

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE,) No. HG115588324
)
Plaintiff,)
) ASSIGNED FOR ALL PURPOSES TO
v.) JUDGE ROBERT MCGUINESS,
) DEPARTMENT 22
WATCHTOWER BIBLE AND)
TRACT SOCIETY OF NEW)
YORK, INC., a)
corporation, et al.,)
)
Defendants.)
)
-----)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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@fjsslaw.com
Email: Rick@fjsslaw.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)

1 APPEARANCES (CONTINUED)
2 FOR THE DEFENDANT:
3 THE WATCHTOWER BIBLE AND TRACT SOCIETY
4 OF NEW YORK, INC.
5 JACKSON LEWIS, LLP
6 BY: ROBERT SCHNACK, ESQ.
7 801 K Street, Suite 2300
8 Sacramento, CA 95814
9 Tel: (916) 341-0404
10 Fax: (916) 341-0141
11 Email: Schnackr@jacksonlewis.com

12
13
14
15
16
17
18
19
20
21
22
23
24
25

--oOo--

1	INDEX OF EXAMINATIONS:	
2		PAGE
3	WITNESSES FOR THE PLAINTIFF:	
4	WITNESS: ELIZABETH PONTON, M.D.	
5	VOIR DIRE EXAMINATION BY: MR. SIMONS	21
6	DIRECT EXAMINATION BY: MR. SIMONS	29
7	CROSS-EXAMINATION BY: MR. SCHNACK	48
8	REDIRECT EXAMINATION BY: MR. SIMONS	51
9		
10	WITNESSES FOR DEFENDANT, NORTH FREMONT CONGREGATION	
11	OF JEHOVAH'S WITNESSES:	
12		
13	WITNESS: BERNICE MUNOZ	
14	DIRECT EXAMINATION BY: MR. McCABE	54
15	CROSS-EXAMINATION BY: MR. SIMONS	63
16		
17	WITNESS: SYLVIA MUNOZ	
18	DIRECT EXAMINATION BY: MR. McCABE	64
19	CROSS-EXAMINATION BY: MR. SIMONS	75
20		
21	WITNESS: PAMELA FIGUERIDO	
22	DIRECT EXAMINATION BY: MR. McCABE	76
23	CROSS-EXAMINATION BY: MR. SIMONS	88
24		
25	(CONTINUED)	

1 INDEX OF EXAMINATIONS: (CONTINUED)

2 PAGE

3 WITNESS: MONICA APPLEWHITE, Ph.D. (by videotape)

4 DIRECT EXAMINATION BY: MR. McCABE 94

5 CROSS-EXAMINATION BY: MR. SIMONS 128

6

7 WITNESS: ALLEN SHUSTER

8 DIRECT EXAMINATION BY: MR. McCABE 145

9 CROSS-EXAMINATION BY: MR. SIMONS 176

10 REDIRECT EXAMINATION BY: MR. McCABE 184

11

12

13

14

15

16

17

18

19

20

21

22

23

24

--oOo--

25

1 INDEX OF EXHIBITS:

2 NUMBER	ADMITTED
3 Plaintiff's 60, Defendant's 29	163
4 Plaintiff's 29, Defendant's 44	171
5 Plaintiff's 12, Defendant's 50	172
6 Plaintiff's 65, Defendant's 49	174

7 (EXHIBITS NOT ATTACHED)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

--oOo--

1 JUNE 5, 2012

8:02 A.M.

2 PROCEEDINGS

3 (Whereupon the following proceedings
4 were heard outside the presence of jurors)

5 THE COURT: On the record, Candace Conti
6 versus Watchtower Bible and Tract Society, Inc., et al.
7 Counsel, what would you like me to address
8 this morning?

9 MR. SCHNACK: I see that Dr. Ponton is in the
10 audience here today. I wanted to make sure, given the
11 deposition testimony and some other things that have
12 happened here during the trial that she not mention
13 Kathy Conti's abuse by an elder, that she not mention
14 that Kathy Conti --

15 THE COURT: Why don't you hold because,
16 Doctor, I want you to listen.

17 Doctor, why don't you come on in and sit in
18 the jury box.

19 Why don't you come on up. Welcome. And let
20 me get you settled.

21 THE WITNESS: Thank you.

22 MR. SCHNACK: And, again, that there be no
23 mention in front of a jury of Kathy Conti's abuse by an
24 elder. And, again, Kathy Conti is Candace Conti's
25 mother. And Kathy Conti's parents were Jehovah's

1 Witnesses.

2 THE WITNESS: I'm just going to write some of
3 these down. Sorry, your Honor.

4 THE COURT: Let's do that. So let's go topic
5 number one. And, Doctor, I made -- just for your
6 information, I made a series of rulings effectively
7 detailing and putting standards and limits in evidence
8 on both sides. So I want you to listen very clearly as
9 to what is off limits relative to your testimony.

10 First of all, Kathy Conti having been abused
11 by an elder in Jehovah's Witnesses.

12 THE WITNESS: Okay.

13 MR. SCHNACK: And second thing is that Kathy
14 Conti's parents were Jehovah's Witnesses.

15 THE WITNESS: Okay. The grandparents for
16 Candace.

17 MR. SCHNACK: Correct.

18 THE WITNESS: Okay.

19 MR. SCHNACK: That Kathy Conti was raised as
20 one of Jehovah's Witnesses.

21 The only thing that can be referenced with
22 respect to Kathy Conti is that she was sexually abused
23 as a child, period. Nothing within the church, nothing
24 referencing the church in that regard.

25 THE COURT: All right.

1 And in fairness, Doctor, in terms of context,
2 I have allowed Ms. Conti to testify about having been
3 sexually abused.

4 THE WITNESS: Uh-huh.

5 Was she unable to mentioned that it was a
6 Jehovah's Witness?

7 THE COURT: Right. Absolutely. That's part
8 of my orders.

9 THE WITNESS: Okay.

10 THE COURT: But we don't want any association
11 stuff relative to that abuse in the church.

12 THE WITNESS: Thank you.

13 MR. SCHNACK: The next topic deals with
14 delayed reporting or delayed disclosure or as what might
15 be called Child Sexual Abuse Accommodation Syndrome.
16 One is that, although the syndrome can be mentioned, the
17 credibility of the person making the delayed report
18 cannot be mentioned.

19 THE WITNESS: This will be a little more
20 confusing, I think, for me.

21 So I can mention the syndrome --

22 MR. SCHNACK: Sure.

23 THE WITNESS: -- the Childhood Accommodation
24 Syndrome. But the credibility, I don't quite understand
25 what you are saying.

1 MR. SCHNACK: You testified that delayed
2 reports should not be discounted, that they should not
3 be viewed as not being credible just because they were
4 delayed. And that you cannot do that here today.

5 THE WITNESS: Okay.

6 MR. SCHNACK: Do you understand the ruling?

7 THE COURT: Well, let's talk about that one,
8 Doctor, just for a minute.

9 So let's go -- you see, I haven't seen this
10 deposition testimony.

11 So you say the Doctor testified how? As to
12 what?

13 MR. SCHNACK: She testified that delayed
14 reports or delayed disclosure should not be discounted
15 and not be believed simply because they were delayed.
16 And, indeed, she went further to say that,
17 statistically, false reports constitute, I mean, 2 to
18 8 percent of all reports, something along that line.

19 THE WITNESS: All right.

20 MR. SCHNACK: And that gets into the
21 credibility of reports. We discussed this with respect
22 to Carl Lewis, Mr. Simons tried to get him to bring it
23 in. We had a couple side bars.

24 THE COURT: Your Honor, I fully understand
25 and I know the history.

1 MR. SIMONS: I would disagree with the
2 depiction of Mr. Simons trying to get that in.

3 THE COURT: Oh, don't worry about that. I
4 think that is just lawyers being lawyers. But the false
5 reporting aspects, I don't think are germane to what we
6 are doing here. So the testimony as to what is false
7 reports and the credibility, the inferred credibility we
8 shouldn't be talking about. But the delay and the
9 reasons why and whatnot, of course.

10 MR. SIMONS: Your Honor, if I may, sort of,
11 restate that for the Doctor.

12 What we are trying to stay away from is any
13 testimony where we say, I found her believable, or I
14 believed her, or her testimony is consistent with what
15 other victims may show connecting Candace Conti and the
16 issue of her credibility directly with the various
17 statistical and research information that we have on
18 delayed disclosure.

19 THE COURT: And, Doctor, I don't know how
20 many times you have been an expert witness, but the jury
21 has its function, you have yours with the expertise you
22 bring to it. And you are not the judge of the
23 credibility aspects.

24 You know, you are sitting here to educate the
25 jury as to the nature of the syndrome and the

1 circumstances without pinpointing it as to the
2 credibility of a particular person.

3 THE WITNESS: So if I were to say delayed
4 disclosure is very common in childhood sexual abuse
5 victims, would that be --

6 THE COURT: I think that's fine.

7 THE WITNESS: Okay.

8 MR. SCHNACK: Your Honor, I do discourage
9 what Mr. Simons' said only to the extent that it is not
10 narrowed to what he said. Yes, you cannot tie Candace
11 Conti's reports. I believe her that she is credible
12 because of the delayed report. But that indeed delayed
13 reports are credible.

14 It is a general statement as well that it's
15 excluded, not that it's delayed reporting is common. I
16 don't disagree with. But the fact that they are common
17 and they should not be disbelieved goes a step further.

18 THE COURT: I don't disagree with that.

19 MR. SIMONS: And neither do I.

20 THE COURT: No.

21 MR. SCHNACK: So the next topic I have is the
22 whole issue of church discipline. Your Honor, the issue
23 of disfellowshipping that came up, what you call "the
24 walking dead" in your report.

25 Anything related to church discipline, other

1 than Jonathan Kendrick having been removed as a
2 ministerial servant in the November 11, 1993 report,
3 should not be referenced whatsoever.

4 THE WITNESS: So run this by me again.

5 Mr. Kendrick's was removed is my
6 understanding. I can say that, yes?

7 MR. SCHNACK: Yes.

8 THE WITNESS: Believe me, disfellowship -- I
9 am not an expert on the faith, so I will stay away from
10 that topic.

11 MR. SCHNACK: It doesn't matter whether you
12 are an expert on it, but that you shouldn't reference
13 that at all.

14 THE COURT: Doctor, I want you to know that I
15 ruled that effectively disfellowshipping is a protected
16 activity. You acknowledged to me that you are not an
17 expert on the process or the nature of that. Stay away
18 from talking about what happened to Mr. Kendrick.

19 By the church, I have allowed evidence into
20 the fact that he had been removed as a ministerial
21 servant, but I don't want any editorializing on that
22 either other than acknowledgment of the fact.

23 MR. SCHNACK: And along with that, no other
24 form of church discipline. If they didn't disfellowship
25 him, they should have done something else. Nothing

1 along that line.

2 THE COURT: That's not your problems, Doctor,
3 and nor is it hardly evidence.

4 MR. SCHNACK: The next category I have, there
5 were several references both in your report and within
6 your testimony about child abuse within the Jehovah's
7 Witnesses church organization or words to those effect,
8 that we ask be stricken as well and not referenced
9 whatsoever here.

10 MR. SIMONS: I agree.

11 THE COURT: Now, Doctor, any questions as to
12 that?

13 Again, we are focusing on this particular
14 matter, not other goings-on and whatnot.

15 THE WITNESS: I will do my best. But just,
16 if I am overstepping, please interrupt me.

17 THE COURT: Oh, I can assure you counsel
18 will.

19 I am having this little session to avoid --
20 and if you have any questions -- because what I'm going
21 to do is I'm going to direct you to obey the rules I've
22 already made contextually so that we don't have issues
23 with the jury.

24 And if you have any questions, the point is
25 to ask them now so we can make sure we have a clean

1 presentation.

2 MR. SCHNACK: And that's my concern too with
3 the last comment, Judge, is if she forces us to set up
4 and have another side bar that we have to do repeatedly,
5 that creates the problem we are trying to avoid. So I
6 don't appreciate that you should try. I think you
7 should just do it. That's my suggestion.

8 THE COURT: Well, gosh, I wish life were
9 that --

10 MR. SCHNACK: I do too, judge, but we have
11 had to do a number of side bars in this trial.

12 THE COURT: But I'm a judge that observes the
13 jurors' reactions and whatnot, and they understand it,
14 and I have told them specifically. So, counsel,
15 understand this, that I have a lot of -- here and I
16 think they get it. I think they understand the nature
17 of the process here. And I think they are all very much
18 on board understanding what is going on and why.

19 But, Doctor, I need -- we are going topic to
20 topic now to assist you in the organization and
21 understanding so we can avoid any problems.

22 I mean, we have all been here over two weeks
23 to present this case and I have commented, which is rare
24 for me, that counsel have gone the extra number of
25 yards, if not miles, to make sure that the jury gets a

1 clean presentation of each side of their case. So I
2 need your attention and backing on that, at least.

3 THE WITNESS: Well, I will make every attempt
4 to follow this. I was just thinking that there might be
5 something that I had not thought about or known about.
6 That's all. I'm really intent on following the rules.

7 THE COURT: I know. And if you have any
8 questions before you answer, I will allow a break just
9 so there is no misunderstanding.

10 MR. SCHNACK: There was also reference in the
11 report that Jonathan Kendrick was an elder or that
12 Candace was abused by an elder within the church.

13 There has already been an instruction that he
14 was not in that position ever. So that should be
15 excised from your testimony completely.

16 THE COURT: And for whatever reason, and I'm
17 not sure what the reason is, there was some
18 misunderstanding, in at least a couple areas of evidence
19 here, that Mr. Kendrick was an elder. He never was.
20 And I don't know -- it is like a virus. You get that in
21 one report and then you find it in three reports. But I
22 would want you to know this, as a matter of fact, he was
23 not an elder.

24 THE WITNESS: He served in the capacity as a
25 ministerial assistant.

1 THE COURT: "Servant" is, I think, what you
2 call it.

3 MR. SCHNACK: Yeah. You didn't get the name
4 right. But it is "ministerial servant."

5 THE WITNESS: A ministerial servant. Okay.
6 Am I allowed to say that?

7 THE COURT: Yes.

8 THE WITNESS: Okay.

9 THE COURT: And actually, it has been a
10 wonderful education for this Court in terms of the
11 structure. But ministerial servant, I believe, is the
12 title.

13 MR. SCHNACK: And the last thing I have is,
14 again, because Paul Inman was referenced yesterday when
15 she shouldn't have been during Carolyn Martinez's
16 testimony. We don't want any references to Paul Inman.
17 The name Inman should not be brought up. And I didn't
18 see it in your testimony, so that's probably not an
19 issue.

20 THE COURT: I think we are giving Inman maybe
21 a little more due than he's worth.

22 But, again, I don't know what this profession
23 did in terms of Inman.

24 How is Inman in your report?

25 MR. SCHNACK: Did you review any depositions

1 of Paul Inman?

2 THE WITNESS: Not to my knowledge.

3 MR. SCHNACK: Okay. So just don't use the
4 word "Inman" during your testimony, I think we will be
5 fine.

6 THE COURT: It sounds like that is almost a
7 given.

8 MR. SIMONS: And I would, your Honor,
9 disagree with the Soviet style of removal of Paul Inman
10 from history. The fact that Carolyn Martinez was
11 married to him was certainly not, I think, intrusive in
12 any way of the Court's rulings.

13 THE COURT: Yeah, I didn't regard it as a
14 make way pieces of circumstance. I can have a little
15 sketch up here to try to keep everybody, the family tree
16 here in order.

17 MR. SCHNACK: Well, we disagree with the
18 scope of the ruling then.

19 But, nonetheless, for our purposes here
20 today, the word "Inman" shouldn't cross your lips,
21 Doctor.

22 That's all I have, Your Honor.

23 THE COURT: All right.

24 And if you want to chat with Plaintiff's
25 counsel, again, I will certainly give you an

1 opportunity.

2 All right. I'm glad we had this session.
3 You can review your notes and relax. We start at 8:30
4 and I will swear you in at that point in time.

5 And, again, I will advise you to stay within
6 the lines of the rulings I have made. And I have done
7 this specifically because of where we are in the trial
8 and everybody's good faith effort to comply.

9 All right. Anything else?

10 I saw your special verdict. I haven't had a
11 chance really to consider it.

12 MR. SIMONS: That's fine, Your Honor.

13 Were you able to open it?

14 THE COURT: I can open it and -- it could
15 only happen in this trial. For some reason, when I get
16 emails from you, they won't print. Sometimes they will
17 print from you; sometimes they won't.

18 I have had my IT guy in here once. He's
19 going to be back in here.

20 But I have been able to open it and read it.
21 I'm just not able to print off of it. I'm having my
22 clerk print off of hers.

23 MR. SIMONS: I think I have a hard copy here
24 with me today somewhere.

25 THE COURT: Well, you said you were going to

1 bring it so --

2 MR. SIMONS: Yeah.

3 THE COURT: -- you know, with plaintiffs'
4 lawyers there's always hope. So I was hopeful you'd
5 show up with it.

6 MR. SIMONS: Yes. And I'm wondering -- I
7 didn't notice it in the top of my notes where it usually
8 would be, and I'm wondering if I walked out of the door
9 without it.

10 THE COURT: Well --

11 MR. SIMONS: But in which case I decided to
12 bring it --

13 THE COURT: -- I am certainly not going to
14 hold you to --

15 (Discussion off the record)

16 MR. McCABE: You know, one thing I noticed is
17 that, Your Honor, that it lumps the two defendants
18 together and I object to that.

19 MR. SCHNACK: There are other issues.

20 (Discussion off the record)

21 (Whereupon the following proceedings
22 were heard in the presence of jurors)

23 THE COURT: Good morning, Ladies and
24 Gentlemen of the jury.

25 Mr. Simons?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1 followed that up and went to the University of Wisconsin
2 Medical School.

3 After that, I completed medical school in
4 1978 and then trained in pediatrics in New York City at
5 Bellevue and St. Vincent's Hospital.

6 And then following that, I went to the
7 University of Pennsylvania in Philadelphia and trained
8 in adult psychiatry.

9 Then I came here to the University of
10 California in San Francisco. I trained in childhood
11 adolescent psychiatry, fellowship, for three years.

12 And then I stayed on as faculty. And I have
13 been at the University of California in San Francisco
14 since 1980 teaching and working.

15 In addition, I have psychoanalytic training
16 and I'm a trained psychoanalyst at the San Francisco
17 Psychoanalytic Clinic.

18 So I do a lot of teaching, probably the main
19 doctor there who teaches in the area of adolescent
20 psychiatry. And I work with all the kids with cancer
21 and psychological problems at Moffett Long. So it is a
22 great job, and I get to work with some great people.

23 Q. Can you tell us if you are board certified?

24 A. Yes, Mr. Simons.

25 I am board certified in adult psychiatry and

1 in child and adolescent psychiatry. Both were obtained
2 in 1985.

3 And then following that, I worked for both
4 the boards, and I have been a board examiner from 1985
5 to the present time.

6 In my area of expertise, child and a
7 adolescents, I served on the board committee and wrote
8 the psychiatry boards, both adult and child and
9 adolescents, for ten years.

10 So I'm very involved in really helping young
11 psychiatrists learn about the field and hopefully pass
12 their tests and go out and work with people.

13 Q. Now, what does it mean to be "board
14 certified"?

15 A. A couple different things, Mr. Simons.

16 It is a lengthy process because you have to
17 first pass the American Medical Boards, three parts, and
18 get your basic licensure.

19 Then, within your subspecialties, your
20 specialty areas, you have to take both an oral and a
21 written exam.

22 Unfortunately, for the young doctors, it
23 costs a lot of money and time, and we are trying to look
24 at how to make it as expedient as possible so we can
25 really educate more doctors.

1 Q. And, Doctor, after having taken the exam
2 yourself, now you work on creating the examinations for
3 these future specialists in adult and child psychology?

4 A. That's correct. I do. I love writing. You
5 know, I sound like I'm a nerd. But writing is my
6 strongest skill probably because I studied English in
7 addition to chemistry. And that's probably why I have
8 been able to be adept in certain areas.

9 Q. Tell us a little bit about the writing that
10 you have done during your career.

11 A. I have written -- to be a full professor at
12 the University of California. That, I have to say, was
13 not easy for a woman. In 1989, I sued the University of
14 California, Class Action for the Women's Faculty. And I
15 won equal pay and equal advancement for Women's Faculty
16 in a class suit.

17 I obtained tenure before that time and then
18 had some struggles with them, as might be expected.

19 So I am very active at the university trying
20 to welcome young faculty, and really faculty from all
21 backgrounds and help them to become teachers and
22 clinicians there.

23 I have written probably about -- you know, I
24 would have to look at the CV because they change every
25 couple of times, and see how it is listed here -- but

1 somewhere between 125 and 150 articles.

2 I have written The Textbook of Adolescent
3 Psychiatry. I'm one of the five authors on that. The
4 Handbook of Adolescent Risk Taking.

5 I have written other things. I have written
6 some popular books about risk-taking behaviors,
7 sexuality, sexual abuse, that are well known, and I have
8 also written fiction.

9 Q. Are you licensed as a doctor in California?

10 A. Yes, I am. I have been since I moved here in
11 1980.

12 Q. And have you had specialized experience and
13 training in the field of childhood and adolescent sexual
14 abuse?

15 A. Yes.

16 I had the good fortune to have trained in
17 pediatrics in New York City when the first mandatory
18 reporting was coming about. And I remember the first
19 case that I had to report as an intern at Bellevue. And
20 three daughters were abused by their father. And they
21 said -- I remember my attending saying, "We have a new
22 rule that you are going to have to report these cases."

23 And it took me all day to write them up and
24 report them. And that, I have to tell you, has
25 continued over these 35 years. There is a lot of

1 reporting.

2 At UC, we report about one case a week in
3 Moffett Long of sexual abuse. So I have trained the
4 younger doctors in how to do that. I work with the
5 social work team. And I work actually with the state
6 agency some too.

7 Q. Now, in your teaching assignment, who are the
8 students that you are teaching?

9 A. I teach young and child adolescent
10 psychiatrists, and then also the pediatricians because
11 they have to be alerted about sexual abuse reporting.
12 The nursing staff at UC, so, psychologists who are
13 training there and social workers.

14 It is really a wonderful environment to work
15 in, a collaborative environment of about 45 to 50 people
16 working as a team to help the kids.

