptural help, spiritual guidance. If they feel that we are going to blab it to our wi[ves], or to announce it from the platform, we wouldn't get too many people coming to us. So confidentiality is important for a minister." (3 RT 254.) Accordingly, the duty imposed by the trial court would simply create unviable conflicts within religious organizations and would harm the minister-congregant relationship in practically every denomination. In the words of Elder Clarke: "Why would anybody come to us [elders] with their problems if they knew that as soon as they came to us we were going to announce it? Why would anybody confess to a Catholic priest if they knew that after they confessed it was going to be announced at [M]ass next week. It is ludicrous." (3 RT 230.)

vii. Significant Societal Consequences.

The significant societal consequences flowing from the trial court's decision also presents compelling reasons against imposing a duty to protect with a duty to warn. Such a duty would forever saddle all religious organizations with unbridled liability in all instances where they discover any activities by any congregation member which may or may not pose harm to other congregation members, or which may or may not be criminal in nature. Indeed, if a congregant has a drinking problem and seeks spiritual advice from church elders to combat that problem, but later drives drunk after leaving a social function (unrelated to the church) and injures another congregant, that church would be liable under the trial court's duty formulation.

Similarly, if a congregant has financial problems and seeks spiritual advice, but later steals from another congregant, that church would also be liable under the trial court's duty ruling. As those two examples aptly illustrate, the potential financial liability to the church is limitless, making it all but impossible for the Freemont Congregation, or any other church, to continue its operations in the face of such unbridled, yet undetermined, liability for the torts of any of its members. No organization, religious or otherwise, could be expected to operate from a sound financial position in the face of such limitless liability, especially where there would be no insurance available to cover those risks.

The consequence of such a duty would therefore be to force the Freemont Congregation – and any church for that matter – to immediately excommunicate any member who *even potentially or allegedly* engaged in any conduct which may or may not later result in criminal or tortious activity against another member at some undetermined point in the future. But as the law correctly recognizes, civil courts are ill-suited to tell any group (religious or otherwise) who it should or should not include, and the First Amendment specifically excludes such government intervention in the right every American has to associate with whomever they chose. Indeed, as recognized in the recent decision of *Melton, supra,* 183 Cal.App.4th at 540-541, limiting who a person can and cannot associate with in an effort to prevent harm from the criminal acts of others is too "socially burdensome" to justify tort liability for those criminal acts. Likewise, limiting a church's choices about who may or may not attend religious services creates a heavy social burden, not to

mention an infringement of First Amendment protections. Civil courts cannot impose liability by case law, nor can legislators by statute prescribe who a religion may invite to attend meetings and participate in its religious activities. (See *Paul v. Watchtower Bible and Tract Society of New York, Inc.* (9th Cir. 1987) 819 F.2d 875, 880-881 [Free Exercise Clause protects religious organizations from civil tort liability related to the religious practice of "shunning"].)

In short, the trial court's creation of a duty to protect the Plaintiff – 24 hours a day, 7 days each week – from the tortious or criminal acts of other rank-and-file members unduly burdens the free exercise of religion to which the Fremont Congregation, and any other religious organization, are undoubtedly entitled. Adherence to that new duty would also impose unwarranted financial and social burdens on churches of all denominations, as well as similarly situated social and nonprofit organizations. Consequently, those organizations would ultimately have reduced resources for the vast array of charitable and social services they provide to society, or would have to cease those activities altogether in the face of unbridled liability, all of which would have a detrimental effect on society. This Court should not tolerate such a result.

In sum, even if this Court concluded it was appropriate to apply the traditional *Rowland* factors to determine whether Fremont Congregation owed the Plaintiff a duty of care, applying the facts of this case to those factors compels the very same result: no such duty of care can be justified. Accordingly, this Court should reverse

the trial court's imposition of such a duty and the resulting Judgment and Amended Judgment against Freemont Congregation and Watchtower.

B. A New Trial is Required Because the Trial Court's Jury Instructions Prejudiced the Outcome.

1. Standards of Review: *De Novo* and Prejudice.

A new trial is required, even if this Court creates a new category of special relationship duty, because the trial court nevertheless erred in giving prejudicial jury instructions which prevented a fair trial. The propriety of jury instructions is a legal question subject to *de novo* review. (*Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 845-846.) As this Court is surely aware, "a [trial] court's duty to instruct the jury is discharged if its instructions embrace all points of law necessary to a decision." (*Thompson Pacific Construction, Inc., v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 553.) However, when those instructions are erroneous or incomplete, the reviewing court "must examine the evidence, the arguments, and other factors to determine whether it is *reasonably probable* that instructions allowing application of an erroneous theory *actually* misled the jury." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 581, fn. 11.) A "reasonable probability" in this context "does not mean more likely than not, but merely a *reasonable chance*, more than an *abstract possibility*." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715.) Furthermore, in conducting that examination, the reviewing court must view the evidence *in the light most favorable to the appellant*, assuming on appeal that the jury might have believed the evidence

upon which the instruction favorable to the appellant were predicated. (See *Henderson v. Harnischfeger Corp.* (1974) 12 Cal.3d 663, 674.)

2. Application to This Case.

a. Scope of Any Duty to Warn Instruction.

Over Freemont Congregation's repeated objections, the trial court issued novel jury instructions regarding Fremont Congregation's legal duty to warn and to take protective actions for its members. Because those instructions were impermissibly vague regarding the *scope* of duty being imposed, they gave the jury improper guidance and created substantial prejudice.

In pertinent part, the trial issued the following instruction with regard to a duty to warn:

> In determining whether or not Watchtower Bible and Tract Society of New York, Inc. and Fremont Congregation of Jehovah's Witnesses, North Unit, took reasonable protective measures, you may consider the following:
>
> 1. The presence or absence of any warning;
>
> 2. Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses from the Fremont Congregation of Jehovah's Witnesses, North Unit, members for the purpose of sexual abuse education and prevention; and
>
> 3. Such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures. (8 RT 987-988; 9 RT 1054.)

Yet that charge gave no direction to define what a reasonable and proper warning would or should look like.[8] The Plaintiff's attorney argued during closing that Fremont Congregation should have told her parents that Kendrick was removed as a ministerial servant because he molested a child. (9 RT 1085-1086.) Yet, as discussed above, numerous and complex questions arise concerning the scope, content, and frequency of the "warning" she claims she was owed, an issue the court's instruction did nothing to clarify.

California has required sex offenders to register with local law enforcement for over 50 years. But when Kendrick abused his stepdaughter, California did *not* require the criminal justice system or any other government agency to warn citizens of future harm from such criminals. Moreover, when that prior abuse took place, California neither provided public access to information about convicted child abusers nor required ministers to report incidents of child abuse to the police. And even knowing what they did about Kendrick's conduct toward his stepdaughter, there was no specific, credible threat made to any other particular individual which would have required an obligation to warn. (See, *e.g., Thompson v. County of Alameda* (1980) 27 Cal.3d 741; see also *Duffy v. City of Oceanside* (1986) 179 Cal.App.3d 666, 674.) Yet the jury was allowed to speculate what such a warning would look like, completely untethered to even the special relationship duty defined by the trial

[8] As our Supreme Court made clear in *Parsons, supra,* 15 Cal.4th at 476-477 part of the court's responsibility in evaluating whether a duty was owed is defining *what that duty would be.*

court. Consequently, the jury was given no relevant guidance on how to determine whether Fremont Congregation *breached* that duty, undermining their entire determination on that critical issue.

b. Mandatory Reporter Instruction.

The trial court also erred when it refused to instruct the jury that ministers and clergy members were *not* mandated reporters of child sex abuse under California law until January 1, 1997, which was more than *three years after* Kendrick inappropriately touched his stepdaughter in 1993. (8 RT 975-979, 991; 9 RT 1021-1023; see Stats. 1996, ch. 1081 (A.B. 3354), § 3.5, eff. Jan. 1, 1997 [amending Pen: Code 11166].) As a result, the jury did not have the proper understanding that Fremont Congregation elders were *not* mandated reporters when they learned of Kendrick's 1993 sexual abuse of his stepdaughter. This was significant because the trial court's concomitant duty instruction directed the jury to consider the presence or absence of any warning about Kendrick in determining whether Fremont Congregation took reasonable precautions to protect the Plaintiff from the risk of sexual abuse by Kendrick.

By refusing to give Fremont Congregation's requested instruction that clergy were not mandated reporters until January 1, 1997, the court allowed the jury to be misled about the elders' legal reporting obligations. The failure also allowed the jury to give improper credence to misleading statements by Plaintiff's expert and counsel

that led to the incorrect conclusion that Fremont Congregation breached a legal duty and was negligent for its failure to warn.

Specifically, incorrect statements about the elders' reporting duty were made by Plaintiff's expert, Anna Salter, Ph.D. She confused the jury by suggesting that in 1993, clergy *were* legally obligated to report under the California mandated child abuse reporting law, and that the 1997 amendments to that law (adding clergy as mandatory reporters) simply "clarified" clergy's already existing reporting obligations. (6 RT 693-694, 707.) Plaintiff's counsel's closing argument compounded the jury's confusion by stating that Fremont Congregation elders *were* mandated reporters in 1993, thus suggesting that the elders had a legislatively imposed duty to report Kendrick to the authorities. (6 RT 693-694, 707.)

The trial court had the opportunity to clarify the multiple misstatements regarding the issue of the elders' legal duties under the relevant law in 1993. However, the court simply gave a limiting instruction that alerted the jury to the fact that the parties' respective mental health experts had a "difference of opinion" on that important *legal* issue. (8 RT 975-979, 991; 9 RT 1021-1023, 1057, 1058.) But it was not the experts' job to tell the jury what the relevant law required, and it was not the jury's job to determine which expert was correct regarding what the law required. Rather, it was exclusively the province of the trial court to tell the jury what the relevant law required. Its failure to do so – and to instead abdicate that responsibility to the jury – caused Freemont Congregation certain prejudice, as it allowed the jury

to impose a legal duty, and to make its determination based upon that legally imposed duty, contrary to what the relevant law actually required.

c. Allocation of Fault Instruction.

Civil Code section 1431.2(a) ("Proposition 51") provides that "the liability of each defendant for non-economic damages shall be several only and shall not be joint." The purpose of Proposition 51 was to eliminate the unfairness and cost of the so-called "deep pocket rule," which exploited relatively blameless defendants who are "perceived to have substantial financial resources[.]" (Civ. Code § 1431.1.) Our Supreme Court has held that a defendant's liability for non-economic damages "cannot exceed his or her proportionate share of fault *as compared with all fault responsible for plaintiff's injury,* not merely that of defendants present in the lawsuit." (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 603 [italics added, citations omitted].) Thus, the trial court, pursuant to Proposition 51, should have allowed a jury to allocate fault to all nonparties, but refused to do so.

Specifically, the trial court refused the jury instruction Fremont Congregation requested (and a corresponding special verdict form) to permit the jury an opportunity to allocate fault to "other persons," *i.e.,* those whom the jury might have found to have contributed to the Plaintiff's claimed damages. (*Bly-Magee v. Budget Rent-A-Car Corp.* (1994) 24 Cal.App.4th 318, 325; *see also Roslan v. Permea, Inc.* (1993) 17 Cal.App.4th 110, 113.) For example, Fremont Congregation requested that the Plaintiff's parents be included on the Special Verdict form. (8 RT 961-967; 9 RT

1012-1014, 1033-1035.) But the trial court refused to do so because it did not believe that the Plaintiff's parents had any knowledge that Kendrick had in the past momentarily touched the breast of his stepdaughter. (*Ibid.*) But a parent's duty to protect their children does not hinge upon such knowledge. "In California, parents have a duty 'to exercise reasonable care, supervision, protection, and control over their minor children'" and even to prevent attacks. (See *People v. Swanson-Birabent* (2003) 114 Cal.App.4th 733, 746; *People v. Rolon* (2008) 160 Cal.App.4th 1206, 1219 ["aiding and abetting liability can be premised on a parent's failure to fulfill his or her common law duty to protect his or her child from attack."].)

The jury had ample evidence to conclude that both of the Plaintiff's parents contributed to her damages. For instance, Watchtower publications distributed to all congregation members provided instruction for parents to protect children from sexual abuse, including the key mandate to personally supervise children at all times. (3 RT 160-165, 260; 6 RT 702-704; 7RT 876-878, 884-887; 8 AA 2014-2023 (Pl. Exh. 59, Def. Exh. 17), 2024-2033 (Pl. Exh. 60, Def. Exh. 29), 2034-2046 (Pl. Exh. 64, Def. Exh. 37), 2047-2052 (Pl. Exh. 65, Def. Exh. 49).) Yet, the Plaintiff testified that her parents allowed her to go alone with Kendrick to his home numerous times, over a two to three year period, which, if true, provided an unreasonable opportunity for Kendrick to sexually abuse Plaintiff. Moreover, if the Plaintiff's testimony is to be credited – as apparently it was by the jury – she further testified that she was molested by Kendrick in the presence of her father on an Amtrak train, while her father did nothing to protect her. (6 RT 745-746.) A Special Verdict and

corresponding instruction that included the Plaintiff's parents would have permitted the jury to express an opinion as to whether it was reasonable for Plaintiff's parents to allow their young daughter to go off alone with an adult male to his home where he lived by himself on literally hundreds of occasions. Failure to give that instruction and related Special Verdict constituted prejudicial error.

Additionally, as is detailed in Watchtower's companion Opening Brief, the North Fremont Police, Child Protective Services, and the District Attorney all had information superior to that possessed by Fremont Congregation elders, yet none warned the public or anyone at Fremont Congregation of Kendrick's subsequent confession and criminal conviction. To the extent that Fremont Congregation bears any responsibility for failing to disclose information about Kendrick's confessed offense even before criminal charges were filed, the jury should have been allowed to also consider whether those agencies also bear equal or greater responsibility for failing to disclose information about the incident which resulted in Kendrick's criminal conviction. The trial court should have allowed the jury to allocate liability accordingly.

Its failure to do so severely prejudiced Fremont Congregation. A miscarriage of justice resulted because the jury was forced to allocate more fault to Fremont Congregation than could otherwise be reasonably warranted. Additionally, the trial court's failure to allow allocation of fault to the parents, law enforcement, and other entities placed a greater burden on a small Christian congregation than the law imposes even on those other individuals and organizations--both of which already

have established duties in the law to protect children. On this basis alone, this matter should be remanded for a new trial, even if this Court finds that Fremont Congregation owed a duty to Plaintiff, so that the jury can properly apportion liability among the "universe of tortfeasors." (*Bly-Magee, supra,* 24 Cal.App.4th at 325 [citations omitted].)

V.

CONCLUSION

Since Fremont Congregation did not have custody or care of Plaintiff, control over Kendrick, or knowledge of the abuse when it occurred, and it did not condone or cover up the abuse, this Court should reverse all aspects of the trial court's Judgment and Amended Judgment, and direct a new judgment be entered in Fremont Congregation's favor on all of the Plaintiff's claims. Alternatively, this Court should order that the lower court conduct a new trial and give complete and proper instructions on duty of care, duty of mandatory reporters, and allocation of fault.

Respectfully submitted,

THE McCABE LAW FIRM

Date: 03/26/13

James M. McCabe, Esq.
Attorneys for Defendant/Appellant
NORTH FREEMONT CONGREGATION
OF JEHOVAH'S WITNESSES

CERTIFICATE OF COMPLIANCE PURSUANT TO THE CALIFORNIA RULES OF COURT, RULE 8.204(c)

Pursuant to the California Rule of Court, Rule 8.204(c), I certify that the foregoing is proportionally spaced, has a typeface of 13 points, is at least one-and-a-half lined spaced, and based upon the word count feature contained in the word processing program used to produce that brief (Microsoft Word 2010), contains 13,608 words.

Date: 03/26/13

James M. McCabe

Jane Doe v. The Watchtower Bible and Tract Society of New York Inc. et al.
Court of Appeal of the State of California
First Appellate District, Division Three
Court of Appeal Case No.: A136641
Alameda County Superior Court Case No.: HG11558324

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 666 State Street, San Diego, California 92101.

On **March 26, 2013**, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

1) **OPENING BRIEF OF APPELLANT, NORTH FREMONT CONGREGATION OF JEHOVAH'S WITNESSES**

In a sealed envelope, postage fully paid, addressed as follows:

Richard J. Simons, Esq. Kelly I. Kraetsch, Esq. Furtado Jaspovice & Simons 6589 Bellhurst Lane Castro Valley, CA 94552	*Attorney(s) for Plaintiff and Respondent: Jane Doe*
Robert J. Schnack, Esq. Jackson Lewis 801 K Street, Suite 2300 Sacramento, CA 95814	*Attorney(s) for Defendant and Appellant: The Watchtower Bible and Tract Society of New York Inc.*
Jon R. Williams, Esq. Boudreau Williams LLP 666 State Street San Diego, CA 92101	
Hon. Robert McGuiness Alameda County Superior Court 1221 Oak Street, Dept. 22 Oakland, California 94612	*Trial Court*
Supreme Court of California 350 McAllister Street San Francisco, CA 94102 **Brief via electronic submission**	*Supreme Court*

On the above date:

__X__ (BY ☐ U.S. MAIL/BY ☒ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Boudreau Williams LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at San Diego, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 619-231-8181; see attached Service List for a list of the telephone number(s) of the receiving facsimile number(s). A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error.

____ (BY PERSONAL DELIVERY) by causing a true copy of the within document(s) to be personally hand-delivered by _____ to the attached Service List, on the date set forth above.

____ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any was unsuccessful.

__X__ (STATE ONLY) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 26, 2013**, at San Diego, California.

Chenin Andreoli

Chenin M. Andreoli

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

A136641

HG11558324

JANE DOE
Plaintiff and Respondent,

v.

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.
Defendant and Appellant.

Appeal from the Superior Court of Alameda County
The Honorable Robert McGuiness, Judge

OPENING BRIEF OF APPELLANT, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.,
Legal Department
Mario F. Moreno, Esq.
(*Pro Hac Vice Pending*)
100 Watchtower Drive
Patterson, NY 12563-9204
(845) 306-1000

BOUDREAU WILLIAMS LLP
Jon R. Williams, Esq./162818
666 State Street
San Diego, CA 92101
(619) 238-0370

Attorneys for Defendant and Appellant,
WATCHTOWER BIBLE & TRACT SOCIETY
OF NEW YORK, INC.

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION THREE	Court of Appeal Case Number: A136641
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* Jon R. Williams, Esq./CSBN: 162818 BOUDREAU WILLIAMS LLP 666 State Street San Diego, CA 92101 TELEPHONE NO.: 619-238-0370 FAX NO. *(Optional):* 619-238-8181 E-MAIL ADDRESS *(Optional):* williams@bwlawllp.com ATTORNEY FOR *(Name):* The Watchtower Bible and Tract Society of New York Inc., et al.	Superior Court Case Number: HG11558324 ***FOR COURT USE ONLY*** Court of Appeal First Appellate District Electronically **FILED** Oct 24 2012 Diana Herbert, Clerk by Mery Chang, Deputy Clerk
APPELLANT/PETITIONER: The Watchtower Bible and Tract Society of New York Inc., et al. RESPONDENT/REAL PARTY IN INTEREST: Jane Doe	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): The Watchtower Bible and Tract Society of New York Inc., et al.

