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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 11, 2012

DAY 7

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1 INDEX OF EXHIBITS:

2 NUMBER

ADMITTED

3 (NO EXHIBITS WERE MARKED OR ADMITTED)

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1 JUNE 11, 2012

7:47 A.M.

2

PROCEEDINGS

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THE COURT: All right. We are back on the record in the matter of the Candace Conti versus the Watchtower New York Bible and Tract Society of New York, Inc.

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The Court is going to take a moment -- first of all, I would like to thank counsel -- and the record should reflect, a fairly intense weekend between court and counsel -- to continue the discussions and efforts as to -- in one case, mutually agreed upon jury instructions in this matter, and secondly, for any issues that were unresolved for the Court's decision.

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I'm going to go through the jury instruction meet and confer table that we used last Wednesday. But more importantly, I'm going to go through the Exhibit -- or I'm sorry -- the jury instructions that have been presented to me for reading to the jury this morning.

19

20

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And I will comment where either I have made a decision for these purposes, and then after I am through reciting the series of instructions that I have and my comments otherwise, I will invite comments from anyone as to -- from either side -- as to the state of jury instructions at this time.

25

All right. In order, Casey 200: Obligation

1 to Prove.

2 It is the Court's understanding that is a
3 mutually agreed upon instruction. Correct?

4 MR. SIMONS: Yes.

5 MR. SCHNACK: Yes.

6 THE COURT: Casey 201?

7 MR. SIMONS: Yes.

8 MR. SCHNACK: Yes.

9 THE COURT: Casey 202?

10 MR. SIMONS: Yes.

11 MR. SCHNACK: Yes.

12 THE COURT: And these are again, instructions
13 I will read to the jury.

14 Casey 203?

15 MR. SIMONS: Yes.

16 MR. SCHNACK: Yes.

17 THE COURT: Let me ask for record purposes,
18 in the packet this morning was Casey 204, willful
19 suppression, I believe it is agreed that that was
20 withdrawn?

21 MR. SIMONS: Yes. It was not offered to
22 Plaintiff. It was withdrawn.

23 THE COURT: 205?

24 MR. SIMONS: Yes.

25 THE COURT: All right. Evidence -- 206:

1 Evidence for a limited purpose?

2 MR. SCHNACK: As modified, yes.

3 THE COURT: And I believe it has been
4 modified, the one I'm looking at.

5 MR. SIMONS: Correct.

6 THE CLERK: 207. Let me make note of this.
7 I have indicated, pursuant to the defense requests, that
8 I am going to issue a limiting instruction as to certain
9 evidence presented in this matter as to Mr. Kendrick
10 only.

11 Now what I'm reading, we need to retool 207.
12 It provides in pertinent part as follows:

13 "Then read limited instruction
14 regarding consideration of certain evidence
15 only against Jonathan Kendrick and not
16 Watchtower North Fremont Congregation."

17 In terms of preparing what is going to go
18 into that instruction, I can tell all of you that I'm
19 going to listen to a little argument as to Ms. Martinez
20 and the field service aspects here. But I'm going to
21 direct that the proposed limiting instruction presented
22 by defendants on Friday will be the instruction I'm
23 going to give as to four incidents related thereon. The
24 only one in play is the incident regarding Martinez and
25 field service.

1 So Mr. Simons, as simply as I can say it,
2 what I got on Friday is a proposed instruction from
3 defense, and I don't have it directly in front of me,
4 but there were four incidents. I can remember the black
5 bra incident. Pictures with children, there were four
6 in total on that instruction, which I'm going to give
7 exactly as redacted with the exception of it being a
8 little bit -- the dealings with Ms. Martinez and her
9 testimony as to field service.

10 Okay. So that's 207 to be modified.

11 208. I dealt with this contextually. First
12 of all, I believe it is as modified. There was a
13 supplemental request for jury instruction by the
14 Plaintiff to add effectively or video and I think now,
15 as modified, it is agreed. Correct, counsel?

16 MR. SIMONS: Yes.

17 MR. SCHNACK: Yes.

18 THE COURT: Casey 210?

19 MR. SIMONS: Yes.

20 MR. SCHNACK: Yes.

21 THE COURT: 212?

22 MR. SIMONS: Yes.

23 MR. SCHNACK: Yes.

24 THE COURT: 218?

25 MR. SIMONS: Yes.

1 MR. SCHNACK: Yes.

2 THE COURT: 219?

3 MR. SIMONS: Yes.

4 MR. SCHNACK: Yes.

5 THE COURT: 220?

6 MR. SIMONS: Yes.

7 MR. SCHNACK: Yes.

8 THE COURT: 221?

9 MR. SIMONS: Yes.

10 MR. SCHNACK: Yes.

11 THE COURT: 223?

12 MR. SIMONS: Yes.

13 MR. SCHNACK: Yes.

14 THE COURT: Casey 400. I think this was
15 agreed upon. It's 401, there was an issue. 400?
16 Casey?

17 MR. SIMONS: Yes.

18 THE COURT: That is just essential factual
19 elements?

20 MR. SIMONS: Yes.

21 THE COURT: All right. 401, at plaintiff's
22 request, I'm going to give 401 a basic standard of care.
23 I spoke to counsel yesterday. I think contextually in
24 terms of the duty instruction, which I'm going to talk
25 about in one moment, that I have to give framework as to

1 basic standard of care. So over defense objection as to
2 401?

3 MR. SCHNACK: That's correct. Over our
4 objection.

5 THE COURT: Noted for the record. Okay.
6 401.

7 Let me talk about the duty instruction, which
8 follows next.

9 First of all, I will be very clear on the
10 record that throughout -- and I will let the defense
11 make a record, once I'm done.