17 Q. Now, do you actually see patients? You call
18 it, I guess, clinical practice.

19 Is that the right term?

20 A. I see patients in two contexts. In the
21 morning -- not today because I'm here -- but we have
22 walk-arounds, and we will see the cases that are in the
23 hospital at UC. And I'm the main attending. And there
24 is a group of other attendings of younger doctors. We
25 walk around with the kids with cancer.

1 One of the boys is dying today who has
2 cancer. And the team is meeting with him and with his
3 father to really help them accept the situation. He is
4 very traumatized by it and is in the intensive care
5 unit. And I work with all of those inpatient cases.
6 And I'm involved in both the psychological and some of
7 the medical areas related to it.

8 I'm quite knowledgeable about pain control as
9 connected with psychological aspects of illness.

10 Then in the afternoon, I see the patients in
11 the outpatient setting. Usually about 25 to 30 per
12 week.

13 I'm known particularly for working with young
14 people, like Candace Conti, so the age group of young
15 people, both boys and young men who have been abused
16 too.

17 Sadly, many young men have been abused also,
18 and it is not as well-known. You know, sometimes the
19 Catholic priest abuse cases have made it more familiar
20 to people, and some of the cases with coaches. And I
21 work with those cases too.

22 And in the afternoon, I see a lot of patients
23 and I enjoy that. And hopefully I'm done by 7:00 to
24 have dinner with my husband, or if any of my kids are in
25 town, you know, I have dinner with them. I try to get

1 them to have dinner with me.

2 Q. Have you experienced, outside of the
3 University setting, with childhood trauma, and in
4 particular with addressing programs for childhood
5 trauma?

6 A. Oh, yes. I'm very active working with the
7 American Psychiatric Association and with the American
8 Academy of Child and Adolescent Psychiatry.

9 I was the founding chair in the '80s of the
10 Disaster and Trauma Committee for the American Academy.

11 You probably appreciate this because I got
12 the idea after the Loma Prieta earthquake, when I
13 watched my own children react to the earthquake and have
14 a lot of traumatic symptoms.

15 And then we organized town meetings for
16 Oakland and San Francisco and for Marin for parents
17 about how to help your children within a few days after
18 the earthquake. I also worked with the Oakland Fire.
19 And I'm currently very involved in the San Bruno fire
20 cases.

21 So my expertise is really dealing with
22 post-traumatic stress disorder and disaster and trauma.
23 I think what I am most well-known for in that area is
24 that I went on national television and then went to New
25 York City after 2011 -- or September 11th, and went on

1 after President Bush to talk about helping the nation's
2 children with post-traumatic stress disorder.

3 So I know a lot about that area and
4 especially how to help children, adolescents and adults
5 reduce their trauma load really through a lifetime of
6 being in a traumatic event.

7 MR. SIMONS: Your Honor, I would offer Dr.
8 Ponton as an expert in the field of psychiatry and child
9 and adolescent psychiatry.

10 THE COURT: Any questions for Dr. Ponton?

11 MR. McCABE: No, your Honor.

12 MR. SCHNACK: No.

13 THE COURT: I would find her qualified as an
14 expert for the two reasons sought.

15 DIRECT EXAMINATION

16 BY MR. SIMONS:

17 Q. Now, Dr. Ponton, did I ask you to evaluate
18 Candace Conti?

19 A. You did, Mr. Simons.

20 Q. And did you meet with her?

21 A. I did. I met with her several times.

22 Q. And in addition to meeting with her, did you
23 review some other materials?

24 A. I did.

25 I want to follow all the guidelines here, but

1 I reviewed a number of depositions and medical records
2 and many documents, really looking at them related to
3 this case.

4 Q. Did you review Candace's medical records,
5 including the medical records from her childhood and
6 adolescent years?

7 A. I did.

8 Q. And did you review the depositions of various
9 health care providers who have treated Candace over
10 time?

11 A. I did, Mr. Simons.

12 Q. When was the first interview that you had
13 with Candace Conti?

14 A. Let me look at this and make sure of this.
15 I think the date was incorrect on my
16 evaluation, but I saw her in the fall of 2011. And I
17 believe the first date was September 20th, 2011.

18 Q. And when was the last date that you saw her?

19 A. I don't have it. I would have to check my
20 billing records, but I would say within the last two
21 months I met with her.

22 Q. Did you develop an opinion as to whether or
23 not the childhood sexual abuse Candace Conti experienced
24 was a cause of harm to her?

25 A. Yes, I have, Mr. Simons.

1 Q. And what is your opinion in that regard?

2 A. I believe that the childhood sexual abuse
3 such as Candace Conti endured for a lengthy period of
4 time significantly harmed her.

5 Q. And you mentioned earlier post-traumatic
6 stress disorder, PTSD.

7 What is post-traumatic stress disorder?

8 A. Post-traumatic stress disorder came out
9 after, actually, the war that the world has participated
10 in.

11 We probably saw the first cases of the Shell
12 Shock Syndrome, you know, after World War I and World
13 War II. Even the Spanish American War had early
14 reportings of it. You can see throughout time -- or
15 human time -- stories referring to it.

16 But beginning in the '80s -- after '70s and
17 '80s, after Vietnam, and particularly at the University
18 of Pennsylvania where I worked, we worked with a lot of
19 Vietnam Vets and it came up. Really started to see a
20 syndrome. At first they attributed it to Agent Orange
21 in the Vietnam war. And then they realized that it was
22 some sort of anxiety disorder.

23 And post-traumatic stress disorder is a
24 anxiety disorder. So it is important to keep that in
25 mind.

1 Other anxieties are global. There is a
2 global anxiety disorder that is very common. Fears.
3 Specific fears are also anxiety disorders. But they are
4 traumatic, really, events that really awaken in the
5 body, psychological and physical responses.

6 So with post-traumatic stress disorder --
7 which I sometimes call it the Queen of Anxiety Disorders
8 -- there is a traumatic event that makes the person feel
9 that really under very serious threat or jeopardy that
10 occurs in that way. It can be a fire, such as those who
11 witnessed the San Bruno fire.

12 Sexual abuse makes a child feel very
13 threatened in terms of body integrity. And the DSM,
14 which is our diagnostic manual in psychiatry, this red
15 book, it really describes how with children, post-sexual
16 abuse, really makes them feel traumatized and attacked.

17 Because you can see, it is hard to see, but a
18 fire and a sexual abuser, if you're a child, are
19 similar. But they really are similar in terms of some
20 of the body's response to it.

21 So there's a traumatic event. It really
22 disturbs the functioning of the young person. And that
23 can be how they do in school, how their emotional state,
24 their physical response.

25 And then there are three categories of

1 symptoms that we're really looking at. The first one,
2 almost everybody knows about. The re-experiencing
3 symptoms, which are like flashbacks, bad dreams, that
4 you just can't forget this trauma. You can't get it out
5 of your mind and it keeps coming back.

6 And with Ms. Conti, one of the most
7 disturbing things -- she is quite a well-read young
8 woman, and the first to really describe Edgar Allan
9 Poe's The Pit and the Pendulum story to me.

10 But she feels like she is down in the pit in
11 her dreams and she is being held down and abused. And
12 that recurrent dream really re-enacts the trauma that
13 she has experienced. So the re-experiencing symptoms
14 are very important.

15 The second category are avoidance symptoms.
16 You try to avoid thinking about, feeling or talking
17 about the traumatic event. And we have all done that.
18 I really strongly encourage avoidance, if there is a
19 traumatic event in play and it is on the television.
20 You don't want to watch it. You don't want to expose
21 your children to the trauma of the repeated viewings of
22 videos that are traumatic.

23 So that aspect is really, really important to
24 use some avoidance.

25 But if you avoid it completely, then it still

1 is inside you, as it was with Ms. Conti. She avoided
2 talking about it. Really hid it. Not feeling safe to
3 talk about it. And it really affected her internal
4 world in a very important way and contributed, I think,
5 to some of her significant problems, you know, which
6 were substances and also depression, you know, that were
7 used, I think, to soothe her and help her with this.

8 The third category are physical symptoms with
9 post-traumatic stress disorder. And that can be
10 hypervigilance, you are jumpy, you are watchful, you are
11 really checking things out. You are carefully looking
12 at everything because you have been through something
13 that has really taught you to watch things in a
14 different way.

15 So that's what the diagnosis is. That is how
16 it is made, through the three categories. And that is
17 really the way we think about it.

18 Q. Do you have an opinion, with reasonable,
19 professional certainty, based on your knowledge and
20 education and training, and your work in this specific
21 case, as to whether or not Candace Conti experienced
22 post-traumatic stress syndrome as a result of her sexual
23 abuse?

24 A. I do, Mr. Simons.

25 Q. And what is your opinion?

1 A. That she has severe chronic post-traumatic
2 stress disorder.

3 Q. You used the word "chronic." What does that
4 refer to?

5 A. Chronic means that it's lasted longer than
6 six months. And, for her, it has lasted for years.

7 Q. And if we could look at Exhibit 55.

8 Now, you mentioned that you had reviewed Ms.
9 Conti's medical records?

10 A. That's correct. I have. And I actually
11 tagged this and my copy of it. This particular record,
12 I think I have it.

13 Q. And this is a record from August of 2002.

14 A. That's correct.

15 Q. Why is this record significant to you in
16 forming your opinions? And particularly with regard to
17 the opinion you just expressed about chronic PTSD.

18 A. Well, this is an early disclosure of abuse.
19 I mean, it is really going to be, you know, years before
20 Ms. Conti is fortunate enough to get the treatment that
21 she needs.

22 But if we look -- look at the star -- this is
23 Dr. Afruma's report. And if you look midway down there,
24 the abuse is reported, presumably, by Candace to him for
25 age 9 to 13. And it is interesting -- that's an

1 approximate, you know, age. And I would guess that
2 Candace said that she had been abused for a couple of
3 years.

4 Why this is important is she is much younger
5 at this point in time, but she is giving this
6 disclosure. And it really aids in credibility and it is
7 really looking at the story over time.

8 So it is important that that had come up and
9 she was thinking about it. It is important to know, in
10 sexual abuse, that it can be disclosed and then the
11 person gets scared again and doesn't talk about it. So
12 it has to do, really, with how safe you feel in the
13 environment talking about it.

14 So she talks about it here. She also
15 acknowledges, at this point, that it began at about 9
16 years of age when she was a very young child. And you
17 have to think, 9 is very young. It is really an
18 elementary student. And you see those kids on the
19 playground, probably have your own grandkids and kids,
20 and they are very, very young.

21 I think what is interesting about this -- and
22 I have to say something about our pediatric group, which
23 I'm part of too with some training -- it is written,
24 "not discussed further."

25 And I will just say something about it, not

1 so much a comment about Candace, often they do not say
2 "not discussed further" because there is the question of
3 mandatory reporting applicable at this point in time.
4 And they say that because that covers them in terms of
5 not reporting.

6 So I think that that's why that is written in
7 that particular way, but it supports Candace's later
8 disclosure.

9 MR. SCHNACK: Your Honor, can we have a side
10 bar, please?

11 THE COURT: Sure.

12 (Sidebar Discussion)

13 BY MR. SIMONS:

14 Q. Let's look at the second page of the Dr.
15 Afruma's health form, August 2002.

16 Now, are you familiar with the standard
17 medical recordkeeping techniques?

18 A. I have to say that we just went to Apex today
19 at UC. And not being there, I am missing being oriented
20 on it. And so it is changing. But I read a lot of
21 medical records every day. Yeah.

22 Q. Is there a standard designation for the "OAP"
23 that we see in the middle?

24 A. Yes. It is actually "SOAP". They are called
25 "SOAP notes." Subjective Objective Assessment and Plan

1 is what they mean. It is our standard formatting for
2 notes. Not everybody uses it. And it has become
3 really -- we are going to the box system with Apex all
4 over the country. It starts today at UCSF. And we
5 check boxes. And we are using a new format. So SOAP is
6 probably going to go by the wayside. So it is
7 challenging.

8 But what is important here is, if you look at
9 the assessment part there, these are the doctors'
10 diagnoses and post-traumatic stress disorder, depression
11 and insomnia. And then the recommendation under the
12 plan is really encouraged to discuss with the counselor,
13 psychiatrist, consider cognitive therapy as part of the
14 treatment plan.

15 And I think that's -- what cognitive therapy
16 is, cognitive therapy is a therapy that targets
17 thoughts. And cognitive therapy was developed by Aaron
18 Beck at the University of Pennsylvania. And it really
19 is useful in recurrent thoughts from post-traumatic
20 stress disorder in helping the individual to cope with
21 them.

22 You generally need it, along with a lot of
23 other treatment in somebody who has a chronic case like
24 the one with Ms. Conti.

25 Q. Is this record the first suggestion in any of

1 Ms. Conti's medical records about a possible
2 post-traumatic stress disorder that existed prior to
3 your evaluation of her?

4 A. It is the first one, Mr. Simons, that I have
5 seen. You know, we don't always have every medical
6 record.

7 I think there is one more point I would like
8 to make off of it, as I put on my glasses here, I can
9 really see better -- and this doctor also saw, and it
10 says -- it mentioned how the drugs can be used to numb
11 the experiences.

12 So Ms. Conti's use of substances could have
13 been used to numb her symptoms of post-traumatic stress
14 disorder. And the doctor very nicely said that it is
15 best to have a proper diagnosis and treatment plan.

16 So I think what the doctor was trying to do
17 was redirect here and set her on a proper course. Of
18 course, she is a very young girl when she comes in for
19 this.

20 Thank you.

21 Q. Now, with regard to the chronic part of PTSD,
22 does PTSD that has existed in a chronic state of more
23 than six months have more difficulty being subjected to
24 treatment than other forms of PTSD that may be acuter or
25 of shorter duration?

1 A. That's correct, Mr. Simons.

2 There is a couple of things we look at. What
3 makes a case require longer periods of treatment? One
4 is the chronicity, really how long it has been there.

5 The other are what we will call "co-morbid
6 diagnoses," the other problems that go along with it.

7 In Ms. Conti's case, the depression that goes
8 along with it makes it harder to treat, and the history
9 of substances makes it harder to treat too.

10 So those things really mean that you have to
11 spend more time, you have to have a much more of a
12 talking relationship with the young person.

13 For example, after the San Bruno fire, we
14 worked in several of the schools in the San Bruno area
15 to target post-traumatic stress disorder in the first
16 four weeks after the fire. And we had some success with
17 that.

18 But that's very early intervention, you know.
19 And if you have a situation that is existing much
20 longer, it is really much harder to work with.

21 Q. You mentioned the drug use.

22 First of all, you are aware of Candace
23 Conti's sustained history of substance abuse?

24 A. I am. I don't know how much of that we are
25 to talk about. I want to follow all the rules here, Mr.

1 Simons, though.

2 Q. Do you have an opinion as to whether or not
3 her years of substance abuse are caused in substantial
4 portion from the sexual abuse she experienced as a
5 child?

6 A. I do.

7 Q. What is your opinion?

8 A. As Dr. Afruma said here, I think it is very
9 likely that Candace was using these drugs to numb her
10 symptoms. I think she had very strong symptoms of
11 post-traumatic stress disorder. And I think those
12 drugs -- many of the drugs that people sell on the
13 street are antidepressants. You know, they are not what
14 we buy or use and they are not what we wish for people
15 because they are badly made and have lots of side
16 effects, and they ruin people's lives. But they are
17 antidepressants.

18 Q. Now, do you have familiarity with the various
19 studies and statistical information concerning genetic
20 factors in substance abuse?

21 A. I do.

22 Q. And based on your information working on this
23 case and your professional knowledge, do you have an
24 opinion as to whether or not it would be more likely
25 than not that Candace Conti would have been in sustained

1 substance abuse absent the child sex abuse?

2 A. I don't know how I can say this and stay
3 within the rules, but I will try.

4 I believe she suffered very significant
5 sexual abuse at an early age. Nine is very early. You
6 know, it is not just fondling. I don't know if the
7 details of the disclosures have been given. And it went
8 on for a significant period of time, and there were
9 multiple episodes. So all of that makes it very
10 significant.

11 With respect to your question about genetics
12 and substance abuse, if a family member was using
13 substances and, you know, genetically carried that
14 predisposition, you know, how would that affect
15 Ms. Conti?

16 There are studies that indicate that there
17 are higher rates in children of substance abusers that
18 are going to use substances too.

19 But there are -- also, the vast majority of
20 children of substance abusers do not use substances.
21 You know, and many of us know this, because we have
22 parents who might drink, and we instead decide we are
23 never going to do that and we are going to stay away
24 from it, and, you know, things like that.

25 So I think that is the majority of people.

1 So just because your parents had a genetic propensity,
2 you know, to use and carry that genetic loading, doesn't
3 mean that you are necessarily going to become a user.

4 Q. Did you do a trauma assessment of Candace
5 Conti?

6 A. I did. I will look for that right here.

7 Q. And while you are looking, can you tell us
8 what a trauma assessment is?

9 A. We are trying -- much in the last few years,
10 we have tried to normalize the testing that we are
11 doing. And we are especially trying to do it with the
12 big cases, so we can get validity on our testing
13 mechanisms for post-traumatic stress disorder. So this
14 is the post-traumatic stress checklist, the
15 civilian variant. And in terms of her symptoms, you
16 know, I will go through them so that you have some idea
17 about them.

18 She has repeated disturbing memories, as I
19 mentioned the dream of The Pit and Pendulum, you know,
20 and being held down. That is one of the most disturbing
21 things for her. She has a lot of triggering with
22 physical reactions, which is heart pounding, trouble
23 breathing or sweating.

24 You know, one of the ways you can find out if
25 somebody has had trauma is if they are taken in for

1 panic attacks to the emergency room, you have a family
2 member at home that has had an experience like that,
3 often that is linked into that. So that is a key, I
4 think, to keep in mind.

5 And she had a lot of physical symptoms that
6 were reported to various docs.

7 Then loss of interest in things that she used
8 to enjoy is very, very important.

9 What is also noteworthy about adolescents in
10 this, in post-traumatic stress, is they feel as if their
11 life is going to be cut short if they have experienced a
12 traumatic event. And she has that feeling that she will
13 die young. Just because she experienced something so
14 bad so early, she is convinced that this is going to
15 happen to her.

16 That, with adolescents and children who have
17 had trauma, is incredibly characteristic of it. So that
18 is a major problem.

19 Then other things, she is super alert and she
20 feels jumpy.

21 So those are the things that showed up on
22 this scoring mechanism.

23 Q. Over the time that you have seen Candace
24 Conti, have you seen significant improvement in her
25 overall condition?

1 And first of all, let me start out, you are
2 aware she's been in treatment?

3 A. I am aware of that, Mr. Simons. I strongly
4 supported that.

5 Q. And have you seen improvement from the first
6 time you saw her to the last time you saw her?

7 A. Very much so.

8 Q. And is that improvement a significant
9 finding?

10 A. Yes. Because it really indicates -- I think
11 when the abuse is disclosed and a person is able to talk
12 about it and really figure out how it made them feel and
13 respond as a child, it is very helpful.

14 And knowing that she has responded so well,
15 now that the abuse story has come out, is really very
16 important in this case.

17 Q. What is your prognosis for her?

18 A. With treatment -- and she will require a lot
19 of treatment -- I believe she has a fair to good
20 prognosis.

21 They say you never really recover from
22 chronic severe post-traumatic stress disorder. Meaning
23 that if a traumatic event happens later in your life, it
24 re-triggers it.

25 But you get wonderful coping strategies from

1 therapy, and really the sense that your resiliency is
2 increased and you can master this.

3 As I said in my report, I am recommending two
4 years of intensive, three times per week, therapy for
5 her and followed by six years of individual treatment of
6 one time per week.

7 I think the total amount, financially, was
8 about \$160,000 for that in today's world in money.

9 Q. Do you have an opinion as to whether or not
10 Candace Conti exhibits or suffers from any other
11 psychiatric illness or diagnosis of significance that
12 would affect any of the matters we have talked about so
13 far in your opinions?

14 A. Yes. I already mentioned the depression.
15 And she meets -- she was diagnosed as depressed here by
16 Dr. Afruma years before.

17 The type of depression that I diagnosed her
18 with is dysthymia. And that is a depressed mood that is
19 really ongoing, chronic and over a period of time. It
20 contrasts with major depressive disorder, which you have
21 probably heard about.

22 Both need treatment. Dysthymia is more
23 common when somebody has had depression. They may have
24 had a major depressive disorder, as she did, probably at
25 the time of the abuse and felt like harming herself, did

1 some self-mutilation and cutting, which is very
2 characteristic of young girls who have been sexually
3 abused. But then it evolves into a chronic depressed
4 state, which is what this did.

5 In addition, as you know, Mr. Simons, the
6 substance abuse disorders are psychiatric diagnoses too.

7 Q. What about paranoia or other similar types of
8 diagnoses? Does she have any evidence that she exhibits
9 in her records or in your interviews with her of those
10 types of diagnoses?

11 A. It is important to say, I think, what
12 paranoia is.

13 She does not, first of all, and her thinking
14 is very clear. I am very impressed with her ability to
15 read, use her mind, use therapy. That is really coming
16 to light. And I wish her well in her career with
17 animals. Animals need treatment too. They are not my
18 favorite. I'm not an animal person. But they really
19 need help and she loves them.

20 And so I think that that's very important.
21 So she has got a path of pursuit, and is really intent
22 upon that. And that is really very important.

23 MR. SIMONS: Thank you.

24 I have no further questions.

25

1 CROSS-EXAMINATION

2 BY MR. SCHNACK:

3 Q. You testified that Candace experienced what
4 you call a lengthy period of abuse; is that correct,
5 ma'am?

6 A. Yes. If you could please call me "doctor."
7 I know it is a lot to ask, but it is my title and
8 function here and I worked hard for it.

9 Q. I'm not sure that I didn't address you as
10 doctor.

11 A. You addressed me as, "ma'am." But that's
12 okay.

13 Q. Okay. There is no malice intended there.

14 A. Thank you very much. Thank you for doing
15 that.

16 THE COURT: All right, Mr. Schnack.

17 MR. SCHNACK: Thank you, your Honor.

18 BY MR. SCHNACK:

19 Q. In your report, you wrote that Candace told
20 you that she had been abused, quote, more than twice per
21 month, and often it happened four to six times per
22 month, close quote, by Mr. Kendrick.

23 Do you recall that?

24 A. Yes. I have got my report here, and I knew
25 you were going to question me on that.

1 Q. Ma'am -- I'm sorry, Doctor, if you could just
2 answer the questions without the sidelines, I would
3 appreciate that.

4 A. Okay. Can you please repeat that?

5 Q. Certainly.

6 Do you recall writing in your report that
7 Candace reported to you that for three years she had
8 been abused, quote, more than twice per month and often
9 they happened six times per month, close quote, by
10 Jonathan Kendrick?