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

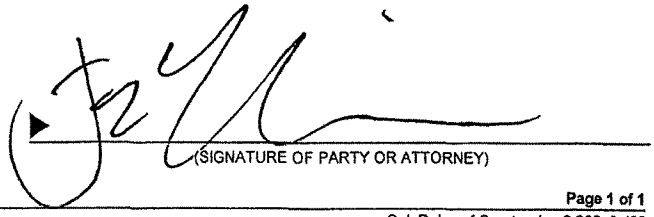
Full name of interested entity or person	Nature of interest (*Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: October 23, 2012

Jon R. Williams, Esq.
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2009]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
Legal Solutions Plus

TABLE OF CONTENTS

		Page
Table of Authorities		v
I.	**INTRODUCTION**	1
II.	**STATEMENT OF FACTS AND PROCEDURAL HISTORY**	4
A.	The Facts of This Case	4
1.	Background of the Appellants	4
2.	Perpetrator Kendrick's Relevant Background	8
3.	Perpetrator Kendrick's Subsequent Abuse of Plaintiff	10
4.	Watchtower's Long-Standing Child Protection Policies	12
B.	Court Proceedings	16
1.	Trial	16
2.	Jury Instructions	19
3.	Verdict and Post-Verdict Proceedings	20
III.	**APPEALABILITY AND STANDARDS OF REVIEW**	22

TABLE OF CONTENTS
(continued)

Page

IV. DISCUSSION 23

A. As Watchtower Did Not Have a Special Relationship with the Plaintiff, It Did Not Have a Duty to Protect Plaintiff from Sexual Abuse by Kendrick, Nor to Warn the Plaintiff or Her Parents About Kendrick's Alleged Past Sexual Abuse of His Stepdaughter 23

1. Standard of Review: *De Novo* 23

2. Application to This Case 23

a. Absent a Special Relationship, Watchtower Cannot Be Liable for the Sexual Abuse of a Local Congregation Member's Child Committed by Another Congregation Member 24

b. The Trial Court's Misplaced Reliance on *Juarez v. Boy Scouts of America* Requires Reversal 30

c. The Trial Court's Imposition of a Duty Cannot Be Justifiably Based Upon Traditional *Rowland* Factors 33

B. The Trial Court Improperly Excluded Other Parties from Sharing Any Responsibility for the Harm Claimed by the Plaintiff, and As a Consequence, Targeted Watchtower's Religious Beliefs and Practices on Confidentiality In a Way That Imperils Watchtower's First Amendment Rights Under the Free Exercise Clauses of the United States and California Constitutions 36

1. Standard of Review: *De Novo* 36

2. Application to This Case 37

TABLE OF CONTENTS
(continued)

Page

3. The Court's Targeting of Religiously Motivated Conduct 40

C. The Trial Court's Imposition Upon Watchtower of a Duty to Protect with a Duty to Warn Impermissibly Entangled the Jury in an Examination and Assessment of Watchtower's Religious Beliefs, Violating Fundamental Constitutional Principles 44

1. Standard of Review: *De Novo* 44

2. Application to This Case 44

D. The Trial Court's Imposition Upon Watchtower of a Duty to Protect with a Duty to Warn Improperly Required Watchtower to Label a Person As a Sex Offender Even Though That Person Had Not Been Convicted of a Crime, in Violation of Constitutional Rights to Privacy, Liberty, and Due Process 48

1. Standard of Review: *De Novo* 48

2. Application to This Case 48

E. The Trial Court Improperly Allowed Plaintiff to Proceed Against Watchtower with a Claim for Punitive Damages Despite the Lack of Substantial Evidence to Support a Predicate Finding of Malice 52

1. Standard of Review: *De Novo* 52

2. Application to This Case 54

TABLE OF CONTENTS
(continued)

Page

F. The Amount of Punitive Damages Awarded Against Watchtower Was Excessive As a Matter of Law, Especially Where the Plaintiff's Stated Purpose in Seeking Those Damages Was to "Change Watchtower's National Policy," Violating Watchtower's Due Process Rights 58

1. Standard of Review: *De Novo* 58

2. Application to This Case 58

V. CONCLUSION 62

CERTIFICATE OF COMPLIANCE 63

TABLE OF AUTHORITIES

Page

Cases

Adams v. City of Fremont
(1998) 68 Cal.App.4th 243 — 26-27, 34

Arena v. Owens-Corning Fiberglas Corp.
(1998) 63 Cal.App.4th 1178 — 39

Bly-Magee v. Budget Rent-A-Car Corp.
(1994) 24 Cal.App.4th 318 — 38

BMW of North America, Inc. v. Gore
(1996) 517 U.S. 559 — 51, 59-60

Board of Administration v. Wilson
(1997) 52 Cal.App.4th 1109 — 44, 48

Bohn v. Dakota County
(8th Cir. 1985) 772 F.2d 1433 — 51

C.A. v. William S. Hart Union High School District
(2012) 53 Cal.4th 861 — 34

Cabral v. Ralphs Grocery Co.
(2011) 51 Cal.4th 764 — 23

Catholic Charities of Sacramento, Inc. v. Superior Court
(2004) 32 Cal.4th 527 — 43-44

Catsouras v. Department of California Highway Patrol
(2010) 181 Cal.App.4th 856 — 23

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah
(1993) 508 U.S. 520 — 41, 42

TABLE OF AUTHORITIES
(continued)

	Page
College Hospital Inc. v. Superior Court (1994) 8 Cal.4th 704	54
DaFonte v. Up-Right, Inc. (1992) 2 Cal.4th 593	37, 39
Davidson v. City of Westminster (1982) 32 Cal.3d 197	24
Delgado v. Trax Bar & Grill (2005) 36 Cal.4th 224	24, 33
DiMartino v. City of Orinda (2000) 80 Cal.App.4th 329	53
Doe v. Poritz (N.J. 1995) 662 A.2d 367	51
Egan v. Mutual of Omaha Ins. Co. (1979) 24 Cal.3d 809	52
Employment Dept. of Human Resources of Ore. v. Smith (1990) 494 U.S. 872	40
Eric J. v. Betty M. (1999) 76 Cal.App.4th 715	26, 35
Evangelatos v. Superior Court (1988) 44 Cal.3d 1188	37
Garcia v. Superior Court (1990) 50 Cal.3d 728	27
Hoch v. Allied-Signal Inc. (1994) 24 Cal.App.4th 48	57
Humphries v. County of Los Angeles (2009) 554 F.3d 1170	50

TABLE OF AUTHORITIES
(continued)

	Page
In re Rodden (2010) 186 Cal.App.4th 24	49
Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377	30-33
Kendall Yacht Corp. v. United California Bank (1975) 50 Cal.App.3d 949	54
Lebron v. National R.R. Passenger Corp. (1995) 513 U.S. 374	51
Louis & Diederich, Inc. v. Cambridge European Imports, Inc. (1987) 189 Cal.App.3d 1574	53
Morris v. De La Torre (2005) 36 Cal.4th 260	24, 33
Nally v. Grace Community Church (1988) 47 Cal.3d 278	24, 45, 47
Owens v. Kings Supermarket (1988) 198 Cal.App.3d 379	23
People v. Cajina (2005) 127 Cal.App.4th 929	49
Philip Morris USA v. Williams (2007) 549 U.S. 346	60, 61
Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257	28-29
Roddenberry v. Roddenberry (1996) 44 Cal.App.4th 634	53
Rowland v. Christian (1968) 69 Cal.2d 108	33, 34, 35

TABLE OF AUTHORITIES
(continued)

	Page
Roman Catholic Bishop of San Diego v. Superior Court (1996) 42 Cal.App.4th 1556	25, 28
Roslan v. Permea, Inc. (1993) 17 Cal.App.4th 110	36, 38
Rothschild v. Tyco International (US), Inc. (2000) 83 Cal.App.4th 488	36
Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696	46
Simon v. San Paolo U.S. Holding Co., Inc. (2005) 35 Cal.4th 1159	58, 59
Smith v. Selma Community Hospital (2008) 164 Cal.App.4th 1478	52
State Farm Mut. Auto Insurance Co. v. Campbell (2003) 538 U.S. 409	59, 60
Stewart v. Truck Ins. Exchange (1993) 17 Cal.App.4th 468	57
Tarasoff v. Regents of University of California (1976) 17 Cal.3d 425	24, 26
Toyota Motor Sales U.S.A., Inc. v. Superior Court (1990) 220 Cal.App.3d 864	53
Valmonte v. Bane (2nd Cir. 1994) 18 F.3d 992	51
Victor v. Nebraska (1994) 511 U.S. 1	44

TABLE OF AUTHORITIES
(continued)

	Page
Watson v. Jones (1871) 80 U.S. 679	45
Weirum v. RKO General, Inc. (1975) 15 Cal.3d 40	26
West v. Atkins (1988) 487 U.S. 42	51-52
Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112	24

Statutes, Codes & Rules

42 U.S.C.	
§ 16901	49
§ 16911	49
Civil Code	
§ 3294	54
Code of Civil Procedure	
§ 904.1	22
Penal Code	
§ 290, *et seq.*	49
§ 290.46	49

TABLE OF AUTHORITIES
(continued)

	Page
Rule of Court	
8.200	61
Other	
Cal. Const., art. I, § 4	43, 45
CACI 406	39
U.S. Const., 1st amend	44

Defendant and Appellant, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. ("Watchtower"), hereby files this Appellant's Opening Brief challenging: (a) the trial court's original Judgment following jury trial, entered on June 27, 2012; (b) the Amended Judgment entered on September 17, 2012; and (c) the trial court's related rulings of August 24, 2012, in favor of Plaintiff, JANE DOE ("Plaintiff"), on various post-trial motions.

I.

INTRODUCTION

Unlike other sexual abuse cases which have generated salacious headlines and garnered broad media attention, this is *not* a case involving the sexual abuse of a child by a religious leader, a member of the clergy, or a youth leader. Rather, this case involves the sexual abuse of the child of one rank-and-file church member committed by another rank-and-file member of that same congregation. Consequently, in this case of first impression, this Court is faced with the following critical *duty* question: What legal responsibility should a religious organization have for the sexual abuse (or any other tort, for that matter) committed by one rank-and-file congregation member against another?

Without a doubt, the sexual abuse of a young child is a profound tragedy that naturally causes a civilized society to consider how to better protect its children. However, that a case involves child sexual abuse should not cause courts to quickly abandon long-standing and well-established principles of American tort law. Indeed,

imposing upon religious organizations an unprecedented duty to protect the children of congregation members from sexual abuse by other congregation members is neither the proper response nor the solution to the disturbing pandemic of child abuse. Such a duty would be virtually impossible for any religious organization to fulfill, would expose religious organizations to endless tort liability, and would lead to intolerable internal religious conflicts. Yet the trial court imposed that duty here. It made Watchtower responsible for the acts of one of its congregation members, Jonathan Kendrick ("Kendrick"), simply on the basis that Kendrick and his family had sought religious counsel from elders of a local congregation of Jehovah's Witnesses years previously arising out of Kendrick's alleged inappropriate conduct with his stepdaughter. As a result, Watchtower and a local congregation are now saddled with a massive judgment of nearly $11.5 million. Incredibly, Plaintiff confirmed during cross examination that she entered into an agreement with Kendrick (who has not been prosecuted for his heinous crimes) *not* to execute on any judgment she obtained against him, which in this case turned out to be about $4.2 million.

Consequently, Watchtower raises four fundamental grounds for reversal of the trial court's Judgment and Amended Judgment. First, Watchtower explains how (A) since Watchtower did not have a special relationship with the Plaintiff (the child of a congregation member), Watchtower did not have a duty to protect Plaintiff from sexual abuse by Kendrick, nor did Watchtower have a duty to warn Plaintiff or her

parents about Kendrick's alleged past sexual abuse of his stepdaughter. Second, Watchtower sets forth how (B) the trial court improperly excluded other parties from sharing any responsibility for the harm claimed by the Plaintiff, and as a consequence, targeted Watchtower's religious beliefs and practices on confidentiality in a way that violated Watchtower's First Amendment rights under the Free Exercise clauses of the United States and California Constitutions. Third, Watchtower describes how (C) the trial court's imposition upon Watchtower of a duty to protect with a duty to warn impermissibly entangled the jury in an examination and assessment of Watchtower's religious beliefs, further violating fundamental constitutional principles. Fourth, Watchtower demonstrates how (D) the trial court's imposition upon Watchtower of a duty to protect with a duty to warn improperly required Watchtower to label a person as a sex offender even though that person had not been convicted of a crime, in violation of well-established rights to privacy, liberty, and due process protected under both the United States and California Constitutions.

Watchtower next raises two additional grounds for reversal of the trial court's related post-trial orders concerning the Plaintiff's award of punitive damages. Specifically, Watchtower explains how (E) the trial court improperly allowed Plaintiff to proceed against Watchtower with a claim for punitive damages despite the lack of substantial evidence to support a predicate finding of malice. Finally, Watchtower describes how (F) the amount of punitive damages awarded against

Watchtower was excessive as a matter of law, especially where the Plaintiff's stated purpose in seeking those damages was to "change Watchtower's national policy," violating Watchtower's due process rights.

Accordingly, Watchtower respectfully requests this Court to reverse the trial court's Judgment, Amended Judgment and related post-judgment orders, and to direct that judgment be entered in Watchtower's favor. Alternatively, Watchtower requests this Court to direct that a new trial be ordered.

II.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Facts of This Case.

1. Background of the Appellants.

The Governing Body of Jehovah's Witnesses ("Governing Body"), which currently is based in Brooklyn, New York, is the body of experienced Christian men who have the overall spiritual supervision and oversight of the worldwide community

of Jehovah's Witnesses. (7 RT 907; 8 AA 2054 [Def. Exh. 131].)[1] At the time of the trial, the Governing Body was composed of seven elders. (7 RT 907.)[2]

At all times relevant to this case, Watchtower was the primary legal entity used by the Governing Body to supervise the spiritual activities of Jehovah's Witnesses in the United States, and its primary office was located in New York. (7 RT 914.) Two of the departments at its offices were the Service Department and Legal Department. (5 RT 533-534; 7 RT 905-906, 932-933.) Elders in the Service Department provide spiritual assistance and direction to congregation elders (7 RT 906; 8 AA 2054), and the Legal Department provides legal advice to congregation and Service Department elders. (3 RT 154; 5 RT 534.)

There are approximately 1.2 million Jehovah's Witnesses associated with about 13,400 congregations in the United States. (7 RT 906, 909-910.) The North Fremont Congregation, located in Fremont, California, is one of those congregations. (3 RT 139.) At all times relevant to this case, congregations held religious meetings three times per week. (3 RT 235-237; 5 RT 548-551.) Most of those religious meetings were held in Kingdom Halls, which are houses of worship used by

---

[1] All facts in this brief are supported by reference to the companion Appellants' Joint Appendix, abbreviated as: ([volume] AA [page]); the Reporter's Transcript, abbreviated as: ([volume] RT [page]); and the exhibits identified on the record and/or admitted into evidence in the trial court, abbreviated as ([Offering party] Exh. [number]).

[2] Elders are persons appointed according to the beliefs and practices of Jehovah's Witnesses to care for the spiritual needs of congregations. Their qualifications are set forth in the Bible. (3 RT 177-178, 233-234.)

Jehovah's Witnesses for their religious services. (3 RT 142, 208-209; 5 RT 548.) For one of those weekly meetings, congregations met in smaller groups in private homes and Kingdom Halls for in-depth Bible study. (3 RT 208, 236-237; 5 RT 548.)

Jehovah's Witnesses do not sponsor programs or activities that separate children from their parents, such as religion classes for children or overnight trips of any kind. (3 RT 140; 4 RT 277, 321, 421; 5 RT 495, 547; 6 RT 705; 7 RT 873-876.) Rather, children attend and participate along with their parents in congregation meetings and in the public ministry for which Jehovah's Witnesses are well known. (3 RT 143, 185-187; 4 RT 277, 367-368, 421; 5 RT 493, 495, 498, 549-551; 6 RT 705; 7 RT 874, 912.) As a result, neither Watchtower personnel nor the elders and ministerial servants of North Fremont Congregation have unique positions of access to children, or positions of trust with children, because families stay together during all religious programs. (7 RT 874-875.)

Congregation members are called "publishers," and all publishers are considered "ordained ministers." (5 RT 553; 7 RT 911; 8 AA 2054.) Thus, the terms "member," "publisher," and "ordained minister" all mean the same thing among Jehovah's Witnesses (5 RT 553; 7 RT 913-914); all of those terms refer to Jehovah's Witnesses, including children, who preach the good news. (3 RT 139-140, 183-184.) Before becoming a "publisher," a person first becomes an "unbaptized publisher." (7 RT 911-912; 8 AA 2054.) Unbaptized publishers generally include Bible students, including members' children, who are making spiritual progress toward becoming a

baptized publisher. (7 RT 911-912.) Subsequently, a person becomes a full-fledged congregation member on the day of his or her baptism as one of Jehovah's Witnesses. (7 RT 911.)

The spiritual oversight of each congregation is the responsibility of a local body of elders. (3 RT 139; 7 RT 908-909; 8 AA 2054.) Those elders are the congregation's spiritual teachers and leaders, and provide spiritual assistance and encouragement to congregation members through their pastoral activities. (7 RT 908-909.) Congregation elders are assisted by ministerial servants who care for ministerial duties such as operating the microphones and sound equipment at meetings, assisting members in obtaining literature, handling accounts, and serving as attendants during meetings. (3 RT 147; 4 RT 402; 7 RT 909.) None of the elders and ministerial servants, however, are paid for their service to the congregation. (3 RT 139, 178; 7 RT 913.)

To become an elder or ministerial servant, a person who meets the Biblical qualifications must first be recommended by the local congregation body of elders, and then approved by Service Department elders. (3 RT 177-178, 233-234.)

Jehovah's Witnesses commonly refer to their public ministry, which involves preaching the good news of God's Kingdom to any who will listen, as "field service" or "field ministry." (3 RT 142-143, 185; 5 RT 548; 7 RT 910.) Field service or field ministry is carried out in many forms, including going from door-to-door, and by conducting Bible studies with interested persons. (5 RT 481, 550-551.) While most

of Jehovah's Witnesses participate in some form of public ministry, participation is not required to maintain congregation membership. (5 RT 552.)

2. Perpetrator Kendrick's Relevant Background.

On November 11, 1993, Kendrick confessed to two North Fremont Congregation elders, Michael L. Clarke and Gary Abrahamson, that on one occasion in July 1993 at the Kendrick family home, he had inappropriately touched the breast of his then 15-year-old stepdaughter, Andrea. (3 RT 138-139, 151-160, 177, 180-181, 183, 207, 210-211, 214-217, 219-222, 239-240, 250-251; 4 RT 302; 7 RT 879-880.) Elders Clarke and Abrahamson provided Bible-based counseling to Kendrick, Andrea, and her mother, Evelyn Kendrick ("Evelyn"), and told Andrea and Evelyn that they had the absolute right to report Kendrick's conduct to law enforcement authorities. (3 RT 163-164, 180-181, 190-191, 239-242, 250-251; 4 RT 293, 297, 302; 6 RT 707; 7 RT 880.) Thereafter, the North Fremont Congregation elders contacted Watchtower's Legal Department for legal advice, and Watchtower's Service Department for spiritual advice. (3 RT 154, 246.) Notably, prior to 1997, ministers and clergy members were *not* mandated reporters of child abuse under California law. (See Stats. 1996, ch. 1081 (A.B. 3354), § 3.5 [amending Pen. Code § 11166, effective January 1, 1997].) Consequently, the elders followed church policy and left it to Andrea and Evelyn to report the matter to the police if they desired to do so. (3 RT 169, 241-242; 7 RT 880.) The Watchtower Service Department expressed

agreement with the elders' recommendation to remove Kendrick as a ministerial servant. (3 RT 163, 166, 192, 218, 241, 244, 247; 7 RT 880.)

In December 1993, the North Fremont Congregation elders announced to the congregation that Kendrick was removed as a ministerial servant. (3 RT 163, 166, 241; 5RT 484; 7 RT 880.) Consistent with the religious beliefs and practices of Jehovah's Witnesses, and based upon their understanding of Bible scriptures on confidentiality, the reason for Kendrick's removal was not announced to the congregation. (3 RT 222-223, 243-244.) Since his removal as a ministerial servant in December 1993, Kendrick has never served in any appointed position in any congregation of Jehovah's Witnesses. (3 RT 243-244; 7 RT 916.)

Unbeknownst to the elders of the North Fremont Congregation, in February 1994, Evelyn and Andrea reported Kendrick's July 1993 sexual abuse of Andrea to the Fremont Police Department ("Fremont Police") and to Child Protective Services ("CPS"). (4 RT 296-297, 300-301, 303-306; 6 RT 701, 711-712; 8 AA 1983-1991 ([Pl. Exh. 5]; [Def. Exh. 94].) Thereafter, Andrea was interviewed by Officer Davila of the Fremont Police and a CPS caseworker. (4 RT 303-306, 348; 6 RT 646, 650-651.) Later, in early March 1994, Officer Davila interviewed Kendrick and Evelyn. (4 RT 303; 6 RT 646-648.) During his interview, Kendrick confessed that he had inappropriately touched Andrea in July 1993, and Officer Davila recommended to the Alameda County District Attorney ("District Attorney") that Kendrick be charged with a sex crime. (6 RT 647-649; 8 AA 1991.) The District Attorney then filed

charges against Kendrick and he was charged and convicted of a misdemeanor. (4 RT 307; 6 RT 654-656.)