12 The defense has made a number of arguments.
13 Basically, first of all, I'm hoping I'm going to state
14 it as succinctly and directly as I can, that under the
15 factual circumstances here, there was no duty of care,
16 relative to the defendants.

17 There was also a second argument that
18 contextually, that to allow a duty of care would result
19 in the creation of the tort of clergy malpractice.

20 Now, I'm going to let you go on the record in
21 a minute. I issued an email yesterday that was fairly
22 succinct -- and I'm taking responsibility for the duty
23 instruction in a very nuance case -- but first of all, I
24 denied Plaintiff's request as drafted. Plaintiff
25 presented two supplementals as to duty. I denied the

1 request as to Number 2 because it was filtered and
2 littered with Mr. Kendrick being a volunteer.

3 And under the factual circumstances of this
4 case, clearly defendants, upon learning of the incident,
5 were quick and concerned, went through their process,
6 and Mr. Kendrick was stripped of his ministerial servant
7 status.

8 So I think, continuing to use and
9 characterize him as a "volunteer" under Juarez was and
10 would be misleading to the jury.

11 Once I can print it out, I'm going to put in
12 the email that I wrote to counsel as to why I was
13 finding a duty of care, and I will deal right now, since
14 it is timely, as to why on the jury verdict form I did
15 not include unserved, un-named parties.

16 As to duty, I wrote in the email of counsel
17 quotes from Tarasoff, which of course was a
18 quintessential duty case, actually arising in Alameda
19 County.

20 But the Court's analysis of Delgado, which
21 followed in Juarez, I did, in effect, find a special
22 relationship of a minor child contextually under the
23 circumstances alleged here.

24 The Court is fully aware of the legal
25 doctrine -- of the general legal doctrine of no duty to

1 warn. I'm fully acquainted with it; I'm acquainted with
2 the evolution of exceptions to that doctrine.

3 I read candidly, probably 30 cases or more,
4 and I have very skilled lawyers here, including a number
5 of out of state cases.

6 Even in the out of state cases, those courts
7 that were finding no duty under these circumstances,
8 often would talk in a sense or two about vulnerable
9 Plaintiffs.

10 And I'm imposing a duty under the
11 circumstances here for the reasons related in my email,
12 but clearly an evolution of the doctrine, perhaps the
13 best example not involving a church was Juarez, as to
14 the duty inherent to adults and their organizations
15 vis-a-vis the taking care of children.

16 So the duty ruling is mine for the reasons I
17 related.

18 As to un-named parties, un-served parties, I
19 was the one who raised the Prop 51 aspects possibility
20 in this proceeding. And I did it because of the
21 evolving nature of Prop 51 and un-named, un-served
22 defendants.

23 I requested counsel to submit further
24 briefing on the matter, and I ruled effectively on it
25 Sunday by email -- which, again, I'm going to run it and

1 put it into the record -- that I wasn't, for purposes of
2 the verdict form here, added the trio of the Fremont
3 Police Department, the District Attorney of Alameda
4 County and Child Protective Services, largely for the
5 cases and the reasons related in Plaintiff's brief that
6 I referenced contextually in the email.

7 The parents, that being the Conti's's, were
8 also asked to be added as un-named, un-served defendants
9 for purposes of the verdict form. I declined to do so
10 and ruled accordingly.

11 I would ask the question on Wednesday as to,
12 for instance, when in the evidentiary record here, when
13 did Mr. Conti learn about the disclosure.

14 And the cases that I think are fairly uniform
15 as of logic, that it is tough to impose a duty under
16 circumstances like these if one is not aware and has any
17 reason to be aware of and react to the nature of the
18 circumstances here.

19 So I declined under several cases related,
20 and I'm going to reference, again, on the record, the
21 brief submitted by Plaintiff as to both the trio of
22 public agencies, and then the parents themselves, which
23 are different in terms of legal reasons for denying
24 same, but I referenced the reasons in the email, which
25 I'm going to put in the record.

1 So the duty instruction, the Court
2 understanding -- I'm going to let the defense in a
3 moment make their record, but I think it is certainly
4 clear in terms of the number of briefs, the number of
5 discussions between the counsel and the Court that --
6 and their position has been very well brought, as I said
7 earlier on in this case, it is a difficult case on the
8 parties, the judge, the jury and counsel.

9 412, by agreement, Casey?

10 MR. SIMONS: Yes.

11 MR. SCHNACK: A lot of your comments you just
12 made, I question the validity here, but we will say yes.

13 THE COURT: 413. I don't think there is any
14 question about that, I'm hoping.

15 MR. SIMONS: Yes.

16 MR. SCHNACK: Yes.

17 THE COURT: 430: Causation?

18 MR. SIMONS: Yes.

19 MR. SCHNACK: Yes.

20 THE COURT: 431: Multiple causes causation?

21 MR. SIMONS: Yes.

22 MR. SCHNACK: Let me look at the wording just
23 to make sure we changed -- yes, as modified.

24 MR. SIMONS: I don't have my hard copy here.
25 I'm looking around, did we do nonparties?

1 THE COURT: Yes. But since you were kind
2 enough to give me a hard copy.

3 MR. SIMONS: Yes.

4 THE COURT: Then we have agreement?

5 MR. SIMONS: Yes, we do.

6 THE COURT: 434: Alternative causation?

7 MR. SIMONS: Yes.

8 MR. SCHNACK: Yes.

9 THE COURT: 1306: Sexual battery, essential
10 factual elements?

11 MR. SIMONS: Yes.

12 MR. SCHNACK: Yes.

13 THE COURT: All right. After that, I
14 indicated to counsel on Wednesday, I was concerned about
15 some of the testimony serving as a basis for --

16 Well, I have already told the jury they are
17 going to get limiting instructions.

18 I was concerned and I want to say on the
19 record that I reviewed the transcript because I
20 requested whether the word "privileged" was used by
21 anybody in this proceeding.