11 A. I have it here. I don't recall writing it,
12 but it is in front of me and I wrote it.

13 Q. And then further down in that same paragraph,
14 you, quote, in summary, Candace's sequence of abuse by
15 Jonathan took place over three years and involved
16 hundreds of episodes of sexual abuse, close quote.

17 Did I read that correctly?

18 A. Yes. This is in my part of the report,
19 description of the events as reported by Candace Conti.

20 So it was what she told me during that first
21 interview.

22 Q. And -- okay. Let's turn now to your
23 deposition. You charged \$800 an hour for that
24 deposition; is that correct?

25 A. The rates are set by the University of

1 California, which I am a faculty member of. And then
2 they go into my university compensation plan which pays
3 for my staff.

4 Q. Is that a yes or a no?

5 A. I did charge that. They charged that, yes.

6 Q. And how much are you charging Mr. Simons for
7 appearing here today?

8 A. I think the rate might be \$900 for court
9 testimony.

10 Q. And is it fair to say you have charged 25 or
11 \$30,000 or more for the evaluation of this case?

12 A. Not at all. I think you saw the billing.
13 And I will get it for you, and I can tell you.

14 Q. How many hours have you put into it?

15 A. I will find it. I want to make sure.

16 I think, if you remember from my deposition,
17 that the billing was remarkably low in this case, partly
18 because I'm very -- I'm a speed reader, and it is
19 relatively quick. So let me look at this.

20 And I think --

21 Q. With all due respect, we didn't discuss your
22 billings in your deposition.

23 But go ahead and respond.

24 A. I brought them there for discussion and was
25 not asked about them.

1 But I think, approximately, the total
2 billings here are well under \$8,000. And that's up
3 until the time of the deposition. I would guess that
4 since that time, probably, you know, in preparation, you
5 depo-ed me in one hour, so that was \$800.

6 I probably --

7 Q. But I paid that. Correct?

8 A. Yes. But I got that money. So you did pay
9 me.

10 Thank you for doing that. I put it in my
11 comp plan.

12 But I think probably the total on this is
13 much closer to twelve to \$15,000 for being more than a
14 year at work on the case.

15 MR. SCHNACK: Okay. No further questions.

16 THE COURT: Mr. McCabe?

17 MR. SIMONS: No, thank you, your Honor.

18 THE COURT: Mr. Simons?

19 MR. SIMONS: Yes. I have one question.

20

21 REDIRECT EXAMINATION

22 BY MR. SIMONS:

23 Q. Doctor, did I understand you correctly that
24 the money that you charge and receive actually goes
25 through the Regents and into your department, and not to

1 you personally?

2 A. Right. It goes into a shared university
3 compensation plan and pays for a percentage of our
4 salary and is used -- I have two assistants. And
5 especially, since I'm switching to the Apex, we all have
6 to train, and they help me a lot. They are younger.

7 Q. So that does not go to you personally?

8 A. Does not go to me personally, no.

9 MR. SIMONS: That's all I have.

10 MR. SCHNACK: Nothing further.

11 THE COURT: Doctor, thank you very much for
12 your time. You are now excused.

13 (Whereupon, the following proceedings
14 were heard outside the presence of jurors)

15 THE COURT: All right. Please have a seat.
16 The jury is outside of the courtroom.

17 MR. SCHNACK: Yes, your Honor. We wanted to
18 move for a directed verdict on the punitive damages
19 claims, the last cause of action alleged in The
20 Watchtower Bible and Tract Society's Complaint, there is
21 no evidence of malice of pressure and thought, or much
22 less clear and convincing evidence of that, and we ask
23 that that be stricken from the case at this point.

24 THE COURT: All right. Motion for Directed
25 Verdict noted as to its timeliness and circumstance.

1 I will reserve it until tomorrow for argument
2 and in briefing and what anybody wants to do. Because I
3 expect we will conclude fairly early tomorrow. And I
4 will decide the motion at that time, after due
5 consideration of anything further and all evidence.

6 All right. Let's take a break until twenty
7 to 10 and we continue to go forward.

8 (Break taken)

9 THE COURT: All right. Mr. McCabe, your
10 first witness.

11 MR. McCABE: Defense would call Ms. Bernice
12 Munoz to the stand, your Honor.

13 THE COURT: Welcome, Ms. Munoz.

14 Please stand and raise your right hand.

15

16 BERNICE MUNOZ

17 WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

18 AND TESTIFIED AS FOLLOWS:

19

20 THE CLERK: Would you please state your name
21 and spell your first and last name for the record.

22 THE WITNESS: Bernice Munoz, B-E-R-N-I-C-E,
23 and last name Munoz is M-U-N-O-Z.

24 THE COURT: Would you please move the chair
25 forward so that you are more comfortable, a little more

1 forward. And then is that comfortable for you?

2 THE WITNESS: I think so.

3 THE COURT: Okay.

4

5 DIRECT EXAMINATION

6 BY MR. McCABE:

7 Q. Could you tell us where you live?

8 A. Fremont, California.

9 Q. And are you married?

10 A. Yes, I am.

11 Q. What is your husband's name?

12 A. Daniel Munoz.

13 Q. How many children do you have?

14 A. Four sons.

15 Q. Do you have any grandchildren?

16 A. Yes, I do.

17 Q. How many?

18 A. Twelve.

19 Q. Wow, congratulations.

20 Do you have great grandchildren?

21 A. Eleven.

22 Q. Okay. And are you one of Jehovah's

23 Witnesses?

24 A. Yes, I am.

25 Q. When did you become baptized as one of

1 Jehovah's Witnesses?

2 A. In June of 1987.

3 Q. And were you associated at the time of your
4 baptism with the North Fremont Congregation of Jehovah's
5 Witnesses?

6 A. Yes, I was.

7 Q. Are you still associated with that
8 congregation?

9 A. Yes.

10 Q. Did you attend meetings at that congregation
11 in 1993 through 1997?

12 A. Yes, I did.

13 Q. I'm going to show you what has been
14 previously marked as Defense Exhibit Number 132, and ask
15 you if you recognize this photograph.

16 Do you recognize that?

17 A. Yes, I do.

18 Q. Can you see it well enough?

19 A. Yes.

20 Q. What is this?

21 A. It is the entryway of the Kingdom Hall of
22 Jehovah's Witnesses.

23 Q. Okay. Is that the Kingdom Hall that you
24 attend, the entryway?

25 A. Yes.

1 Q. The next slide.

2 Do you recognize this one?

3 A. Yes.

4 Q. What is it?

5 A. It is the back side of the Kingdom Hall.

6 Q. Okay. It looks like there is double door
7 there.

8 Is that what you see?

9 A. Yes.

10 Q. And is that the entryway to the Kingdom Hall?

11 A. Yes, it is.

12 Q. And is that where most folks come into the
13 meeting and enter in through that door?

14 A. Yes, uh-huh.

15 Q. And do they also exit out that door?

16 A. Yes.

17 Q. Okay. The next photograph I would like to
18 show you is another picture.

19 Do you recognize any of the people in that
20 picture?

21 A. Yes, I do.

22 Q. Okay. Do you recognize the interior, what
23 that room is?

24 A. Yes, it is the Kingdom Hall.

25 Q. Okay. And this looks like an auditorium with

1 a -- looks like an aisle going down here.

2 Is there one or more aisles separating that
3 are these seats?

4 A. There is two aisles.

5 Q. Okay. So one down this side?

6 A. Yes.

7 Q. And then one down the other side where the
8 main group of people are pictured?

9 A. Yes.

10 Q. Do you know how many seats are on each side
11 of the aisles?

12 A. Maybe 25.

13 Q. On the sides or in the middle?

14 A. On the side aisles?

15 Q. Yes, on the sides.

16 A. Maybe like around 30.

17 Q. Okay. How many people can be seated in this
18 auditorium, if you know?

19 A. Sometimes maybe over 200.

20 Q. Okay. For a normal meeting currently, what
21 is your attendance like?

22 A. Maybe about a 180.

23 Q. How about back in the 1990s? '94, '95, '96?

24 A. It was pretty much the same.

25 Q. Okay. It's a mix of adults, children,

1 younger, older people, families?

2 A. Yes.

3 Q. Do you remember back in the mid-1990s a
4 family in the congregation known as the Conti family?

5 A. Yes, I do.

6 Q. Do you remember who made up that family?

7 A. The father, the mother and a child. A little
8 girl.

9 Q. Do you remember what the little girl's name
10 was?

11 A. I believe it was Candace.

12 Q. Okay. Do you remember what she looked like?

13 A. Yeah. She was white and she had reddish
14 brown hair.

15 Q. Do you remember what the father and mother's
16 names were?

17 A. I'm sorry.

18 Q. Father and mother's name, do you remember
19 what they were?

20 A. Neal Conti and the mother, I believe, was
21 Kathy Conti.

22 Q. Okay. Did you see them at the Kingdom Hall
23 during the mid-1990s when you went to meetings?

24 A. Yes.

25 Q. Were you a regular meeting attender? Did you

1 go to each of the meetings at the Kingdom Hall?

2 A. Yes, most of the time.

3 Q. If you were sick or on vacation, you didn't
4 go; is that correct?

5 A. Right.

6 Q. But if you were in town, did you go to the
7 meetings?

8 A. Yes.

9 Q. Do you remember another family in the
10 congregation by the name of Kendrick?

11 A. Yes, I do.

12 Q. All right. Do you remember who composed that
13 family?

14 A. It was Brother Kendrick and his wife and a
15 child. A little girl.

16 Q. Do you remember what the girl's name was?

17 A. The little girl? No, I don't remember.

18 Q. How about Mrs. Kendrick; do you remember her
19 first name?

20 A. No, I don't.

21 Q. Do you remember seeing both of these families
22 attend meetings at the same time back in the mid-1990s
23 at the Kingdom Hall?

24 A. Well, I would say so.

25 Q. Did you ever see Candace Conti sit on

1 Jonathan Kendrick's lap at the Kingdom Hall before,
2 after or during the meetings?

3 A. No. Never.

4 Q. Did you ever see any little girl sit on
5 Jonathan Kendrick's lap at the meetings?

6 A. No.

7 Q. Do you remember where Jonathan Kendrick used
8 to sit in the meetings?

9 A. I remember him sitting with his wife and
10 child, and they used to sit in the middle.

11 Q. Okay.

12 A. But when he was alone, sometimes he sat in
13 the back row or so. And I remember this because
14 sometimes he used to fall asleep in the back row.

15 Q. How did you know he was asleep?

16 A. Well, because he had his eyes closed and he
17 had a silent snore.

18 Q. So at least when he was sleeping, no one was
19 sitting on his lap.

20 A. What was that again?

21 Q. When you saw him sleeping, no one was sitting
22 on his lap?

23 A. No.

24 Q. Did you ever see Mr. Kendrick give Candace
25 Conti big bear hugs at the Kingdom Hall?

1 A. No.

2 Q. Did you ever see Jonathan Kendrick leave in
3 his vehicle with Candace Conti, in the vehicle alone?

4 A. No.

5 Q. Did you ever see Jonathan Kendrick and
6 Candace Conti out together in a field ministry going
7 from house to house together alone?

8 A. No.

9 Q. Did you ever see Candace Conti at the Kingdom
10 Hall without her father or her mother or both of her
11 parents at the Kingdom Hall?

12 A. No.

13 Q. Did you ever observe anything about Mr.
14 Kendrick that, as a mother or grandmother, would cause
15 you any concern about his behavior at the Kingdom Hall?

16 A. No.

17 Q. I'm going to show you what has been marked
18 previously as Plaintiff's Number 64 and the Defense
19 Number 37, and ask you if you recognize this document.

20 A. Yes, I do.

21 Q. Could you tell me what it is?

22 A. Well, it is talking about protecting your
23 children.

24 Q. Well, first of all, what is this document?

25 A. It is an Awake Magazine.

1 Q. Okay. And back in '93, how did you obtain
2 copies of the Awake Magazine, if you did?

3 A. In the mail.

4 Q. So you got them delivered to you in the mail.
5 Were they also available at the Kingdom Hall?

6 A. Yes.

7 Q. Do you recall getting this magazine back in
8 the 1990s?

9 A. Yes, I do.

10 Q. Do you recall reading it?

11 A. Uh-huh.

12 Q. Was it your custom and practice to read the
13 magazines when they came?

14 A. Yes.

15 Q. Do you have a general idea of what the
16 magazine was about?

17 A. No. Not now, I don't. It is talking about
18 protecting your children and things that could happen to
19 them.

20 Q. Okay. Sexual child abuse. Correct?

21 A. Yes.

22 Q. Do you have this magazine still available to
23 you in your home?

24 A. No.

25 Q. Do you have a computer in your home?

1 A. Yes.

2 Q. Do you have an electronic library in your
3 home?

4 A. Yes.

5 Q. Do you have a Watchtower electronic library
6 in your home?

7 A. Yes.

8 Q. And does it have a search engine in it?

9 A. Yes, it does.

10 Q. So if you typed up "child abuse" in the
11 search engine, would it bring up this article?

12 A. Yes.

13 Q. And other articles that dealt with this
14 subject?

15 A. Yes.

16 MR. McCABE: I have nothing further, your
17 Honor.

18 THE COURT: Mr. Simons?

19

20 CROSS-EXAMINATION

21 BY MR. SIMONS:

22 Q. Were you paying special attention to Brother
23 Kendrick?

24 A. Special attention? No.

25 MR. SIMONS: I have nothing further. Thank

1 you.

2 THE COURT: Ms. Munoz, thank you for your
3 time.

4 You are excused.

5 MR. McCABE: Your Honor, the Defense would
6 call Sylvia Munoz.

7

8 SYLVIA MUNOZ

9 WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK
10 AND TESTIFIED AS FOLLOWS:

11

12 THE CLERK: Will you please state your name
13 and spell your first and last name for the record.

14 THE WITNESS: Sylvia Munoz, S-Y-L-V-I-A
15 M-U-N-O-Z.

16

17 DIRECT EXAMINATION

18 BY MR. McCABE:

19 Q. Good morning, Ms. Munoz.

20 A. Good morning.

21 Q. Could you tell the jury where you live,
22 please?

23 A. 35958 Adobe Drive, Fremont, California.

24 Q. Are you related to the Ms. Munoz that just
25 testified?

1 A. Yes. That's my mother-in-law.

2 Q. What is your husband's name?

3 A. Daniel Munoz.

4 Q. And how long have you been married?

5 A. Twenty-seven years.

6 Q. Do you have any children?

7 A. Two sons.

8 Q. How old are they?

9 A. Nineteen and 26.

10 Q. So one is the same age as Candace Conti?

11 A. Yes.

12 Q. Are you one of Jehovah's Witnesses?

13 A. Yes.

14 Q. What congregation do you attend?

15 A. North Fremont.

16 Q. And when did you start attending meetings at

17 North Fremont Congregation?

18 A. Since before I was baptized before 1991.

19 Q. So you were baptized in 1991 but you were

20 attending meetings before you became baptized?

21 A. Yes.

22 Q. Were you a regular meeting attender during

23 the 1990s?

24 A. Yes.

25 Q. Did you miss many meetings?

1 A. I tried not to. Only when my children were
2 sick.

3 Q. And when they weren't sick or you weren't on
4 vacation, was it your custom and practice to be at the
5 meetings?

6 A. Yes.

7 Q. I want to show you what has previously been
8 admitted to evidence as Defense Number 132, and ask if
9 you recognize this picture.

10 A. Yes.

11 Q. What is this?

12 A. That is the front of the Kingdom Hall where
13 they have the meetings.

14 Q. And that's the Kingdom Hall you still attend
15 today?

16 A. Yes.

17 Q. I want to show you a picture of the interior
18 of that -- or looks like the interior of a room.

19 Does that look to be like the Kingdom Hall
20 that you attend?

21 A. Yes, I recognize the friends there.

22 Q. Okay. And do you recognize the interior of
23 the building too?

24 A. Yes.

25 Q. Is it pretty much the same as it has been

1 since, say, 1993 or 1994?

2 A. Yes. I think they had a paint job done to
3 the interior. But, yeah, it is the same.

4 Q. But structure is still the same?

5 A. Yes.

6 Q. Same amount of seats in the facility?

7 A. Yes.

8 Q. What's it like before and after the meeting
9 ends? Is it chaos in the Kingdom Hall, kids running
10 around, things like that?

11 A. It's not chaotic. I mean, you know, we are
12 encouraged to speak to one another and communicate and
13 associate before and after the meetings.

14 Q. Kids running around and playing tag?

15 A. Sometimes. I mean, they're children. They
16 do like to play with their friends and talk to their
17 friends. But it never gets out of hand or anything like
18 that.

19 Q. Your children didn't do that?

20 A. No. We always had our boys right by us.

21 Q. Back in the mid-1990s, do you remember a
22 family by the name of Conti?

23 A. Yes.

24 Q. And who made up that family?

25 A. Neal Conti, the father, Kathy, and they had a

1 daughter, Candace. And I believe Neal had a son, but I
2 can't remember his name.

3 Q. And do you remember them coming to the
4 Kingdom Hall to meetings there?

5 A. Yes.

6 Q. Do you remember specifically Candace? Do you
7 remember what she looked like?

8 A. Yes.

9 Q. What did she look like?

10 A. She was light-skinned. She had freckles on
11 her face, dark brownish red hair, kind of long. She was
12 a cute little girl.

13 Q. And do you also remember a family by the name
14 of Kendrick attending meetings at the Kingdom Hall
15 during the same time period, the mid-1990s?

16 A. Yes, I do.

17 Q. Do you remember what their names were?

18 A. Jonathan Kendrick, Evelyn. And Evelyn had a
19 daughter by the name of Andrea, I believe.

20 Q. And do you remember both of these families
21 being at meetings together at the same time?

22 A. Yes.

23 Q. Did you ever see Candace Conti getting a big
24 bear hug from Jonathan Kendrick?

25 A. No.

1 Q. Would that have been appropriate in your mind
2 to have something like that happen?

3 A. That would not be appropriate, no.

4 Q. How about -- did you ever see Candace Conti
5 sitting on Mr. Kendrick's lap either before, during or
6 after a meeting?

7 A. No.

8 Q. I'm talking about when she was 9, 10, 11
9 years old.

10 A. No.

11 Q. Would you have thought that would be
12 appropriate?

13 A. That would not be appropriate.

14 Q. Okay. What about, did you ever see Mr.
15 Kendrick -- do you remember what kind of vehicle he
16 drove?

17 A. No, I don't remember.

18 Q. Did you ever see Mr. Kendrick and Ms. Conti,
19 as a little girl, 9, 10, 11, 12 years old, leaving the
20 Kingdom Hall property together in the same vehicle?

21 A. No.

22 Q. Did you ever see Mr. Kendrick and Ms. Conti
23 working together in the field ministry?

24 A. No.

25 Q. Did you ever see them driving anywhere in a

1 car together?

2 A. No.

3 Q. In doing your field ministry, do unmarried
4 men go in a car with an unmarried woman together alone?

5 A. No.

6 Q. Why not?

7 A. Because it is not appropriate.

8 Q. Now, did you ever see Candace Conti alone at
9 the Kingdom Hall without one of her parents being there?

10 A. No.

11 Q. I wanted to show you Plaintiff's Number 30.
12 It is an aerial photo. And I want to see if you
13 recognize what it is.

14 Can you see that photograph?

15 A. I can see it, yes.

16 Q. Would you like one in your hand to look at?

17 A. I would probably like to see it a little
18 closer.

19 Q. Let me give you a copy of what is on the
20 board.

21 A. Looks like the parking lot.

22 Q. The parking lot of what?

23 A. Of the Kingdom Hall.

24 Q. Do you notice there is kind of like a
25 triangle to what is my right side of the photograph as

1 I'm looking at it?

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. What is that area?

6 A. It is -- now it is kind of like an overflow
7 of the parking lot, I guess. Or sometimes the friends
8 do park. But back then I don't think it was really used
9 for that.

10 Q. And how often do you see cars parked in this
11 area?

12 A. Now, probably pretty much every meeting now.
13 But before, no.

14 Q. Is there more than one congregation that
15 meets at this Kingdom Hall?

16 A. Not at the same time.

17 Q. Is this a dirt area?

18 A. Yes, uh-huh.

19 Q. How do children dress when they come to the
20 meetings at the Kingdom Hall currently?

21 A. They are very nicely dressed. The girls wear
22 nice dresses and even the young ones, little boys, wear
23 suits, nice shoes.

24 Q. Was that true back in the 1990s as far as you
25 remember?

1 A. Yeah, my boys were always dressed in a suit.

2 Q. And your boys were -- one of them at least
3 was the age of Ms. Conti.

4 Did you allow your boys to play out in this
5 dirt area that we are talking about?

6 A. Never, no.

7 Q. Before and after meetings?

8 A. No, never.

9 Q. You never caught them out there --

10 A. No.

11 Q. How about running around in the parking lot?

12 A. No.

13 Q. Why not?

14 A. It's dangerous. The friends are coming in
15 and out of the parking lot.

16 Q. I want to direct your attention now to
17 Plaintiff's Exhibit 64 and Defense 37, which has been
18 admitted into evidence in this case, and ask if you
19 recognize what this document is.

20 A. Yeah. It is an Awake Magazine.

21 Q. Back in -- looks like it's in October 8, 1993
22 Awake Magazine.

23 Do you recognize that?

24 A. Yes.

25 Q. And do you recall if you received this

1 magazine back in 1993?

2 A. Yes.

3 Q. What is the general subject matter about this
4 magazine?

5 A. Protecting your children.

6 Q. I would like to draw your attention to a
7 picture in this.

8 Do you recall reading this when you got it?

9 A. Yes.

10 Q. All right. And let me ask you this too while
11 we are looking at the picture -- I'm going to go to page
12 8 of the exhibit.

13 Excuse me.

14 Seven out of 13 of the exhibit. But there is
15 a number, like, 7 over 13. Do you see that?

16 A. Seven over 13, yes.

17 Q. And currently, do you have this magazine
18 available to you in your home?

19 A. I would have it in our -- what we call our
20 CD-ROM that is our Watchtower library where we have a
21 lot of our publications.

22 Q. And you have that on a CD-ROM?

23 A. CD-ROM, yes.

24 Q. Do you have a computer?

25 A. Yes.

1 Q. Does your CD-ROM have a search engine in it?

2 A. Yes.

3 Q. So if you wanted to look at any articles
4 about childhood sexual abuse or protecting children,
5 what would you do?