Based on Officer Davila's investigation, the authorities learned that Kendrick was a member of the North Fremont Congregation. (6 RT 652.) However, no one from the Fremont Police, CPS, or the District Attorney's office ever informed the members or elders of the North Fremont Congregation about their investigation or the conviction of Kendrick for molesting Andrea. (3 RT 193, 251-252; 4 RT 419; 6 RT 649, 652-653, 655, 711-712.) In fact, the North Fremont Congregation elders did not become aware of Kendrick's conviction until 1998. (3 RT 193, 251; 4 RT 307-308, 410.)

3. Perpetrator Kendrick's Subsequent Abuse of Plaintiff.

Plaintiff, who was born on November 25, 1985, attended the North Fremont Congregation religious meetings with her parents, Neal and Kathleen Conti. (4 RT 350, 352, 367-368; 6 RT 713.) Plaintiff never attended North Fremont Congregation religious meetings without at least one of her parents being present. (3 RT 189-190; 4 RT 321, 333, 442; 5 RT 482, 493, 498; 6 RT 725-726, 737-738.)

The Conti family became acquainted with Kendrick through their mutual association with the North Fremont Congregation. (4 RT 353-354; 5 RT 482-483.) Plaintiff testified that Kendrick hugged her and made her sit on his lap during congregation religious meetings. (6 RT 723, 738-739, 742.) She also testified that from about 1994 to 1996, Kendrick regularly took her to his home and sexually

abused her *after* Sunday congregation religious meetings. (6 RT 742, 744.) Plaintiff further testified that Kendrick sexually abused her at his home *after* field service activity, although she made no mention of this sexual abuse at her deposition. (6 RT 728-731, 746-747, 762.) In addition, she testified that after watching a movie in Sacramento, Kendrick sexually abused her on an Amtrak train while her father, Neal Conti, was present. (6 RT 745-746.) During closing argument, Plaintiff's counsel incorrectly suggested to the jury that Plaintiff was abused by Kendrick *during* field service. (9 RT 1102, 1190.) The record demonstrates, however, that Plaintiff never testified to being molested by Kendrick during field service.

Further, Plaintiff's father denied that Kendrick ever hugged Plaintiff or had her sit on his lap during congregation religious meetings. (5 RT 495-496, 513.) He also disputed his own daughter's testimony that she was taken by Kendrick to Kendrick's home alone after congregation meetings or after field service. (5 RT 496, 513.) And Neal Conti also denied that Kendrick ever abused Plaintiff on an Amtrak train while he was present. (5 RT 499-501.)

Plaintiff's mother, Kathleen Conti, who lives with Plaintiff (4 RT 350; 6 RT 713), testified that she never saw Kendrick hug Plaintiff or put her on his lap during congregation religious meetings. (4 RT 368-369) She also testified that her daughter never went to meetings or field service without one of her parents. (4 RT 357, 367-368.)

North Fremont Congregation elders, Gary Abrahamson, Michael Clarke, and Lawrence Lamerdin, testified that they kept a watchful eye on Kendrick after the 1993 incident with his stepdaughter, even though they knew nothing of his subsequent criminal conviction. (3 RT 162-163, 247-248, 250; 4 RT 406-409, 412-413, 417, 420; 7 RT 880-881.) They, too, never saw Kendrick hug Plaintiff or have her, or any other child, sit on his lap during congregation meetings. (3 RT 195-196, 248-249, 253; 4 RT 420-421.) The elders also never saw Plaintiff leaving alone with Kendrick after congregation meetings or field service. (3 RT 196, 248, 253; 4 RT 420-421, 430.) And they never witnessed Plaintiff at meetings or in field service without at least one of her parents. (3 RT 187, 190, 248.)

North Fremont Congregation members Bernice Munoz, Sylvia Munoz, and Pamela Figuerido similarly testified that they never saw Plaintiff sit on Kendrick's lap during meetings (7 RT 828-829, 836, 852), never saw Kendrick give Plaintiff a bear hug (7 RT 829, 836, 851), never saw Kendrick leave the Kingdom Hall in vehicle with Plaintiff or drive together in same vehicle (7 RT 829, 836-837, 852), never saw Kendrick in field service alone with Plaintiff (7 RT 829, 837, 852-853), and never saw Plaintiff at Kingdom Hall without one of her parents. (7 RT 837, 852.)

4. Watchtower's Long-Standing Child Protection Policies.

Since the 1980's and throughout the 1990's, Watchtower published numerous articles in its religious journals, *The Watchtower* and *Awake!*, to educate Jehovah's

Witnesses and the public about the growing problem of child sexual abuse, the signs of such abuse, the methods of child molesters, and various protection measures parents can adopt to safeguard their children from sexual abuse. (3 RT 160-165; 6 RT 702-704; 7 RT 876-878, 884-887; 8 AA 2014-2023 (Pl. Exh. 59, Def. Exh. 17), 2024-2033 (Pl. Exh. 60, Def. Exh. 29), 2034-2046 (Pl. Exh. 64, Def. Exh. 37), 2047-2052 (Pl. Exh. 65, Def. Exh. 49).) For example, the January 22, 1985 issue of *Awake!* featured the cover series, "Child Molesting – You *Can* Protect Your Child," warning of the prevalence of child sexual abuse in society. (3 RT 258; 7 RT 884-885, 917.) It urged parents to be protectors of their children (3 RT 260; 7 RT 918), explained that child sexual abuse is more likely to be perpetrated by someone you know than by a stranger (3 RT 258; 7 RT 885, 918), taught parents how to keep their children out of dangerous situations (3 RT 259; 7 RT 919), and further informed parents how to detect and respond to possible sexual abuse. (7 RT 885; 918-919.)

Similarly, the teaching box "If Your Child Is Abused" on page 9 of the October 8, 1993 issue of the *Awake!* discussed how parents can train their children to protect themselves (7 RT 921-922), provided parents with suggestions on what to do if their child was abused (7 RT 922), and stated: "Some legal experts advise reporting the abuse to the authorities as soon as possible. In some lands the legal system may require this." (7 RT 922-923; 8 AA 2041.)

All Jehovah's Witnesses received those publications in their home by mail. (3 RT 179-180, 238, 260; 4 RT 331-332; 7 RT 830, 839, 848-849, 886-887.)

Additionally, congregation elders often used those publications to teach during congregation meetings and to provide spiritual counsel and advice to individual congregation members. (3 RT 188, 208, 235, 237-239; 5 RT 508-510, 547; 7 RT 887.) Jehovah's Witnesses also offered those publications to interested members of the public free of charge as part of their public ministry. (3 RT 239, 260; 4 RT 425-426; 5 RT 545-546; 7 RT 931, 939.)

Watchtower provided congregation elders with additional information on how to handle appropriately incidents of child sexual abuse. (3 RT 170; 4 RT 273.) This was done as part of the elders' ongoing spiritual training through Kingdom Ministry Schools held about every three years (3 RT 178-179, 234; 4 RT 273, 391), and through letters to bodies of elders. (3 RT 179.) For example, the Watchtower's July 1, 1989 letter to all bodies of elders addressed matters of legal and spiritual concern, including the misuse of the tongue and confidentiality. (3 RT 229, 255; 8 AA 1973-1978 (Pl. Exh. 1, Def. Exh. 26).) It reminded congregation elders of the long-standing policy, based upon Scripture, which requires elders to keep individuals' private information confidential. (3 RT 257; 4 RT 278.) At the same time, it informed congregation elders that "[m]any states have child abuse reporting laws" (3 RT 223-23, 254-257; 4 RT 272, 278; 7 RT 923; 8 AA 1975) and directed elders to immediately contact Watchtower's Legal Department if they receive reports of child abuse, emphasizing how "[v]ictims of such abuse need to be protected from further danger." (3 RT 255-256; 7 RT 924; 8 AA 1975.) That direction was in

harmony with Watchtower's child abuse policy which required congregation elders to comply with child abuse reporting laws and to recognize that victims of child sexual abuse and their parents had the absolute right to report such crimes to the appropriate authorities. (7 RT 922-924.) Watchtower's March 23, 1992 and February 3, 1993 letters to all bodies of elders further highlighted that it is important for elders to be kind, sensitive, and compassionate listeners when providing spiritual help to victims of child abuse. (7 RT 881-882, 925-927; 8 AA 2002-2005 (Pl. Exh. 27, Def. Exh. 32).)

Watchtower's August 1, 1995 letter to all bodies of elders similarly directed elders to admonish individuals who committed child sexual abuse in the past to never be alone with children, and not to hug or be overly familiar with children. (7 RT 927-928; 8 AA 2006-2007 (Pl. Exh. 29, Def. Exh. 44).) Additionally, Watchtower's March 14, 1997 letter to all bodies of elders directed elders regarding what to do when an individual who has committed child sexual abuse in the past moves to a new congregation. Specifically, it required elders in the former congregation to inform the elders in the new congregation about the individual's history of child sexual abuse. (7 RT 929-930; 8 AA 1994-1996 (Pl. Exh. 12, Def. Exh. 50).) That letter also confirmed Watchtower's long-standing policy that a known child molester does not qualify to be appointed to a position of responsibility in any congregation. (7 RT 929; 8 AA 1994.) All of Watchtower's publications and letters to bodies of elders on

the subject of child sexual abuse comprise Watchtower's policy on that subject. (4 RT 273; 7 RT 922-923, 929, 931.)

B. Court Proceedings.

Plaintiff filed a First Amended Complaint for Damages, dated May 3, 2012, against Watchtower and the North Fremont Congregation (collectively "Appellants") asserting claims including, but not limited to, negligence regarding child abuse allegedly committed against her by Kendrick. (2 AA 501-508.) Plaintiffs claims against Appellants proceeded on that operative pleading.

1. Trial.

During his opening statement and closing argument, the Plaintiff's attorney portrayed Watchtower's July 1, 1989 letter to all bodies of elders as a nefarious "policy of secrecy" that allowed child molesters to hide who they were from congregation parents so that Watchtower could avoid lawsuits. (3 RT 88-89, 98; 11 RT 1231-1233.) Further, Plaintiff and her attorney openly admitted before and during trial that their purpose of bringing Plaintiff's claims was to "effect a change" in Watchtower's *national* child abuse policy. (11 RT 1233-1234, 1239-1240.) That purpose was manifested in various ways, including:

- Plaintiff's Mandatory Settlement Conference Statement openly admitted that until Jehovah's Witnesses' alleged "policy of secrecy" regarding the identity of known child molesters in local congregations changes, "the case is not subject to settlement." (2 AA 312.)

- Plaintiff's motion for leave to amend her complaint to include facts supporting a claim for punitive damages states that "[a]ll of the disputed conduct involved following the policies of, and instructions of [Watchtower]," and that "[Watchtower's] implementation and maintenance of the secrecy policy epitomizes despicable conduct carried on with a willful and conscious disregard of the rights or safety of children." (1 AA 49-50.)

- At trial Plaintiff testified that she told the elders she wanted to change the alleged policy of secrecy, and that she would not have brought this lawsuit had they agreed to change that alleged policy. (6 RT 764-765.)

- During closing arguments, Plaintiff's attorney argued that punitive damages were necessary to effect a change in Watchtower's alleged policy of secrecy. (9 RT 1090-1091.)

Allen Shuster, an elder and assistant overseer of the Service Department in New York, testified that the July 1, 1989 letter was sent to all bodies of elders in the United States, and covered many issues, including confidentiality and child abuse. (7 RT 923.) He confirmed that the letter informed elders that many states have child abuse reporting laws and they should therefore call Watchtower's Legal Department immediately when they receive reports of child abuse. It also stressed that "[v]ictims of such abuse need to be protected from further danger." (7 RT 924; 8 AA 1975.) On the subject of confidentiality, that letter reminded elders that congregation members have an expectation of privacy and that it is important for elders to obey the Bible's mandate regarding confidentiality. (7 RT 906, 913; 937-938.) As North Fremont elders Clarke and Lamerdin testified, Watchtower's policy that requires elders to keep spiritual communications with congregation members confidential is long-standing and based on Scripture. (4 RT 278-279, 284, 289, 422-

423.) Commenting on why elders do not announce even reports of child abuse received in confidence, elder Clarke testified: "Why would anyone come to us with their problems if they knew that after they came to us we were going to announce it?" (3 RT 230.)

Watchtower's trial expert, Monica Applewhite, Ph.D., testified that the wording of Watchtower's policy on confidentiality closely mirrored the concerns expressed by other religious organizations and reflected in the codes of ethics for the National Association of Social Workers, the American Counseling Association, and Child Welfare League of America. (7 RT 881-884.) On the other hand, Plaintiff's expert, Anna Salter, Ph.D., misled the jury by testifying that in 1993 – the year the North Fremont elders learned that Kendrick sexually abused his stepdaughter, Andrea – clergy in California were legally obligated to report child abuse to the authorities, and that California's 1997 amendments to its child abuse reporting law simply "clarified" that previously existing reporting obligation. (6 RT 693-694, 707.) As explained above, however, church clergy and elders were not "mandatory reporters" in California until 1997.

Moreover, during closing argument, Plaintiff's attorney argued that in 1993, the North Fremont Congregation elders should have announced to the congregation that Kendrick was removed as a ministerial servant because he sexually abused a child. (9 RT 1085-1086.) In doing so, Plaintiff's attorney also misled the jury about Jehovah's Witnesses beliefs and practices on confidentiality. He argued that

Kendrick's confession to the elders was not really a confession because he allegedly lied and it was not like a confession to a Catholic priest in a booth. (9 RT 1192.) The trial court further allowed Plaintiff's counsel to argue that Kendrick's confession did not have "the privilege attached to it," was not really confidential, and that "confidential" in this case was "an excuse to keep secret child sex abuse." (9 RT 1192-1193.)

2. Jury Instructions.

On June 11, 2012, the trial court made its final rulings on the instructions to be provided to the jury, including, over Watchtower's objections, instructions related to Watchtower's "duty to protect," allocation of fault, privilege, and child abuse reporting. (9 RT 1010-1016, 1021-1024, 1034-1035, 1040-1041; 5 AA 1239.) In doing so, the court denied Watchtower's requests to instruct the jury on several critical points:

- That Appellants had no duty to warn congregation members of Kendrick's abuse of Andrea (8 RT 974-975; 9 RT 1041; 5 AA 1239), and
- That ministers were *not* mandatory reporters in California in 1993. (8 RT 975-979, 991; 9 RT 1021-1023.)

The trial court also denied Watchtower's request to add the North Fremont Police, CPS, the District Attorney, and Plaintiff's parents to the special jury verdict for purposes of allocation of fault. (8 RT 961-967; 9 RT 1012-1014, 1033-1035.)

Over Watchtower's objection, the trial court further ruled that based on *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377 and *Rowland v. Christian* (1968) 69 Cal.2d 108, Watchtower had a "special relationship" with Plaintiff (8 RT 981-985; 9 RT 1032-1033) which gave rise to "a duty to take reasonable protective measures to protect Candace Conti from the risk of sexual abuse by . . . Kendrick." (8 RT 979-980; 9 RT 1011-1012, 1054.)

The trial court also ruled, over Watchtower's objection, that it would instruct the jury that in determining whether Watchtower took reasonable protective measures, it "may consider the following: (1) The presence or absence of any warning (8 RT 987-988; 9 RT 1054); (2) Whether or not any educational programs were made available to plaintiff, her parents, or to other Jehovah's Witnesses from the Fremont Congregation . . . for the purpose of sexual abuse education and prevention (9 RT 1054); and (3) Such other facts and circumstances contained in the evidentiary record here as to the presence or absence of protective measures." (9 RT 1054-1055; 5 AA 1239.)

Over Watchtower's objection, the trial court further instructed the jury that the issues of privileged communications and mandatory child abuse reporting were issues for the court to determine, not the jury. (8 RT 988-990; 9 RT 1016, 1019, 1021-1023, 1057-1058; 5 AA 1246.) Watchtower objected to the court's privileged communications instruction on grounds that it was not needed, it was incomplete, and it would confuse and mislead the jury respecting the reasonableness of Watchtower's

claim of confidentiality based on church doctrine and policy regarding the reasons for not warning congregation members about Kendrick's prior abuse of his stepdaughter. (9 RT 1016-1020.) Watchtower similarly objected to the court's mandatory child abuse reporting instruction on the ground that it would confuse and mislead the jury into believing that perhaps the North Fremont Congregation did have a legal duty to report Kendrick's abuse of Andrea to the authorities in 1993, as Dr. Salter had testified, even though California had no such reporting duty for clergy in 1993. (9 RT 1021-1022, 1096-1097.)

3. Verdict and Post-Verdict Proceedings.

On June 13, 2012, an Alameda County Superior Court jury returned a compensatory damages verdict in favor of Plaintiff and against Appellants and Kendrick for $7.0 million in general and special damages, finding Kendrick 60% at fault, Watchtower 27% at fault, and North Fremont Congregation 13% at fault, and further finding that Watchtower alone acted with malice. (11 RT 1214-1215; 5 AA 1285-1286.) The next day, the jury further awarded Plaintiff $21,000,001 in punitive damages exclusively against Watchtower. (12 RT 1242.)

On July 17, 2012, Appellants jointly moved for judgment notwithstanding the verdict ("JNOV") and a new trial. (5 AA 1352-1387.) After a hearing on August 13, 2012 (13 RT 1251-1280), the trial court entered its post-trial orders on August 24, 2012, denying Watchtower's JNOV motion and conditionally granting a new trial on the punitive damages awarded against Watchtower unless the Plaintiff accepted

judgment in her favor on punitive damages claim in the amount of $8,610,000. (7 AA 1936-1940.) Subsequently, the Plaintiff accepted the reduced punitive damage amount, and the court entered an Amended Judgment on September 17, 2012, in the total gross sum of $11,488,000 against Watchtower and the local congregation. (7 AA 1941-1942.)

III.

APPEALABILITY AND STANDARDS OF REVIEW

Watchtower's appeal from the Judgment and Amended Judgment entered by the trial court was properly taken under Code of Civil Procedure section 904.1, subd. (a)(1). Similarly, its appeal of the trial court's denial of Watchtower's JNOV motion was also properly taken pursuant to Code of Civil Procedure section 904.1, subd. (a)(4).

Additionally, to assist the Court in reviewing those challenges, Watchtower discusses the applicable standards of review at the beginning of each sub-section of its brief that follows.

IV.

DISCUSSION

A. As Watchtower Did Not Have a Special Relationship with the Plaintiff, It Did Not Have a Duty to Protect Plaintiff from Sexual Abuse by Kendrick, Nor to Warn the Plaintiff or Her Parents About Kendrick's Alleged Past Sexual Abuse of His Stepdaughter.

1. Standard of Review: *De Novo.*

In order to establish negligence, Plaintiff must demonstrate a duty on the part of the defendant, breach of that duty, causation and damages. (*Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 876.) At issue here is the question of *duty*, which "is a question of law for the court, to be reviewed *de novo* on appeal." (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770-771; see also *Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 385 ["The issue whether a duty exists is a question of law to be determined by the court, and is reviewable de novo"].)

2. Application to This Case.

The trial court erroneously determined, as matter of law, that there is a special relationship between a national religious organization, Watchtower, and the child of a local congregation member. That improper determination prompted the trial court to instruct the jury that Watchtower had a duty to protect a congregation member's child, the Plaintiff, from sexual abuse by another congregation member, Kendrick. Based upon the trial court's unprecedented duty-to-protect instruction, the jury found

Watchtower liable for not protecting Plaintiff from sexual abuse by a rank-and-file congregation member.

Notably, no reported California case has imposed a similar duty upon a religious organization to protect the child of a congregation member from the sexual abuse committed by another congregation member. Instead, California courts have consistently held that no special relationship exists between a religious organization and a congregation member. Because the trial court disregarded that authority, its Judgment and Amended Judgment against Watchtower should be reversed by this Court.

a. Absent a Special Relationship, Watchtower Cannot Be Liable for the Sexual Abuse of a Local Congregation Member's Child Committed by Another Congregation Member.

"[O]ne is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a special relationship of custody or control." (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 293.) The Supreme Court has traditionally and faithfully followed this common law "no duty to protect" rule. As it explained in *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 435, "when the avoidance of foreseeable harm requires a defendant to control the conduct of another person, or to warn of such conduct, the common law has traditionally imposed liability only if the defendant bears some special relationship to the dangerous person or the potential victim."

Recent California Supreme Court decisions have only affirmed that well-established rule. (See, *e.g., Delgado v. Trax Bar and Grill* (2005) 36 Cal.4th 224, 235 ["[A]s a general matter, there is no duty to act to protect others from the conduct of third parties"]; *Morris v. De La Torre* (2005) 36 Cal.4th 260, 269 [same]; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1129, quoting *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203 ["'As a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct'"].)