22 And I want to be very clear, I thought
23 counsel were very professional, as were the witnesses,
24 preparing on this issue; however, there was testimony as
25 to privilege being used as a basis for not disclosing.

1 So I wrote an email to counsel yesterday.
2 I'm going to read it into my record, because I'm going
3 to read this to the jury on the privilege issue, and
4 then I'm going to take the opportunity to talk about the
5 statutory duty to report, because we had an interplay
6 with one of the experts as to whether there was a
7 statute and whether there was a duty to report, and
8 candidly, I'm going to characterize her testimony as a
9 mixed bag.

10 So I'm going to read to the jury:

11 "In this particular matter, you heard
12 the use of the word, quote, privilege, end of
13 quote. Under the California Evidence Code
14 certain communications are privileged such
15 that they may not be disclosed upon the
16 assertion of a claim of privilege by the
17 holder and the same. Whether a particular
18 communication is privileged is a matter for
19 decision by the trial court. Your
20 deliberations are to be based solely upon the
21 evidence presented and the instructions given
22 without any consideration whatsoever as to
23 whether any communication within the evidence
24 presented in this matter was privileged under
25 California law."

1 Now, I got an email from Plaintiff's counsel
2 saying that was, I think, okay with Plaintiff?

3 MR. SIMONS: Yes. It wasn't what we asked
4 for, your Honor. But --

5 THE COURT: Be careful in this court what you
6 ask for.

7 MR. SIMONS: But we basically said, "Okay,
8 the Court has ruled and we move forward from there."

9 THE COURT: Counsel, just for a minute on
10 that.

11 MR. SCHNACK: We do object to this
12 instruction. We think if you are going to give that
13 instruction, you need to get into Evidence Code Section
14 1034, where the ministers hold privilege separate and
15 apart from the penitent.

16 And if you read through the law
17 revision commission comments -- I would like to read
18 this into the record, if you don't mind. Again, this is
19 Section 1034 of the California Evidence Code, and the
20 Law Revision Commission comments state that:

21 "The law will not compel a clergyman
22 to violate, nor punish him for refusing to
23 violate the tenets of his church which require
24 him to maintain secrecy as to confidential
25 statements made to him in the course of his

1 religious duties."

2 Further along in those Law Revision
3 Commission comments states that:

4 "The extent to which a clergyman
5 should keep secret or reveal penitential
6 communication is not an appropriate subject
7 for legislation. The matter is better left to
8 the discretion of the individual clergyman
9 involved and the discipline of the religious
10 body of which he is a member."

11 We think this instruction basically is an
12 area which the Court should not go, but if you are going
13 to give it, we also think the instruction needs to be
14 given that says that the clergyman holds a separate
15 privilege. We don't think there should be any
16 instruction on privilege.

17 THE COURT: And the only reason I'm doing it
18 is because of the record, it being used as a
19 justification.

20 MR. McCABE: And could I just add for the
21 record, your Honor, that the only indication of anyone
22 using privilege, I think was the testimony of Michael
23 Clarke, who was not a lawyer, was not claiming the
24 privilege not to testify in this court or any other
25 proceeding, but was using the word in delayed vernacular

1 of confidentiality.

2 THE COURT: Well, I read what he said. And
3 the problem as to the hearer, I'm not sure that they
4 would understand that, because it is part of, in my
5 view, the use of the term itself.

6 When you use the term "privilege" it
7 inevitably raises issues as to what and why. And I
8 tried to limit my comments to the process itself.

9 See, that argument, in use of 1034, is not
10 very different from kind of the subliminal argument as
11 to whether there is a spiritual privilege not to
12 disclose, which I have largely avoided, seeking to avoid
13 confusion to the jury.

14 I have broken it out to make sure it is very
15 clear that it is a matter of evidentiary privilege --
16 and this court has determined, by the way, early on that
17 the nature of the discussions here did not come within
18 the penitent clergyman privilege.

19 So you have made your record. Now, let's go.

20 MR. SCHNACK: And, your Honor, to that extent
21 you have up until time of trial here to change what we
22 consider an incorrect ruling in that regard, because if
23 you go through Section 1032 of the Evidence Code, which
24 defines penitent privileges, it says that it requires a
25 communication confidence in the presence of no third

1 person as far as the penitent is aware to a member of
2 the clergy.

3 Here, there's been no evidence that Jonathan
4 Kendrick was aware of any third person there.

5 Again, I wasn't involved in this case when
6 that was briefed and the matter was presented to the
7 Court.

8 But within the Jehovah's Witnesses faith a
9 wife and family members are not considered third persons
10 to such penitential communications.

11 Here, the penitent, again, was Kendrick. He
12 could have had the belief his wife and stepdaughter
13 were third persons under Section 1032. So we would urge
14 that you correct the prior ruling.

15 THE COURT: Thank you, Mr. Schnack.

16 Early on, before we even got into trial here,
17 I said, if I may quote myself, "I wish somebody would
18 have taken that to the court of appeal."

19 I haven't made a glib decision in this case.
20 My thoughts are succinct. But I gave a lot of thought
21 to that because I thought it was a threshold question at
22 the time. And candidly, I was thinking if this case
23 goes to trial, certainly I was going to get a replay,
24 which I just did, of the nature of it.

25 And I think everybody has the sense this

1 judge doesn't pretend beyond admission in these matters,
2 but I made that ruling on a very extensive presentation
3 of process, who was there, what happened when it goes to
4 New York, the letter and all of that. So good or bad,
5 you know --

6 And I actually reviewed that ruling twice,
7 early on in this case to reassess what I did then and
8 why I did it. And I'm going to stick with the ruling.