6 A. I would log on to the CD-ROM in the
7 Watchtower library and I could just put in a couple
8 words and hit search and it would bring up a couple
9 articles.

10 Q. Articles like this?

11 A. Right.

12 Q. As you look at page 7 of 13 in that
13 photograph that's there, do you know what that is
14 depicting?

15 A. Yes. It is depicting an adult trying to talk
16 to a young child.

17 Q. Okay. And the subject matter of sexual
18 abuse, does it look like there is a mom and a dad here
19 coaching a child?

20 A. Yes.

21 Q. Do you remember seeing Jonathan Kendrick
22 specifically at meetings back in the mid-1990s?

23 A. Yes.

24 Q. Anything significant ever stand out about
25 him?

1 A. I do recall sometimes he would fall asleep
2 during the meetings. Not all the time, but sometimes.

3 Q. And that was noticeable by you?

4 A. Yes.

5 Q. Do you know where he sat at the meetings when
6 he came by himself?

7 A. I believe it was toward the back.

8 Q. Did you ever see him do anything
9 inappropriate with a child at the Kingdom Hall?

10 A. No, never.

11 Q. Out in the parking lot?

12 A. No.

13 MR. McCABE: I have nothing further.

14

15 CROSS-EXAMINATION

16 BY MR. SIMONS:

17 Q. Good morning, Ms. Munoz.

18 A. Hello.

19 Q. Did you have any reason to keep a special eye
20 on Jonathan Kendrick?

21 A. No.

22 MR. SIMONS: Nothing further.

23 THE COURT: Are we done with Ms. Munoz?

24 MR. McCABE: She can be excused, your Honor.

25 THE COURT: Thank you for your time this

1 morning.

2 You are now excused.

3 MR. McCABE: The defense would next call Mrs.
4 Pam Figuerido.

5

6 PAMELA FIGUERIDO

7 WAS DULY SWORN TO TELL THE TRUTH BY THE CLERK

8 AND TESTIFIED AS FOLLOWS:

9

10 THE CLERK: Would you please state your name
11 and spell your first and last name for the record.

12 THE WITNESS: It's Pamela Figuerido.

13 P-A-M-E-L-A, F-I-G-U-E-R-I-D-O.

14 THE CLERK: Thank you.

15

16 DIRECT EXAMINATION

17 BY MR. McCABE:

18 Q. Good morning, Mrs. Figuerido.

19 A. Good morning.

20 Q. Could you tell the jury where you live,
21 please?

22 A. Fremont, California.

23 Q. How long have you lived there?

24 A. Let's see. Since 1983.

25 Q. Are you married?

1 A. Yes.

2 Q. What is your husband's name?

3 A. Gary.

4 Q. All right. Do you have any children?

5 A. Yes.

6 Q. What are their ages?

7 A. Thirty-four and 39.

8 Q. Do you have any grandchildren?

9 A. Seven.

10 Q. Are you one of Jehovah's Witnesses?

11 A. Yes, I am.

12 Q. When were you baptized as one of Jehovah's

13 Witnesses?

14 A. In 1961.

15 Q. How old were you at that time?

16 A. Thirteen.

17 Q. Were you baptized at the North Fremont

18 Congregation?

19 A. I was baptized in San Jose.

20 Q. Okay. Were you attending the North Fremont

21 Congregation at the time of your baptism?

22 A. No.

23 Q. How long have you been attending meetings at

24 the Kingdom Hall at North Fremont?

25 A. Since 1983 when we moved there.

1 Q. And back in the mid-1990s, what was the
2 frequency of your meetings? Since I heard they had
3 three meetings a week, what would be your custom and
4 practice of going to meetings back in the mid-1990s?

5 A. That would be correct. We have two mid-week
6 meetings and a Sunday meeting.

7 Q. Did you go to all the meetings?

8 A. Yes.

9 Q. Did you ever miss?

10 A. Well, when we were on vacation or if one of
11 us was sick.

12 Q. Okay. In the Kingdom Hall which you attend,
13 I want to show you what has been marked as Exhibit 132.
14 And I want to show you a picture of -- looks like some
15 people standing together, and ask if you recognize
16 anybody in this picture.

17 A. Oh, yes.

18 Q. Who are those people?

19 A. They are members of the congregation.

20 Q. Okay. And it looks like they are either
21 standing or singing or something.

22 But how many rows of seats are in this -- I
23 mean, like, are there aisleways in the seating
24 arrangement?

25 A. Well, there is three sections of seats and

1 two on the sides and one center section.

2 Q. Now, on the side section, I assume you are
3 talking about what is just going off camera here in the
4 corner?

5 A. That's correct.

6 Q. How many seats are in those rows on that
7 side?

8 A. I think there is four.

9 Q. How about on -- there is another row on the
10 other side, I take it, in this area?

11 A. On the far wall?

12 Q. Yeah.

13 A. The same.

14 Q. Four seats in the middle?

15 A. I think there is about ten.

16 Q. Okay. How many people attend the meetings
17 currently on Sunday?

18 A. Usually around a hundred.

19 Q. A hundred?

20 A. Uh-huh.

21 Q. How about back in the 1990s; was that
22 similar?

23 A. Similar.

24 Q. I want to show you another picture that's
25 been -- before we go to that other picture -- what's the

1 meetings like at the Kingdom Hall in North Fremont
2 before and after the meeting?

3 A. Before and after? We just visit with one
4 another, greet one another as we come in. Children are
5 talking amongst themselves. And then the meeting is
6 called to order and we sit down.

7 Q. How about after the meeting? How long do the
8 meetings last?

9 A. About an hour and forty minutes.

10 Q. So after the meeting, do the kids go berserk?

11 A. Absolutely not. They are not allowed to.

12 Q. Okay. Do they ever run and play tag, things
13 like that?

14 A. Well, you're going to have the occasional
15 child that's going to run and hide. But for the most
16 part, they are well-behaved.

17 Q. Do the ministerial servants attendants try
18 and keep that pretty orderly after the meetings?

19 A. Yes.

20 Q. I want to show you another picture that has
21 been marked Defense Exhibit Number -- Plaintiff's
22 Exhibit Number 30, excuse me.

23 I will bring you up a copy because it might
24 be a little hard to see from there.

25 Do you recognize what that photograph is?

1 A. It is the Kingdom Hall on Peralta.

2 Q. An aerial photograph of it?

3 A. Yes.

4 Q. Okay. And I'm looking at the brown -- looks
5 to me kind of brownish greenish triangular area as I'm
6 looking at this photo to my right.

7 Do you see that?

8 A. I do.

9 Q. What is that?

10 A. That's an ease way, I believe, for the city.
11 It is just a dirt area. They do use it for parking cars
12 in.

13 Q. How often do you see cars parked?

14 A. Every meeting.

15 Q. And that is a dirt area?

16 A. Uh-huh.

17 Q. Do you ever see children playing out there?

18 A. No.

19 Q. Well, was that true in the 1990s?

20 A. Same. They always try to be very cautious in
21 the parking lot. It's dangerous with all the cars.

22 Q. How are children dressed when they attend the
23 meetings?

24 A. They wear their Sunday best.

25 Q. So did your children play out in this dirt

1 area from time to time?

2 A. My son may have snuck out there a time or
3 two. But my daughter, no.

4 Q. Did you catch your son out there?

5 A. You better believe it.

6 Q. Okay. I want to show you what's been marked
7 Defense Exhibit 17 and Plaintiff's 59, and ask if you
8 recognize this document.

9 A. Yes. I remember this one.

10 Q. What is it?

11 A. It is an article in the Awake Magazine on
12 child molesting and how -- it gave advice on how to
13 protect your child.

14 Q. Do you remember receiving this particular
15 issue of the magazine in January of 1985?

16 A. Yes. This one stands out in my mind. I
17 remember the shadowing and the child with the baby.

18 Q. Was it your custom and practice to read the
19 magazines when you received them?

20 A. Yes.

21 Q. How did you receive them back in 1995 and
22 '96?

23 A. Through the mail.

24 Q. Were they also available anywhere else?

25 A. You could pick them up at the Kingdom Hall.

1 Q. And were they also made available to anybody
2 else outside the Congregation of the Jehovah's
3 Witnesses?

4 A. They could subscribe to them, yes.

5 Q. What about when you do your -- what do you
6 call it? -- house to house work?

7 A. Yes.

8 Q. Do you also offer those to people?

9 A. Yes.

10 Q. Do you recall what this series of articles
11 was generally about?

12 A. Well, the one thing that stood out in my mind
13 was the importance of communication with a child.
14 Because a child that is ignorant becomes vulnerable.
15 And so the communication to let the child -- teach them
16 ways that it's never wrong to come to myself or their
17 father if somebody did something to them that they felt
18 uncomfortable with.

19 Q. Do you recall ever going over this material
20 with your children?

21 A. I did.

22 Q. I want to show you what has been marked
23 Plaintiff's Number 64 and Defense 37, and ask if you
24 recognize this document.

25 A. Yes.

1 Q. What is that?

2 A. This is another article on protecting your
3 children.

4 Q. And did you receive this article?

5 A. I did.

6 Q. How did you receive it?

7 A. Through the mail.

8 Q. And was it also available down at the Kingdom
9 Hall like you mentioned?

10 A. Yes.

11 Q. Do you remember reading this particular
12 article?

13 A. I do.

14 Q. Do you still have this article available to
15 you?

16 A. On CD-ROM.

17 Q. What is a CD-ROM?

18 A. It is the Society's CD that has been made
19 available to us, and it has the publications on it that
20 we can reference when we need them.

21 Q. So it has a search engine in it?

22 A. Yes.

23 Q. You can just type in a few words and get
24 articles that you want?

25 A. Yes.

1 Q. If you type in "child abuse," you think this
2 article would come up?

3 A. It would.

4 Q. Do you remember the Conti family at the
5 Kingdom Hall in North Fremont in, say, early 1990s to
6 mid-1990s?

7 A. Yes, I do.

8 Q. Do you remember what their names were?

9 A. Yes. The father was Neal Conti; the mother,
10 Kathy Conti; daughter, Candace Conti and her
11 stepbrother, Ricky.

12 Q. Okay. Do you recognize Candace here in court
13 today?

14 A. Yes, I do.

15 Q. Do you remember what she was like as a little
16 girl?

17 A. She was your typical little kid. I mean, she
18 tended to be a little bratty at times. I'm sorry to say
19 that. But she was strong-willed and had a mind of her
20 own.

21 Q. That's okay. We have heard that description
22 before.

23 Did you remember also another family in the
24 congregation at that time in the mid -- early, mid-1990s
25 by the name of Kendrick?

1 A. Yes.

2 Q. Do you recall who was in that family?

3 A. Jonathan Kendrick and then his wife was
4 Evelyn, and they had a daughter, Andrea. Well, it was
5 his stepdaughter. It was Evelyn's daughter.

6 Q. Okay. Do you recall the Contis and the
7 Kendricks being together at the Kingdom Hall at the same
8 time?

9 A. Yes.

10 Q. Did you ever see Jonathan Kendrick give a big
11 bear hug to Candace Conti?

12 A. No.

13 Q. Did you ever hear him say, "Who loves you,"
14 and then holds on to her until she said, "You do" and
15 then he let her go?

16 A. Never.

17 Q. If you had seen that, would that have been
18 remarkable to you?

19 A. Absolutely.

20 Q. Did you ever see Candace Conti as a 9, 10,
21 11-year-old girl sitting on Jonathan Kendrick's lap at
22 any Kingdom Hall events?

23 A. No.

24 Q. Would you have thought that was appropriate?

25 A. For a 9- or 10-year-old girl?

1 Q. Yes.

2 A. Yes. It was inappropriate.

3 Q. Did you ever see Candace, even as a littler
4 child, sitting on Mr. Kendrick's lap?

5 A. No.

6 Q. Did you ever see Candace Conti leave the
7 Kingdom Hall premises alone with Mr. Kendrick?

8 A. No.

9 Q. Did you ever see Candace at the Kingdom Hall
10 without either her mother or her father or both her
11 parents being present?

12 A. No.

13 Q. What about, you talked about the field
14 service or field ministry when you go door-to-door.

15 Did you ever see Candace Conti and Mr.
16 Kendrick going in the field ministry alone by
17 themselves?

18 A. No.

19 Q. Did you ever see them together in the field
20 ministry?

21 A. No.

22 Q. Would it have been appropriate had they been
23 together in the ministry?

24 A. Working together just the two of them?

25 Q. Yes.

1 A. Inappropriate.

2 MR. McCABE: I have nothing further, your
3 Honor.

4 THE COURT: Mr. Simons.

5

6 CROSS-EXAMINATION

7 BY MR. SIMONS:

8 Q. It sounds like you had a long and stable and
9 happy marriage; is that correct?

10 A. That's correct.

11 Q. And you have been blessed with great
12 stability in your home?

13 A. That's correct.

14 Q. And is that also true of all the other
15 families in the North Fremont Congregation?

16 A. Yes. For the most part, yes.

17 Q. And you talked about communication with the
18 children and all.

19 And would you agree that in all of the
20 families that you know within the congregation, over the
21 years that you have been there, that the families have
22 good communication with their children?

23 A. Yes.

24 Q. With regard to Mr. Kendrick, you mentioned
25 that he would sit in the back of the Kingdom Hall during

1 the services?

2 A. I didn't say that.

3 Q. Did he used to sit in the back mostly?

4 A. I remember him sitting about halfway up.

5 When I visualize him in there, I remember him sitting
6 about halfway up on the right-hand side.

7 Q. So it would not really be accurate to say
8 that he sat in the very back and would, maybe, sleep
9 through the services?

10 A. He would sleep through the services, yes.

11 Q. But he was not in the back?

12 A. Not when I saw him, no. He would mostly sit
13 in the middle.

14 MR. SIMONS: If we could see that third
15 photograph from Exhibit 133.

16 MR. McCABE: I think it is 132.

17 BY MR. SIMONS:

18 Q. Do you see that back wall there behind the
19 seats? Are you able to see that from where you are
20 sitting?

21 A. Yes.

22 Q. What is behind that?

23 A. Over the bathrooms in back there.

24 Q. They are in the back?

25 A. Yes.

1 Q. Are there some other rooms, storage rooms and
2 things like that?

3 A. There is a closet and a conference room and
4 what we call our second school.

5 Q. So if, for example, you wanted to go to the
6 bathroom somewhere in the middle of the hour and
7 forty-minute service, would you have to go to the back
8 of the seats and then out through one of the doors there
9 to get to the back?

10 A. You wouldn't go through a door. You would go
11 through that opening right there in the back.

12 Q. Let me just use my laser pointer here.
13 Is this the opening?

14 A. No.

15 Q. Okay. Where would you --

16 A. It would be to the left of that, where you
17 were pointing.

18 Q. To here?

19 A. Yes. That, that right there are the doors
20 going outside.

21 Q. Okay. So if you went through this doorway,
22 is there something between that looks sort of like the
23 doors that are right there but, in fact, there is some
24 space between that?

25 A. That's correct.

1 Q. That's just hard to see on the picture.

2 A. Right.

3 Q. But you would go through there and then you
4 would go in the back and that's where the bathrooms
5 would be and these other rooms?

6 A. That's correct.

7 Q. And when your children were at the -- when
8 your children were at the Kingdom Hall services, you
9 kept them pretty close. Right?

10 A. Yes. They sat right with us.

11 Q. And before and after, you didn't allow them
12 to kind of run out and maybe mix with the other kids
13 while you would be visiting with other members of the
14 congregation?

15 A. They would be inside the Kingdom Hall, but I
16 always had them in my sight.

17 Q. So you wouldn't really be watching what was
18 going on in the parking lot if you would be there inside
19 the building.

20 A. Well, how could I see the parking lot if I
21 was in Kingdom Hall?

22 MR. SIMONS: Very good. I agree.

23 Thank you.

24 MR. McCABE: May this witness be excused,
25 your Honor?

1 THE COURT: Ms. Figuerido, thank you very
2 much for your time this morning. You are now excused.

3 MR. McCABE: Your Honor, our next witness has
4 previously been videotaped. It's our expert, Dr. Monica
5 Applewhite. And we are calling her as an expert in
6 child sex abuse as related to historical standards of
7 care, and also an expert in prevention and response of
8 organizations, and an expert in patterns of molesters
9 and standards of care for religious and church
10 organizations.

11 THE COURT: All right. And, Mr. Simons, do
12 you agree that Dr. Applewhite is an expert for those
13 purposes?

14 MR. SIMONS: Well, your Honor, I think we
15 have discussed that outside the presence, so I'll defer
16 to you for that.

17 THE COURT: All right. I will rule that she
18 is an expert for these purposes.

19 MR. McCABE: May we play the video then, your
20 Honor?

21 (Whereupon, the video recording was played)

22 MR. McCABE: James McCabe on behalf of the
23 Defendant, North Congregation Jehovah's Witnesses of
24 Fremont, California.

25 MR. SCHNACK: Bob Schnack on behalf of the

1 defendant, Watchtower Bible and Tract Society of New
2 York.

3 (Whereupon the video was stopped)

4 (Sidebar Discussion)

5 MR. McCABE: May we resume playing, your
6 Honor?

7 THE COURT: You may.

8 MR. McCABE: Thank you.

9 (Whereupon, video recording was played)

10 MR. McCABE: James McCabe on behalf of the
11 defendant, North Congregation of the Jehovah's Witnesses
12 of Fremont, California.

13 MR. SCHNACK: Bob Schnack on behalf of the
14 Defendant, Watchtower Bible and Tract Society of New
15 York.

16 MR. SIMONS: Rick Simons for Plaintiff.

17 MS. KRAETSCH: Kelly Kraetsch for Plaintiff.

18 VIDEOGRAPHER: Thank you.

19 Will the court reporter please swear in the
20 witness?

21

22 MONICA APPLEWHITE, Ph.D.

23 WAS DULY SWORN TO TELL THE TRUTH BY THE COURT REPORTER

24 AND TESTIFIED AS FOLLOWS:

25

1 DIRECT EXAMINATION

2 BY MR. McCABE:

3 Q. Dr. Applewhite, good morning.

4 Could you tell us your name and spell your
5 last name for the record.

6 A. Monica Applewhite. It is M-O-N-I-C-A.

7 A-P-P-L-E-W-H-I-T-E.

8 Q. Are you married, Dr. Applewhite?

9 A. Yes, I am.

10 Q. And you have children?

11 A. Yes, I do.

12 Q. How many?

13 A. I have a daughter who is twelve years old and
14 a son who is eight years old.

15 Q. And what kind of work does your husband do?

16 A. My husband teaches high school physics and
17 advanced placement biology.

18 Q. And do you have an educational background
19 that qualifies you to testify in this case?

20 A. Yes, I do. I have a Bachelor's degree in
21 Social Work, a Master's in Science and Social Work, and
22 a Ph.D. in Clinical Social Work.

23 Q. Where did you earn those degrees?

24 A. I earned the Bachelor's degree from Texas
25 Christian University, and the Master's and Ph.D. from

1 University of Texas in Arlington.

2 Q. And your principal focus of your work is --
3 what would you describe it as?

4 A. The primary focus of my work, since I began
5 my career, has been working with organizations to better
6 prevent, detect and respond to child abuse of various
7 forms, including physical abuse, emotional abuse and
8 sexual abuse.

9 Q. Have you had any professional experience
10 working with social service agencies, governmental
11 entities?

12 A. Sure.

13 I have worked with residential treatment
14 programs for children who have been removed from their
15 homes, having been abused in their own biological homes,
16 and worked with foster care and emergency shelters,
17 which have been in place. And I have also worked with
18 protective services in several states.

19 Q. What states would that be?

20 A. Texas, Wyoming, State of Washington, Montana
21 and New Jersey.

22 Q. Do you have any professional experience
23 working with youth organizations?

24 A. Yes, I do.

25 Q. Which organizations would that be?

1 A. The youth organizations would be the YMCAs
2 and the Boys and Girls Clubs. I have worked with
3 Scouting programs. I have worked with private and
4 public schools, residential schools, charter schools,
5 and just a variety of small, single entity youth-serving
6 organizations.

7 Q. And what has been your role in working with
8 these organizations?

9 A. The roles change, depending on what is
10 necessary within the organization, but I have conducted
11 many risk assessments, and that is to examine the
12 organization and determine if there were to be an
13 incident of abuse in this organization, this is the most
14 likely way for it to happen, and this is what you can do
15 to prevent that from happening in the future, as well as
16 to come in after there has been an incident and work
17 with the organization to be sure an incident doesn't
18 happen like that in the future.

19 Q. Do you have any professional experience
20 working with religious organizations?

21 A. Yes. I have worked with religious
22 organizations since beginning in about 1996, working
23 with organizations in a similar area of youth
24 organizations of other types. But also in developing
25 large-scale prevention programs to prevent incidents of

1 abuse from happening within the religious organization
2 and in the child's life when they're in it.

3 Q. Could you tell the jury what are some of the
4 religious organizations that you have worked with?

5 A. Sure.

6 I have worked with the United Methodist
7 Church, the Presbyterian Church. I work with many Roman
8 Catholic Diocese as well as religious orders and
9 congregations of men. I have worked with Southern
10 Baptist, and there are also organizations around the
11 world where they're ecumenical in nature, and so they
12 bring together various denominations.

13 For example, there is one in Australia called
14 Sadist Church, and that is all of the religious
15 denominations together, working to prevent sexual abuse
16 misconduct and other types of misconduct within their
17 churches. So I work on a very broad scale in some of
18 these organizations.

19 Q. What is the basis of the recommendations you
20 give to these organizations regarding the prevention of
21 child abuse?

22 A. The primary basis for the recommendations
23 that I provided are prevention and detection and
24 response.

25 The primary basis for that is analysis of

1 actual cases. In other words, that you take a case or a
2 group of cases and you try to figure out how did that
3 happen?

4 How did this person come into the
5 organization?

6 Could it have been prevented?

7 Could it have been detected sooner?

8 Is there a way to respond in the future where
9 a system could be set up to prevent this type of an
10 incident from happening in the future.

11 Or in these other cases, to determine how to
12 prevent and respond properly in the future.

13 And I have conducted an analysis of more than
14 1800 cases of abuse that have happened within
15 organizations, not just religious organizations but in
16 all different types of organizations.

17 Q. Do you have any experience working with
18 victims on sexual abuse?

19 A. Yes. I haven't worked as a therapist
20 directly with victims, but I have worked on many, many
21 occasions to either identify how the abuse was
22 perpetrated in a particular case or to receive the
23 allegation of abuse that a person is bringing to an
24 organization. And that is both with children who are
25 still children and also adults who had experiences of

1 abuse when they were children.