The Court of Appeals has similarly applied the "no duty to protect" rule to child sexual abuse cases. For example, in *Roman Catholic Bishop v. Superior Court* (1996) 42 Cal.App.4th 1556, a 15-year-old girl brought a negligence action against a church because of sexual abuse by a parish priest. The Fourth District confirmed in that case:

> A person is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a special relationship of custody or control. Where, as here, a "complaint alleges injuries resulting from the *criminal acts of third persons* . . . 'the common law, reluctant to impose liability for nonfeasance, generally does not impose a duty upon a defendant to control the conduct of another, or to warn of such conduct, unless the defendant stands in some *special relationship* either to the person whose conduct needs to be controlled, or to the foreseeable victim of such conduct.'" (*Roman Catholic Bishop, supra,* 42 Cal.App.4th at 1564 [citations omitted; emph. in orig.].)

Similarly, in *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, a minor was molested by his mother's boyfriend on premises owned by the boyfriend's family members. No one in the family warned the minor's mother about her boyfriend's prior convictions for child molestation. Writing for the court, Presiding Justice Sills affirmed that "[a]bsent a 'special relationship,' one cannot be held liable for mere nonfeasance, such as not protecting another from a criminal attack by a third party." (*Eric J., supra,* 76 Cal.App.4th at 727.)

As our High Court explained in *Tarasoff,* "[t]his rule derives from the common law's distinction between *malfeasance* and *nonfeasance*, and its reluctance to impose liability for the latter." (*Tarasoff, supra,* 17 Cal.3d at 435, fn. 5.) "Misfeasance exists when the defendant is responsible for making the plaintiff's position worse, *i.e.*, defendant has created a risk. Conversely, nonfeasance is found when the defendant has failed to aid plaintiff through beneficial intervention." (*Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 49.) In *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, Justice Kline similarly explained why courts are reluctant to impose liability for nonfeasance, quoting Professor Francis S. Bohlen's classic 1908 essay on the duty to aid others:

> "In the case of active misfeasance the victim is *positively worse off* as a result the wrongful act. In cases of passive inaction plaintiff is in reality no worse off at all. His situation is unchanged; he is merely deprived of a protection which, had it been afforded him, would have benefited him. In the one case the defendant, *by interfering with plaintiff or his affairs, has brought a new harm upon him, and created a*

> *minus quantity, a positive loss*. In the other, by failing to interfere in the plaintiff's affairs, the defendant has left him just as he was before; no better off, it is true, but still in no worse position; he has failed to benefit him, but he has not caused him any new injury nor created any new injurious situation. There is here a loss only in the sense of an absence of a plus quantity. It is this latter difference which in fact lies at the root of the marked difference in liability at common law for the consequences of misfeasance and non-feasance." (*Adams, supra,* 68 Cal.App.4th at 304 [dis. opn. of Kline, P. J.], quoting *The Moral Duty to Aid Others as a Basis of Tort Liability* (1908) 56 U. Pa. L.Rev. 217, 220-221.)

Similarly, in *Garcia v. Superior Court* (1990) 50 Cal.3d 728, the Supreme Court previously explained that the existence of a special relationship is an essential "prerequisite" in a nonfeasance case. There, although the Supreme Court found misfeasance (affirmative misrepresentations), it explained that in the case of a nonfeasance claim, "[a] special relationship is a prerequisite for liability based on a defendant's *failure to act.*" (*Id.* at 734 [emph. in orig.].)

In the present case, the trial court did *not* instruct the jury that it must find Watchtower liable for *misfeasance*. Indeed, doing so would have been contrary to the entire record, since there is no evidence that Watchtower interfered in Plaintiff's affairs to bring a new harm to her. Rather, the trial court instructed the jury that it could find Watchtower liable for *nonfeasance*, a failure to protect or to warn. In so doing, the trial court misapplied California's long-standing "no duty to protect" law, which necessarily required the existence of a special relationship between Watchtower and the Plaintiff, or between Watchtower and Kendrick, in order to find

liability for its alleged failure to act. But California does not recognize a special relationship between a national religious organization and local congregation members (or their children). For example, in *Roman Catholic Bishop, supra,* 42 Cal.App.4th 1556, no special relationship was found to exist between a parish priest and his 15-year-old parishioner, who was his victim. To that end, the *Roman Catholic Bishop* court reasoned:

> [T]here is no special relationship here creating a heightened duty of care based on a priest/parishioner relationship. In the context of a claim for negligent counseling, our Supreme Court explained in *Nally v. Grace Community Church*, *supra*, 47 Cal.3d 278, 298, that the Legislature has exempted clergy from licensing requirements applicable to other counselors. That exemption is in recognition "that access to the clergy for counseling should be free from state imposed counseling standards, and that 'the secular state is not equipped to ascertain the competence of counseling when performed by those affiliated with religious organizations.' [Citation.]" (*Id.* at 1568.)

Similarly, in *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, this Court held that there was no special relationship between the church member and the priest or Archdiocese. There, an adult church member filed a tort action against a church priest and the Archdiocese because the priest improperly exploited a confidential counseling relationship to initiate a sexual relationship with her. Relying on *Nally, supra*, this Court in *Richelle L.* rejected the church member's argument that because a special relationship had been found in cases involving physicians and attorneys, she similarly stood in a special relationship with the priest.

As Presiding Justice Kline explained: "California cases involving physicians and attorneys [citations] are inapposite, because the malpractice claims that may be made against physicians, psychotherapists, and attorneys cannot be made against members of the clergy. There is no such thing in the law as clerical malpractice." (*Richelle L., supra,* 106 Cal.App.4th at 269.)

Similarly, with respect to the Archdiocese, this Court in *Richelle L.* further reasoned:

> Appellant does not attempt to hold respondent Archdiocese vicariously liable under the theory of respondeat superior, but directly liable for breach of a fiduciary duty and for negligence in hiring and supervision. In order to prevail against the Archdiocese, however, appellant must show, among other things, that she suffered an injury the law recognizes. For the reasons we have explained, appellant cannot make such a showing; accordingly, there is no need to inquire whether the Archdiocese can be subjected to any duty. (*Id.* at 282-283.)

Since a local priest does not stand in a special relationship with a parishioner, *Richelle L.* implicitly also ruled that the Archdiocese had no special relationship to a church member for the same reasons. (*Ibid.*)

Notably, the perpetrators in *Roman Catholic Bishop* and *Richelle L.* were both priests, in positions of church leadership. *Kendrick, the perpetrator in this case, was simply a rank-and-file congregation member* when he sexually abused Plaintiff. (3 RT 163, 166, 241; 4 RT 356; 5 RT 484; 6 RT 711; 7 RT 872-873, 880; 9 RT 1054.) He held no position of leadership or authority within the Freemont Congregation

when he sexually abused the Plaintiff. Thus, the holdings of *Roman Catholic Bishop* and *Richelle L.* – that no special relationship exists between a church member and her priest – makes it eminently clear that there can be no special relationship between Watchtower (the national religious organization of Jehovah's Witnesses) and Plaintiff, who was the child of another local rank-and-file congregation member. In short, the trial court clearly erred when it incorrectly determined, as a matter of law, that a special relationship existed between Watchtower and Plaintiff.

b. The Trial Court's Misplaced Reliance on *Juarez v. Boy Scouts of America* Requires Reversal.

In finding a special relationship and imposing a duty on Watchtower, the trial court relied primarily on this Court's prior decision in *Juarez v. Boy Scouts of America, Inc., supra,* 81 Cal.App.4th 377. But the facts of *Juarez* are unique, and differ so fundamentally from the facts of this case that such reliance cannot be justified. Specifically, *Juarez* involved a perpetrator who was a scoutmaster, *a person in a position of leadership or authority*, into whose care, custody, and control a "youth organization" had placed the children for an overnight campout. (*Id.* at 385-386, 397, 404, 411.) Moreover, in *Juarez,* the victim "was repeatedly molested by his scoutmaster . . . and that numerous incidents took place during officially sanctioned scouting events, such as overnight campouts." (*Id.* at 397.)

In stark contrast, Kendrick was simply a congregation member, and was in no position of leadership or authority within the congregation at the time he abused the

Plaintiff. (3 RT 163, 166, 241; 4 RT 356; 5RT 484; 6 RT 711; 7 RT 872-873, 880; 9 RT 1054.) Watchtower was not a "youth organization" and had not been entrusted with the care, custody, or control of the Plaintiff, and consequently, did not place the Plaintiff in the care, custody, or control of Kendrick for any overnight camping trip, or for any church sanctioned event. (3 RT 140, 185-187; 4 RT 277, 321, 421; 5 RT 495, 547; 6 RT 705; 7 RT 873-876, 878-880, 912.) Indeed, Plaintiff testified that Kendrick abused her at his home *after* Sunday congregation meetings (6 RT 742, 744), *after* field service activity (6 RT 728-731, 746-747), and on a train during a *personal* visit to Sacramento with Kendrick and her father. (6 RT 745-747.)

Given the fundamental factual differences between *Juarez* and this case, the trial court simply erred by relying on *Juarez* to find that there was a special relationship between Watchtower and Plaintiff. This is especially true where even in finding liability in *Juarez*, this Court cautioned against using its decision to impose duties of care upon other charitable organizations:

> We do not intend our decision to serve as a manifesto by which lower courts are to impose duties of care upon all forms of charitable organizations engaged in volunteer youth programs, requiring them to take steps to prevent or minimize the chance that group leaders will engage in intentional misconduct against the youths participating in their programs. (*Juarez, supra,* 81 Cal.App.4th at 409.)

To be sure, this Court in *Juarez* took great pains to emphasize how its finding of a special relationship and concomitant duty was limited to the specific facts of that case:

> [W]e wish to make special note that the reach of this opinion is only intended to extend as far as the record before us today. If we have not yet made it abundantly clear, deciding the question of duty mandates a case-by-case fact and policy analysis. (*Id.* at 409.)

And even in doing so, this Court showed understandable reluctance, but ultimately found a duty in light of the perpetrator's position of leadership within the Boy Scouts, the mission of that "youth organization" generally, and the relationship the victim had to the Scouts:

> [W]e are reluctant to rely on the special relationship doctrine per se as the analytical underpinning for our conclusion that a duty of care was owed by the Scouts to Juarez. However, we note that cases exploring this alternative theory of tort duty have found a special relationship, giving rise to a duty to protect children against a known risk that they might be sexually molested. One jurist has described the special relationship between the child participant and youth organization in terms particularly pertinent to this case: "The mission of youth organizations to educate children, the naïveté of children, and the insidious tactics employed by child molesters dictate that the law recognize a special relationship between youth organizations and the members such that the youth organizations are required to exercise reasonable care to protect their members from the foreseeable conduct of third persons." [Citation.] (*Ibid.*)

But the very facts which drove that imposition of a duty of care in *Juarez* are simply *not* present in this case: Watchtower is *not* a "youth organization," Kendrick was *not* in a position of authority or leadership, and the Plaintiff was *not* entrusted to either Watchtower's or Kendrick's custody and control. Thus, the trial court was simply putting the proverbial square peg in the wrong analytical hole when it relied

on *Juarez* to impose upon Watchtower a seemingly boundless duty to protect congregation members' children – *over whom it had no custody or control* – from sexual abuse by another congregation member not in any position of leadership or authority, and who perpetrates his crimes off church property and unrelated to church activities. In so doing, the trial court clearly failed to heed this Court's explicit caution against extending its reasoning in *Juarez* well beyond its limited and unique facts. Instead, the trial court was bound to follow the reasoning of the *Roman Catholic Bishop* and *Richelle L.* decisions, and should have concluded that no special relationship existed between Watchtower and the Plaintiff. Its failure to do so compels this Court's reversal now.

c. The Trial Court's Imposition of a Duty Cannot Be Justifiably Based Upon Traditional *Rowland* Factors.

To the extent that the trial court also relied upon *Rowland v. Christian, supra,* 69 Cal.2d 108, to impose on Watchtower a broad duty to protect the Plaintiff from sexual abuse by Kendrick, it further erred. California Supreme Court cases decided after *Rowland* have uniformly confirmed that *Rowland* did not change the traditional common law "no duty to protect" rule. (See, *e.g., Morris v. De La Torre* (2005) 36 Cal.4th 260, 269; *Delgado, supra,* 36 Cal.4th at 235-236; *Nally, supra,* 47 Cal.3d at 293.) Indeed, *Rowland* did not change the long-standing common law rule in California that absent a special relationship, there is no duty to protect, warn, or aid another.

To that end, Presiding Justice Kline's dissenting opinion in *Adams v. City of Fremont, supra,* 68 Cal.App.4th 243 explains why *Rowland* is inapplicable when the "no duty to protect" rule applies:

> The imposition of tort liability on the basis of such a "special relationship," or because the duty was voluntarily assumed, has nothing to do with *Rowland v. Christian* (1968) 69 Cal.2d 108 [70 Cal.Rptr. 97, 443 P.2d 561, 32 A.L.R.3d 496], as the majority claims, because *that case does not concern exceptions to a general rule of no duty.* (See discussion, *post,* at p. 308 et seq.) [¶] . . . [¶] The chief reason I believe *Rowland* is irrelevant to the question of duty in this case, as I have said, is that the police, like everyone else, have no duty to rescue. The issue in this case is whether there is any applicable exception to a general no-duty rule, which is unrelated to the question presented in cases to which *Rowland* properly applies. (*Id.* at 292, 311 [emph. added] [dis. opn. of Kline, P. J.].)

Instead, the *Rowland* analysis is relevant only to define the *scope* of a duty which otherwise is found to exist. As recently as March 8, 2012, the California Supreme Court made the following instructive comment regarding the *Rowland* multi-element duty assessment: "We have previously used this analysis to decide the *scope* of duty arising from a special relationship. [Citation.]" (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 877, fn. 8 [italics added].) Thus, *if* the case at hand involved facts to support a special relationship between Watchtower and the Plaintiff, then an exception to the "no duty to protect" rule would apply, and only then would the *Rowland* multi-element duty assessment be properly utilized to decide the *scope* of Watchtower's duty to protect. But, as

discussed above, the facts of this case simply do not support a special relationship between Watchtower and the Plaintiff in the first place. Thus, the trial court's alternate reliance upon *Rowland* to create an exception to the "no duty to protect" rule was simply misplaced.

Nevertheless, assuming *arguendo* that the trial court properly considered the duty question in this nonfeasance case under the multi-element duty assessment outlined in *Rowland*, then Presiding Justice Sills' opinion in *Eric J. v. Betty M., supra,* 76 Cal.App.4th 715 (affirming that there is no duty to protect absent a special relationship) is further instructive:

> That weighing process, however, has already been done by courts over the centuries in formulating the 'no duty to aid' rule. We need only add that any result other than the one we reach today under the facts of this case would create intolerable conflicts of interest within families. (*Id.* at 729-730.)

Similarly, imposing a duty upon Watchtower – a national religious organization – to protect the child of one congregation member from sexual abuse by another congregation member would create even greater intolerable conflicts within a religious organization. To be sure, for all of the additional reasons articulated in North Freemont Congregation's Opening Brief (which Watchtower fully joins in here under Rule of Court 8.200, subd. (a)(5)), it would make Watchtower the virtual insurer for the acts of every one of Jehovah's Witnesses simply by virtue of their membership in that religious organization. Nothing in *Rowland* was meant to either impose or justify such wide-ranging liability.

In short, the sexual abuse of a young child is a despicable act. But the resulting heartbreak cannot be wiped away by assigning fault where it does not belong. Based upon established law and the compelling facts of this case, there was simply no legal basis for the trial court to find a special relationship between Watchtower and the Plaintiff, or for imposing upon Watchtower a duty to protect the Plaintiff from sexual abuse by Kendrick. Consequently, the trial court's Judgment and Amended Judgment against Watchtower must be reversed in full.

B. The Trial Court Improperly Excluded Other Parties from Sharing Any Responsibility for the Harm Claimed by the Plaintiff, and As a Consequence, Targeted Watchtower's Religious Beliefs and Practices on Confidentiality In a Way That Imperils Watchtower's First Amendment Rights Under the Free Exercise Clauses of the United States and California Constitutions.

1. Standard of Review: *De Novo.*

The construction and application of a statute by a trial court to a specific set of facts presents a pure issue of law subject to this Court's *de novo* standard of review. (*Rothschild v. Tyco International (US), Inc.* (2000) 83 Cal.App.4th 488, 493; see also *Roslan v. Permea, Inc.* (1993) 17 Cal.App.4th 110, 113 [finding that the trial court erred as a matter of law by not allowing the allocation of fault – as required by Civil Code section 1431, *et seq.* – as between potentially responsible, but unnamed parties].)

2. Application to This Case.

As this Court is well aware, in June 1986, the voters of California approved an initiative measure, the Fair Responsibility Act of 1986 (Civ. Code §§ 1431 to 1431.5) – popularly known as, and hereafter referred to as, "Proposition 51." Proposition 51 modified the traditional, common law "joint and several liability" doctrine, limiting an individual tortfeasor's liability for noneconomic damages to a proportion of such damages equal to the tortfeasor's own percentage of fault. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1192.) Subsequently, in *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, our Supreme Court confirmed the rationale of Proposition 51 as follows:

> The express purpose of Proposition 51 was to eliminate the perceived unfairness of imposing all the damage on defendants who were found to share [only] a fraction of the fault. ([Civ. Code] § 1431.1, subd. (b).) In this context, the only reasonable construction of section 1431.2 is that a defendant[s]' liability for noneconomic damages cannot exceed his or her proportionate share of fault *as compared with all fault responsible for the plaintiff's injuries*, not merely that of defendant[s]' present in the lawsuit. (*Id.* at 603 [internal quotes omitted] [emph. in orig.].)

It is undisputed that by March 1994 members of the Fremont Police, CPS, and the District Attorney's office had been told that Kendrick had abused his minor stepdaughter. Yet none of those governmental entities, who are charged with protecting the public, including children, warned Plaintiff or her parents about Kendrick. Nevertheless, the trial court refused to allow the jury, either in the Special

Verdict form or in the instructions provided to the jury, to allocate any fault to those governmental entities for Plaintiff's later sexual abuse by Kendrick. Refusing to do so was clearly error. (See *Roslan, supra,* 17 Cal.App.4th at 113 [trial court erred by not including in the special verdict forms defendants who had settled before trial and by refusing to permit the trial defendant to present evidence of one settling defendant's culpability, requiring the matter be remanded so that the jury could apportion liability among the "universe of tortfeasors"].)

Indeed, a case similar to this one drives that point home. *Bly-Magee v. Budget Rent-A-Car Corp.* (1994) 24 Cal.App.4th 318 involved the issue of allocation of the alleged negligent conduct of not only the named defendants, but also of two public entities, the California Highway Patrol and the Los Angeles County Sheriffs Department. The Court of Appeal in *Bly-Magee* held it was appropriate for the trial court to include on the verdict form the phrase "other persons" so that the jury could "apportion damages among the defendants and the 'universe of tortfeasors.' [Citations.]" (*Id.* at 325.) The *Bly-Magee* court also discussed that counsel for the defendant Budget Rent-A-Car could have argued that the "other persons" to whom or to which the jury should allocate fault included the public entities of the California Highway Patrol and the Los Angeles County Sheriffs. (*Id.* at 326.)

Thus, at the very minimum, had the trial court in this case followed *Bly-Magee's* guidance, it should have instructed the jury about non-party liability and allowed Appellants' proffered use of a Special Verdict form that allowed the jury to

allocate fault to the "other persons or entities" or "nonparties" referenced above. (*Id.* at 326.)

Including others in the verdict form was mandated by Proposition 51, which is intended in every case to shield a defendant from any share of noneconomic damages beyond that attributable to his or her own comparative fault, and instead to apportion such damages among the "universe" of tortfeasors. (*Dafonte, supra,* 2 Cal.4th at 602-603.) Moreover, the "Directions for Use" for CACI Verdict Form 402 (Negligence – Fault of Plaintiff and Others at Issue) states that it is for the jury to "specify the liability and causation of each nonparty actor." (See also CACI 406; *Arena v. Owens-Corning Fiberglas Corp.* (1998) 63 Cal.App.4th 1178, 1198-1199 [trial court erred in failing to consider Proposition 51 where multiple products caused plaintiff's injuries].)