9 Number 2. You have heard two -- and let me
10 say -- I want to be very clear as to why I didn't use
11 the Plaintiff's instruction -- the Plaintiffs's
12 instructions talk about privilege or confidentiality.
13 Okay. And the way I framed it for the jury in my
14 instruction, I want to talk about evidentiary privilege
15 to hopefully avoid any confusion they would have there.
16 I wouldn't have and did not use confidentiality because
17 of the nature of the presentation --

18 I will go with you a little bit on this in
19 terms of the expectations when one goes through that
20 process. So I have limited my comments to privilege.

21 Number 2, I'm going to read to the jury the
22 following:

23 "You have heard two experts here
24 testify as to the standard of care regarding
25 child abuse reporting.

1 Whether there was a statutory duty to
2 report to lawful authorities a purported
3 incident of child abuse by anyone hearing or
4 reporting the same is a matter of law for
5 determination by the trial court. Your
6 deliberations are to be based solely upon the
7 evidence presented and instructions given
8 without any consideration whatsoever as to
9 whether there was any statutory duty to report
10 an incident of suspected child abuse to lawful
11 authorities at any time involved within the
12 evidence presented here."

13 Now, I sent that to lawyers yesterday.
14 Plaintiffs's counsel, you can respond. Probably the
15 same way as you did to the other.

16 MR. SIMONS: Well, your Honor, we said our
17 position on the submissions, so I just rest on that.

18 THE COURT: All right. And the defense?

19 MR. McCABE: Our position is that there was
20 no mandatory duty to report in this instance, because
21 that's the law. And I think if you don't tell the jury
22 the law, then you are leaving it up to them to wonder
23 about it and speculate.

24 Even though if you tell them not to do that,
25 you are leading them down that path and they are

1 expecting to hear the law from your Honor, and you don't
2 tell them the law.

3 MR. SCHNACK: And further, your Honor, we
4 submitted a proposed instruction that would indeed
5 instruct the jury that when mandated reporting became
6 the law for clergy in California, and with respect to
7 this case, they should not consider the mandated
8 reporting law because there was no such law in place
9 with respect to clergy in '93 and '94.

10 THE COURT: There is that old comment, the
11 tangled web, which, again, I will try to walk in the
12 jurors' shoes in a matter such as this.

13 First of all, I told counsel yesterday, if
14 somebody had objected to the discussion about what the
15 law was at that time, I would have granted it, because
16 it is exactly what I feel and how I would have made the
17 decision.

18 I would and did let the experts testify as to
19 their opinions as to standard of care. Again, I
20 probably have everybody satisfied here, but if I start
21 to get into mandated, I think that carries inferences
22 into the jury's discussions and deliberations.

23 I don't think the lawyers or this court have
24 disagreed at all that the duty under that statute to
25 report by church or clergy did not occur until January

1 1, 1997 as a matter of the statute.

2 I have already found, over defense objection,
3 that there was a common law standard of care existing in
4 1993. And in all of my -- not just -- well, a simple
5 way and not so simple case is trying to direct the jury
6 to the evidence.

7 None of the discussion about what the law
8 was, who it would apply to, whether it was mandated -- I
9 think that gets them off into a territory that I am
10 seeking to close down because I want them to consider
11 this matter from a common law standard of care and the
12 evidence deduced. So I'm going to read that.

13 So let's get to simpler territory.

14 3700?

15 MR. SIMONS: It was briefed.

16 MR. SCHNACK: Yes.

17 THE COURT: 3701?

18 MR. SIMONS: As modified, agreed.

19 MR. SCHNACK: I'm reading it briefly, your
20 Honor.

21 THE COURT: Good morning to everyone.

22 MR. SCHNACK: Yes, agreed as modified.

23 THE COURT: 3703?

24 MR. SIMONS: Yes.

25 MR. SCHNACK: Although, your Honor, with

1 respect to 3701, we don't waive any of our arguments
2 that there was no duty whatsoever. I guess that's the
3 danger in consenting to this. We don't want to waive
4 any of the arguments we presented on the lack of special
5 relationship, all of those things that we had briefed.
6 By consenting to 3701, we waive those.

7 THE COURT: I understand what you are saying.
8 Basically, by agreeing that that may be given, it is not
9 in agreement that there is a standard of care. Right?
10 Or a duty?

11 MR. SCHNACK: Or that there was a duty.

12 THE COURT: All right. Okay. Noted.

13 3703: Relationship not disputed?

14 MR. SIMONS: Agreed.

15 MR. SCHNACK: Agreed.

16 THE COURT: 3720: Scope of employment?

17 MR. SIMONS: Agreed.

18 MR. SCHNACK: Yes.

19 THE COURT: 3900: Introduction to tort
20 damages?

21 MR. SCHNACK: Yes.

22 MR. SIMONS: Yes.

23 THE COURT: 3902: Economic and non-economic
24 damages?

25 MR. SIMONS: Yes.

1 MR. SCHNACK: Yes.

2 THE COURT: 3903: Items of economic damage?

3 MR. SIMONS: Yes.

4 MR. SCHNACK: Yes.

5 THE COURT: 3903: Medical expenses, past and
6 future?

7 MR. SIMONS: Actually, the title is
8 misleading.

9 THE COURT: We should give it a pass.

10 MR. SCHNACK: They are going to have them in
11 the jury room. Correct?

12 THE COURT: Yeah. We should get rid of
13 "past."

14 MR. SCHNACK: And I think medical expenses
15 should be changed as well in the title.

16 MR. SIMONS: Actually, there is a typo in
17 here besides.

18 THE COURT: All right. So let's agree. And
19 this is for our duty, speaking of duty -- so we need to
20 change the title, and I think the temporal -- or time
21 period.

22 So how would we like to do it? Certainly we
23 get rid of past and -- should we say therapy expenses,
24 future therapy expenses?

25 MR. SCHNACK: Or therapy and counseling

1 expenses.