2 Q. And do you have any experience working with
3 offenders, sexual offenders?

4 A. Yes. Very early in the work that I did, I
5 was working with juvenile sexual offenders because we
6 had residential treatment programs and foster care and
7 rescue shelters where a young person who was sexually
8 offended, other children was placed in that situation.
9 And we had a need to develop supervision programs for
10 them.

11 Later on, I began doing a similar type of
12 work with adult sexual offenders who were going to be in
13 an environment where they needed supervision. And so I
14 also worked with the adult sexual offenders in
15 developing supervision for them.

16 Q. Can I ask you what motivated you to do
17 research in the field of historical standard of care?

18 A. When I first got interested in the history of
19 this area of care, it was not central to my work. It
20 was back in 1993, 1994 when I began learning about the
21 development of the knowledge base. And I began
22 conducting educational seminars. And in many cases
23 those educational seminars would be the first time that
24 someone had ever heard anybody speak up about sexual
25 abuse.

1 And so afterwards people would just line up
2 and want to talk about their stories that they had of
3 their own experiences of sexual abuse. And it was not
4 uncommon for people to feel a real sense of devastation
5 that their families hadn't noticed or they even told
6 someone and that person didn't believe them.

7 And so I became interested in the ability to
8 articulate to them why is it that maybe their parents
9 didn't notice or that maybe they told someone and they
10 didn't believe.

11 So that's how I started in the interest in
12 standard of care. But then in 2007, I really started an
13 exhaustive review to go as far back in history as I
14 could to understand the way the standards of care
15 developed over time.

16 Q. Okay. and in regards to the historical
17 standard of care for children, could you explain to the
18 jury what you mean by standard of care?

19 A. Sure.

20 A standard of care in the area of -- in
21 particular, sexual abuse with organizations, is the
22 benchmark for what would be expected of an individual or
23 an organization in a similar circumstance during this
24 time frame.

25 In order to come up with that standard of

1 care, I look at the criminal justice system initiatives,
2 how criminal justice handles this as a criminal matter,
3 how other similar organizations handling similar
4 situations, what is known by researchers and
5 professionals who work with sexual offenders, who work
6 with people who have experienced sexual abuse. And then
7 what is the general public awareness? And when we put
8 those things together, that is the way you can develop
9 that benchmark standard of care.

10 Q. What is your main work today?

11 A. My primary work to date is conducting
12 educational programs with organizations as well as with
13 broad groups of people, such as the work that I do in
14 Ireland and Australia, is to educate people on a very
15 broad scale and that would be social welfare agencies,
16 schools, religious organizations, youth serving
17 organizations, to teach them about the dynamics of
18 sexual abuse, how to prevent, how to protect, how to
19 respond in a way that's compassionate. I do those types
20 of education programs.

21 I also continue to do risk assessments in
22 organizations and that is, again, to identify what could
23 be done more proactively in this organization to prevent
24 abuse. And I also provide an outside ear if an
25 organization has someone who is coming forward who has

1 experienced abuse in that organization and they want to
2 meet with somebody who is outside of the organization,
3 then it is not uncommon for me to do that work.

4 Q. And I take it, because you are here
5 testifying for us today, that you also -- part of your
6 work is consulting on lawsuits. What percentage of your
7 work would you say is involved in being involved in some
8 type of forensic testimony or examinations?

9 A. The portion of my work that is really
10 involved with this type of an activity with lawsuits,
11 consulting or providing a deposition is about three to
12 five percent of the work that I do today.

13 Q. And previously you and I have worked together
14 on another case; is that correct?

15 A. Yes, it is.

16 Q. And that case was in San Diego?

17 A. Yes.

18 Q. And you gave a deposition in that case also?

19 A. Yes, I did.

20 Q. How many depositions have you given
21 altogether in cases involving issues of sexual abuse?

22 A. I have given four other depositions in cases
23 that are similar to this.

24 Q. Okay. So what is that? About one a year
25 would you say?

1 A. About one a year.

2 Q. And you testified in a trial before like we
3 are having here today?

4 A. I have never testified in a trial.

5 Q. What are your areas of expertise? What are
6 they with respect to child abuse?

7 A. My areas of expertise are the evolving and
8 historical standards of care for organizations in
9 preventing, detecting and responding to incidents of
10 abuse. I also have expertise in the patterns of sexual
11 offenders in terms of how they operate within
12 organizations. I have expertise in the supervision and
13 management of sexual offenders as well as the standards
14 of care for response to individuals who come forward.

15 Q. In terms of response, does that also include
16 investigations of allegations of child abuse?

17 A. I have expertise in internal investigations
18 as well as the standards for organizations to
19 investigate.

20 Q. Okay. And in connection with your
21 preparation to testify in this case, could you tell us
22 what you reviewed to formulate your opinions in this
23 case?

24 A. In this case I reviewed many of the Awake and
25 Watchtower publications that are published by the

1 Jehovah's Witnesses organization. I reviewed
2 depositions and exhibits that were particular to this
3 case. I went back and reviewed state law, federal law
4 that had relevance to this case. And I also reviewed
5 some professional codes of ethics from counselors and
6 social workers.

7 Q. Okay. Have you formulated some opinions on
8 this case?

9 A. I have formulated opinions on this case.

10 Q. And could you tell the jury what the general
11 basis is of all your opinions?

12 A. The general basis of the opinions that I have
13 formed in this case are the prevailing laws in the State
14 of California and the federal law at the time, the
15 activities, with respect to all forms of abuse, but
16 specifically sexual abuse within organizations that
17 serve children as well as religious organizations
18 specifically.

19 I have also utilized my own experience in
20 working with religious organizations and other
21 youth-serving organizations, and taken the facts of this
22 particular case, paired them with those elements and
23 that's the basis for my key opinions.

24 Q. Okay. Could you tell us what your first key
25 opinion is in this case?

1 A. The first opinion that I have is that the
2 knowledge base regarding the sexual abuse of minors and
3 the skills and protocols needed to prevent and detect
4 and respond properly to sexual abuse had developed over
5 time in an incremental basis, and therefore, any
6 evaluation of reasonable care in any case has to be
7 examined within a particular historic context that those
8 activities occurred.

9 Q. So why is a historical framework important to
10 your opinion?

11 A. The historic framework is really critical in
12 this particular area because the body of knowledge
13 surrounding sexual abuse is very, very young. We really
14 only began studying human sexuality in a research-based
15 way in the late 1940s. And so we have a very young body
16 of knowledge overall about human sexuality. Then within
17 that the knowledge base regarding sexual abuse of
18 children is even younger.

19 And so we have made some dramatic shifts in
20 just the past 20 years. We have made even dramatic
21 shifts in the past ten years. That is with respect to
22 our knowledge, within our skills and within our
23 expectations for what happened after an incidence of
24 sexual abuse occurs and what happens in terms of
25 prevention in the primary matter as well.

1 Q. Do you have some benchmarks regarding the
2 historical standard of care that you can show the jury?

3 A. I do. I've actually prepared a timeline that
4 I think is helpful in looking at those benchmarks.

5 Q. Do you recall what my question was?

6 A. Are there some benchmarks?

7 Q. Yes.

8 In the historical framework of responding to
9 child abuse issues?

10 A. Yes.

11 Q. Can you tell us what some of those are?

12 A. Sure.

13 I think in terms of just understanding when I
14 say that the knowledge base is young, the first
15 benchmark that I would point to is 1982 when the experts
16 within the United States decided that they were going to
17 get together and talk about everything that they knew
18 about child sexual abuse. And that was in Denver
19 Colorado in 1982.

20 And at that symposium, the experts made a
21 decision that they were only going to discuss
22 intra-familial abuse, incest abuse. They weren't going
23 to have any conversations about abuse that occurred
24 outside the family because they didn't have enough
25 information to really make presentations about that.

1 That was just 1982. And so I think that that is a
2 critical benchmark to know.

3 The next piece that I think is really
4 critical is to look at the 1994 benchmark, which is when
5 we first had a law in the United States that said, if a
6 violent rapist is released from prison and moves into a
7 neighborhood, we will let that community know that this
8 violent sexual offender is going to be living in this
9 neighborhood near children. The very first time in the
10 United States that we had a law that said that that was
11 the thing to do, was 1994 in the State of New Jersey.

12 Q. What was that law called?

13 A. That was called Megan's Law. It was named
14 for Megan Kanka who was raped and murdered by a
15 twice-convicted sexual offender. And the public was
16 outraged and said that we don't want to have a violent
17 sexual predator move into the neighborhood and have the
18 police know about it and not inform us.

19 And that was the very first state that had
20 that law, Megan's law. It became actually Federal law
21 then in 1998 when the Federal law said that every state
22 will have some form of what is called community
23 notification.

24 Q. And what do you mean by "community
25 notification"?

1 A. Community notification is the proactive
2 informing that we have a predatory violent sexual
3 offender that is coming into a particular community.
4 That is community notification.

5 Q. Did a version of the Megan's Law passed in
6 New Jersey in 1994 become part of the law in the State
7 of California?

8 A. Yes. The State of California actually passed
9 the California Megan's Law and enacted that law in
10 January 1 of 1997.

11 Q. Have there been any significant changes as
12 far as historical standards of care since the mid-1990s?

13 A. Yes.

14 The other significant changes would include
15 that -- well, first -- up until this point, our federal
16 government, state governments, hadn't provided to youth
17 organizations any real, tangible resources to help them
18 know how to screen select? How do you monitor
19 volunteers? What are the ways in which we can protect
20 children? Those things had to be developed by
21 individual youth organizations on their own.

22 But beginning in 2002, the Points of Light
23 Foundation provided information about how to screen
24 volunteers. And then in 2007, the Centers for Disease
25 Control published the first national guidelines for

1 organizations that gave guidance to the variety of ways
2 in which an organization can prevent sexual abuse from
3 happening in that organization. And that was called the
4 Preventing Child Sexual Abuse Within Youth-serving
5 organizations: Getting Started with Policies and
6 Procedures.

7 Q. Does that pretty well cover your first
8 opinion that you have in this case?

9 A. Yes.

10 Q. Could you tell the jury what your second
11 opinion was in this case?

12 A. Yes.

13 With respect to access and responsibility
14 with children, religious organizations in particular are
15 divided in three categories. The first category would
16 be members. Ordinary members of a congregation. The
17 second would be the employees and the volunteers who
18 have particular roles with children and youth programs.

19 And the third category would be clergy and
20 spiritual leaders. Some individuals who have a sexual
21 attraction to minors unfortunately do target religious
22 organizations as a means to gain access to children.
23 And depending on the individual, their own skills, their
24 own abilities, and their own roles that are available
25 within a religious organizations, they will make choices

1 about how they are going to attempt to use that
2 religious organization.

3 Q. And you mentioned clergy and spiritual
4 leaders.

5 Was the defendant, Jonathan Kendrick, in this
6 case, a clergy or a spiritual leader during the time
7 period he was alleged to have abused the Plaintiff?

8 A. Jonathan Kendrick was not a member of the
9 clergy or a spiritual leader within the Jehovah's
10 Witness organization.

11 Q. Okay. And I would like to go into your third
12 opinion and, perhaps, introduce it by asking you this
13 question: Do the Jehovah's Witnesses have positions of
14 special access to children who are in positions of trust
15 with children?

16 A. In working extensively with religious
17 organizations, I am very skilled to identify the special
18 roles that are available within an organization who gain
19 access to children.

20 For example, if there is a Vacation Bible
21 School or a youth camp, then that person working at a
22 camp or an overnight environment such as that has access
23 to children overnight, is there when undressed, is there
24 when they're swimming, they may go horseback riding or
25 mountain climbing and have legitimate opportunities to

1 have physical touch with children. Those are some
2 higher access positions.

3 You also have people who are there to
4 specifically teach children and have a Sunday School
5 class and take ten children into a room and teach them
6 about the Bible. So in most religious organizations,
7 there are times when children are separated from their
8 parents and the adults who are in charge of that program
9 have special access.

10 What is unique about the Jehovah's Witnesses
11 Organization is that they don't have programs that are
12 geared specifically toward children or that at these
13 times separated children from their families.

14 And so there are no unique positions of
15 access with children or positions of trust with children
16 that are in this particular organization because the
17 unit of service that is the family, so they always stay
18 together throughout all the programming.

19 Q. Does that pretty well cover your third
20 opinion then?

21 A. There is one other dimension of that opinion
22 that I would like to share and that is that there are
23 positions of responsibility within the Jehovah's
24 Witnesses Organization.

25 The first one is called the ministerial

1 servant. And the ministerial servant is not in a
2 pastoral role or counseling role or spiritual worker.
3 They are really there to manage the singing or hand out
4 the literature or hand the microphone if they are going
5 to speak. But they don't have any special access to
6 children.

7 The second would be more in line with the
8 leadership of a congregation, is the elder. And elders
9 actually don't have special access with children either
10 because they are not teaching children, they are not
11 separating children from the families. So they do
12 provide pastoral care, but they are not in a unique
13 position of trust for children.

14 Q. Thank you.

15 Could we hear your fourth opinion. What is
16 that?

17 A. The fourth opinion is that, as a result of
18 this distinctive structure of the Jehovah's Witnesses,
19 it is not possible -- it was not possible for Jonathan
20 Kendrick to get himself into a position of unique access
21 or trust with children.

22 As a result, Jonathan Kendrick chose the
23 methods that were available to him, and that was to gain
24 access through family and friends and target the
25 children within that family or friend.

1 As a result of this unique structure, the
2 standard of care question that I believe I needed to
3 consider in this particular case was:

4 During the time frame of 1993 to 1997, what
5 measures were religious organizations taking to regulate
6 the access to children that is provided by the child's
7 own parents?

8 What was the standard of care in the
9 mid-1990s?

10 And the answer is this. I don't know of any
11 mainstream religious organization that has ever
12 attempted to regulate the access to children that they
13 provide, that is provided by the child's own parents. I
14 have never seen that in a religious organization.

15 But in addition, I would not recommend that
16 as a risk management technique, to give the authority to
17 make decisions about a child's interpersonal
18 relationships over to the clergy versus allowing the
19 parents to make those decisions for themselves. That's
20 not a risk management strategy that I would recommend.

21 Q. Dr. Applewhite, since the standard of care
22 didn't require and you would not recommend them telling
23 parents who can have access to their children, what can
24 religious organizations like the Jehovah's Witnesses do
25 to protect their children?

1 A. Well, it is critical when trying to figure
2 out how best to protect children in a given
3 organization, is to figure out what are the particular
4 activities of this organization.

5 In the Jehovah's Witness Organization,
6 because children aren't separated from their parents,
7 the really best method for protecting children in that
8 organization is to give the parents as much information
9 as you possibly can about the warning signs, about the
10 need to protect children, about the prevalence of sexual
11 abuse. And tell them there is a need and explain to
12 them how to meet that need.

13 And in that instance is where I really
14 believe that the Jehovah's Witness Organization has done
15 an exceptional job. And that is providing real
16 materials directly in the hands of parents, not keeping
17 that information just with religious leadership but
18 giving it directly to the parents and saying, "Here is
19 what you need to know about sexual abuse. Take this.
20 Protect your children. Here are the warning signs.
21 Here is what you watch out for. Here is what you do if
22 you see it."

23 And that is what the Jehovah's Witness
24 Organization has done, both in the publication of the
25 Awake and the Watchtower. And those publications began

1 in the 1970s and have continued to be published
2 periodically adding on as the knowledge base grew on
3 through the 1990s.

4 Q. I think maybe my question kind of evoked you
5 to get into your fifth opinion; is that true?

6 A. I think it did.

7 Q. Okay. Sorry about that.

8 What were other religious organizations doing
9 as far as providing material and education for families
10 during this time period?

11 A. During the time frame of the mid -- well,
12 from the '80s on through the mid-1990s, most of
13 religious organizations were not providing specific
14 educational programs for parents. And there were
15 policies being developed about response and there were
16 some things that were happening in religious
17 organizations, but this idea of educating parents
18 directly, I didn't see that in other religious
19 organizations during that time frame.

20 Q. Do you see it now in those religious
21 organizations?

22 A. Since 2002 there have been religious
23 organizations that have developed specific educational
24 materials for parents and families.

25 Q. Does that pretty well cover your fifth

1 opinion in this case?

2 A. Yes, it does.

3 Q. How about your sixth opinion?

4 A. The sixth opinion is that, based upon my
5 reading of the depositions and exhibits, at no time was
6 Jonathan Kendrick placed into a position that required
7 or allowed him to be alone with children, to be in
8 supervision of children, to spend time with children
9 away from their families, or to engage in those higher
10 activities such as overnights, changing clothes or
11 legitimate physical contact.

12 He was not authorized by the congregation to
13 work with or spend time with Jane Doe or any other child
14 or particular group of children. He just didn't get
15 that assignment.

16 Q. Does that pretty well cover your sixth
17 opinion in this case?

18 A. That's my sixth opinion.

19 Q. And when you said that Jonathan Kendrick
20 wasn't placed in any position that required or allowed
21 him to be alone with children, you were specifically
22 referring to whom would be placing him in that?

23 A. Yes. That's a big clarification.

24 My opinion is about Jonathan Kendrick not
25 being placed by his congregation or his congregation

1 leaders into a position that required or permitted him
2 to be alone with children.

3 Q. And just referring back for a minute here to
4 your fifth opinion, which had to do with educating
5 parents and family members about this issue, do you have
6 an opinion about whether Jehovah's Witnesses, as a
7 religion, met the standard of care for educating and
8 protecting children?

9 A. In the mid-1990s?

10 Q. Yes, ma'am.

11 A. My opinion was that, in the mid-1990s, that
12 the Jehovah's Witnesses well exceeded the standard of
13 care for educating parents about sexual abuse.

14 Q. Okay. Does that cover your fifth and sixth
15 opinions?

16 I know I mixed them up going back and forth.

17 A. I'm pretty sure I didn't mix them up. But I
18 think it has been covered.

19 Q. Okay. So can we go to your seventh opinion?
20 What is that?

21 A. It does appear that in 1993, Jonathan
22 Kendrick self-disclosed, in the presence of his wife and
23 stepdaughter, that he had touched the breast of his
24 stepdaughter.

25 He first disclosed to an elder, and then two

1 elders met with the family, with Jonathan Kendrick,
2 Evelyn Kendrick and Andrea. And in the presence of his
3 family, Jonathan Kendrick disclosed that he had sexually
4 touched his stepdaughter.

5 At that time the adults in the marriage of
6 Evelyn Kendrick and Jonathan Kendrick made a decision to
7 stay married. And the elders listened to his disclosure
8 and left the decision to report to the police up to the
9 family.

10 Even though the position of ministerial
11 servant is not a position of trust with children, it is
12 a responsibility in the congregation. And so the elders
13 made a decision at that time to remove Jonathan Kendrick
14 from that position of ministerial servant and to make an
15 announcement to the congregation that he had been
16 removed from that position.

17 If he had had a position of trust with the
18 children, such as youth minister or camp counselor, it
19 would have been necessary at that time to evaluate
20 whether or not he could continue in that position. But
21 since he wasn't in that position, that's not really
22 relevant in this case.

23 Q. Did the elders do anything more than remove
24 Jonathan Kendrick as a ministerial servant by your
25 reviewing the materials that you examined in this case?

1 A. In addition to removing him as a ministerial
2 servant, Michael Clarke and Larry Lamerdin both said
3 they kept a special watch on him and paid attention to
4 whether or not he had any inappropriate contact with
5 children within the meetings at Kingdom Hall.

6 Q. And do you find that to be appropriate within
7 the standard of care?

8 A. I find it to be appropriate.

9 Q. Can we go on then to the ninth opinion?

10 A. Yes.

11 Privacy and confidentiality considerations
12 for individuals who are alleged or known to have
13 committed wrongdoing.

14 Considering their privacy is part of their
15 criminal justice system and part of the codes of ethics
16 for most human service professionals and helping
17 non-professionals as well as the policies for
18 confidentiality that are in the procedures of most
19 religious organizations.

20 So considering the private information a
21 person discloses is a very common theme for counselors
22 and others like them.

23 And the wording of the letters to the bodies
24 of elders in the United States that were provided by
25 Watchtower, the wording that they used to caution elders

1 against recklessly disclosing private information, the
2 wording of that very closely mirrors the National
3 Association of Social Workers Code of Ethics, the
4 American Counseling Association Code of Ethics and even
5 the Child Welfare League of America Standard of
6 Excellence.

7 Those concerns about confidentiality and
8 privacy -- the wording is very, very similar to
9 religious organizations as well as those codes of
10 ethics.

11 Q. You were referring to letters from the
12 Watchtower Bible and Tract Society who are the
13 defendants in this case.

14 Those letters were directed to whom?

15 A. The Watchtower Society sends letters to all
16 bodies of elders in the United States. And that's
17 really the way that policies get implemented within the
18 Jehovah's Witness Organization. They -- the Watchtower
19 Society will send the letter out to all of the bodies of
20 elders. The bodies of elders will oversee the
21 congregation. So when they want the elders to know how
22 to be respond to the situation, they send out letters to
23 the bodies of elders.

24 Q. Okay. So specifically did you have reference
25 to a July 1st, 1989 letter?

1 A. I am referring to the July 1st, 1989 letter
2 as well as there were two other letters that were sent
3 prior to the particular dates of consideration here.

4 There was another letter, March 23rd of 1992,
5 which was three years later, and then another letter,
6 which was February 3rd of 1993.

7 And I think when you read those letters, you
8 really get a sense for the critical concern being that
9 the elders need to respond to victims of sexual abuse
10 with a great sense of compassion and sorrow for what's
11 happened to them and to take some time to listen to
12 them.

13 They also -- the letters to the bodies of
14 elders really caution elders against being insensitive
15 and saying things like, Why don't you just forget about
16 that? They say take some time. Understand that the
17 person who has experienced abuse may have some real
18 mixed feelings and you have to really reach out to them
19 with a heart of compassion.

20 Q. Well, is part of your opinion, then, that
21 confidentiality within religious organizations and other
22 organizations that you work with, is that a good thing
23 or a bad thing?

24 A. It is not part of my opinions to say whether
25 it is a good thing or a bad thing. I just know that,

1 with counseling, with social work, with therapists, with
2 religious leaders and pastoral counselors, there is a
3 trust relationship that is built. And when people need
4 to go to someone for help, they need to feel that they
5 are going to disclose information and the person they
6 disclose to is going to be trustworthy. They are not
7 going to gossip about them. They are not going to
8 recklessly share that information. And so I recognize
9 that that is part of the codes of ethics for a reason.