Again, the testimony and evidence in this case was uniformly that the Fremont Police Department, CPS, and the District Attorney did *not* do those very same things that the Plaintiff alleges the elders from the North Fremont Congregation should have done, *i.e.,* they did not inform the congregation or local community about Kendrick's July 1993 incident of inappropriately touching his minor stepdaughter. Those entities that Appellants requested to be added to the Special Verdict form are already recognized as owing a broad duty to protect the public. Thus, the jury should have been allowed to consider their respective breaches of those duties, and the role they may have played in causing the Plaintiff's damages.

Additionally, the Plaintiff's parents had a statutory duty to protect the Plaintiff from Kendrick's conduct, and there is ample and undisputed evidence that they also were informed by the Appellants about steps they could have taken to protect the Plaintiff from child abusers. (3 RT 238-239, 260; 5 RT 509-510; 6 RT 702-704; 7 RT 830, 839-841, 848-849, 876-878, 884-887, 918-919, 921-923.) The evidence of Kathleen Conti's drug and alcohol abuse and her emotional state do not relieve her from that parental duty. (4 RT 355-356, 364-365; 5 RT 478, 485-486, 488-489.) In any event, from those facts and evidence, the Appellants submit that the jury could have reasonably found that one or both of Plaintiff's parents was responsible to some degree for the very same damages the Plaintiff claims to have suffered as a result of the conduct of the Appellants. Thus, under well-settled California law, the jury should have been given the opportunity to allocate fault to those nonparties through jury instructions and the verdict form.

3. The Court's Targeting of Religiously Motivated Conduct.

In addition to ignoring the mandate of Proposition 51, by not allowing the jury to allocate fault to nonparties, the trial court also violated the Appellants' free exercise of religion protected by the First Amendment of the United States Constitution and its California counterpart. It is most certainly true that a church is not spared from complying with "a neutral, generally applicable law [which is] applied to religiously motivated action." (See *Employment Dept. of Human Resources of Ore. v. Smith* (1990) 494 U.S. 872, 881.) However, by holding that

only the Appellants could potentially be held liable for a failure to inform, *the trial court singled out the Appellants for special treatment* and did not follow a standard that is generally applicable to *all* potential tortfeasors, both named and unnamed. Instead, it specifically excluded from the jury's consideration the comparative fault of government entities and other nonparties (including the Plaintiff's parents), thereby impermissibly targeting only "religious conduct for distinctive treatment." (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 534.)

"The Free Exercise Clause 'protect[s] religious observers against unequal treatment,' . . . and inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation." (*Id.* at 542-543 [citation omitted].) That holding has no less effect when a court targets the failure to inform based upon information gathered during a communication that Appellants' Bible-based belief required to be held confidential, but at the same time exempts government officials and other individuals from a similar duty to inform when they became aware of the identical information.

To be sure, the trial court's rulings and jury instructions on duty and allocation of fault clearly targeted and substantially burdened Appellants' religiously motivated decision not to violate their beliefs on confidentiality by revealing a confidence to congregation members. That the jury was allowed to allocate fault for failure to warn

only to Appellants – the religious entities – and *not* to the governmental entities that knew of Kendrick's past sexual abuse, clearly demonstrates that those rulings and jury instructions were *not* neutral and generally applicable.

Protecting children from sexual abuse is certainly a compelling state interest. But where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling. It is established in our strict scrutiny jurisprudence that "a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." (*Babalu*, *supra,* 508 U.S. at 546-547.)

The trial court's ruling imposed on Appellants a broad, virtually impossible duty to protect with a duty to warn. That duty was twofold. First, it essentially required Appellants to provide the children of all congregation members with 24-hours-per-day, seven-days-per-week protection from possible abuse by a rank-and-file congregation member, Kendrick. Second, it required Appellants to warn the congregation about Kendrick, when the elders did not even know whether he had been charged with, let alone convicted of, a crime. Yet disclosing information received in confidence from Kendrick, his wife, and stepdaughter would have violated Appellants' Bible-based religious beliefs, practices, and policies on confidentiality. (3 RT 222-223, 229-230, 243-244, 257; 4 RT 278-279, 284, 289,

422-423; 7 RT 906, 913; 937-938.) And even if it were possible for Appellants to warn, they would face the increased risk of lawsuits for breach of confidentiality, false light, invasion of privacy, and defamation.

Based upon the foregoing, the trial court's imposition upon Appellants of an unprecedented duty to protect with a duty to warn was an extraordinary burden on Appellants' religious beliefs, practices, and policies on confidentiality. It was *not* narrowly tailored and it was *not* the least restrictive means of achieving the state's interest. Revealingly, no law has been passed by the Legislature imposing upon religious organizations such a special duty to protect or warn, and the trial court similarly should not be allowed to impose that duty by judicial fiat.

In sum, the trial court violated Appellants' rights protected by the Free Exercise Clause of the First Amendment of the United States Constitution. Its rulings and jury instructions on duty and allocation of fault targeted religion, were underinclusive, were not neutral and generally applicable, were not narrowly tailored, and were not the least restrictive means to achieve the state's interest. As such, they cannot – and should not – be condoned by this Court.

The result is the same under the California Constitution, which states in relevant part: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed." (Cal. Const., art. I, § 4.) When a law substantially burdens a religious belief or practice, California's free exercise clause also requires strict scrutiny review. (*Catholic Charities of Sacramento, Inc. v. Superior Court*

(2004) 32 Cal.4th 527, 562.) Accordingly, for the same reasons discussed above, the Appellants' rights under the free exercise clause, Article I, section 4 of the California Constitution were similarly violated.

C. The Trial Court's Imposition Upon Watchtower of a Duty to Protect with a Duty to Warn Impermissibly Entangled the Jury in an Examination and Assessment of Watchtower's Religious Beliefs, Violating Fundamental Constitutional Principles.

1. Standard of Review: *De Novo.*

Whether Appellants' religious tenants should have been submitted as part of the jury instructions for negligence requires *de novo* review by this Court. (See *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1129.) This is especially true where those instructions impermissibly intrude upon constitutionally protected activities or interests. (*Victor v. Nebraska* (1994) 511 U.S. 1, 6 [reviewing court's task is to determine *de novo* whether there is a reasonable likelihood the jury applied the trial court's remarks or instructions in an unconstitutional manner].)

2. Application to This Case.

Both the United States and California Constitutions prohibit the making of any law respecting the establishment of religion. The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion." (U.S. Const., 1st amend.) Similarly, the California Constitution provides

that "[t]he Legislature shall make no law respecting an establishment of religion." (Cal. Const., art. I, § 4.)

The California Supreme Court has recognized that significant Establishment Clause concerns arise when a court attempts to create a duty of care designed to govern religious practices and activities. For example, in *Nally, supra,* 47 Cal.3d 278, the High Court held that a duty should not be imposed on clergy when engaged in spiritual counseling, stating that "the secular state is not equipped to ascertain the competence of counseling when performed by those affiliated with religious organizations. [Citation.]" (*Id.* at 298.) To that end, the *Nally* court reasoned:

> Because of the differing theological views espoused by the myriad of religions in our state and practiced by church members, it would certainly be impractical, and quite possibly unconstitutional, to impose a duty of care on pastoral counselors. Such a duty would necessarily be intertwined with the religious philosophy of the particular denomination or ecclesiastical teachings of the religious entity. (*Id.* at 299.)

Thus, the California Supreme Court in *Nally* made clear that California courts must avoid becoming entangled in the religious beliefs and practices of clergy or religious organizations. Similarly the United States Supreme Court has long maintained that "civil courts exercise no jurisdiction" over disputes "which concern[] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them . . . ." (*Watson v. Jones* (1871) 80 U.S. 679, 733.) To that end, the High Court has

made abundantly clear that under the doctrine of "ecclesiastical abstention," it is beyond the purview of a secular court to evaluate matters concerning religious beliefs, practices, and internal government.

Despite those clear principles, the jury in this case was allowed to inquire into whether the Appellants properly adhered to their own religious tenets and beliefs in *not* warning the Plaintiff or other congregation members about Kendrick's prior sexual abuse of his stepdaughter. Thus, the trial court in this case impermissibly injected an examination of the beliefs, practices, and internal government of Jehovah's Witnesses. Maintaining the confidentiality of congregation members is a fundamental religious precept which Appellants believe is directly derived from Scripture. (3 RT 222-223, 230, 243-244, 257; 4 RT 278-279, 284, 289, 422-423; 7 RT 906, 913; 937-938.) But neither a court nor a jury may evaluate disputed evidence concerning adherence to the religious beliefs, practices, and internal government of Jehovah's Witnesses without becoming entangled in a religious controversy in violation of Appellants' First Amendment rights. (See *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 709.)

In this case, the trial court instructed the jury that Appellants had a duty to take reasonable protective measures "to protect" Plaintiff from sexual abuse by Kendrick. (8 RT 979-980; 9 RT 1011-1012, 1054; 5 AA 1239.) It also specifically allowed the jury to consider the "presence or absence of any warning" when weighing whether Appellants breached this duty to protect Plaintiff. (8 RT 987-988;

9 RT 1054; 5 AA 1239.) Thus, by those instructions, the trial court invited and encouraged the jury to determine whether Appellants' alleged failure to warn – which was motivated by Appellants' practice of their religious beliefs concerning the confidentiality of their congregation members – was reasonable or breached that duty. By giving those instructions, the trial court impermissibly required the jury to consider and evaluate many religious-oriented factors: (1) the Appellants' reasons for not warning; (2) the Appellants' religious beliefs, practices, and policies on confidentiality; and (3) the validity of the Scriptural basis for such religious beliefs and practices on confidentiality. It then further required the jury to evaluate and determine, in view of Appellants' religious beliefs, practices, and policies on confidentiality and the Scriptural basis therefore, whether Appellants acted reasonably or breached the court-imposed duty to protect the Plaintiff from sexual abuse by Kendrick.

But what standard of care was the jury to use in deciding whether the Appellants' conduct was reasonable? A Catholic standard? A Methodist standard? A Jewish standard? An Atheist standard? Such an inquiry and evaluation by the jury clearly fostered the very entanglement with religion the ecclesiastic abstention doctrine was meant to avoid, and required the jury to "necessarily be intertwined with the religious philosophy of the particular denomination or ecclesiastical teachings of the religious entity" (*Nally*, 47 Cal.3d at 299) in violation of Appellants' rights under the Establishment Clauses of the United States and California Constitutions. This

Court should conclude, as a matter of law, that the trial court's evaluation and examination of Appellants' religious tenets was an inquest that the trial court should have scrupulously avoided and that its failure to do so requires reversal of the trial court's judgment.

D. The Trial Court's Imposition Upon Watchtower of a Duty to Protect with a Duty to Warn Improperly Required Watchtower to Label a Person As a Sex Offender Even Though That Person Had Not Been Convicted of a Crime, in Violation of Constitutional Rights to Privacy, Liberty, and Due Process.

1. Standard of Review: *De Novo.*

As discussed above, whether a constitutional violation results from government action presents a question of law for this Court's *de novo* standard of review. (See *Board of Administration, supra,* 52 Cal.App.4th at 1127-1129.)

2. Application to This Case.

The trial court imposed a duty upon Appellants to warn members of the congregation that Kendrick had molested a minor once the North Fremont Congregation elders became aware of that molestation, *even though at that time Kendrick had neither been charged or convicted of any crime arising from that conduct.* That duty was imposed upon Appellants as a religious organization, yet even law enforcement authorities have not been authorized by the Legislature to disclose information about a person accused of child molestation in the absence of a criminal conviction.

The national standards for sex offender registration and notification were comprehensively revised when Congress enacted Title I of the Adam Walsh Child Protection and Safety Act of 2006 and the Sex Offender Registration and Notification Act (SORNA). (42 U.S.C. § 16901, *et seq.*) By definition, the federal government clearly limits the public dissemination of information about a sex offender to "an individual who was convicted of a sex offense." (42 U.S.C. § 16911, subd. (1).) Likewise, California's "Megan's Law" properly requires the systematic dissemination of information *only upon conviction* of specific Penal Code section offenses, and only then, after the defendant has had the procedural benefit of notice and an opportunity to be heard. (Pen. Code §§ 290, *et seq.*; see *In re Rodden* (2010) 186 Cal.App.4th 24, citing *People v. Cajina* (2005) 127 Cal.App.4th 929, 933.) To be sure, even a confession to the police does not authorize them to disseminate information regarding a child molester; a conviction is required. (Pen. Code § 290.46, subd. (a)(2).) Similarly, the California Legislature has delegated the duty of disseminating information and warnings to the public about sex offenders to law enforcement agencies, and *not* to religious organizations. (Pen. Code § 290.46, subd. (a)(1).)

North Fremont Congregation elders Abrahamson and Clark testified that in November 1993, congregation member Kendrick told them during religious counseling that he touched his 15-year-old stepdaughter's breast in about July 1993. (3 RT 138-139, 151-160, 177, 180-181, 183, 207, 210-211, 214-217, 219-222, 239-

240, 250-251; 4 RT 302; 7 RT 879-880.) However, at that time, Kendrick had not been convicted of any crime, as the police did not investigate Kendrick's sexual abuse of his stepdaughter until March of 1994. (4 RT 303, 307; 6 RT 646-649, 654-656; 8 AA 1983-1991.) Moreover, the congregation elders' *undisputed testimony* was that they were not told of Kendrick's conviction until 1998, which was at least two years after Kendrick had already abused the Plaintiff. (3 RT 193, 251; 4 RT 307-308, 410; 6 RT 742, 744.)

Thus, the trial court imposed a legal duty to warn, based upon the congregation elders' receipt of confidential information from Kendrick and his family about the incident with his stepdaughter, which clearly exceeded state warning or notification standards. Indeed, the California Legislature never contemplated imposing a duty on religious organizations that would violate the fundamental constitutional rights of citizens to privacy, liberty, and due process, and deprive citizens of procedural safeguards inherent in the judicial or adjudicatory process.

Moreover, a public notification scheme requiring religious organizations to label their congregants as child sex offenders based upon anything less than a criminal conviction would result in some citizens being stigmatized based on false or erroneous allegations of child sexual abuse. Such a notification scheme would violate citizens' fundamental constitutional liberty and due process protections, and would be directly contrary to the law. (*See Humphries v. County of Los Angeles* (2009) 554 F.3d 1170, 1186 ["being labeled a child abuser . . . is 'unquestionably

stigmatizing' [and] there is [n]o doubt . . . that being falsely named as a suspected child abuser . . . is defamatory"]; *Valmonte v. Bane* (2nd Cir. 1994) 18 F.3d 992, 1000 [finding a protectable liberty interest where listing on an abuse registry potentially damages reputation by branding as a child abuser]; *Bohn v. Dakota County* (8th Cir. 1985) 772 F.2d 1433, 1436, fn. 4 [reputation of parents were protectable liberty interests when found by county to be child abusers, exposing them to public opprobrium]; *Doe v. Poritz* (N.J. 1995) 662 A.2d 367, 419 [holding that the public notice provisions of New Jersey's Megan's Law triggered procedural due process protection under both the federal and state constitutions].)

Here, it was the trial court, rather than the Legislature, that imposed upon Appellants a duty to warn based upon something less than a criminal conviction. However, the creation of such duty is not validated because California's judiciary, rather than its Legislature, creates it. Whether created by the Legislature or the judiciary, the constitutional infirmity is identical. (*See BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 572 [equating "legislatively authorized fines" with "judicially imposed . . . damages"].)

In short, California's judiciary cannot require religious organizations (like Appellants) to do that which the State itself is constitutionally prevented from requiring. (See *Lebron v. National R.R. Passenger Corp.* (1995) 513 U.S. 374 [holding that it was impermissible for government to create a private corporation to evade its constitutional duty to abide by the First Amendment]; *West v. Atkins* (1988)

487 U.S. 42 [concluding that North Carolina could not contract with private physicians to attempt to avoid its constitutional duty to provide adequate medical treatment to prison inmates].) Yet by imposing upon Appellants a duty to warn congregation members that another congregation member had committed child sexual abuse in the past, even though the accused had not been convicted of any related crime, the trial court improperly exceeded legislative protocols that protect the fundamental constitutional rights of citizens to privacy, liberty, and due process protected by the United States and California Constitutions. Such a duty is not only impermissibly broad, it is also constitutionally infirm.

E. The Trial Court Improperly Allowed Plaintiff to Proceed Against Watchtower with a Claim for Punitive Damages Despite the Lack of Substantial Evidence to Support a Predicate Finding of Malice.

1. Standard of Review: Substantial Evidence.

Whether the Plaintiff proved the requisite malice by clear and convincing evidence to support an award of punitive damages is governed by the substantial evidence test. (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 821.) Yet while that resolution of fact is within the sole province of the trial court, the question of whether "substantial evidence" supports the judgment is one of law within the province of the appellate court. (*Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1515-1516.) It is for this reason that in determining whether a judgment is supported by substantial evidence, reviewing courts may not defer to the

trial court's decision entirely. "[I]f the word 'substantial' means anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with 'any' evidence. It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." (*DiMartino v. City of Orinda* (2000) 80 Cal.App.4th 329, 336 [internal citations omitted].) Thus, the focus is on the quality, not the quantity of the evidence. Very little solid evidence may be "substantial," while a lot of extremely weak evidence might be "insubstantial." (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871-872.)

Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence. (*Louis & Diederich, Inc. v. Cambridge European Imports, Inc.* (1987) 189 Cal.App.3d 1574, 1584-1585.) In short, substantial evidence is not merely an appellate incantation designed to conjure up an affirmance. To the contrary, it is essential to the integrity of the judicial process that a judgment be supported by evidence that is at least substantial. An appellate court need not blindly seize any evidence in order to affirm the judgment. Indeed, the Court of Appeal was not created merely to echo the determinations of the trial court. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652.)

2. Application to This Case.

The Plaintiff's claim for punitive damages was based exclusively on her mischaracterization of Watchtower's July 1, 1989 letter to all bodies of elders, which Plaintiff's counsel repeatedly styled as a "policy of secrecy" with respect to child abuse. (3 RT 88-89, 98; 6 RT 764; 8 RT 956; 9 RT 1090-1091; 12 RT 1231-1234, 1239-1240.) *The Plaintiff offered no other evidence to support her assertion of malice.* Yet even affording that evidence the maximum weight to which it could be entitled, it is woefully insufficient to demonstrate malice, let alone by the requisite "clear and convincing" standard. (See *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725 [malice sufficient to sustain an award of punitive damages requires "despicable conduct" in addition to "willful and conscious disregard" of the plaintiff's interests]; *Kendall Yacht Corp. v. United California Bank* (1975) 50 Cal.App.3d 949, 958 [evil motive is a central element of malice]; see also, Civ. Code § 3294, subd. (a).)

Specifically, no witness testified that the July 1, 1989 letter was a "policy of secrecy." Watchtower's representative, Service Department elder Allen Shuster (7 RT 906), testified that this letter addressed "a variety of subjects . . . such as search warrants and subpoenas, crimes, criminal investigations, when serv[ants] and publishers move, lawsuits, the issue of confidentiality and also child abuse." (7 RT 923.) To enhance the protection of its worshippers' confidential communications, Watchtower wanted to emphasize to elders that they must follow the Bible's mandate

regarding confidentiality. (4 RT 278-279, 283-284; 7 RT 906, 913, 937-938.) Consequently, the primary thrust of the July 1, 1989 letter was to remind elders of Scriptural direction concerning confidential communications. (3 RT 226, 229-230; 4 RT 278-279, 284, 289, 422-423; 5 RT 535.) But that letter served another purpose, as it was also intended to help the elders, who are untrained in secular law, to protect victims of child abuse and comply with all applicable legal obligations they might encounter in the performance of their spiritual and congregation duties. (3 RT 255-256; 4 RT 424; 7 RT 924.) In pertinent part, that letter stated:

> Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. *Victims of such abuse need to be protected from further danger.* (8 AA 1975 [emph. added].)

Notably, the content of that letter also harmonizes with trial testimony that Watchtower was concerned about the worldwide problem of child abuse and instructed elders to follow the law and to protect victims. And the elders involved in this case only confirmed that they followed the letter's instruction by calling the Watchtower Legal Department for legal advice regarding reporting obligations. (3 RT 154, 169, 241-242, 246, 255; 7 RT 880, 924.) In addition, those same elders testified that, pursuant to that policy, they informed victims and their parents that they had the *absolute right* to report an allegation of abuse to the authorities if they so desired. (3 RT 239-242, 250-251; 4 RT 293, 297, 302-303; 6 RT 707; 7 RT 880, 937.) Such counsel also comported with the October 8, 1993 issue of *Awake!,*

published by Watchtower, which similarly informed parents that some experts recommend reporting child abuse to the authorities to protect children. (3 RT 238, 242; 7 RT 922-923; 8 AA 2041.)