2 MR. SIMONS: Therapy and counseling.

3 THE COURT: So let's change the title on
4 that. And I'm going to put this aside. I can read it,
5 I think, into the body. So we need to change the title.

6 MR. SIMONS: There is a typo in the body,
7 too.

8 THE COURT: Okay. And I want to -- I will
9 put this on the record. With the magnificent amounts of
10 paper produced by counsel on both sides, this is the
11 first typo I have noticed.

12 MR. SCHNACK: Also in the last phrase, again,
13 on 3903-A, it says:

14 "Must prove reasonable cost or reasonably
15 necessary medical care that she has received."

16 THE COURT: Yeah, that needs to be addressed.

17 MR. SCHNACK: That's past tense, and it is
18 medical care.

19 MR. SIMONS: And where in 3903?

20 MR. McCABE: The second line.

21 MR. SIMONS: Future therapy and counseling.

22 THE COURT: That she will receive.

23 MR. SIMONS: Medical care. Oh, I see. Yes.

24 MR. McCABE: And then you have to change it
25 to future tense.

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MR. SCHNACK: It has past tense.

MR. SIMONS: She will receive. Yes.

MR. SCHNACK: Or may receive.

THE COURT: Actually, "may" is more appropriate in terms of tense.

MR. SCHNACK: So it is going to be future therapy and counseling that she may receive?

THE COURT: Correct.

MR. SIMONS: Okay. Let's see if we can get that back.

THE COURT: 3904-A: Present cash value.

And I will say on the record, as I already have, over defense objection, I am allowing the use of the actuary table. But forgetting that -- or certainly not forgetting that, otherwise agreed?

MR. SCHNACK: Yes. Subject to your comments, agreed.

MR. SIMONS: Agreed, yes.

THE COURT: 3905: Non-economic damage?

MR. SIMONS: Agreed.

THE COURT: 3905-A?

MR. SIMONS: Agreed.

THE COURT: 3924?

MR. SIMONS: Agreed.

MR. SCHNACK: I'm trying to catch up here. I

1 have been sick over the weekend, Judge.

2 THE COURT: I won't detail for you my
3 challenges.

4 MR. SCHNACK: We are up to where?

5 THE COURT: 3924.

6 MR. SCHNACK: Agreed.

7 THE COURT: 3925?

8 MR. SIMONS: There was no objection.

9 MR. SCHNACK: Yes.

10 THE COURT: Life expectancy, 3932?

11 MR. SCHNACK: We objected, your Honor, no
12 evidence of life expectancy.

13 THE COURT: With that exception noted.

14 3934: Damages from multiple legal theories,
15 I believe we all agreed on that.

16 MR. SCHNACK: Yes.

17 MR. SIMONS: As it was modified, yes.

18 THE COURT: 3946: Punitive damages and any
19 independent bifurcated trial, first phase.

20 I understand we agreed on that?

21 MR. SCHNACK: The only question I have, your
22 Honor, is the title, if this is going to go into the
23 jury room?

24 MR. SIMONS: Yes.

25 THE COURT: Yes. That is a legitimate

1 comment.

2 MR. SCHNACK: I think just Casey 3946,
3 period, punitive damages, should be the only thing in
4 the title?

5 THE COURT: Okay. Let me make a note.

6 3964: No attorneys fees or costs?

7 MR. SCHNACK: Agreed.

8 THE COURT: 5000: Duties of judge and jury?

9 MR. SCHNACK: Agreed.

10 THE COURT: I'm just going to go right
11 through it, since I know we agreed on all this.

12 So I'm just going to go and ask yes.

13 5042: Evidence.

14 5043: Witnesses.

15 5005: Multiple parties.

16 5006: Non-person party.

17 5009: Pre-deliberation instructions.

18 5010: Taking notes.

19 5011: Reading back.

20 114: Bench conferences and conferences in
21 chambers.

22 116: Electronic communications and research
23 being prohibited.

24 5012: Introduction to special verdict form.

25 5016: Judges commenting on evidence.

1 And I might add that I discussed with counsel
2 yesterday leaving in the first two sentences, striking
3 in the next three, telling them to disregard my comments
4 and contextually, I struck the last three sentences of
5 that.

6 5007: Polling the jury.

7 5020: Demonstrative evidence.

8 With the exception of the comment I made,
9 those are agreed?

10 MR. SIMONS: Yes.

11 THE COURT: All right. Let's deal first with
12 2007. I have instructed Mr. Simons to adapt the defense
13 proposed instruction of Friday as to four acts
14 referenced thereon that are to be considered for
15 liability as to Mr. Kendrick only.

16 All right. So a one-minute debate about
17 Ms. Martinez and her testimony as to field service.

18 Mr. Simons, to you.

19 MR. SIMONS: As we stated, your Honor, I
20 think the evidence supports admissible inference that
21 the time frame within which Ms. Martinez saw Ms. Conti
22 is indeed the time that Ms. Conti stated that they were
23 in service together, which was after her parents were no
24 longer attending regularly with her for family reasons,
25 and that would be during time that the abuse was

1 occurring.

2 THE COURT: Mr. Schnack?

3 MR. SCHNACK: What Mr. Simons left out and
4 this is what we emailed to, your Honor. And we can even
5 include that in the record if we have to.

6 Ms. Martinez also testified that she never
7 saw Candace Conti in field service without either one or
8 both of her parents.

9 So that undercuts the argument that somehow
10 this is admissible as against either Watchtower or the
11 North Congregation.

12 MR. SIMONS: And I think that misquotes what
13 she stated.

14 THE COURT: Well, you are both reasonably
15 accurate. But I read both -- I, of course, listened to
16 Ms. Conti's testimony. I read both transcripts.

17 I'm not going to instruct them. I'll let the
18 jury consider the time and circumstance. And I will
19 introduce as part of the record, Mr. Schnack, the email
20 you sent me.