10 Q. For training, education and experiences, are
11 confidentiality a part of social service agencies and
12 other organizations other than religious organizations?

13 A. As a social worker, it is part of my code of
14 ethics. As a social worker, it is in my training and
15 education and expertise. I see that in religious
16 organizations and counseling environments that concerns
17 about privacy and confidentiality are pervasive within
18 the professions.

19 Q. Now, earlier in one of your previous opinions
20 you mentioned about the Awake and Watchtower Magazines
21 that are provided to members of this religious
22 organization. You referred to articles that educated
23 them.

24 And did you have any specific article in
25 mind?

1 A. I read many articles, but I did pull just a
2 few of them because I think that they are good examples
3 of why I feel like the standard of care was exceeded.

4 The first was in July 22nd, 1976, was just a
5 broad article about how we just call attention to the
6 problem of child abuse in general. And it is called
7 "Child Abuse: What Can Be Done About It?" And that was
8 published in Awake.

9 Then in January 22nd of 1985, the Awake
10 Magazine published an article called "Child Molesting:
11 You Can Protect Your Child." And I really found this
12 striking because it explained to parents the
13 pervasiveness of the problem and explained that it
14 contradicted what many people believed in 1985.

15 It might not be a stranger and it might not
16 be somebody who appeared to not be a nice person. It
17 could be a neighbor, it could be a good friend, it could
18 be a member of the family and it could be a minister.

19 And they provided very specific scenarios
20 that people could relate to. And I find that, in
21 educating people, it is really critical that you provide
22 those very specific scenarios so that people can relate
23 to them and see those behaviors in their own
24 environments.

25 So they also really gave specifics. There is

1 a section called, "If The Worse Should Happen." And it
2 says be suspicious, pay attention. And if the child
3 does disclose, how to manage that disclosure in a way
4 that it is not going to cause harm to the child. So I
5 found this to be more of a parents education program.
6 And that was in January of '85.

7 In 1991 Awake also published an article
8 called "Healing The Wounds Of Child Abuse." And this
9 one also I thought was really far ahead of its time
10 because it explained the very, very complicated feelings
11 that an adult can have who experienced sexual abuse as a
12 child and provided guidance to elders and other members
13 about how they can respond to that person.

14 And then about a month later, they also
15 published letters that people had written in about how
16 important it was to them to read this information, and
17 those letters were also published.

18 Then lastly, in October of 1993, there was
19 another publication called "Protect Your Children." And
20 it gave an updated version of the adult education
21 program that was published in 1985. And one of the
22 really strong things that said in there is, don't limit
23 your training to one time with your child. And I still
24 have to tell parents that now, that you can't think you
25 are going to sit down and have a talk with your child.

1 You have to know it is going to be an ongoing project to
2 work with your children.

3 So much of what was published in 1985 and
4 then in 1993 I would still use in an adult education
5 program for parents.

6 Q. And all these magazines that you refer to,
7 the Awake Magazines are published by Watchtower Bible
8 and Tract Society; is that correct?

9 A. These publications are all published by The
10 Watchtower Society.

11 Q. And do you know how they are disseminated to
12 the public or to the members of this religion?

13 A. These are disseminated in a variety of ways
14 depending on what the publication is. And they are also
15 referred back to in those letters to elders that come
16 from Watchtower, they'll say, please remind yourself
17 about the information that was contained on this day.

18 But the way it is generally disseminated is
19 they come out in the publication, and then the members
20 go and educate other people using those publications.

21 So they read them themselves. They come
22 directly to their house. At this time, they were coming
23 directly to their house.

24 And so they would come to their home, as well
25 as to be in the Kingdom Hall. And also there would be

1 meetings around certain of the publications, where there
2 would be teachings directed to the articles.

3 Q. Do these articles refer to scientific
4 community in this area or experts in the field?

5 A. It was -- it was actually one of the things
6 that I found interesting and striking, was that, for
7 example, in 1985 David Finkelhor and Gail Sheehy were
8 cited -- were quoted.

9 And David Finkelhor was clearly one of the
10 most important writers at that time, one of the most
11 important researchers. He was the researcher who first
12 began explaining to people that sexual abuse could at
13 times cause long-term effects.

14 And so both David Finkelhor and Gail Sheehy
15 are quoted in the 1985 article. But there are always in
16 these particular publications, authoritative researchers
17 and experts who were cited in the material. So it is
18 not just providing scriptural references or spiritual
19 references. It also gives really solid information from
20 a social work perspective.

21 Q. Thank you, Doctor.

22 I would like to take you to your tenth
23 opinion at this time.

24 Can you state what that is, if you can?

25 A. Sure.

1 One of the things I considered in this case
2 was whether or not it was reasonable that the elders in
3 the North Fremont Congregation didn't notice or didn't
4 suspect that it was possible that Jane Doe was
5 experiencing sexual abuse. And my opinion was that it
6 was reasonable that they didn't detect.

7 And the reason that I have that opinion is
8 because there were two groups of people that were in a
9 better position than they were to know or suspect, who
10 also did not know or suspect. And those two groups of
11 people are, first, those individuals in her family who
12 were so close with her. And that would be her father,
13 her mother and her paternal grandmother with whom she
14 lived on and off.

15 And then there was a second group of people
16 who also didn't know or suspect, that were
17 professionals. And that would be her therapist, Laura
18 Fraser, the mediator who she met with about the divorce,
19 Barbara Ryan. And she also had professional contact
20 with her school counselor, Dana Takamoto.

21 And so neither of the people within she was
22 intimately involved nor the professionals who were
23 involved in her life knew or suspected that she was
24 experiencing sexual abuse. And, therefore, it's my
25 opinion that it was reasonable that the elders also did

1 not know.

2 Q. Okay. So, Dr. Applewhite, based on your
3 education, your training, your experience and all the
4 materials that you've examined in this case, did the
5 elders, who received information from Jonathan Kendrick
6 in November 1993, violate any standard of care in how
7 they handled that situation?

8 A. My opinion is that the elders who heard the
9 disclosure from Jonathan Kendrick and his family did not
10 violate any standard of care that I know for religious
11 organizations or leaders within religious organizations
12 in the mid-1990s.

13 MR. McCABE: Thank you. I have no further
14 questions at this time.

15

16 CROSS-EXAMINATION

17 BY MR. SIMONS:

18 Q. Dr. Applewhite, back in the time period we
19 are concerned about in 1993 and 1994, you were starting
20 to get your Ph.D. at the University of Texas; is that
21 correct?

22 A. At the University of Texas in Arlington.

23 Q. During that time, you did some research as
24 part of your dissertation in getting your Ph.D.

25 Correct?

1 A. Yes.

2 Q. Okay. And what was that research in?

3 A. That research was on women who were involved
4 in violent relationships.

5 Q. Were you actually doing consulting and
6 training with religious groups about childhood sexual
7 abuse prevention in 1993 and 1994?

8 A. I was not yet working with religious groups
9 in 1993 or 1994.

10 Q. You used the term, or counsel did,
11 "historical research."

12 What context is historical research involved
13 in the opinions you have given us today?

14 A. I'm sorry. Can you -- can you ask me that
15 again?

16 Q. Yes.

17 Is it fair to say that the opinions you have
18 given about standards of care in 1993 and 1994 are based
19 upon the research that you have done and library work,
20 rather than your own personal experience in 1993 and
21 1994 in the field?

22 A. I don't think that that is entirely correct.
23 Because during that -- from 1992 to 1994, I was already
24 gathering cases and doing root cause analysis of cases.
25 And so those particular cases that I was doing the

1 analysis on had happened normally within the past ten
2 years.

3 But I was also already gathering the cases
4 during that time frame. And so there were some
5 contemporary cases from '93 and '94, but they would have
6 gone back about ten years. So I gathered about 300
7 cases during that two-year time frame and did root cause
8 analysis on those.

9 So I don't think that everything that I'm
10 basing today on is just from literary research or just
11 from professional research. It is also the work that I
12 did during that time.

13 Q. Was any of that work directly with the
14 victims themselves?

15 A. Some of that work was directly with victims
16 because when we were trying to figure out how in
17 relation to respond, I also met with people who had the
18 experiences of abuse and asked them questions about --
19 for example: When you made that call, what were you
20 hoping to hear? What could have been said?

21 So, yes, I -- I was never doing therapy with
22 them, but I certainly spent a great deal of time
23 listening to what their concerns were.

24 Q. And how many of those different individuals
25 that you might have interviewed in '93 and '94 were

1 sexually molested in a religious institution context?

2 A. Just a handful at that time. I would say
3 five or six people. I'm sorry. Probably two or three
4 children as well that I met with the families and they
5 were still children.

6 Q. Your work does, however, include extensive
7 research into the same periods that other religious
8 organizations had implemented in the time period during
9 and before 1993 and '4. Correct?

10 A. My?

11 Q. Your opinions today rely in large part upon
12 your research into what other religious organizations
13 were doing in the same time frame.

14 A. Yes.

15 Q. And part of the different religious
16 organizations that you looked at was what the Catholic
17 Church was doing.

18 Is that fair to say?

19 A. The Catholic Church was included in that.

20 Q. Okay. And you are also very familiar
21 yourself with the standards involving, if you will,
22 positions of the Catholic Church with regard to child
23 and sexual abuse issues.

24 A. I'm not sure I know what you mean by
25 "positions."

1 Q. Have you done a lot of consulting with
2 various either dioceses or other Catholic-based
3 organizations?

4 A. I have done a great deal, a great deal of
5 work with the Catholic Church in various ways.

6 Q. And I think you have, in your resume, two
7 published articles, one of which was published in the
8 American Magazine, which is a publication of the
9 Catholic Church. Correct?

10 A. Yes. The American Magazine is published by
11 the Jesuits.

12 Q. And in your research and work with the
13 Catholic Church, did you become aware of a public
14 standard of the U.S. Conference of Catholic Bishops from
15 1992 on the subject of childhood sexual abuse?

16 A. I am familiar with that.

17 Q. And was that a five-point policy statement?

18 A. Yes.

19 Q. And do you remember whether any of the five
20 points dealt with the subject of communicating and
21 disclosing information to the community?

22 A. Yes. I recall.

23 Q. Do you recall what the exact language was?

24 A. I don't recall the exact language. I
25 remember that the fifth point of the five points that

1 the bishops published in 1992 said that -- to deal as
2 openly as possible with -- within the confines of
3 confidentiality with the public and the community. But
4 I may not have -- well, you have it.

5 Q. Do you recognize that as the 1992 Conference
6 of Bishops Policy Statement?

7 A. Yes.

8 Q. And what did policy statement five say?

9 A. There is five points. The fifth point says:
10 "Within the confines of respect for
11 privacy of the individuals involved, deal as
12 openly as possible with the members of the
13 community."

14 Q. All right. Thank you.

15 Have you published any articles on the
16 subject of childhood sexual abuse prevention in any
17 professional peer review journal?

18 A. I have not published academic articles in
19 this area.

20 Q. You work for a firm called Park Dietz at
21 present. Correct?

22 A. I contract with Park Dietz and Associates.
23 That is correct.

24 Q. And what is the fee that you charge for your
25 services in this case?

1 A. There is two different fees. There is the
2 fee that Park Dietz and Associates charges, and then
3 there is the fee that I charge to Park Dietz and
4 Associates.

5 In this case, Park Dietz and Associates
6 charges \$450 an hour and I charge to Park Dietz and
7 Associates \$300 an hour.

8 Q. And Park Dietz is a forensic consulting firm.
9 Is that fair to say?

10 A. I think that's fair to say.

11 Q. And what does that phrase "forensic
12 consulting firm" mean to you?

13 A. Dealing with matters -- well, consulting in
14 matters of law and criminal law.

15 Q. And you testified, as counsel pointed out, in
16 deposition in San Diego last month in another case of
17 Jehovah's Witnesses alleged sexual abuse. Correct?

18 A. Yes, I did.

19 Q. And do you have a number as to the amount of
20 billing dollars that have been submitted for your
21 combined work for the Jehovah's Witnesses in this case
22 and that case?

23 A. I'm sorry. What was the word that you used?
24 Do I have a --

25 Q. How much has Park Dietz charged for your

1 forensic services in these two cases?

2 A. I'm sorry. I don't have that number on the
3 top of my head.

4 Q. Do you have an estimate as to the number of
5 hours that you have spent in your review of materials in
6 preparation for testimony in this case?

7 A. Yes.

8 Q. What is your estimate as to that?

9 A. I can look it up.

10 Q. Okay.

11 A. Prior to this month, there were 41 hours.

12 And then this month I believe that there has been
13 another -- probably another 25 hours. And then here
14 coming to testify as well. That would be in addition to
15 that.

16 Q. So we are somewhere in the neighborhood, for
17 this case, of \$30,000?

18 A. Okay. My math is not that great, but it
19 sounds like about \$30,000, yes.

20 Q. And what were the fees charged in the San
21 Diego case?

22 A. That, I don't know. I'm sorry. I just don't
23 know.

24 Q. Were the hours you spent in that case similar
25 to the number of hours that you spent in this case?

1 A. Similar.

2 Q. You talked about the exceptional child abuse
3 prevention program that, in your opinion, the Jehovah's
4 Witnesses had in place.

5 Can you tell me whether or not you agree that
6 whether a program is effective or not in child sex abuse
7 prevention and education is best evaluated by whether it
8 has reduced or prevented childhood sexual abuse
9 occurring within the institution?

10 A. Well, let me begin by saying that what I said
11 was that it was an excellent parent education program,
12 which is different than a sexual abuse prevention
13 program. Parent education is a dimension. And I
14 believe that those materials that were provided are
15 excellent.

16 And then, is the best way to evaluate the
17 effectiveness of a sexual abuse prevention program to
18 measure whether or not instances of sexual abuse are in
19 fact reduced is -- in an ideal world, that would
20 certainly be the best empirical basis for evaluating a
21 program.

22 In the real world, I very rarely see that
23 type of empirical evidence being gathered to evaluate
24 sexual abuse programs. I just don't see it very often,
25 but I certainly think that that is the ultimate

1 question, does it reduce sexual abuse.

2 Q. Have you received any data as to the
3 incidence of child sexual abuse within Jehovah's
4 Witnesses organizations during the past 30 years?

5 A. I have not asked for that.

6 Q. And so, as you sit here today, is it accurate
7 to say that you have no statistical or empirical data at
8 all upon which you rest your opinions with regard to the
9 appropriateness and effectiveness of the Jehovah's
10 Witnesses child sex abuse education and prevention
11 programs?

12 A. Actually, because it is so -- you can't have,
13 really, a control group, in a sense, in a program like
14 this.

15 What I base my opinions on are the root cause
16 analysis of cases. And so, for example, would I make a
17 recommendation that this is an appropriate way to
18 prevent?

19 What I'm basing that on is a case in which
20 the -- for example, I interview the perpetrator and the
21 perpetrator says, Well, I chose this child instead of
22 that child because this child said that they were going
23 to tell their parents. Or this child had an older
24 sister who kept coming over to my house and asking
25 questions.

1 So rather than going afterwards and saying,
2 "This is the number of children who weren't abused."
3 The way I base the recommendations is on cases where we
4 know what allowed the abuse to slip through the cracks.

5 And in this particular instance, the reason I
6 say these are good materials is they provided the
7 specific information that, first of all, the adult
8 survivors have said, It is critical for people to
9 understand. And also, they provide the particular types
10 of protections that I have seen prevent cases of abuse
11 in the past.

12 So it is not a statistical analysis for me.
13 It is really a case-based analysis.

14 Q. So the direct answer to my question about
15 whether or not you base your opinions at all on any
16 statistical data about prevalence or absence of child
17 sexual abuse within Jehovah's Witnesses is, no, you do
18 not.

19 A. No, I don't base it on statistics.

20 Q. All right. Before Park Dietz, you consulted
21 with another business group as your -- if you will, your
22 method of consulting. Is that correct?

23 A. Well, first, the only thing that I do with
24 Park Dietz, so just the few legal cases that I work on,
25 the --

1 (Side bar discussion)

2 THE COURT: First of all, we are going to
3 stop the depo now. That was not the subject of
4 discussion between counsel and the judge. But had --
5 and I will take responsibility for it. We have been
6 working through a number of issues as we go along.

7 Here is what I expect. I am going to dismiss
8 you now and ask you to come back at 1:00 o'clock, early.

9 We will have some more testimony this
10 afternoon. One of you has a very legitimate
11 circumstance in the morning.

12 What I would intend to do, and call it, if
13 you would, an executive decision because I'm going to
14 take responsibility for it -- this has been, obviously,
15 a -- well, I have been meeting with counsel off and on
16 outside of your presence, as I have related.

17 I am not going to bring you in tomorrow. You
18 know, I have got the obligation Thursday and Friday in
19 Sacramento. But I can tell you and look you in the eye
20 that, with all that has been going on and very
21 professional circumstances and cooperation, this case is
22 going to go to you on Monday, instead of deeper into the
23 week.

24 And when all this is over and you have
25 rendered your decision, as a matter of procedure,

1 certainly I will welcome any questions. And, of course,
2 as I have already instructed you, you can talk to the
3 lawyers. And, of course, you don't need to talk to
4 anybody. But we will -- I expect closing argument by
5 everybody on Monday.

6 As part of the work of the case, as I have
7 told you, you get to be the judges. But what I didn't
8 tell you is, I still have to do a little judging. And I
9 have been doing judging every morning. And as part of
10 what -- already I have given you, what I call,
11 pre-flight instructions, to give you a sense of what
12 your responsibilities are and who has got burden of
13 proof and whatnot.

14 The instructions in this case -- I will be
15 working with counsel, again, in the morning to agree
16 upon or to make rulings upon as needed the entire set of
17 closing instructions, which will be far greater in
18 number than the so-called pre-flight.

19 But in terms of the planning of your daily
20 lives, we will not be in session tomorrow. We are back
21 in session at 1:00 o'clock this afternoon. I want to be
22 very clear on that. And I'm hopeful that we will get
23 through the testimony today such that we will be in a
24 position on Monday to argue and go to -- I'm very
25 confident you are going to get the case on Monday. I

1 can't tell you exactly when, but that is what is going
2 to happen.

3 So that being the circumstance, I am going to
4 excuse you now, and I will look forward to seeing you at
5 1:00.

6 We will go as long as we need to today to
7 accommodate and structure what I have told you,
8 notwithstanding the calendar I have this afternoon.

9 So as always -- and I wanted to say this
10 directly right now. I'm not much a fan of history does
11 this, not this judge, of sitting on high up here, but I
12 would already like to thank you, in terms of the obvious
13 diligence each of you are giving and attention to what
14 has been going on here.

15 So thank you, and I will see each of you at
16 1:00.

17 (Whereupon the following proceedings
18 were heard outside the presence of jurors)

19 THE COURT: Counsel, let me see if I
20 understand.

21 You are going to have Mr. Shuster?

22 MR. McCABE: Yes, your Honor.

23 MR. SCHNACK: And then we are going to
24 discuss depositions real quickly here. And it might be
25 a few lines at most.

1 THE COURT: Okay. Well, I am in here taking
2 care of other business, so I'm not going anywhere. So,
3 if you need me.

4 All right. I will look forward then to
5 seeing everybody as 1:00 o'clock. Thanks.

6 (Break taken)

7 MR. SIMONS: Housekeeping.

8 Now that Dr. Applewhite has testified, I
9 would request the court rule -- I request for judicial
10 notice the statutes that were in effect in California on
11 January 1st, 1993.

12 THE COURT: I will take judicial notice of
13 it.

14 What would you like me to do other than that?

15 MR. SIMONS: Well, once it is judicially
16 noticed, I think, your Honor, then it can either be read
17 to the jury or at least referred to or read to the jury
18 in closing argument and shown to the jury in closing
19 argument. At least I'm thinking that.

20 THE COURT: I'm not sure of that. I will
21 take a look at that. Certainly I have the power to take
22 judicial notice of it but I don't think that necessarily
23 answers the questions as to whether we show it to the
24 jury or not.

25 And that kind of dovetails with some

1 consideration we will talk about tomorrow in terms of
2 instructions and the law.

3 MR. SIMONS: Yeah. Because, yeah, one
4 alternative is to instruct that, the section on
5 such-and-such a date said. But it is not evidence per
6 se.

7 THE COURT: Well, that's what I'm thinking
8 through as we are having this discussion, is I have to
9 be very careful with that. Because certainly I
10 wouldn't -- under the statute, I took judicial notice
11 of, I wouldn't give a per se instruction on that
12 statute.

13 MR. SCHNACK: Yeah. We do want to be heard
14 on that later then.

15 THE COURT: We will do it tomorrow when we do
16 our instruction stuff.

17 MR. SCHNACK: Thank you.

18 THE COURT: I'm not surprised by your
19 request. The issue is: How to present it?

20 MR. SIMONS: Yeah. And we have heard
21 conflicting testimony from the experts as to what the
22 statute said.

23 MR. SCHNACK: Particularly the one that
24 doesn't reference clergy whatsoever.

25 THE COURT: All right. We will hash that out

1 tomorrow on how to present it and we'll rule on it
2 potentially.

3 MR. SCHNACK: Since we are doing
4 housekeeping, do we have a time in mind for having the
5 court reporter present tomorrow?

6 THE COURT: And here is the time I have in
7 mind just because of the nature, that we start at
8 10:00 a.m? Fair enough. Because after that, that's
9 fine, if I can get in here and continue to deal with all
10 my sundry decision making then, I will be clear and
11 clean at 10:00. Okay?

12 Madame reporter, 10:00 o'clock. I'm sure
13 you'll take part in that.

14 THE COURT REPORTER: Of course.

15 THE COURT: And we can go as long as we need
16 to to get it right tomorrow.

17 Okay. If you want to arrive earlier, you are
18 always welcome to, if you want to have the jury room or
19 whatnot, whatever rooms available, you can do that, and
20 then we can meet at 10:00 and we can go from there.

21 (Lunch recess taken)

22 THE COURT: All right. Mr. McCabe.

23 MR. McCABE: Thank you, your Honor.

24 I will call Mr. Allen Shuster to the stand.

25 THE COURT: All right, then. Mr. Shuster,

1 come on up. I will remind you, you have been previously
2 sworn and remain under oath. Please have a seat.