Watchtower's representative confirmed that Watchtower abhors child sexual abuse because it is an "egregious sin." (7 RT 915, 916.) Watchtower's expert, Monica Applewhite, Ph.D., testified that for an organization like Jehovah's Witnesses that does not separate children from their parents for religious instruction or other activities, the best method of protecting children is to give parents information about the prevalence of sexual abuse, the warning signs of abuse, the need for parents to protect their children, and how to meet that need. (7 RT 876-877.) Dr. Applewhite further opined that Jehovah's Witnesses have done an exceptional job in this regard from the 1970's through the 1990's. (7 RT 876-877, 896, 898.) In addition, Dr. Applewhite testified that, during the mid-1990's, Jehovah's Witnesses well exceeded the standard of care for educating parents about sexual abuse. (7 RT 879.) Moreover, she testified that the wording of Watchtower's policy on confidentiality in the July 1, 1989, letter to all bodies of elders closely mirrored the concerns expressed by other religious organizations and as reflected in the codes of ethics for the National Association of Social Workers, the American Counseling Association, and Child Welfare League of America. (7 RT 881-882.)

In short, all evidence adduced at trial regarding the July 1, 1989 letter demonstrated *the absence of any malice, despicable conduct, evil motive, recklessness, or wickedness on the part of Watchtower.* There was no evidence that Watchtower was deliberately indifferent to victims of abuse, whereas there was testimony that Watchtower was concerned for such victims, and balanced such concerns by countervailing, yet reasonable Scriptural direction about protecting confidentiality. On the other hand, to support her claim of malice, the Plaintiff relied exclusively on the July 1, 1989 letter, which through colorful and repeated arguments was characterized by her counsel as some nefarious plot to keep child sexual abuse secret. But as this Court is surely aware, argument of counsel is not evidence. (See CACI 5002 ["What the attorneys say during the trial is not evidence. . . . What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence."].) Counsel's characterization of the July 1, 1989 letter does not change its substance and is not sufficient to demonstrate malice, especially by a heightened clear and convincing standard. (*Hoch v. Allied-Signal Inc.* (1994) 24 Cal.App.4th 48, 60-61; see also *Stewart v. Truck Ins. Exchange* (1993) 17 Cal.App.4th 468, 482 [scrutinizing the substantiality of the evidence proffered on the issue of malice to determine it would not satisfy the higher "clear and convincing" evidentiary burden required for a finding of malice].)

F. The Amount of Punitive Damages Awarded Against Watchtower Was Excessive As a Matter of Law, Especially Where the Plaintiff's Stated Purpose in Seeking Those Damages Was to "Change Watchtower's National Policy," Violating Watchtower's Due Process Rights.

1. Standard of Review: *De Novo.*

As our Supreme Court has confirmed, appellate review of whether the amount of punitive damages is so excessive as to violate due process is *de novo.* (*Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1172-1183 ["we are to review the award *de novo*, making an independent assessment of the reprehensibility of the defendant's conduct, the relationship between the award and the harm done to the plaintiff, and the relationship between the award and civil penalties authorized for comparable conduct. . . . This exacting appellate review is intended to ensure punitive damages are the product of the application of law, rather than a decisionmaker's caprice"] [citations and internal quotations omitted].)

2. Application to This Case.

As Watchtower has previously explained, there was an utter absence of malice demonstrated at trial. Therefore, its conduct was not reprehensible at all, let alone enough to support even the remitted punitive damages amount of $8,610,000 fashioned by the trial court as part of its ruling on Watchtower's new trial motion. (7 AA 1936-1940.) Moreover, although Watchtower maintains that both the Plaintiff's compensatory and punitive damages awards are each excessive in their own right, Watchtower does not simply claim that the *ratio* of compensatory damages to that

award of punitive damages is beyond constitutional limits. (See *State Farm Mut. Auto Insurance Co. v. Campbell* (2003) 538 U.S. 409, 425; *Simon, supra,* 35 Cal.4th at 1182-1183.) Rather, Watchtower asserts that the compensatory award, comprised mainly of general damages, itself is so astronomically high that it likely already contained a punitive element. (*Simon, supra,* 35 Cal.4th at 1182-1183.)

But what is equally (and perhaps more) troubling about the excessive punitive damages awarded in this case is that they appear to include an award for *harm to others*, and not just the harm alleged in this case by the Plaintiff. Indeed, at all times, the Plaintiff's stated purpose for pursuing punitive damages was to effect "a change in Watchtower's national policy" purportedly expressed in its July 1, 1989, letter to all bodies of elders in the United States.[3] Yet the United States Supreme Court has repeatedly held that seeking punitive damages for that purpose is improper. (*BMW of North America, supra,* 517 U.S. at 585 ["While each State has ample power to

---

[3] For example, during his opening statement, Plaintiff's counsel referenced Watchtower's July 1, 1989 letter and stated: "The governing body, through this policy, had made a determination that its own needs would be placed above protection of children and an indifference to children like Candice who were placed at risk by the presence of known sexual abusers within the congregations and the secrecy that surrounded it. That is what this case is about." (3 RT 98.)

During the trial, the Plaintiff testified that she told the elders she wanted to change Watchtower's alleged "policy of secrecy" and that she would not have brought this lawsuit had Watchtower agreed to change its policy, referring to Watchtower's July 1, 1989 letter. (6 RT 764-765.)

And in closing arguments, the Plaintiff's counsel argued that punitive damages were necessary to effect a change in Watchtower's policy of secrecy, again referring to the July 1, 1989 letter. (9 RT 1090-1091; 12 RT 1231.)

protect its own [citizens], none may use the punitive damages deterrent as a means of imposing its regulatory policies on the entire Nation"]; *State Farm, supra,* 538 U.S. at 420-421 [award of punitive damages reversed where plaintiff used case as a platform to expose and punish defendant for perceived deficiencies in its national operations; "as a general rule . . . a State [does not] have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction"]; *Philip Morris USA v. Williams* (2007) 549 U.S. 346, 353-354 [clarifying that "the Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties . . . *i.e.,* injury that it inflicts upon those who are, essentially, strangers to the litigation"].)

By admittedly using punitive damages as a device to "change national policy," the Plaintiff asked the jury to do what the United States Supreme Court has emphatically declared cannot be done: to punish a defendant for injury or alleged harm that it may have inflicted upon "strangers to the litigation." (*Philip Morris USA, supra,* 549 U.S. at 353-354.) The trial court did so without allowing Watchtower any "opportunity to defend against the charge" by showing why one victim's case (the Plaintiff's) is different from another's (all others she asserted have been harmed, or might be harmed in the future, by Watchtower's alleged "conspiracy of silence"). (*Ibid.*) Even though the trial court ultimately reduced the jury's punitive damages award from its original amount of $21,000,001 (a breathtaking sum

awarded exclusively against Watchtower), the fact remains that allowing any punitive damages to be awarded in this case for harm caused to any other alleged "victims" added "a near standardless dimension to the punitive damages equation." (*Id.* at 354.) How many such victims are there? How seriously were they injured? Under what circumstances did their injuries allegedly occur? "The trial will not likely answer such questions as to nonparty victims [and] [t]he jury will be left to speculate." (*Ibid.*) Nothing the trial court did in reducing that punitive damages award to $8,610,000 could answer those critical questions either.

It is clear from the record that Plaintiff used her punitive damages claim to punish Watchtower with the goal of changing Watchtower's purported *national policy* expressed in its July 1, 1989 letter to all bodies of elders in the United States. Based upon the reasoning and holding of the United States Supreme Court decisions in *BMW*, *Campbell*, and *Philip Morris*, doing so was clearly improper and violated Watchtower's due process rights. Thus, the punitive damages award of $8,610,000 must be reversed and vacated in its entirety.[4]

[4] Pursuant to Rule of Court 8.200, subd. (a)(5), Watchtower further joins in and incorporates here by reference all of the additional grounds for reversal asserted in the companion Appellant's Opening Brief filed concurrently by the North Freemont Congregation.

V.

CONCLUSION

Based upon the foregoing, Watchtower respectfully requests this Court to reverse all aspects of the Judgment and Amended Judgment rendered in this matter by the trial court, and to direct that a new judgment be entered in Watchtower's favor on all of the Plaintiff's claims. Alternatively, Watchtower asks this Court to order that a new trial be held on those claims and that the trial court give complete and proper instructions on duty, allocation of fault, and mandatory reporting.

Respectfully submitted,

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., LEGAL DEPARTMENT
Mario F. Moreno, Esq.
(*Pro Hac Vice Pending*)

BOUDREAU WILLIAMS LLP

Date: 03/20/13

Jon R. Williams, Esq.
Attorneys for Defendant/Appellant
WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.

CERTIFICATE OF COMPLICANCE PURSUANT TO THE CALIFORNIA RULES OF COURT, RULE 8.204(c)

Pursuant to the California Rule of Court, Rule 8.204, subd. (c), I certify that the foregoing brief is proportionally spaced, has a typeface of 13 points, is double-line spaced, and based upon word count feature contained in the word processing program used to produce this brief (Microsoft Word 2010), contains 15,352 words.

Date: 03/20/13

Jon R. Williams

Jane Doe v. The Watchtower Bible and Tract Society of New York Inc. et al.
Court of Appeal of the State of California
First Appellate District, Division Three
Court of Appeal Case No.: A136641
Alameda County Superior Court Case No.: HG11558324

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 666 State Street, San Diego, California 92101.

On **March 26, 2013**, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

1) **OPENING BRIEF OF APPELLANT, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.**
2) **JOINT APPELLANTS' APPENDIX (8 Vols.)**

In a sealed envelope, postage fully paid, addressed as follows:

Richard J. Simons, Esq. Kelly I. Kraetsch, Esq. Furtado Jaspovice & Simons 6589 Bellhurst Lane Castro Valley, CA 94552 **Brief + Appendix**	*Attorney(s) for Plaintiff and Respondent: Jane Doe*
James M. McCabe, Esq. The McCabe Law Firm, APC 4817 Santa Monica Avenue, Suite B San Diego, CA 92107 **Brief + Appendix**	*Attorney(s) for Defendant and Appellant: Fremont California Congregation of Jehovah's Witnesses, North Unit*
Hon. Robert McGuiness Alameda County Superior Court 1221 Oak Street, Dept. 22 Oakland, California 94612 **Brief only**	*Trial Court*
Supreme Court of California 350 McAllister Street San Francisco, CA 94102 **Brief only via electronic submission**	*Supreme Court*

On the above date:

__X__ (BY ☐ U.S. MAIL/BY ☒ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Boudreau Williams LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at San Diego, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 619-231-8181; see attached Service List for a list of the telephone number(s) of the receiving facsimile number(s). A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error.

____ (BY PERSONAL DELIVERY) by causing a true copy of the within document(s) to be personally hand-delivered by _____ to the attached Service List, on the date set forth above.

____ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any was unsuccessful.

__X__ (STATE ONLY) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 26, 2013**, at San Diego, California.

Chenin Andreoli

Chenin M. Andreoli

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

A136641

HG11558324

JANE DOE
Plaintiff and Respondent.

v.

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.
Defendant and Appellant,

Appeal from the Superior Court of Alameda County
The Honorable Robert McGuiness, Judge

APPLICATION OF MARIO F. MORENO TO APPEAR AS COUNSEL *PRO HAC VICE*; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF MARIO F. MORENO AND JON R. WILLIAMS, AND [PROPOSED] ORDER

WATCHTOWER BIBLE & TRACT SOCIETYOF NEW YORK, INC.,
Legal Department
Mario F. Moreno, Esq.
(*Pro Hac Vice Pending*)
100 Watchtower Drive
Patterson, NY 12563-9204
(845) 306-1000

BOUDREAU WILLIAMS LLP
Jon R. Williams, Esq./162818
666 State Street
San Diego, CA 92101
(619) 238-0370

Attorneys for Defendant and Appellant,
WATCHTOWER BIBLE & TRACT SOCIETY
OF NEW YORK, INC.

APPLICATION

Pursuant to California Rules of Court 9.40 and 8.54, Defendant and Appellant, Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") hereby moves the Court for an order permitting attorney Mario F. Moreno to appear as counsel *pro hac vice* in this matter. Watchtower requests that the Court grant this motion for the reasons explained in the accompanying memorandum of points and authorities, the attached declarations of Mario F. Moreno, the record accompanying this appeal, and upon all papers, pleadings, and other records on file in this case.

Respectfully submitted,

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., LEGAL DEPARTMENT
Mario F. Moreno, Esq.
(*Pro Hac Vice Pending*)

BOUDREAU WILLIAMS LLP

Date: 03/25/13

Jon R. Williams, Esq.
Attorneys for Defendant/Appellant
WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

California Rule of Court 9.40(a) provides that "[a] person who is not a member of the State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel *pro hac vice*, provided that an active member of the State Bar of California is associated as attorney of record."

Mario F. Moreno, Associate General Counsel for Watchtower, coordinates all of the defense litigation for Watchtower, including appeals, in the United States. Following entry of Judgment adverse to Watchtower in the underlying trial court matter before the Alameda Superior Court, it has become necessary for Watchtower to pursue its appellate remedies with this Court, and it desires to do so with Mr. Moreno's input and assistance. However, as Mr. Moreno is not yet admitted before the Court of Appeal and Mr. Moreno's participation and appearance will be required on behalf of Watchtower throughout the course of this appeal, Watchtower respectfully files this *pro hac vice* motion pursuant to California Rule of Court 9.40, subd. (c)(2). Proper and timely notice of this motion has been given to all parties in this case and to the State Bar of California at its San Francisco address.

As set forth in the attached declaration of Mario F. Moreno, all the requirements of Rule 9.40 have been met by the declarant. Accordingly, Watchtower

respectfully moves this Court to permit Mario F. Moreno, Associate General Counsel for Watchtower Bible and Tract Society of New York, Inc., to appear as counsel *pro hac vice* in this appellate matter in association with Jon R. Williams, Esq., an active member of the State Bar of California and Certified Appellate Specialist who also serves as appellate counsel of record for Watchtower in this appeal.

DECLARATION OF MARIO F. MORENO

I, Mario F. Moreno, declare as follows:

1. I am an attorney duly licensed to practice in the State of New York. I serve as in-house counsel and Associate General Counsel for Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), the Appellant/Defendant in this appeal. I have been assigned by Watchtower's General Counsel, Philip Brumley, to represent Watchtower in this case.

2. I make this application for permission to appear as counsel *pro hac vice* on behalf of Watchtower pursuant to Rules 9.40 and 8.54 of the California Rules of Court.

3. I am not a resident of California nor am I regularly engaged in the practice of law in California. My office address is Watchtower Bible and Tract Society of New York, Inc., Legal Department, 100 Watchtower Drive, Patterson, NY 12563. My telephone number is (845) 306-1000.

4. I am a resident of New York. My residential address is 2721 Route 22, Patterson, NY 12563-2228.

5. I am admitted to practice law in the jurisdictions of Arizona, Connecticut, and New York. I was admitted to practice before the Supreme Court of the State of Arizona and all other courts in the State of Arizona on October 13, 1979. I was admitted to practice before the District Court for the District of Arizona on September 5, 1980. I was admitted to practice before the Court of Appeals for the Ninth Circuit on September 7, 1982. I was admitted to practice before the Supreme

Court of the State of Connecticut and all other courts in the State of Connecticut on June 10, 1994. I was admitted to practice before the Court of Appeals of the State of New York and all other courts in the State of New York on December 7, 1994. I was admitted to practice before the District Court, Southern District of New York, on October 14, 2003.

6. I am currently in good standing and eligible to practice in all courts to which I am admitted.

7. I am not currently suspended or disbarred in any court.

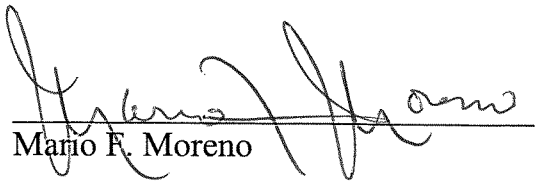
8. In the preceding two years, I have applied to appear as counsel *pro hac vice* in two cases in California. In the first case, *Dorman v. La Jolla Church*, San Diego Superior Court, Case Number 37-2010-00092450-CU-PO-CTL, my unopposed *pro hac vice* application was filed with the Superior Court on or about May 6, 2011. After the Superior Court granted my application, I was admitted *pro hac vice* on or about June 3, 2011. In the second case, *Rivera, et al. v. Pacific Beach Church, et al.*, San Diego Superior Court, Case Number 37-2011-00096950-CU-PO-CTL, my unopposed *pro hac vice* application was filed with the Superior Court on or about November 4, 2011. After the Superior Court granted my application, I was admitted *pro hac vice* on or about December 16, 2011.

9. Watchtower has also employed as their appellate counsel in this matter the firm of Boudreau Williams LLP, by Jon R. Williams, Esq., a Certified Specialist in Appellate Law (State Board of Legal Specialization). Mr. Williams is an active member of the State Bar of California.

10. Concurrently with the filing of this Application, I submit the required fee of $50.00 along with a copy of this Application to the State Bar of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 21st day of March, 2013 at Patterson, New York.



Mario F. Moreno

DECLARATION OF JON R. WILLIAMS

I, Jon R. Williams, declare as follows:

1. I make this declaration in support of the Motion of Mario F. Moreno to Appear as Counsel *Pro Hac Vice* in this matter.

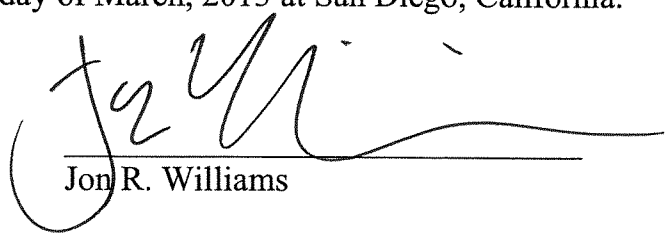
2. I am an active member of the State Bar of California, and am a Certified Specialist in Appellate Law (State Board of Legal Specialization).

3. I have been retained by Watchtower to assist in the preparation and prosecution of this appeal before this Court, and in that capacity, have consulted with Mr. Moreno and other members of Watchtower's Legal Department, as well as Watchtower's trial counsel.

4. I declare that the Application of Mario F. Moreno to Appear as Counsel *Pro Hac Vice* was served on the State Bar of California at its San Francisco address, along with a check for $50 in payment of the fee required for the *pro hac vice* appearance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 25th day of March, 2013 at San Diego, California.



Jon R. Williams

[PROPOSED] ORDER

The Application of Mario F. Moreno for an order granting permission for him to appear as counsel *pro hac vice* for Defendant/Appellant Watchtower Bible and Tract Society of New York, Inc., in association with Boudreau Williams LLP, by Jon R. Williams, Esq., appellate attorney of record in the above-entitled action, came under review by this Court.

The Court, having considered the papers submitted in support of the motion and good cause appearing therefore, orders as follows:

IT IS HEREBY ORDERED that the Application for an Order granting permission for Mario F. Moreno to appear as counsel *pro hac vice* pursuant to California Rule of Court 9.40 is granted.

Dated: March _____, 2013

_____

PRESIDING JUSTICE

Jane Doe v. The Watchtower Bible and Tract Society of New York Inc. et al.
Court of Appeal of the State of California
First Appellate District, Division Three
Court of Appeal Case No.: A136641
Alameda County Superior Court Case No.: HG11558324

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 666 State Street, San Diego, California 92101.

On **March 26, 2013**, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

1) **APPLICATION OF MARIO F. MORENO TO APPEAR AS COUNSEL *PRO HAC VICE*; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF MARIO F. MORENO AND JON R. WILLIAMS, AND [PROPOSED] ORDER**

In a sealed envelope, postage fully paid, addressed as follows:

Richard J. Simons, Esq. Kelly I. Kraetsch, Esq. Furtado Jaspovice & Simons 6589 Bellhurst Lane Castro Valley, CA 94552	*Attorney(s) for Plaintiff and Respondent: Jane Doe*
James M. McCabe, Esq. The McCabe Law Firm, APC 4817 Santa Monica Avenue, Suite B San Diego, CA 92107	*Attorney(s) for Defendant and Appellant: Fremont California Congregation of Jehovah's Witnesses, North Unit*

On the above date:

X (BY □ U.S. MAIL/BY ☒ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Boudreau Williams LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service

carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at San Diego, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 619-231-8181; see attached Service List for a list of the telephone number(s) of the receiving facsimile number(s). A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error.