21 But the questioning and the cross-examination
22 started with at the Hall, and then went on to field
23 service. So there are various inferences one could get
24 from the testimony of Ms. Conti to that testimony.

25 MR. SCHNACK: So the ruling is what?

1 THE COURT: The ruling is on the limiting
2 instruction, I'm not going to instruct as to
3 Ms. Martinez and her comments about field service. Only
4 to be considered against Kendrick.

5 MR. SCHNACK: What about her comments about
6 Candace Conti sitting on Jonathan Kendrick's lap from
7 1991 to 1992 during Bible study?

8 That was included within the limiting
9 instruction as well, to be applicable only to Kendrick.

10 THE COURT: I don't think it was within the
11 limiting instruction. So let's get it up.

12 Do you have it on your computer?

13 MR. SCHNACK: No. I go by Blackberry, your
14 Honor.

15 MR. SIMONS: I have it here.

16 THE COURT: So let's read it in a minute.
17 Hopefully, I can get it up on my computer.

18 MR. SIMONS: The instruction says five --
19 Conti/Martinez's testimony that Candace Conti sat on
20 Jonathan Kendrick's lap in about 1991 or '92 during a
21 Bible study.

22 THE COURT: Okay. Is that in a proposed
23 limiting instruction?

24 MR. SIMONS: It is. It's the last item,
25 Number 5.

1 THE COURT: Okay. So can somebody kind of
2 give me a curve ball in terms of her testimony as to the
3 field service? Because that's going to be in as far as
4 I'm concerned.

5 MR. SIMONS: The field service was separate,
6 that was a separate issue.

7 THE COURT: Okay. 1991 or '92, I will limit
8 on that. Okay.

9 MR. SCHNACK: So as the limiting instruction
10 is drafted, then that will be submitted?

11 THE COURT: Yes. Was that in it?

12 MR. SIMONS: It was.

13 THE COURT: All right. Then .5 will be in my
14 limiting instruction as to 1991 and '92.

15 But -- and Mr. Simons to you, gives you one
16 point; although it wasn't, I guess, part of the limiting
17 instruction.

18 MR. SCHNACK: I have a copy here, your Honor,
19 if you want to see it.

20 THE COURT: That would be helpful.

21 MR. SIMONS: It was part of the original
22 request of limiting instruction. The field service was
23 not, but the sitting on the knee was.

24 THE COURT: Yeah, and I'm going to go along
25 with that. And I told you in terms of the brief

1 submitting that was convincing that the field service
2 stuff was in and will not be subject to limiting
3 instruction.

4 All right. To the defense for a moment, I
5 understand we have some changes to effect, do you want
6 to make a further record about either the duty of care
7 or un-named, un-served parties being part of the verdict
8 form?

9 And I'm going to deal with the special
10 verdict form as it stands at this point.

11 MR. SCHNACK: Just briefly, your Honor, we do
12 obviously, follow all the briefing we submitted. And as
13 your Honor has noted in prior proceedings, you are
14 breaking new ground here. There has never been a case
15 in California that anyone could find in which a special
16 relationship was found with respect to a minor with
17 regard to a mere church member like Kendrick was here,
18 but otherwise we will rely on our briefing, which has
19 already been submitted.

20 With respect to the allocation of fault
21 issue, the cases we've submitted show that we think
22 there is clear error not to include the other parties on
23 the verdict form.

24 And there has been several reversals of trial
25 courts by the California Appellate Court to allow such

1 allocation. We think it's clearer here.

2 MR. McCABE: Especially, your Honor, with
3 regard to the parents. If they allow their child to go
4 hundreds of times with Kendrick, that is just beyond the
5 pale.

6 That is an inference the jury could draw in
7 this case if they believe Ms. Conti's testimony. And
8 the parents have a duty under the statute of the Welfare
9 and Institution Codes to care for their children, and no
10 parent today, in 1993 to 2012, should or could
11 conscionably allow their child to go hundreds of times
12 with an adult single male, as Ms. Conti testified. And
13 if they did that, our belief is that they should be
14 added to the jury form. And we will submit on that.

15 THE COURT: And look, I was considering, you
16 know, where -- I guess in terms of the intonation, the
17 buck stops here as a judge, but if I went along with
18 that ruling, I, as a committed parent -- and we were and
19 am and are -- and my best friend whom I have known for
20 forty years, I have no knowledge and no observations of
21 activities that would lead a reasonable person acting
22 reasonably to believe that that person whom I have
23 known -- I can make -- if you want to use a sports
24 figure, Jim Boheim, the Syracuse coach, the coach that
25 was next to him for 36 years, was accused.

1 But under those circumstances, if I choose to
2 expand duties, then every parent of every child in the
3 State of California is subject to a lawsuit by their
4 children as to not protecting them.

5 That's why, you know, I have effectively
6 ruled that unless the evidentiary record shows these
7 parents had actual knowledge or -- and I guess under
8 Juarez --

9 Well, I don't know. That's kind of a
10 volunteer case. But the cases that were cited that I
11 went and did more legal research on, minimally, they
12 would have to have actual knowledge. We could have a
13 debate or reason to believe, but I don't think either
14 standard is met in this case.

15 MR. SCHNACK: Your Honor, if I could be heard
16 on that just briefly?

17 THE COURT: Sure.

18 MR. SCHNACK: There was evidence submitted by
19 the Plaintiff that Neal Conti was on the same train
20 sitting across from a table in the an Amtrak train when
21 Kendrick abused Candace. In his presence, sitting
22 across the table. And yet he allowed her then to go
23 hundreds of times? We think the evidence is there. But
24 we will submit it on the briefing.