3

4

ALLEN SHUSTER,

5

WAS PREVIOUSLY SWORN TO TELL THE TRUTH BY THE CLERK

6

AND TESTIFIED AS FOLLOWS:

7

8

DIRECT EXAMINATION

9

BY MR. McCABE:

10

Q. Mr. Shuster, where were you born?

11

A. Monmouth, Illinois.

12

Q. And where did you grow up?

13

A. I grew up in Hope, Arkansas.

14

Q. And did you go to high school there?

15

A. Yes, I did.

16

Q. Did you graduate?

17

A. Yes, I did.

18

Q. What did you do upon graduation from high

19

school? Did you do any college?

20

A. I did not, no.

21

Q. What did you do?

22

A. I began my ministry then, you know, as what

23

is called a regular pioneer. And that means agreeing

24

and volunteering to devote a certain amount of time to

25

the ministry. And so I began that in September of 1971.

1 Q. Okay. So you were previously baptized as one
2 of Jehovah's Witnesses; is that correct?

3 A. Yes.

4 Q. What year was that?

5 A. That was in 1968.

6 Q. And how old were you then?

7 A. I was 15.

8 Q. On your pioneering activity, that is
9 primarily done door-to-door, conducting Bible Studies,
10 things like that?

11 A. Yes. That is a form of ministry.

12 Q. How long did you continue in Hope, Arkansas
13 as a pioneer for Jehovah's Witnesses?

14 A. About three years in Hope, Arkansas. And
15 then I moved to a small town called Prescott, Arkansas
16 and pioneered about a year-and-a-half there.

17 Q. Okay. What did you do next?

18 A. I sent in an application to serve at the
19 world headquarters of Jehovah's Witnesses in Brooklyn,
20 New York, and was accepted in April 1976.

21 Q. When you arrived in New York, what was your
22 job assignment?

23 A. I worked in the factory. We did -- that's
24 where the Bibles and other literature for Watchtower are
25 printed and distributed.

1 Q. What specific job did you have?

2 A. I worked in the -- what's called the paint
3 shop. I did finishing and refinishing of furniture.

4 Q. Are you intimately familiar with the beliefs
5 and practices of Jehovah's Witnesses?

6 A. Yes.

7 Q. And you know about the policies and
8 procedures of the organization of Jehovah's Witnesses on
9 child abuse?

10 A. Yes, I do.

11 Q. Okay. After you worked in the paint shop,
12 did you have a job change?

13 A. Yes. I was transferred to the Service
14 Department in the early part of 1981. I think it was
15 January or February.

16 Q. What, exactly, is the Service Department?

17 A. The Service Department is an office that has
18 oversight of the United States field, the congregations
19 of Jehovah's Witnesses. We have 13,400 congregations.

20 Q. What does the Service Department do with the
21 13,400 congregations?

22 A. It provides spiritual advise and counsel to
23 our elders who are serving in these 13,400
24 congregations.

25 Q. Would that include some of the letters that

1 the jury's seen and heard about?

2 A. That's correct, yes.

3 Q. So those letters come from the Service
4 Department of The Watchtower Bible and Tract Society?

5 A. Yes.

6 Q. I'm going to approach and show you an exhibit
7 that's previously been marked Defense 131, and ask you
8 if you recognize that document, seen it before.

9 A. Yes, I do.

10 Q. I want to take you through it and ask you
11 some questions.

12 Is this an accurate depiction of the
13 structure of the church of Jehovah's Witnesses?

14 A. Yes, it is.

15 Q. And it looks like it's a hierarchy of the
16 organizations from the top down?

17 A. Yes, sir.

18 Q. At the top there it mentions the governing
19 body.

20 Who are they?

21 A. The governing body is a body of seven men,
22 seven elders who make up the spiritual leadership of the
23 church structure of the Jehovah's Witnesses.

24 Q. And where do they do their service work?

25 A. They live in Brooklyn, New York. They are

1 from varied countries. Mainly in New York.

2 Q. Okay. Next I noticed there is a U.S. Branch
3 Committee.

4 What is that?

5 A. It is a committee of twelve men, twelve
6 elders, who have oversight of the United States field
7 activity, oversight of the Service Department. They are
8 one branch of about a hundred branches throughout the
9 world.

10 Q. And does the U.S. Branch Committee provide
11 any spiritual instruction or guidance for the
12 Congregation?

13 A. Yes, they do.

14 Q. Where do they get their instruction from?

15 A. Their the governing body.

16 Q. And next you have the Service Departments
17 underneath the Branch Committee?

18 A. That's correct.

19 Q. And then I notice there's district overseers
20 and circuit overseers.

21 What's that?

22 A. Yes. These are elders who travel to various
23 congregations and provide spiritual instruction and
24 encouragement, patterned after the first century Apostle
25 Paul, that's who traveled with the congregates.

1 Q. So are they kind of like field
2 representatives of the Service Department?

3 A. Yes.

4 Q. Now down to the Congregation level.
5 Who was the spiritual leaders of the
6 congregation on the local end?

7 A. It would be the elders.

8 Q. And what is their function and role?

9 A. They provide spiritual direction to the
10 congregation, and they teach, shepherd, they do
11 evangelizing work. And so they basically take the lead
12 in these aspects within the congregation.

13 Q. So if we could use terminology from another
14 religion, they would be like the priests or the pastors
15 of the congregation?

16 A. Like the clergy. Yes. Pastors, ministers.

17 Q. And then the next level we heard some
18 testimony about ministerial servants. They do mostly
19 administrative things and physical things around the
20 Kingdom Hall?

21 A. Yes. They are helpful to the elders. They
22 handle microphones in the congregation. They work with
23 latecomers who arrive and can help seat them. They work
24 in parking lots parking cars. A variety of things,
25 distributing literature to the members.

1 Q. Okay. Regarding the beliefs of Jehovah's
2 Witnesses, you believe you are a Christian organization?

3 A. Yes, we do. That is somewhat of a
4 misconception among some. We do believe in Jesus. We
5 recognize him as our Savior and leader, and we respect
6 the teachings that he gave in the gospel accounts.

7 And so we try very hard to adhere to the
8 teachings of Jesus, as well as his conduct in the way he
9 treated people. We don't always measure up, but we try
10 our best to follow his example.

11 Q. How many Jehovah's Witnesses are there in the
12 United States?

13 A. There are approximately a million two-hundred
14 thousand active Jehovah's Witnesses.

15 Q. I think it seems like more with the number of
16 hands that were raised about people calling at their
17 doors.

18 Why do Jehovah's Witnesses call on people's
19 homes from house to house?

20 A. Well, it's -- we feel there is some
21 encouraging Good News that we have to offer. I know at
22 the jury selection it was commented that they were a
23 little irritated by Jehovah's Witnesses calling at their
24 home. And it is understandable. I don't want to be
25 awakened on Saturday morning either.

1 But we do feel there is a message we have to
2 offer and that is Good News about the Kingdom of God.
3 We are taught to pray as Christians and let Your Kingdom
4 come and that Your will be done on earth as it is done
5 in heaven.

6 So that Kingdom offers a prospect of hope to
7 the future that is encouraging. Many are receptive to
8 the message that we have and we are experiencing growth
9 as an organization.

10 Q. How does a person become a Jehovah's Witness?

11 A. We're not born as one of Jehovah's Witnesses.
12 We don't perform infant baptisms. But we feel that it's
13 important that each individual make a decision based on
14 his own knowledge of the Bible, to encourage taking the
15 knowledge.

16 John 17:3 says: This means everlasting life,
17 taking the knowledge of the only true God and the one
18 whom you sent forth, Jesus.

19 So based on that knowledge, we feel that
20 individuals can make an educated decision as to whether
21 they want to become a member of Jehovah's Witnesses.
22 And then symbolize that by means of watered baptism as
23 Jesus himself did.

24 Q. Okay, sir. How is the activities of
25 Jehovah's Witnesses supported?

1 A. It is purely by voluntary contribution. We
2 have some boxes in the back, contribution boxes, that if
3 an individual wanted to contribute something, they are
4 welcome to do that. We don't pass the plates or we
5 don't tithe. It is all on a voluntary basis.

6 Q. Go back to Exhibit 131, where it mentions
7 "baptized publisher."

8 What does that terminology refer to?

9 A. It refers to a member of the congregation,
10 one who has been baptized.

11 Q. And why the use of the word "publisher"?

12 A. Because it is an individual who has his own
13 love of people and a desire to imitate Jesus who was an
14 evangelizer who go from door-to-door, from village to
15 village someone who has agreed voluntarily to publish
16 the Good News of the Kingdom.

17 Q. What about an unbaptized publisher?

18 A. They are individuals who have expressed a
19 desire to publish and have met moral requirements and as
20 a result they want to join the members in preaching and
21 sharing the Good News.

22 Q. Are they kind of like a baptized publisher in
23 training?

24 A. Yes.

25 Q. Okay. Are the elders and ministerial

1 servants baptized publishers?

2 A. Yes, they are.

3 Q. Okay. Now, are the meetings of Jehovah's
4 Witnesses open to the public?

5 A. Yes.

6 Q. Do you have any rules or regulations about
7 excluding people or the public who want to come and
8 visit?

9 A. No. It's open to -- all of our meetings are
10 open to the public.

11 Q. So if we look at the chart here, then you
12 mention that they're -- the chart mentions visitors and
13 guests, children and other family.

14 Is that what you mean by open to the public?

15 A. Yes. We have -- of course, children of
16 Jehovah's Witnesses attend with their parents. We have
17 other family members who have an interest in being at
18 our meetings. We have people that we study the Bible
19 with that attend the meetings. And so all in all we
20 have quite a group, ministry. It is probably
21 2.5 million in this country.

22 Q. Who attend meetings?

23 A. Who attend meetings.

24 Q. Okay. We heard the elders aren't paid for
25 their work in congregation.

1 Are you paid as a member of the headquarter
2 staff in New York?

3 A. No, I am not.

4 Q. So you are a volunteer?

5 A. Yes.

6 Q. Okay. We have also heard testimony about
7 congregation members being ordained ministers.

8 Is that true?

9 A. Yes, that's true.

10 Q. What does that term mean in the religion of
11 Jehovah's Witnesses, a person being an ordained
12 minister?

13 A. Yes. An ordained minister is one who is
14 baptized and we regard it a little bit different than a
15 secular person's.

16 We feel that at Jesus' baptism, he commenced
17 his ministry and thus that was the recognition, his
18 ordination as a minister. He didn't need any
19 accreditation, accreditations, such as presented in a
20 school. But from that point on, he became a minister.
21 And we regard Jehovah's Witnesses who are baptized
22 members as ministers.

23 Q. So an ordained minister, is that a word that
24 can be equated with just a member of the congregation?

25 A. That's right.

1 Q. Doesn't represent any leadership role or
2 teaching role of congregations of the Jehovah's
3 Witnesses?

4 A. No.

5 Q. So you are telling us there is about
6 1.2 million ordained ministers in the United States?

7 A. That's correct.

8 Q. Of Jehovah's Witnesses?

9 A. Of Jehovah's Witnesses.

10 Q. What is The Watchtower Bible and Tract
11 Society?

12 I have heard a lot about it, but I don't know
13 what it is yet.

14 A. It is a legal entity that was established to
15 print and to distribute Bible and Bible literature and
16 to provide spiritual direction and convey the
17 appointment of elders and ministerial servants to the
18 local congregations prior to the year 2001.

19 Q. And what is happening since that year?

20 A. That now comes under a different corporation.

21 Q. Oh.

22 How big are the congregations of Jehovah's
23 Witnesses on average, if you know?

24 A. On average, we have between 75 and 150,
25 including our publishers and members in our

1 congregation.

2 Q. What happens if the congregation grows larger
3 than that?

4 A. We usually -- we usually divide from another
5 congregation. And that allows the elders to give closer
6 attention to shepherding and teaching. And so we are a
7 family-like atmosphere, and so having smaller groups is
8 more conducive.

9 Q. Are you an elder?

10 A. Yes.

11 Q. When did you first become an elder?

12 A. In 1979.

13 Q. So when you were in New York?

14 A. When I was in Brooklyn, New York, yes.

15 Q. Are you still in the congregation today?

16 A. Yes, I am.

17 Q. How many congregations have you been in where
18 you have been an elder?

19 A. Two.

20 Q. Can you tell me what the position of the
21 Watchtower Bible and Tract Society is -- is it fair,
22 when I say "Watchtower," is that -- we know what we are
23 talking about?

24 Is that just the organization of Jehovah's
25 Witnesses when you say "Watchtower"?

1 A. That would be a simpler way of addressing it.

2 Q. Okay. So what is the position of Watchtower
3 on the issue of childhood sexual abuse?

4 A. Well, I can say that's -- and this is
5 probably an understatement -- that we absolutely abhor
6 child abuse. We hate it. It is an egregious sin. And
7 we are not going to tolerate anyone who is a child
8 abuser in a congregation and to be a member of the
9 congregation and to be actively involved in that kind of
10 activity.

11 Q. So what about a repentant child abuser? Can
12 they be attending congregation meetings, being part of a
13 congregation?

14 A. Yes, they can.

15 Q. Okay. Can a person who is known to be a
16 child molester be a ministerial servant?

17 A. No, he cannot.

18 Q. Can he be an elder?

19 A. No, he cannot. Absolutely not.

20 Q. Can he be a pioneer?

21 A. Absolutely not.

22 Q. How long has that been the policy of
23 Jehovah's Witnesses?

24 A. That has been a long-standing policy of
25 Jehovah's Witnesses, ever since I can remember.

1 Q. We talked a lot about The Watchtower and
2 Awake Magazines. I want to take you to what has been
3 marked and admitted as Exhibit Number 17 for the Defense
4 and Number 59 for the Plaintiff. Just touch on a few
5 points of that with you.

6 Do you recall this issue of the Awake
7 Magazine?

8 A. Yes.

9 Q. Have you read it recently?

10 A. Yes.

11 Q. Are you well familiar with what is contained
12 in there?

13 A. Yes.

14 Q. What basically is the cover series
15 addressing?

16 A. Well, I think, as has been discussed a number
17 of times already, that this is an article that is
18 talking about child molesting, that you can protect your
19 children. And the first article talks about the growing
20 trend in societies, which was printed and distributed
21 back in 1985.

22 So at the time it was -- this problem was
23 growing, and there was more education, more learning
24 being achieved as a result of research. And so, as a
25 result, there was a need to -- our organization,

1 Watchtower, felt the need to provide education for
2 parents so as to protect them. And this article cites a
3 number of sources, a number of experts that comment on
4 the growing trend of child abuse in society.

5 Q. Were some of those experts the ones that Dr.
6 Monica Applewhite mentioned?

7 A. That's correct.

8 Q. I would like to direct your attention to page
9 6 of 10 in this exhibit. I think it is entitled "Child
10 Molesting: Can You Protect Your Child?"

11 What is the advice that is given to parents
12 in this portion of the exhibit?

13 A. Yes. It is just talking about the first line
14 of defense.

15 It says:

16 "The first line of defense is to
17 avoid situations that leave our children
18 vulnerable. For example, parents are advised
19 to be careful about using as babysitters young
20 adults who seem to prefer being with children
21 rather than with folks their own age. One
22 clinical psychologist reports that two-thirds
23 of the molesters he is treating committed the
24 offense while babysitting."

25 Q. So strong warning to parents?

1 A. Yes.

2 Drawing attention to the fact that child
3 abusers are not just your next-door neighbor, not just a
4 stranger, but it could be someone you know.

5 Q. I would like to draw your attention next to
6 that same exhibit to the box on page 8 of 10. "If The
7 Worst Should Happen."

8 What does this information advise parents to
9 do?

10 A. This is a teaching box and it outlines,
11 despite the fact you may take precautions, there may be
12 situations where, God forbid, the worst thing happens
13 and that is your child is abused. And so it says there
14 are some things that can be done to deal with that.

15 One is that, first, the child and other
16 children too must be protected from any further abuse.
17 This must be done whatever the cost.

18 And, second, the child must be given a lot of
19 love and emotional support. The parents must make it
20 very clear that the little victim is not to blame. The
21 crime, anything that happens as a result of it, even if
22 a close relative goes to prison, is not her or his
23 fault.

24 Q. The next page of that exhibit, perhaps it is
25 page 10, was there any practical advice given to parents

1 about how to train their children regarding this issue
2 of child abuse?

3 A. Yes.

4 Q. What was it?

5 A. The article cites a book written by a Linda
6 Tschirhart Sanford, The Silent Children. And she
7 suggested using a tool, The what if? What if the
8 babysitter did this? What if the babysitter did that?
9 What if the babysitter said, "Let's keep a secret"?

10 So it's a way of parents running some
11 scenarios with the children so as to prepare them with
12 the possibility of maybe someone wanting to molest them
13 and how to deal with it.

14 Q. Why is that information published in your
15 Awake Magazine?

16 A. It is because we recognize with children that
17 parents are really the first line of defense in helping
18 their children. So we want to educate our parents to
19 know what they can do to protect their families.

20 Q. Okay. I would like to take you to the next
21 Awake article. It's October 8th, 1991. It's
22 Defendants' Exhibit 29, and Plaintiff's Number 60. I
23 don't believe this has been admitted, but by agreement
24 we agreed this can come in.

25 MR. McCABE: May it be admitted your Honor?

1 MR. SIMONS: No objection.

2 THE COURT: Plaintiff's 60 is in.

3 (Whereupon, Plaintiff's Exhibit Number 60
4 and Defendant's Exhibit Number 29
5 was admitted into evidence)

6 BY MR. McCABE:

7 Q. What was this series of articles about?

8 A. This was one of the magazines or journals
9 that Dr. Applewhite spoke about in her deposition about
10 individuals who have been victims of child abuse. And
11 it just gives some suggestions as to what individuals
12 can do to deal or cope with their feelings and what
13 others -- those who can support them and help them
14 through this difficult period.

15 Q. Okay. I would like to take you to the next
16 exhibit. It has been admitted, Defendants' Number 37
17 and Plaintiff's Number 64, the October 8th, 1993 issue
18 of the Awake Magazine.

19 Do you recall this article?

20 A. Yes. "Protect Your Children."

21 Q. And what were some of the highlights
22 discussed in these articles?

23 A. On the page 4 of the exhibit, there was an
24 article there from Awake Magazine that mentioned "All
25 experts agree that the best defense against child abuse

1 is public awareness."

2 Q. Is that what Watchtower is trying to do by
3 publishing this information?

4 A. That's correct. By publishing magazines of
5 this sort, we were helping parents realize that they
6 really are the first, are the best defense against child
7 abuse and helping promote public awareness at least.

8 Q. I would like to draw your attention to page 6
9 of 13 of this exhibit. There is a book described there.

10 Do you know who the author of that book was?

11 A. Yes. Her name is Cheryl Fraser.

12 Q. And what was her advice that spoken here?

13 A. She says:

14 "That while children should feel free
15 to ignore, scream at or run from an abuser,
16 many children who are abused explain later
17 that they didn't want to seem rude. Children
18 thus need to know that some grownups do bad
19 things and that not even a child has to obey
20 everyone who tells him or her to do something
21 wrong. At such times a child has a perfect
22 right to say no."

23 Q. Okay. So directing your attention to the
24 first page, was some practical advice given and
25 illustrated to help parents teach their children to

1 protect themselves?

2 A. Yes. It's pictured there. I think we have
3 seen already that the purpose of this was to run
4 scenarios which help to demonstrate what a child can do
5 by using words, by being firm in body language to resist
6 any improper advances.

7 Q. Okay. I would like to take you to the next
8 page of this exhibit and ask you: Was it a policy of
9 Jehovah's Witnesses to encourage their members to
10 hush-hush up this subject matter?

11 A. Absolutely not, no. We would not have
12 published information of this nature if we were trying
13 to hush-hush.

14 Q. And I would like to direct your attention to
15 the end of the first paragraph in the box that is
16 highlighted.

17 Could you read the first two sentences for
18 me?

19 A. Beginning with "Repeatedly"?

20 Q. Yes.

21 A. Okay.

22 "Repeatedly reassure the child that
23 you will do your best to provide protection.
24 That the abuse is the abuser's fault, not the
25 child's. And that the child is not bad. That

1 you love the child. Some experts advise
2 reporting the abuse to the authorities as soon
3 as possible. In some lands the legal system
4 may require this."

5 Q. Now, these articles that we have looked at
6 and the jury has seen repeatedly to other witnesses, are
7 these the stated Watchtower policies regarding the issue
8 of child abuse?

9 A. Yes, they are.

10 Q. Is there any other way that Watchtower policy
11 is communicated to the congregations of Jehovah's
12 Witnesses?

13 A. Yes. Not just through the journals of our
14 Awake and Watchtower but through letters to our bodies
15 of elders.

16 Q. Okay. Let's take a look at Defense Exhibit
17 26, Plaintiff's Number 1, that has been admitted into
18 evidence.

19 Can you tell us what this is?

20 A. This is a letter to all bodies of elders,
21 dated July 1, 1989, and it has to deal with a variety of
22 subjects that was addressed to our bodies of elders,
23 subjects such as search warrants and subpoenas, crimes,
24 criminal investigations, when service and publishers
25 move, lawsuits, the issue of confidentiality and also

1 child abuse.

2 Q. And would this be considered a policy letter
3 from Watchtower Bible and Tract Society?

4 A. Yes, it would.

5 Q. You mentioned child abuse.

6 How big a section of this letter was devoted
7 to that subject, child abuse?

8 A. On page 3 of the exhibits, I believe there is
9 just four sentences, again, read the paragraph that
10 highlights reporting child abuse when the law requires
11 it, but especially when these things happen, we want to
12 the protect our young people and then report that to our
13 Legal Departments.

14 Q. Was this the be-all end-all of Watchtower's
15 child abuse policy, this July 1st, 1989 letter?

16 A. No, it was not.

17 Q. Do you continue to publish from the
18 Watchtower on this subject matter?

19 A. Yes, we have.

20 Q. And do you continue to publish up to the
21 present time?

22 A. That's correct.

23 Q. We heard this morning from members of the
24 congregation about CD-ROMs.

25 Can you tell us what that is?

1 A. It is a library of information over the last
2 40 years that is available to anyone who is associated
3 with Jehovah's Witnesses. And it contains articles like
4 the one we just discussed in the journals of the Awake,
5 Watchtower and various other publications. So it has a
6 search engine. You can just type in an expression and
7 it pulls up all the articles on that subject.