____ (BY PERSONAL DELIVERY) by causing a true copy of the within document(s) to be personally hand-delivered by _____ to the attached Service List, on the date set forth above.

____ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any was unsuccessful.

__X__ (STATE ONLY) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 26, 2013**, at San Diego, California.

Chenin Andreoli

Chenin M. Andreoli

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

A136641

HG11558324

JANE DOE
Plaintiff and Respondent.

v.

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.
Defendant and Appellant,

Appeal from the Superior Court of Alameda County
The Honorable Robert McGuiness, Judge

APPLICATION TO FILE AN APPELLANT'S OPENING BRIEF IN EXCESS OF WORD COUNT LIMIT; DECLARATION OF JON R. WILLIAMS IN SUPPORT THEREOF; PROPOSED ORDER [RULE OF COURT 8.204(c)(5)]

WATCHTOWER BIBLE & TRACT SOCIETYOF NEW YORK, INC.,
Legal Department
Mario F. Moreno, Esq.
(*Pro Hac Vice Pending*)
100 Watchtower Drive
Patterson, NY 12563-9204
(845) 306-1000

BOUDREAU WILLIAMS LLP
Jon R. Williams, Esq./162818
666 State Street
San Diego, CA 92101
(619) 238-0370

Attorneys for Defendant and Appellant,
WATCHTOWER BIBLE & TRACT SOCIETY
OF NEW YORK, INC.

APPLICATION

Pursuant to Rule of Court 8.204, subd. (c)(5), Defendant and Appellant, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. ("Watchtower"), hereby respectfully asks permission to file an Appellant's Opening Brief exceeding the length limit otherwise prescribed by Rule 8.204, subd. (c)(1).

As set forth in greater detail in the accompanying declaration of Jon R. Williams, this consolidated appeal presents a complicated factual and procedural history (arising from a multi-week trial before the lower court), and encompasses a substantial legal issue of first impression: *whether a religious organization has a "special relationship" with its rank-and-file members sufficient to impose a duty to warn and to protect those members from the criminal acts of other rank-and-file members*. That duty issue was consistently briefed at several critical stages of the underlying case, and permeated the lower court's jury instructions, Special Verdict, and ultimate Judgment at issue in this case.

Watchtower has made a concerted effort to coordinate its discussion of that duty issue in a way that avoids needless repetition with a similar duty challenge raised by Co-Appellant and Defendant, NORTH FREEMONT CONGREGATION OF JEHOVAH'S WITNESSES ("Freemont Congregation"), and in doing so has substantially reduced the length of its argument in its Opening Brief. Nevertheless, as that duty issue, as well as other substantive

challenges Watchtower raises to the trial court's Special Verdict form, instructions to the jury, and award of punitive damages, required detailed treatment in that Opening Brief in order to accurately and fully advance those challenges and to assist the Court, Watchtower respectfully seeks to submit to this Court an Appellants' Opening Brief of **15,352 words**, including footnotes.

Respectfully submitted,

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., LEGAL DEPARTMENT
Mario F. Moreno, Esq.
(*Pro Hac Vice Pending*)

BOUDREAU WILLIAMS LLP

Date: 03/26/13

Jon R. Williams, Esq.
Attorneys for Defendant/Appellant
WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.

DECLARATION

I, JON R. WILLIAMS, declare:

1. I am an attorney at law duly admitted to practice before this Court, and am a partner in the law firm of Boudreau Williams LLP. I am a Certified Appellate Specialist (California State Bar Board of Specialization), appellate counsel of record for Defendant and Appellant, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. ("Watchtower"), and the attorney primarily responsible for representing Watchtower before this Court.

2. *Relevant Procedural History of These Consolidated Appeals*: The underlying Judgment at issue in this case was rendered against both Watchtower (the national organization of Jehovah's Witnesses) and a local congregation, the NORTH FREEMONT CONGREGATION OF JEHOVAH'S WITNESSES ("Freemont Congregation"). While those two Defendants shared the same trial counsel in the lower court, they are separately represented on appeal by different counsel before this Court. Nevertheless, those two appeals have proceeded together before this Court, with both Watchtower and the Freemont Congregation filing their own respective Appellant's Opening Briefs, challenging various components of the trial court's Judgment.

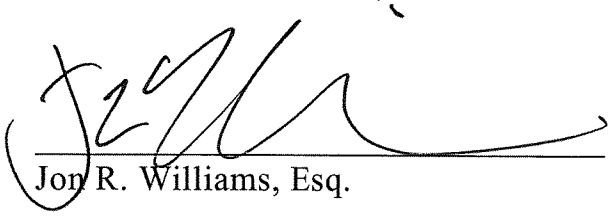
3. *Diligence and Good Cause*: Notwithstanding that these appeals are consolidated, I diligently attempted to draft an Appellant's Opening Brief on Watchtower's behalf within the usual word court limits established by Rule 8.204,

subd. (c)(1). This included over seven separate drafts of that brief, each of which I trimmed down substantially with input from Watchtower's General Counsel and legal staff. This also included substantial coordination with the Freemont Congregation's appellate counsel, including a concerted effort to avoid duplication whenever possible, and to reciprocally join (per Rule of Court 8.200, subd. (a)(5)) in the arguments made in those respective Opening Briefs. That level of coordination also led to both Watchtower and the Freemont Congregation submitting in support of those briefs and Joint Appellants' Appendix, all with an eye toward streamlining our presentation to the Court on behalf of our clients. Yet given the number of substantive challenges Watchtower raises from the trial court's pre-trial and post-judgment rulings, as well as from the trial court's Judgment, I was not able to reduce the word count below the 14,000 word threshold. This is due also, at least in part, to the relative size of the trial court record, with a Reporter's Transcript consisting of 13 volumes and spanning 1,281 pages, and an Appellants' Appendix consisting of 8 volumes and 2,071 pages. Further complicating this task was the critical and novel duty issue which permeates both appeals, but from slightly different perspectives, as well as Watchtower's challenge to the amount of the punitive damages awarded against it alone, requiring additional briefing and analysis to assist the Court in deciding that issue. In short, despite considerable efforts, I was unable to bring this brief down in length any more than **15,352 words**, which is only 1,352 words over the word count limited provided by Rule 8.204, subd. (c)(1). Indeed, I make it my practice – even on complicated

matters such as this one – to avoid filing overlength briefs with this or any other Court or Appeal, and rarely do so. However, this case justifies an exception, given the interrelated importance of the factual, procedural, and legal elements of the arguments Watchtower raises, all of which need to be thoroughly and accurately briefed to this Court in order to responsibly advance Watchtower's interests on appeal.

4. *Good Faith and Lack of Prejudice*: This Application is made in good faith for the reasons stated here and not for any other purpose. Furthermore, I know of no prejudice that will result to any party from grant of this Application, especially where the Plaintiff/Respondent, JANE DOE, will be able to seek similar relief, if needed, to respond to the two separate Opening Briefs filed in this appeal by Watchtower and the Freemont Congregation. However, significant prejudice will likely result to Watchtower if this Application is denied, in light of the complexity of the facts, procedure, and law which must be accurately summarized and briefed, and given the multiple core issues which have been squared for this Court's determination in this appeal.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 26, 2013, at San Diego, California.



Jon R. Williams, Esq.

ORDER

Based on the application of Defendant and Appellant, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. ("Watchtower"), and good cause appearing;

IT IS ORDERED THAT:

Pursuant to Rule of Court 8.204, subd. (c)(5), Watchtower may file with this Court an Appellant's Opening Brief of **15,352 words**, including footnotes.

Dated: _____

_____
Presiding Justice

Jane Doe v. The Watchtower Bible and Tract Society of New York Inc. et al.
Court of Appeal of the State of California
First Appellate District, Division Three
Court of Appeal Case No.: A136641
Alameda County Superior Court Case No.: HG11558324

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 666 State Street, San Diego, California 92101.

On **March 26, 2013**, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

1) **APPLICATION TO FILE AN APPELLANT'S OPENING BRIEF IN EXCESS OF WORD COUNT LIMIT; DECLARATION OF JON R. WILLIAMS IN SUPPORT THEREOF; PROPOSED ORDER**

In a sealed envelope, postage fully paid, addressed as follows:

Richard J. Simons, Esq. Kelly I. Kraetsch, Esq. Furtado Jaspovice & Simons 6589 Bellhurst Lane Castro Valley, CA 94552	*Attorney(s) for Plaintiff and Respondent: Jane Doe*
James M. McCabe, Esq. The McCabe Law Firm, APC 4817 Santa Monica Avenue, Suite B San Diego, CA 92107	*Attorney(s) for Defendant and Appellant: Fremont California Congregation of Jehovah's Witnesses, North Unit*

On the above date:

X (BY ☐ U.S. MAIL/BY ☒ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Boudreau Williams LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized

by the express carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at San Diego, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 619-231-8181; see attached Service List for a list of the telephone number(s) of the receiving facsimile number(s). A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error.

____ (BY PERSONAL DELIVERY) by causing a true copy of the within document(s) to be personally hand-delivered by _____ to the attached Service List, on the date set forth above.

____ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any was unsuccessful.

__X__ (STATE ONLY) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 26, 2013**, at San Diego, California.

Chenin Andreoli

Chenin M. Andreoli

http://usnews.msnbc.msn.com/_news/2012/06/15/12225753-jehovahs-witnesses-ordered-to-pay-more-than-20-million-to-woman-who-said-she-was-sexually-abused?lite

Jehovah's Witnesses ordered to pay more than $20 million to woman who said she was sexually abused

By James Eng, msnbc.com

Updated at 3:20 p.m. ET: In what both sides described as a momentous ruling, a jury in Oakland, Calif., has found that Jehovah's Witnesses was partly responsible for the alleged sexual abuse of a girl by one of its members and must pay her more than $20 million.

The Alameda County Superior Court jury on Thursday awarded $21 million in punitive damages to the plaintiff, who is now 26 years old. That was on top of the $7 million in compensatory damages it awarded her on Wednesday.

The Watchtower Bible and Tract Society of New York, the Jehovah's Witnesses' legal entity, is responsible for the entire punitive damages amount and 40 percent of the compensatory damages, said Rick Simons, attorney for the plaintiff. Sixty percent of the compensatory damages was assessed against Jonathan Kendrick, the man accused of abusing her.

Candace Conti sued Watchtower, the Fremont, Calif., congregation of Jehovah's Witnesses and Kendrick in 2011. It's msnbc.com's policy not to identify victims of sexual abuse, but Conti agreed to be identified so that any other victims would feel they could come forward too.

"The ultimate goal of the lawsuit was to have a change in policy, to be able to ID these people, child molesters, to the congregation to protect children," Conti told msnbc.com. "Secondarily, to have silent ones come forward and tell their stories and to bring to light that overall issue of violence and the hush-hush policy."

Both her parents were Watchtower congregation members at the time of the abuse, she said.

"I was trying to be the best Jehovah's Witness I could be at that time," she told msnbc.com.

Jim McCabe, attorney for the Fremont congregation of Jehovah's Witnesses, said that he was "stunned" by the verdict and would appeal.

"This is the first case I know of where a church has been hit with liability involving a rank-and-file member," he told msnbc.com.

"Mr. Simons has his twist on the facts and we will see how a court of appeals views the trial court rulings and the evidence," McCabe said.

The jury found that the elders who managed the Fremont congregation in the 1990s and who were under the supervision of Watchtower knew that Kendrick, a member, had recently been convicted of the sexual abuse of another child, but they kept his past record secret from the congregation, said Simons.

Kendrick went on to molest the plaintiff, who was a Jehovah's Witness member in Fremont, over a two-year period beginning when she was 9 years old, the lawsuit contended.

Kendrick was eventually convicted in 2004 of the sexual abuse of another girl, and is now a registered sex offender in California, Simons said. He has not been criminally charged with abusing the plaintiff, but Simons said the case is under investigation by law enforcement.

Kendrick was not in court for the trial and msnbc.com could not immediately find a contact number for him.

The California sex offender registry lists two convictions for him: lewd or lascivious acts with a child under 14 years of age and sexual battery involving a restrained person.

The lawsuit alleged that Watchtower had a policy that instructed elders in its Jehovah's Witnesses congregations to keep reports of child sex abusers within the religious group secret to avoid lawsuits.

"The verdict is significant because the policy of hiding sex abusers within the congregation was out in this case," Simons said.

He also said the judgment was "one of the largest in the country for a child sex abuse single victim in a religious institution molestation case."

Jehovah's Witnesses is a Christian denomination noted for its nontraditional interpretation of the Bible. Members are best known for their door-to-door preaching, distributing literature such as The Watchtower and Awake! magazines.

Conti filed the lawsuit after trying, without success, to get Jehovah's Witnesses in Southern California and in Fremont to change the secrecy policy, Simons said. There was no settlement demand from her because she felt the only way to expose this policy and make it change was to bring this case to trial and make it public," he said.

"The money is the only way left for her to force Jehovah's Witnesses to stop keep hiding known sex offenders within their congregation."

McCabe denied Jehovah's Witnesses has a secrecy policy concerning child sex abuse. He called the verdict "unprecedented."

"We're stunned by the verdict. We hate child abuse and everything to do with it."

McCabe said he was not aware of any other case in which a religious organization has been found liable for wrongdoing by a member who was not in an official position of responsibility.

“We’ve got a long ways to go yet before this one is resolved,” he said of the planned appeal.

Simons said Jehovah’s Witnesses has sufficient resources, including valuable real estate, to cover the judgment but an appeal could drag out for years.

Watchtower Bible & Tract Society of New York Inc
25 Colombia Heights
Brooklyn N Y 11201 2483

SDU SSW June 19~~-1998~~

North Congregation Fremont
#15685
c/o Michael Clarke
32852 Bass Lake St
Fremont CA 94555 1000

Dear Brothers

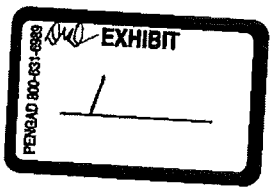
This is in regard to a matter involving Jonathan Kendrick In reviewing our files we noted that Jonathan Kendrick was reproved by the North Congregation and deleted as a ministerial servant on December 3 1993 for child molestation

In the letter to all bodies of elders March 14 1997 direction was given to provide a report of anyone who is currently serving or who formerly served in a Society appointed position in the congregation who is known to have been guilty of child molestation in the past Has this in formation been provided to the Society? If so perhaps it was lost in the mail Therefore please send us additional copies of your correspondence for our files If not please answer the questions in the first paragraph of page 3 of the March 14 1997 letter When responding you may make reference to this letter by the date and desk reference from above Please accept our warm Christian love and best wishes

Your brothers

Watchtower Bible and Tract Society

Of New York INC



Bela Pamela MTL

DO NOT DESTROY

SEP 14 1998

North Congregation Fremont

#15885
c/o Michael Clarke
32852 Bass Lake St
Fremont, CA 94555-1000

Watchtower Bible & Tract Society of New York Inc
25 Columbia Heights
Brooklyn New York 11201 2483

SDU SSW Aug 31 1998

Dear Brothers

This is in regard to your letter of June 19 1998 involving Jonathan Kendrick We are providing a copy of our November 15 1993 letter to you and your letter to us of December 3 1993 SCN SST

Below are answers to questions posed in the March 14 1997 letter to all bodies of elders page 3 para 1

1	How long ago did he commit the sin?	July 1993
2.	What was the age of his victim?	15yrs old
3.	Was it a one-time occurrence?	one time
4	How is he viewed in the community/authorities?	legal authorities contacted police report made no action taken by courts
5	Has he lived down any notoriety in community?	community unaware
6	Are members of congregation aware of sin?	no
7	Has he ever been disfellowshipped reproved etc	yes loss of temper self control – Reproved
8	If he has moved, indentity congregation	Oakley Congregation Antioch CA
9	Have they been notified?	No

We were not aware that we needed to send a follow up letter after our November 15 1993 letter We are sorry for that oversite Brother Kendrick was deleted as a ministerial servant as of December 3 1993 Full restrictions were put into place and lifted over a 2 year period *He moved to Antioch in Jan of 1998. Our letter failed to mention anything about this matter. We will write to them immediately and send them a copy of this letter.*

Please accept our warm Christian love and best wishes

Michael Clarke Gary Abrahamson Leafy Lamerdin

cc. Oakley Congregation

EXHIBIT 2

PENGAD 800-631-6989

JUL-31-2012 11 23 AM LINDAKENDRICK 925 679 8318 P 06

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK INC

8 COL MB HEIG 18 BROOKLYN NEW ORK 1 201 U.S.A. PHONE (18) 625-3600

SCN SST December 3 1993

BODY OF ELDERS
NORTH CONGREGATION OF
JEHOVAH S WITNESSES FREMONT CA
C/O MICHAEL J CLARKE
32852 BASS LAKE ST
FREMONT CA 94555

Dear Brothers

Your letter dated November 15 1993 has been received As you will note from the enclosed S 52 form Brother Jonathan Kendrick has been deleted from serving as a ministerial servant on the grounds of 'uncleanness '

Your letter states 'He confessed to touching the breasts of his stepdaughter while she was sleeping She was awakened instantly and knew what had happened " Since this incident is known by outside members of the family it is appropriate that Brother Kendrick be deleted from serving as a ministerial servant with your congregation

On page 92 of the Kingdom Ministry School textbook the following is stated Uncleanness includes an intentional momentary touching of sexual parts or caressing of breasts Such minor uncleanness can be handled at the discretion of an elder or two it does not require a judicial hearing There is a need for strong counsel admonition and assistance to help the individual to maintain chaste conduct in the future

In harmony with the above it will not be necessary for a judicial committee to handle the 'uncleanness committed by Brother Kendrick However it would be appropriate for two elders to meet with him and provide him with strong Scriptural counsel so as to avoid a repetition of such a serious offense

We trust the above comments will be helpful to you With this letter we are pleased to send you an expression of our warm Christian love and best wishes

Your brothers

Watchtower Bible and Tract Society
OF NEW YORK INC

cc R Rainer CA #40

EXHIBIT 3
PENGAD 800-631-6989

JUL-31-2012 11 24 AM LINDAKENDRICK 925 679 8318 P 07

Extra Copies

SSD NOV 23 1993

North Congregation #16666
Fremont
c/o Michael L Clarke
32852 Bass Lake St.
Fremont, Ca 94555

Nov 15 1993

Watchtower Bible & Tract Society
25 Columbia Heights
Brooklyn New York 11201 USA

Dear Brothers

We are writing to you regarding a case of child abuse We telephoned 11/12/93 and it was suggested that we submit in writing our questions

We met on 11/11/93 with Jonathan Kendrick, a ministerial servant, who confessed to child abuse with his 15 yr old step daughter The abuse occurred approximately 4 months ago He confessed to touching the breast of his step daughter while she was sleeping She was awaken instantly and knew what had happened His wife was informed that evening and the 3 of them talked it out between them Brother Kendrick thought since he was sorry and his family was willing to forget the abuse, he would not have to report it to the congregation elders He said that his conscious continued to bother him

Evelyn his wife is baptized but inactive She occasionally attends meetings

Andrea the step daughter is not baptized and is no longer an unbaptized publisher The step daughter is now using this as a tool to threaten with when she wants something Because she has been promiscuous with 2 boys at school the parents have tried to enforce house rules covering her comings and goings

Andrea has recently mentioned the abuse to another young girl Toy Register whom she attends school with Coincidentally Toy attends our congregation meetings and is studying Her mother is disfellowshipped Toy mentioned the abuse to her mother and added that Brother Kendrick on another occasion had accidentally touched her chest but admitted that it was not intentional. Mrs Register is now threatening to call the police

EXHIBIT 4

PENGAD 800-631-6989

Here are the facts as best as we can present them without interviewing each party. Our questions are as follows

1 Can 2 elders handle this matter with Brother Kendrick as mentioned on page 83 of "Pay attention to Yourselves, Flock", under the heading Uncleanness? Or do we have to form a Judicial hearing because of it being child abuse?