25 THE COURT: And look, I didn't say it wasn't

1 an interesting question. It was a good job done by
2 lawyers. But I really do have concerns, part public
3 policy and part is specifically contextually within the
4 record here as to reasons for making my ruling.

5 Okay. So we are working, as far as the Court
6 is concerned, on redoing 207.

7 3903-A.

8 There is one more.

9 3946. I'm going to let counsel do that for a
10 little bit. I told the jury we are going to have them
11 here at 9:00.

12 MR. SCHNACK: We also have a verdict form,
13 your Honor.

14 THE COURT: Let's take a pause to refresh and
15 catch up to what we just did.

16 MR. SIMONS: So here's the updated 3903-A.

17 MR. McCABE: Can I give you a copy of our
18 proposed special verdict form?

19 THE COURT: Why don't you give it to Rick?

20 MR. McCABE: I just did.

21 THE COURT: So this would be 2000?

22 MR. SIMONS: Your Honor, can I just call her?
23 It is a lot easier to do it on the phone.

24 THE COURT: Yeah. What I have is between
25 have to get -- are you with me?

1 MR. SIMONS: No.

2 THE COURT: Well, do it with me so we can be
3 productive.

4 MR. SIMONS: On the limiting instruction on
5 207, I'm not sure we have a draft. She will have to
6 basically type it up from scratch.

7 THE COURT: Okay.

8 MR. SIMONS: (To a person on the phone) So we
9 are in court. Here is the thing, opening up 3903-A, do
10 you see how it says "medical expenses" in the bottom in
11 here?

12 THE COURT: Yes, here is what I'm going to
13 suggest. Mr. Schnack and Mr. Simons, give me your
14 proposed limited instruction. I'm just going to read
15 that to the jury, and then we will have Mr. Simons'
16 staff --

17 Mr. Simons, I'm going to make it easier.
18 Give me, in handwriting, your revised 3903. You have to
19 deal with changes on the title and a little bit on
20 substance. But give me your handwritten version and I
21 will read that to the jury, the agreed upon change.

22 MR. SIMONS: Okay. I think we can do that.
23 And for some reason the public network access just
24 collapsed. Email. Off the record.

25 (Break taken)

1 THE COURT: Back on the record. This was
2 presented to the Court, and this Court deals with this.

3 "Criminal sexual misconduct falls
4 outside the course and scope of agency and
5 should not be imputed to the principle.

6 A person is otherwise responsible for
7 harm caused by the wrongful conduct of its
8 agent while the agent is acting within the
9 scope of authority given to him."

10 Now, Mr. Schnack, to you, you want to add a
11 sentence: Jonathan Kendrick --

12 MR. SCHNACK: I would start:

13 "I instruct you that Jonathan Kendrick was
14 not an agent of defendant Watchtower Bible and Tract
15 Society of New York or North Fremont Congregation;
16 however, that defendant is being named. Watchtower
17 Bible and Tract Society."

18 THE COURT: I want to say a little more than
19 that. Not -- because we want to let the jury do their
20 job.

21 He wasn't an agent -- and I'm going to read
22 the defendants' names. In the event you determine a
23 sexual battery occurred here, okay --

24 Do you understand the Court's thinking on
25 that one, folks?

1 Mr. Simons, any comment?

2 MR. SIMONS: No.

3 MR. SCHNACK: That's fine, your Honor.

4 MR. McCABE: That's fine, your Honor.

5 THE COURT: All right. Further, for record
6 purposes only -- give me a second. Let me take a pause
7 and refresh this.

8 All right. I'm pleased to relate I have the
9 instructions in good order. We are going off the record
10 for one second.

11 (Break taken).

12 THE COURT: On the record.

13 3903 is in good order. So allow me to --
14 okay.

15 Nice work to the defense on -- yeah. Good.
16 All right.

17 Mr. Simons, we are down to title of 3903-A
18 and the punitive damages title. Now, I'm really ready
19 to instruct. All right.

20 MR. SIMONS: I think you have the 3903-A.

21 THE COURT: I do.

22 MR. SIMONS: So 3946 we just need to print
23 out.

24 THE COURT: Well, I have 207 ready to go. I
25 have 3903-A ready to go. I have the special duty and

1 the special instruction that is going to go after 3920.
2 So done.

3 MR. SCHNACK: I do have one comment, your
4 Honor.

5 THE COURT: Punitive damages title is what
6 I'm looking for.

7 MR. SCHNACK: 207, it has the bracket
8 language in there.

9 THE COURT: I already took that out.

10 MR. SCHNACK: Okay. That is gone from what
11 will go in the jury room?

12 THE COURT: Actually, I scratched out. But
13 we need to mechanically do it. I wasn't going to give
14 it to the jury.

15 MR. SIMONS: 207 is the one you -- basically,
16 the one you submitted, is the one we used.

17 MR. SCHNACK: I know. But it has bracket,
18 "then read limiting instruction."

19 If that's going to the jury, that should not
20 be in there.

21 THE COURT: Well, actually, I think we can
22 just get rid of 207 and deal with the special jury
23 instructions. I was already with you on that one.

24 MR. SCHNACK: All right.

25 THE COURT: So we are down to the punitive

1 damages instruction and the special verdict.

2 So let's take a pause and refresh us.

3 I want to make my record on this. There have
4 been a -- my father used to say "a slew of special jury
5 instructions submitted."

6 So I'm going to go through them as follows:

7 Plaintiff supplemental Number 1, I have
8 effectively dealt with by rewriting the duty and care
9 instruction. So it was denied as presented.

10 The Plaintiff's supplemental Number 2 went to
11 a volunteer note under Juarez. I denied that.

12 Number 3 was a retooling of 208 to include
13 the quote or video that was agreed to by counsel all as
14 modified. There have been a series of --

15 Plaintiff also submitted Number 4, I believe,
16 which talked about confidentiality and privilege. I
17 effectively rewrote -- I denied it in part but not in
18 substance. I have included that within my limiting
19 instruction and explanation to the jury. And we have
20 already put that on the record.