8 Q. Is it updated from time to time?

9 A. Yes, every year I believe it is.

10 Q. Okay. And so a new member of the
11 congregation would have access to all this information?

12 A. Yes.

13 Q. Are CDs made available to all the members of
14 the congregation?

15 A. Yes, they are.

16 Q. Where would they get it?

17 A. They can get it at the literature counter in
18 our Kingdom Halls.

19 Q. And that is one of the functions of the
20 ministerial servants to take care of?

21 A. That's correct.

22 Q. Okay. I'd like to turn your attention next
23 to what's been admitted as Plaintiff's Number 27, but
24 it's also marked as Defense 32.

25 Do you recognize this document?

1 A. Yes, I do.

2 Q. What is it?

3 A. Again, it is a letter to all bodies of elders
4 in the United States.

5 Q. And what was the purpose of sending this
6 letter out to the congregations?

7 A. It was recognized that victims of child abuse
8 may not have physical scars but they have emotional
9 scars. And it is important that the elders who are
10 interested in protecting and helping the individuals.
11 And so the purpose of this letter was to educate our
12 elders, further educate our elders, as to what they can
13 do to help the victims of child abuse.

14 Q. Was part of it to help them to be sensitive
15 to things they say when they hear about allegations of
16 sexual child abuse?

17 A. Yes. That is one of the letters that I
18 believe Dr. Applewhite referred to in her interview.

19 Q. There was a, I believe, one page attachment
20 to this letter also as part of Exhibit 32.

21 A. Yes.

22 Q. Do you recognize that document?

23 A. I do.

24 Q. Is that a document you received as an elder
25 in your congregation?

1 A. Yes, it was.

2 MR. McCABE: Can we have that on the screen?

3 BY MR. McCABE:

4 Q. What was the purpose of this one-page
5 handout?

6 A. This was given to every elder at the time.
7 And it was for the purpose of filing it, keeping it
8 within his personal belongings so in the event if
9 someone was victimized as a -- or was abused a child,
10 was abused as a child, then they could look up the
11 various Watchtower and Awake articles referenced there
12 as well as the scriptures. It has many scriptures, many
13 Bible references in there, to familiarize themselves
14 with the materials so as to be sensitive to these
15 victims.

16 Q. And did you personally use this exhibit
17 yourself?

18 A. Yes, I did.

19 Q. What did you do with it?

20 A. I read it and I looked up all the references
21 and read the biblical -- Watchtower references, Awake
22 references and Bible references.

23 Q. Next, I would like to take you to Exhibit
24 Defense Number 44, Plaintiff's Number 29. Appears to be
25 another letter to all bodies of elders in the United

1 States.

2 MR. McCABE: And I would ask that this be
3 admitted into evidence?

4 THE COURT: What number is this?

5 MR. McCABE: It's Defense 44, Plaintiff's 29.

6 MR. SIMONS: This is the '95?

7 MR. McCABE: Yes, sir.

8 MR. SIMONS: No objection.

9 MR. McCABE: Thank you.

10 THE COURT: It shall be admitted as
11 requested.

12 (Whereupon, Plaintiff's Exhibit Number 29
13 and Defendant's Exhibit Number 44
14 was admitted into evidence)

15 BY MR. McCABE:

16 Q. Is this also part of The Watchtower policy on
17 dealing with allegations of sexual child abuse?

18 A. Yes, it is.

19 Q. What's the policy stated in this particular
20 letter?

21 A. In paragraph 3, it states very simply that
22 when someone has abused a child, that they should talk
23 really frankly to the former child abuser, strongly
24 cautioning him as to the dangers of hugging or holding
25 children on his lap, and that he should never be in the

1 presence of a child without another adult being present.

2 Q. Okay. I notice it says that they should talk
3 frankly to a former child abuser.

4 Do you know why it uses the word "former"?

5 A. That would be a member who has exhibited a
6 repentant attitude and remains a part of the
7 congregation.

8 Q. Okay. If they were an active child abuser
9 that the congregation knew about, what would happen?
10 Never mind. Withdraw that question. Excuse me.

11 Let's go to Exhibit Number 50. It is also
12 Plaintiff's Number 12.

13 MR. McCABE: And, again, I would move that
14 this be admitted as an exhibit at this time.

15 MR. SIMONS: No objection.

16 THE COURT: It shall be admitted.

17 (Whereupon, Plaintiff's Exhibit Number 12
18 and Defendant's Exhibit Number 50
19 was admitted into evidence)

20 BY MR. McCABE:

21 Q. What is this letter?

22 A. This is a letter to all bodies of elders,
23 March 14, 1997, that outlines some of the policy that we
24 have in regard to child abusers.

25 Q. Okay. And this is part of the written

1 policy?

2 A. Yes.

3 Q. Okay. What is the policy stated that's made
4 in this March 14th, 1997 letter?

5 A. It begins in paragraph 4. It raises the
6 question: Who is a known child molester? And quoting
7 from the January 1st, 1997 Watchtower article on "Let Us
8 Abhor What Is wicked," mentions on page 29 that a man
9 known to have been a child molester would not qualify
10 for privileges in the congregation.

11 Q. What does that mean?

12 A. That means he would not serve as an elder nor
13 as ministerial servant nor pioneer.

14 Q. And how long has that policy been in effect?

15 A. That has been a long-standing policy ever
16 since I can remember. It's because he has not measured
17 up to the scriptural or biblical standard for an elder
18 or ministerial servant.

19 Q. Okay. And on the second page of this
20 exhibit, what is the focus of the policy that is stated
21 here?

22 A. This is on page 2 of the exhibit?

23 Q. Page 2, yes.

24 A. It outlines what the elders should do
25 whenever a former molester moves to another

1 congregation. And the secretary is to prepare a letter,
2 that's signed and sent to the new congregation outlining
3 the background of that individual and the need for the
4 elders to be cautious and cautioning him in his
5 association with others.

6 And then a copy of that is sent to the Branch
7 Office, the Service Department, so that he doesn't slip
8 through the cracks.

9 Q. Okay. So what else is mentioned in here
10 about protecting children?

11 A. That they want to be very alert to the
12 activities of anyone who is known to have molested a
13 child in the past, recognizing that he may have certain
14 weaknesses that he needs to deal with.

15 Q. I notice it refers to a Watchtower Magazine.
16 I would like you to look at Defendant's Number 49,
17 Plaintiff's Number 65.

18 MR. McCABE: And I would ask that this be
19 admitted into evidence.

20 MR. SIMONS: 65, 049. No objection.

21 THE COURT: So admitted.

22 (Whereupon, Plaintiff's Exhibit Number 65
23 and Defendant's Exhibit Number 49
24 was admitted into evidence)

25 BY MR. McCABE:

1 Q. Why did the March 14th, 1997 letter refer to
2 this particular Watchtower?

3 A. Because this Watchtower basically mentions
4 the policy referred to in the March 14, 1997 letter that
5 a known child molester would not qualify for
6 responsibilities in the congregation.

7 Q. Is this information that we just reviewed,
8 these letters in The Watchtower and Awake Magazine
9 articles, do they constitute a Watchtower policy
10 regarding allegations or issues that arise dealing with
11 childhood sexual abuse?

12 A. Yes, they do.

13 Q. And you indicated that Watchtower continues
14 to publish articles on the subject. Is that correct?

15 A. Yes. Up to the present, they are interested
16 in the ongoing education of parents to protect their
17 children.

18 Q. How many issues of Watchtower and Awake are
19 printed every month?

20 A. 42 million of each journal per month.

21 Q. Are they all just in English?

22 A. No. The Watchtower is printed in 194
23 languages and Awake in 84 languages. It is a worldwide
24 distribution of magazines.

25 Q. And so is it your contention that Watchtower

1 treats the issue of childhood sexual abuse in a
2 hush-hush manner?

3 A. Absolutely not, no.

4 MR. McCABE: Thank you. I have no further
5 questions.

6 THE COURT: Mr. Schnack?

7 MR. SCHNACK: No.

8 THE COURT: Mr. Simons?

9 MR. SIMONS: Thank you.

10

11

CROSS-EXAMINATION

12 BY MR. SIMONS:

13 Q. Mr. Shuster, part of your duties over the
14 years has been to provide depositions and declarations
15 and testimony in lawsuits involving the Watchtower New
16 York. Correct?

17 A. Yes.

18 Q. And let me ask you a couple of questions that
19 we did not go over at the time of your deposition.

20 First of all, when people are in field
21 service, do they sometimes collect money?

22 A. They do accept voluntary contributions from
23 individuals, yes.

24 Q. And the money that is collected during field
25 service, that goes to Watchtower New York. At least it

1 did before 2001.

2 A. I'm not sure of the entity, but it does go to
3 what we call the World Wide Work, yes.

4 Q. Now, after 2001 -- I just want to get that
5 structure that you gave us straight here.

6 The Legal Department still remains in
7 Watchtower New York?

8 A. I believe that was the deposition testimony,
9 yes.

10 Q. And before 2001, the Service Department and
11 the Legal Department were both in Watchtower New York.

12 A. I believe that's correct.

13 Q. Now, you said a person known to be a child
14 molester cannot be an elder or ministerial servant or
15 pioneer.

16 Can they continue to be a baptized publisher?

17 A. Yes.

18 Q. They can continue to be a minister?

19 A. Yes.

20 Q. And they can continue to be called "brother"?

21 A. Yes.

22 Q. And they can be sent out as a baptized
23 publisher into neighborhoods to spread the word of the
24 gospel?

25 A. Yes. But not by themselves or with a child.

1 Q. Is there in writing anywhere the caveat that
2 you just gave to us? I haven't seen it in any of the
3 exhibits.

4 A. I believe we have something in writing, yes.
5 I couldn't put my finger on it right now, but yes.

6 Q. Is it here with us today?

7 A. I don't know if it is here. I don't recall.

8 Q. We have been in this trial now for a couple
9 weeks. And you certainly know that one of the issues is
10 whether or not a person who is positively identified as
11 a child molester was going into field service with
12 children who did not know and whose parents did not know
13 that he was a molester. Correct? And you have heard
14 all that for the last couple of weeks.

15 A. Yes.

16 Q. Any reason why, if there was a policy that
17 specifically prohibited baptized publishers who were
18 known to have molested children from going into field
19 service with a child, that that written policy wouldn't
20 be right in front of you right now?

21 A. That policy is specific to each individual
22 situation. In each situation there are instructions
23 given in the letter to a body of elders where that
24 individual is and that instruction is given in that
25 letter.

1 Q. Okay. But where is the written policy?

2 A. I'm not sure. You are talking about to the
3 public in general?

4 Q. Or to the elders specifically.

5 A. As I mentioned, the instruction is specific
6 to the individual's case.

7 Q. So there is no corporate written policy from
8 Watchtower New York and there never has been that says a
9 positively identified child molester cannot go into
10 field service with a child?

11 MR. McCABE: Your Honor, may we approach?

12 (Discussion off the record)

13 THE COURT: Do you want to repeat the
14 question, Mr. Simons?

15 BY MR. SIMONS:

16 Q. We were talking about a written policy that
17 advises elders that a person possibly identified as a
18 child molester cannot go into field service with a
19 child.

20 Are you aware of any such administrative
21 policy in writing that is with us here in this
22 courtroom?

23 A. Not in this courtroom.

24 Q. Now, we looked at the 1985 Awake Magazine,
25 and we talked about the first line of defense. I don't

1 want to look at the Awake Magazine again. We have seen
2 it enough.

3 But let me just ask you this: In any Awake
4 Magazine, was the members, the public who are members of
5 Jehovah's Witnesses, the congregation members who
6 receive Awake Magazine, told that, if there was a
7 positively identified child molester within the
8 congregation, that that information would not be shared
9 with the parents who are the first line of defense?

10 A. I do believe we have information to that
11 effect.

12 Q. And which Awake Magazine is that in?

13 A. It was not in the Awake Magazine.

14 Q. You were part of the drafting of the
15 July 1st, 1989 body of elder letter?

16 A. I think I mentioned to you at the time, but I
17 am not certain. Possibly. It is hard to remember. It
18 is quite a few years ago.

19 Q. That letter was not distributed, like Awake
20 Magazine is, to the general congregation membership?

21 A. That's correct.

22 Q. You talked about sensitivity to child abuse
23 victims.

24 Would telling the mother of a 13-year-old
25 victim that it was her fault that her child was molested

1 because she was not having enough sex with the molester
2 fall under that general umbrella of sensitivity?

3 A. I don't know of any elder who would say
4 something like that. That is not being sensitive. If
5 he said that, it would be wrong to say that.

6 Q. And do you disagree, sir, that, if the first
7 line of defense is the parents, that warning the parents
8 of the existence of a positively identified child
9 molester within the congregation gives them the tools
10 they need to protect their children from a very specific
11 individual threat?

12 A. I don't agree with that. And if I can
13 explain the reasons.

14 Q. All right.

15 A. The reason is because we are very much
16 interested in protecting our children, and that's why we
17 have educated the parents over the years.

18 We have given cautions to our elders about
19 individuals who are child molesters, who are repentant,
20 who remain part of the congregation.

21 We have assured them to sit down, very
22 frankly, as stated, don't sit, don't be around, don't
23 hold or hug or kiss or take into ministry anyone who has
24 that proclivity.

25 We also comply with the legal requirements.

1 If the law says to report that, then we are sensitive to
2 the responsibility that we, as ministries, have to be in
3 subjection to the superior rules, Romans 13:1.

4 If the law doesn't require it, then we as
5 ministers will instruct the parents or the guardian or
6 the victim that he has a responsibility. If he wants to
7 report that, that is entirely up to him. But it is his
8 absolute right to do that. We are not going to restrict
9 him from doing that.

10 And in addition to that is the issue of
11 confidentiality. It's something that we are very
12 concerned about as ministers.

13 And the Bible has outlined this issue from
14 even before Christ. In Proverbs 25:9, Do not reveal the
15 confidential talk with another.

16 So when someone comes to us and has a
17 problem -- and it could be a variety of problems -- it
18 doesn't just have to be child abuse. It could be child
19 abuse -- they have a certain expectation that what they
20 say to us is going to be private. It is going to be
21 kept confidential.

22 So we take that responsibility seriously.
23 Otherwise, you could have individuals that withhold
24 saying anything, and then you do have a problem with
25 that.

1 Q. And if the individuals say, "Don't keep this
2 private, protect people," is it still confidential?

3 A. I'm not sure of the question.

4 Q. You are assuming that the report of the
5 childhood sexual abuse must remain secret because it was
6 given in confidence, in your answer, your lengthy answer
7 that you just gave us.

8 A. We provide warnings to the elders that give
9 them cautions as to how to deal with that individual.
10 We continue to educate our parents so that they can be
11 the first line of defense to try to protect their
12 children.

13 Q. I'm not sure that you answered my question,
14 Mr. Shuster.

15 If the communication reporting a child
16 molester is not requested to be kept private, but
17 instead is delivered so that people can be protected
18 from that molester, does that still mean that it has to
19 be kept secret under the policies of your organization?

20 A. We regard that as a confidential
21 communication.

22 Q. And that's because the --

23 A. We comply with the laws of the land.

24 Q. Do you do both?

25 A. Yes.

1 MR. SIMONS: Nothing further.

2 THE COURT: Anything further?

3 MR. McCABE: Just two questions, your Honor,
4 although I risk putting a number on it.

5

6 REDIRECT EXAMINATION

7 BY MR. McCABE:

8 Q. The Watchtower and Awake Magazines, are they
9 distributed worldwide free of charge?

10 A. Yes.

11 Q. And do you go door-to-door in public ministry
12 yourself?

13 A. Yes.

14 Q. When is the last time you ever received any
15 money doing that?

16 A. I can't remember the last time.

17 MR. McCABE: Nothing further.

18 THE COURT: Anything further, counsel-person?

19 All right. You can step down. Thank you for
20 your time.

21 Anything more?

22 MR. SCHNACK: Next, your Honor, we are just
23 going to put on a minute and a half or so of the
24 Plaintiff, Candace Conti's, deposition.

25 MR. SIMONS: Yes. I've reviewed it. There's

1 no objection.

2 MR. SCHNACK: (Reading from video screen)

3 Question by McCabe to Candace Conti:

4 I'm sure your attorney's explain to you that
5 everything that is being said in the room is
6 being taken down by the court reporter and you
7 have just sworn to tell the truth.

8 And so your testimony here, even
9 though it's in your lawyer's office, in the
10 conference room, has the same force and effect
11 as if you were testifying in a court of law.

12 Do you understand that?

13 And Ms. Conti replied: Yes.

14 And Mr. McCabe asked: Also, whatever
15 you testify here to today will be put down in
16 a booklet form like it reads like a script in
17 a play sometimes, and it will be presented to
18 you to read and sign.

19 You are free to make changes in the
20 transcript if you feel that there is a
21 material mistake being made in the transcript,
22 but if you do make changes, that could be
23 commented upon by me or someone else and
24 affect your credibility at future proceedings.

25 Do you understand that?

1 And Ms. Conti answered: Yes.

2 MR. SCHNACK: Next clip.

3 Mr. McCabe asked: How many times did
4 it take place, the bear hugs?

5 Ms. Conti said: I couldn't give you
6 a number.

7 Mr. McCabe: Frequently?

8 She replied: Very frequently.

9 Question: Every meeting?

10 Ms. Conti replied: I would -- I
11 could safely say that.

12 MR. SCHNACK: And then the last clip.

13 Mr. McCabe asked: Referring to the
14 abuse that took place at the Kendricks' home,
15 was anyone else present during any of these
16 instances?

17 Ms. Conti replied: No.

18 Question: Was he married at that
19 time?

20 Answer: No.

21 Question: Did he live alone?

22 Answer: Yes.

23 THE COURT: Okay. Any further evidence from
24 the defense?

25 MR. SCHNACK: Watchtower Bible and Tract

1 Society rests.

2 MR. SIMONS: North Congregation rests.

3 THE COURT: Anything further?

4 MR. SIMONS: No, your Honor.

5 THE COURT: All right. The parties have
6 rested. I will look forward to seeing each of you well
7 rested on Monday morning. The closing argument will be
8 made.

9 Generally speaking, I like to instruct before
10 final argument, particularly in a case like this. So we
11 will be working tomorrow morning on the instructions and
12 related matters. The matter will be, again, submitted
13 to you on Monday for your deliberations and decisions.

14 And again, I say this as sincerely as a
15 judicial officer can say it, I thank you for your
16 obvious attention in this matter, your patience, and I
17 look forward to seeing you Monday morning, 8:30, right
18 here.

19 (Whereupon, the following proceedings
20 were heard outside the presence of jurors)

21 THE COURT: We have pending, your meet and
22 confer, particularly Casey non-special instructions.

23 I, again, will be in here early tomorrow
24 morning. You can arrive anytime you agree. Let's
25 presume we will go on the record at 10:00, and that's

1 not fixed in stone, so make sure we have a reporter
2 here.

3 I am going to deal with the motion to strike
4 Lewis' testimony.

5 I'm going to deal with the request for
6 directed verdict.

7 As to the punitive damages count. And
8 again -- I can open -- actually, the printer, at least
9 for a minute, was working. So if anybody wants to email
10 me and make any argument about a motion for directed
11 verdict, have at it. I'm not going to see it before
12 6:45 tomorrow morning. However, the demands I have for
13 the rest of the day --

14 So I will deal with the directed verdict
15 motion. Motion to strike the Lewis' testimony. I will
16 consider the application and -- looking into a cohesive
17 fashion, the judicial notice for request in that
18 statute.

19 I am also looking for anything anyone would
20 like to proffer relative to dealing with the concept of
21 privilege, its definition, and a presentation to the
22 jury that, as a matter of law, separating the rest of
23 the process -- their decision making process
24 contextually.

25 MR. SCHNACK: My list also says limiting

1 instructions.

2 THE COURT: Well, are you talking about the
3 special instructions?

4 MR. SCHNACK: No. Limiting instructions
5 regarding --

6 THE COURT: Right. Correct. Thank you.

7 And just -- and I'm operating from memory,
8 which right now is a dangerous thing, but limiting
9 instructions going to Kendrick's admissions, the
10 grooming incident. There were four by my count. And I
11 have a little note in chambers, but we will discuss
12 those openly in terms of the limiting instructions.

13 And then certainly maybe saving the best for
14 last, a special instruction dealing with the duty issue
15 here.

16 And I'm not set in stone on this, because I
17 have looked at several. And I have thought -- I was
18 scratching a little bit myself on this.

19 I don't think this case fits directly into
20 Juarez with the active volunteer. One reason, of
21 course, is that the testimony is consistent, and
22 Mr. Kendrick was not acting -- after the incident
23 report -- was not acting in a ministerial manner, unlike
24 the Juarez.

25 So I took a long look at the proffered

1 Special Instruction Number 2 of plaintiff, and I thought
2 that was a Men's Warehouse fit to the case, suit fit to
3 the case, certainly not the quality of clothing worn by
4 all counsel here.

5 But my focus on my so-called weekend was an
6 associational instruction, not entirely consistent with,
7 but not dissimilar from that proffered by Plaintiff
8 Special 1.

9 So again, that's open field, and I will look
10 forward to comments and whatnot.

11 My goal remains, obviously, is to -- for the
12 lawyers and the judge -- is to tell everybody, I don't
13 care who wins in my courtroom, but I try to get it
14 right. So that's my goal tomorrow in a case that has a
15 lot of shimmy -- shim to it.

16 So on that high note -- well, I am in here.
17 You are all welcome to get here as early as you agree.
18 But my goal, again, which is movable, is to have the
19 reporter here at 10:00 o'clock so we can act and react
20 and really make some progress.

21 I won't have any -- unlike the last two weeks
22 at least -- my day tomorrow is much calmer than it has
23 been since at least the week before we started this
24 trial. So we have plenty of time to get it right
25 tomorrow in terms of our discussions and in term of

1 dealing with the numerous instructional issues.

2 MR. SCHNACK: Shall we meet and confer on
3 what needs to be redacted on the medical records as
4 well?

5 THE COURT: Any housekeeping tasks.

6 MR. SIMONS: Nobody actually offered them, I
7 thought.

8 MR. SCHNACK: I thought you offered them.

9 THE COURT: Tell me the number.

10 MR. SIMONS: It is 51/120. And I thought we
11 just said, you know what, after she testified we didn't
12 need the records. It seems to me we had that
13 discussion.

14 THE COURT: I don't believe it was admitted.
15 I will have my clerk check it. It was in testimony --
16 but I don't recall. I put it in for identification, but
17 I don't believe I admitted it.

18 MR. SCHNACK: I understood it was admitted.

19 THE COURT: So, Madam Clerk, I'll have you
20 take a look at that question.

21 All right. Nice work. I'll see you in the
22 morning.

23 (Proceedings adjourned at 2:10 p.m.)

24

25

--oOo--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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