2 We assume that Brother Kendrick does not qualify any longer as a Ministerial Servant. We will announce to the congregation that he is no longer serving as such If this is incorrect, please inform us

3 The legal department has given us some direction as far as our legal requirements and we will follow that closely

We will wait to hear from you regarding the above questions If I have not been clear enough, you may reach me during the day at my work phone (510-462 7881 ext 105)

Your Brothers

Michael P Clark

Fax 831-634 0333 AUG 98

North Congregation Fremont

#15685
c/o Michael Clarke
32852 Bass Lake St
Fremont CA 94555 1000

Watchtower Bible & Tract Society of New York Inc
25 Colombia Heights
Brooklyn N Y 11201 2483

SOU-SSW Aug 31, 1998

Dear brothers

This is in regard to your letter of June 19 1998 involving Jonathan Kendrick We are providing a copy of our November 15 1993 letter to you and your letter to us of December 3 1993 SCN SST

Below are answers to questions posed I the March 14 1997 letter to all bodies of elders page 3 para 1

1	How long ago did he commit the sin?	July 1993
2	What was the age of his victim?	15yrs old
3	Was it a one time occurrence?	One time ~~was time is for legster~~
4	How is he viewed in the community/authorities?	legal authorities contacted police report was made no action ~~2 yr sentence~~
5	Has he lived down any notoriety in community?	community unaware What about today?
6	Are members of congregation aware of sin?	(no)
7	Has he ever been disfellowshipped reproved etc?	yes loss of temper self control — Reproved"
8	If he has moved identify congregation	Oakley Congregation Antioch CA

We were not aware that we needed to send a follow up letter after our Nov 15 1993 letter We are sorry for that oversite Brother Kendrick was deleted as a Ministerial Servant as of December 3 1993 Full restrictions were put in place and lifted over a 2 year period HE moved to Antioch in January of 1998 Our letter failed to mention anything about this matter We will write to them immediately and send them a copy ~~on~~ of this letter *

Please accept our warm Christian love and best wishes

Michael Clarke Gary Abrahamson Larry Lamerdin

cc Oakley Congregation

Same name on letter dated 12/20/09

* No mention of Genitals

EXHIBIT 5

PENGAD 800-631-6989

BENTLEY 000107

Christian Congregation
of Jehovah s Witnesses
2821 R o u te 22 P a tte r s on NY 12563 2237 Ph on e (845) 306 1100
10/1/12 E Us
October 1 2012
TO ALL BODIES OF ELDERS
Re Child abuse
Table of Contents

Legal concerns regarding accusations of child abuse Pars 3 7
Congregational concerns regarding accusations of child sexual abuse Pars 8 20
Helping victims of child sexual abuse Par 21
Restrictions and privileges Pars 22 24

Dear Brothers

1 This letter updates the letters to all bodies of elders regarding child abuse dated March 23 1992 February 3 1993 August 1 1995 March 14 1997 July 20 1998 May 24 2002 April 1 2004 June 5 2006 and May 24 2010 Those letters should be removed from the congregation permanent file of policy letters and be destroyed No one should keep originals or copies of any of those letters

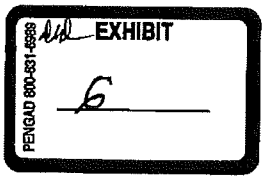
2 Additionally much fine direction has been included in the Shepherding textbook Thus elders should first consult the Shepherding textbook and review the Scriptural principles involved They should thereafter study the additional points outlined in this letter As you review this letter please note that paragraphs 3 7 set forth legal concerns regarding accusations of child abuse Paragraphs 8 20 set forth congregational concerns This letter should be carefully consulted anytime a matter involving child abuse arises

LEGAL CONCERNS REGARDING ACCUSATIONS OF CHILD ABUSE

3 What is child abuse from a legal standpoint? Child abuse includes the sexual or physical abuse of a minor (a person less than 18 years of age) It would also include the extreme neglect of a minor by his parent or guardian Child sexual abuse generally includes sexual intercourse with a minor oral or anal sex with a minor fondling the genitals breasts or buttocks of a minor voyeurism of a minor indecent exposure to a minor soliciting a minor for sexual conduct or any kind of involvement with child pornography Depending on the circumstances of the case it may also include sexting" with a minor Sexting' describes the sending of nude photos seminude photos or sexually explicit text messages electronically such as by phone

4 Most states have child abuse reporting laws that depending on the facts mandate elders to report an accusation to the authorities Thus when elders learn of an accusation of child abuse two elders from their congregation should immediately call the Legal Department for legal advice If the individuals involved are in different congregations each body of elders should arrange for two of their elders to call the Legal Department A call should be made even when both persons involved in sexual misconduct are minors The elders should not ask an alleged victim the accused person or relatives of the victim or accused to call the Legal Department The elders should call the Legal Department even in the following situations Re Child abuse
October 1 2012
Page 2

☑ The alleged abuse occurred many years ago
☑ The alleged abuse is based on the testimony of only one witness
☑ The alleged abuse is believed to be a repressed memory
☑ The alleged abuse involved perpetrators or victims who are deceased
☑ The alleged abuse is believed to have already been reported to the authorities by someone
☑ The alleged perpetrator or victim is no longer a member of the congregation
☑ The alleged abuse occurred before the alleged perpetrator or victim was baptized
☐ The alleged victim is now an adult
☑ The alleged abuse occurred in the past and you are not certain whether the elders involved at the time called the Legal Department for direction



5 The Legal Department will provide you with legal advice based on the facts andthe applicable law If the individual who is accused of the child abuse is associated with a congregation please provide the Legal Department with his date of birth and if applicable his date of baptism After a report has been made to the Legal Department depending on the need the elders may be directed to contact the Service Department for assistance with questions regarding theocratic or judicial aspects of the case or regarding how to protect children

6 Two elders should also call the Legal Department regarding any prison inmate who has been accused of child abuse in the past and who is now associating with a congregation such as by attending congregation meetings held in the prison This would apply whether he is baptized or not In some cases elders may not be authorized to inquire of the offense that an inmate may have committed But if the elders learn that the alleged offense has to do with child abuse they should call the Legal Department immediately

7 If the elders become aware of minors associated with a congregation sexting" with other minors or of adults sexting' with minors the Legal Department should be called immediately The Legal Department does not need to be called when the elders receive reports of adults (that is cases in which all parties involved are at least 18 years old) sexting' one another

CONGREGATIONAL CONCERNS REGARDING ACCUSATIONS OF CHILD SEXUAL ABUSE

8 What is child molestation from a congregational standpoint? Webster's Ninth New Collegiate Dictionary defines pedophilia as sexual perversion in which children are the preferred sexual object (See Questions From Readers in The Watchtower of February 1 1997 page 29) Deuteronomy 23 17 18 condemns such practices as detestable (See the footnotes to verses 17 and 18 in the Reference Bible Also see the footnote on page 10 of the October 8 1993 issue of Awake!) In harmony with these references we are herein discussing sexual perversion in which children are the object of sexual abuse including fondling by an adult We are not discussing a situation wherein a minor who is a willing participant and who is approaching adulthood has sexual relations with an adult who is a few years older than the minor nor generally speaking are we discussing situations in which only minors are involved Rather we are referring to situations in which it is established that an adult brother or sister has been guilty of sexually abusing a young child or has been sexually involved with a minor who is approaching adulthood and who was not a willing participant Re Child abuse October 1 2012

9 As spiritual shepherds elders should continue to make every effort to protect all in the congregation especially children from the unwholesome practices of the world (Isa 32 1 2) One of these is child sexual abuse We abhor the sexual abuse of children and will not protect any perpetrator of such repugnant acts from the consequences of his gross sin (Rom 12:9) Elders should take seriously their responsibility in this matter so that the congregations will be safeguarded from any valid accusation of neglect in protecting children from sexual abuse

10 Regardless of whether the law requires the elders to report an accusation to the authorities steps need to be taken to protect children Elders should help the parents of the children involved to understand that they have the primary responsibility for protecting their children Obviously such parents will be keenly interested in taking precautions in this regard Our publications contain helpful information on how parents can protect their children —w10 11/1 p 13 w08 10/1 p 21 g 10/07 pp 3 11 lr pp 170 171 g03 2/8 p 9 g99 4/8 pp 9 11 g97 4/8 p 14 w96 12/1 pp 13 14 fy pp 61 62 g93 10/8 pp 5 13

11 In addition the elders should investigate every allegation of child sexual abuse When elders learn of an accusation in addition to this letter they should carefully review the direction outlined in the Shepherding textbook chapter 12 paragraphs 18 21 However in evaluating the evidence for internal congregational purposes they must bear in mind the Bible s clear direction No single witness should rise up against a man respecting any error or any sin At the mouth of two witnesses or at the mouth of three witnesses the matter should stand good (Deut 19 15) This requirement to consider testimony of two or three witnesses was confirmed by Jesus (Matt 18 16) Thus although they investigate every allegation the elders are not authorized by the Scriptures to

take congregational action unless there is a confession or there are two credible witnesses However even though the elders are not authorized to take congregation action when there is only one witness the elders should remain vigilant with regard to the conduct and activity of the accused (See paragraph 12 of this letter) If two persons are witnesses to separate incidents of the same kind of wrongdoing their testimony can be deemed sufficient to take judicial action (1 Tim 5 19 24 25) If the person is not repentant over the gross sin disfellowshipping action would be warranted If the decision is to reprove the reproof should be announced (ks10 chap 7 par 20 second bullet) This will serve as a protection for the congregation Information concerning an individual accused of child molestation proved or otherwise should be placed in the congregation confidential file and marked Do Not Destroy" and kept indefinitely This includes Notification of Disfellowshipping or Disassociation (S 77) forms on individuals who have been disfellowshipped for child sexual abuse and then later reinstated Because of the delicate nature of handling a judicial case where an adult sexually abuses a child please contact your circuit overseer He will designate an experienced elder from your circuit to serve as chairman of the judicial committee

12 Loving elders should take steps to protect children especially when a judicial committee determines that the one who has sexually abused a child is repentant and will be allowed to remain a member of the Christian congregation The same concern would be shown when one who has sexually abused a child is disfellowshipped later cleans up his life and is reinstated The elders should be especially mindful of the activity of any who are known to have sexually abused a child in the past They should also ensure that newly appointed elders are made aware of this caution It would be appropriate for elders to talk kindly but very frankly to individuals who have manifested a weakness in this regard strongly cautioning them to refrain from displaying affection for children to avoid hugging or holding children on their lap never to be alone with a child (other than their Re Child abuse October 1 2012
Page 4
own) not to allow children to spend the night in their home not to work alone in field service (hence they should always be accompanied by another adult) and not to cultivate friendships with children This not only serves to protect children but will help to prevent those who have sexually abused a child from putting themselves in the way of temptation being subjected to an unfounded accusation or doing things that may cause concern to others in the congregation (1 Cor 10 12 32) If the individual does not follow this direction from the elders the elders should immediately call the Service Department for assistance

13 If the individual does not follow the above direction from the elders or if the elders believe he may be a predator the elders should immediately call the Service Department for assistance A predator' is one who clearly lacks self-control and by his actions provides reason to believe he will continue to prey on children Not every individual who has sexually abused a child in the past is considered a predator The branch office not the local body of elders determines whether an individual who has sexually abused children in the past will be considered a predator If the branch office determines that an individual will be considered a predator parents with minor children will need to be warned of the danger that exists so that they can protect their children In such a case and only after receiving direction and instructions from the Service Department two elders should be assigned to meet with the parents of minor children in order to provide a warning At the same time that parents are warned about an individual it would be appropriate for the elders to inform the individual that parents in the congregation will be discreetly informed

14 What step should be taken when you learn of an adult who has been viewing child pornography? As stated in paragraph 4 of this letter two elders should call the Legal Department After receiving legal direction the elders will be directed to contact the Service Department for theocratic direction

15 Who is considered a known child molester? The January 1 1997 Watchtower article Let Us Abhor What Is Wicked mentions on page 29 that a man known to have been a child molester" does not qualify for privileges in the congregation The expression known to have been a

child molester' has reference to how such a man is considered in the community and in the Christian congregation In the eyes of the congregation an adult known to be a former child molester is not free from accusation or irreprehensible nor does he have a fine testimony from people on the outside (1 Tim 3 1 7 10 5 22 Titus 1 7) In view of his past those in the community would not respect him and congregation members might be stumbled over his appointment Keep in mind that the branch office not the local body of elders determines whether one who has sexually abused a child is considered a known child molester

16 When a known child molester moves to another congregation the elders should follow the procedure set forth in the Shepherding textbook chapter 12 paragraph 20 If a known child molester is in prison and is transferred to another facility or is released it is important to inform the appropriate congregation of his situation in writing, if it is possible to do so This direction also applies when one considered a predator as outlined in paragraph 13 of this letter moves to another congregation

17 From time to time local authorities may inform you that a sex offender is living in your area The notice usually provides the address of the individual and may state the nature of his Re Child abuse
October 1 2012
Page 5

criminal activity In such a case the elders should list that address on the appropriate territory card as a Do Not Call Thereafter two elders can periodically make calls on that address Following this direction will assist you in protecting the flock

18 Sexual misconduct involving only minors What steps should elders take when minors (persons less than 18 years of age) engage in sexual misconduct with one another? As stated in paragraph 4 of this letter two elders should call the Legal Department even when both persons are minors Minors who have sexual contact with one another are generally not considered as child molesters by the congregation However regardless of the ages of those involved such misconduct is serious Elders should be alert to render assistance and to protect children The body of elders should also arrange for the minor(s) to receive assistance in the presence of their believing parent(s) in harmony with the principles and guidelines found in the Scriptures and in our publications

19 When baptized minors become involved in sexting the elders must use good judgment in determining whether the wrongdoing has escalated to a point warranting judicial action Helpful information can be found in Questions From Readers in the July 15 2006 issue of The Watchtower Please review this material carefully before concluding that a baptized minor is guilty of gross uncleanness or brazen conduct loose conduct (ks10 chap 5 par 9) However if the baptized minor has been previously counseled and persists in the wrong course in most cases judicial action is taken Each case must be evaluated on its own merit If elders have questions regarding a specific case they should contact the Service Department Also keep in mind that Christian parents should be included in any discussions the elders have with a minor who may be involved in sexting

20 The potential serious consequences associated with sexting" underscore the importance of Christian parents supervising their children s use of cellular telephones and other means of electronic communication Excellent suggestions can be found on pages 6 7 of the November 2009 issue of Awake! (Matt 24 45) When a minor has been involved in sexting elders can use such excellent material to offer Scriptural counsel and encouragement to both the parents and the child —1 Pet 5 2 3

HELPING VICTIMS OF CHILD SEXUAL ABUSE

21 Some Christians may become troubled with memories and feelings associated with past child sexual abuse When an elder is approached by someone concerned or distraught about such memories he should speak consolingly (1 Thess 5 14) Elders should manifest an empathetic compassionate patient and supportive response to those approaching them about such memories An elder must never be alone with or become the sole confidant of a sister to whom he is not closely related Helpful suggestions and guidelines can be found in the Shepherding textbook chapter 4 paragraphs 21 28 The elders should carefully review this material when helping victims of child sexual abuse

RESTRICTIONS AND PRIVILEGES

22 It cannot be said in every case that one who has sexually abused a child could never qualify for privileges of service in the congregation However the elders will certainly want to be very cautious especially when dealing with one who had repeatedly engaged in this kind of wrongdoing or who had been disfellowshipped for such an offense Before privileges can be extended such a man must meet the Scriptural qualifications of being self-controlled and irreprehensible He must also have a fine testimony' from individuals inside and outside the congregation (Titus 1 6-8 Re Child abuse October 1 2012

1 Tim 3 2 7) Elders should keep in mind what is stated in the January 1 1997 Watchtower article Let Us Abhor What Is Wicked page 29 paragraph 2 Child sexual abuse reveals an unnatural fleshly weakness Experience has shown that such an adult may well molest other children True not every child molester repeats the sin but many do And the congregation cannot read hearts to tell who is and who is not liable to molest children again (Jeremiah 17 9) Hence Paul s counsel to Timothy applies with special force in the case of baptized adults who have molested children Never lay your hands hastily upon any man neither be a sharer in the sins of others (1 Timothy 5 22)

23 Hence privileges of service should never be extended hastily Considerable time should always pass before one who has sexually abused a child is recommended if ever it would be up to the local body of elders to determine whether such a recommendation should be made to the branch office taking into account all factors in each individual case Please note that unless specifically approved by the branch office one who has sexually abused a child should not be used to conduct any meetings held in the congregation or in a prison and he does not qualify to work on any Kingdom Hall project other than one involving the congregation where he serves as a publisher

24 If the elders as a body conclude that one who has sexually abused a child in the distant past may now qualify for privileges they should assign two elders to call the Service Department

25 In view of the foregoing each elder should make the following notation next to chapter 3 paragraph 20 chapter 5 paragraph 10 second bullet chapter 7 paragraph 20 second bullet and chapter 12 paragraph 18 of the Shepherding textbook See letter dated October 1 2012 to all bodies of elders

26 It is hoped that the direction provided in this letter will help you brothers in handling matters in the congregation so as to protect children from sexual abuse and at the same time balance Bible based justice and mercy We also hope this direction will assist you to lovingly help victims of child sexual abuse May Jehovah s rich blessing continue to be with you in carrying out your many responsibilities as shepherds of the flock With this letter we send our warm Christian love and best wishes

Your brothers

cc Traveling overseers

PS to secretary

This letter should be retained in the congregation permanent file of policy letters You may wish to update the congregation copy of Index to Letters for Bodies of Elders (S 22) at this time as

September 21 998

To The Elders of the Kingdom Hall

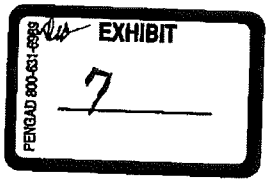
Dear Brothers

I Evelyn Kendrick am the ex wife of Jonathan David Kendrick Please accept this document as a release that Jonathan is scriptually free to marry should he chose to do so

Thank you

Evelyn R. Kendrick

Evelyn R Kendrick
(510) 792 6077



Dear Jon

Sorry but I felt better to have this dropped in the mail than to see you face to face

I wish you all the best I m sorry that I wasn t good 'wife material but I guess my upbringing doesn t allow me to be a good wife not just to you but to anyone That s why I ll probably remain single for the rest of my life I wanted to love you so very much but something inside me didn t let you ever get too close to me That was why I stayed so far away from you emotionally and sexually

I wanted you to know this I m sorry for all the bad years and the waste of your many good years I hope you don t hate me for it

You re a good and wonderful man Jon and you ll always be in my heart I wish you all the best on your new marriage

Love

E

Evelyn Kendrick

EXHIBIT 8

PENGAD 800-631-6989

September 21 998

To The Elders of the Kingdom Hall

Dear Brothers

I Evelyn Kendrick am the ex wife of Jonathan David Kendrick Please accept this document as a release that Jonathan is scriptually free to marry should he chose to do so

Thank you

Evelyn R. Kendrick

Evelyn R Kendrick
(510) 792 6077

NORTH CONGREGATION of FREMONT

1660 Peralta Boulevard,Fremont, CA 94536

1/16/98

COPY

OAKLEY CONGREGATION
c/o ERIC SMOTHERS
4328 - Rock Island Drive
Antioch, CA 94509

Re: Jonathan Kendrick

Dear Brothers,

Enclosed are the Publisher Cards of Brother Jonathan Kendrick, and our comments in his regard that we hope will enable you to know him better.

Brother Kendrick is a fine Brother who can easily offer a 'positive spirit' to a Congregation. He has served the North Congregation as Literature Servant in the somewhat recent past, has done well in the TMS and presenting the "Good News" in the Field Ministry.

However, our Brother has had a 'stormy' marriage which ended in divorce, during which time a Judicial Committee saw the need to place restrictions on him for outbursts of anger His anger was not unprovoked however, in that, his former wife [now inactive], never allowed him to assume the scriptural role of "family head". She resisted him in allowing her teenage daughter [from a previous marriage], to date a 'worldly' individual with whom she was sexually active [even in their own residence when Jonathan was not present], resulting in a child out of wedlock So Brother Kendrick has had much frustration to deal with, but the Committee agreed that that didn't give him license to vent his anger in violent demonstration, which in at least one case, involved the Fremont Police Department.

Brother Kendrick has been away from good, regular spirtual association for some months now. As a result, I fear the worlds attitudes have creeped in on him a little more. Please help him put these aside. Jonathan may seem a little 'gruff' on the outside, but you will find with some attention he will respond well to your efforts. He wants and appreciates strong, pointed counsel on the TMS as well as personally to help him grow and progress.

The skills of Brother Kendrick vary from violin playing and topiary to wood-working and welding(trade). He is a very interesting individual who has taken the lead with some young ones in the congregation and helped them from 'vearying off course'.

Jonathan is no longer on restriction; you will find him to be a fine individual, kind, loving, and appreciates the peace and refreshment of the Christian Brotherhood. Please convey our well wishes and warm love to him, and all those loyally serving JAH in the Brentwood Congregation

Your Brother,

Larry Lamerdin