21 Now, the defense has submitted an entire
22 number of supplemental proposed jury instructions,
23 relative to duty of care. Denied --

24 Well, let me reframe it this way: I have
25 denied defense's request for supplemental jury

1 instructions with the exception of the one that has now
2 become the special jury instruction Number 207 as to
3 sexual misconduct not being within the scope and course.

4 Give me a second in terms of comments;
5 otherwise, I have this all lined up.

6 And I might add, the one I have just agreed
7 to gives a bit of special jury instruction number --
8 strike that.

9 Number 2 about him not acting within the
10 scope.

11 I denied Number 3. I have found a special
12 relationship existing here such that a duty of care --

13 This is defense supplemental.

14 Duty of care does exist.

15 I have denied request Number 4 in terms of
16 the parents' duty, effectively and contextually.

17 I note, just in passing, that in the May 16
18 filing of special instructions, there is no reference
19 Number 1. It is like the 13th floor of the hotel.

20 All right. That is our record for the
21 minute.

22 MR. SCHNACK: Your Honor, one additional
23 thing. The appellate lawyers always tell us that in
24 case you didn't specifically mention any special
25 instruction, that the request had been denied due to the

1 extent we haven't addressed one.

2 THE COURT: They are denied.

3 The special verdict form.

4 Let me make a preface set of remarks. And
5 the record will reflect nice work from the Simons Law
6 Office. 3946 is done.

7 Okay. There has been -- well, first of all,
8 have we agreed on a special verdict yet? I ask a bullet
9 question.

10 MR. SIMONS: There is one remaining issue.
11 We are going with the form that the defense prepared
12 because of the Court's decision to include Abrahamson
13 and Clarke on the verdict form.

14 However, the defense special verdict form as
15 presented has the question of malice on a separate page
16 after the signature line.

17 THE COURT: You win on that one. I noticed
18 that before we even had a discussion. I want that where
19 you had it.

20 MR. SCHNACK: Actually, the one we just
21 submitted has the signature line for the presiding juror
22 after the malice question.

23 Things move quickly here, your Honor.

24 THE COURT: Well, you are starting to read
25 the judge's mind. That's nice work.

1 But Mr. Simons, you are going to win that
2 point.

3 Well, let's see. I just got handed a new
4 one.

5 MR. SIMONS: Well, it's still a separate
6 question on the new one. And in my view, I think it
7 should go after -- it should be Number 5, and then 5
8 becomes 6, and 6 becomes 7.

9 MR. SCHNACK: We think it should come after
10 percentage allocation. That should be the last question
11 on the form.

12 THE COURT: Well, let me see -- I want to see
13 the latest Simons' version right now.

14 MR. SIMONS: The latest Simons' version has
15 already been junked. But it is here. This is how I did
16 it.

17 THE COURT: That was junked with an E-D?

18 MR. SIMONS: Junked with past tense.

19 THE COURT: Now, having said that -- okay.

20 Okay. I will go with -- let me put on the
21 record there were issues as to me to specifically
22 identify the elders/agents. I indicated that -- and
23 that was promoted by defense. And having read the
24 agreed upon instruction 3701, I believe for consistency
25 and explanation purposes that was legitimate on the

1 verdict form, which apparently has been changed to
2 reflect that.

3 The question as to malice will be as prepared
4 in the latest version of the verdict form of Mr. Simons.

5 MR. SCHNACK: Can we see a copy of that?

6 THE COURT: It is -- and for the future, it
7 looks like to me, but I am reading the handwritten
8 version.

9 And, counsel, let's be very clear on the
10 record, I'm not saying it's going into that jury room on
11 a special verdict until we see the cleaned up copy of
12 same.

13 MR. SIMONS: Which I would like to be able to
14 show the jury during closing arguments as well and
15 discuss with them.

16 THE COURT: Okay. That's not unusual.

17 MR. SCHNACK: Your Honor, we would ask that
18 question Number 7 regarding malice go at the end of the
19 verdict form rather than before, asking for amount of
20 damages and allocation.

21 THE COURT: Mr. Simons, I think that I want
22 to keep that portion separate and apart. I don't want
23 to write above it the economic damages question. I want
24 it right after the "before."

25 MR. McCABE: Your Honor, I have this

1 electronically in court. We can just take off this
2 section here and make this question Number 7.

3 THE COURT: That's fine. That's fine. So
4 there is consistency of the questions, but the damages
5 that are not -- with malice --

6 MR. SCHNACK: Malice at the end.

7 THE COURT: Okay. So, Hill, go address the
8 jury. Tell them we are still working. We will not be
9 long.

10 Let's get the special verdict form and go to
11 work.

12 Mr. Simons, I want to put on the record, all
13 the changes referenced have been made. Nice work,
14 counsel.

15 Now, let's retool the special verdict form.

16 (Break taken)

17 THE COURT: On the record, we are going to
18 review a special verdict form and we are all in
19 agreement with it as structured at this time?

20 MR. SIMONS: Based on the Court's rulings,
21 yes.

22 MR. McCABE: Yes, your Honor.

23 MR. SCHNACK: Yes, your Honor.

24 THE COURT: Okay. Based upon my rulings.
25 All right.

1 (Whereupon, the following proceedings
2 were heard in the presence of jurors)

3 THE COURT: All right. First of all, thank
4 you as always. Hopefully you had a nice weekend.

5 If I knew then what I know now, I would have
6 brought you in at 9:30. So I apologize for not getting
7 you on board at 8:30.

8 I can tell you counsel worked this weekend
9 and early this morning, so the time was valuable and
10 used well by everyone.

11 In a moment, I'm going to give you the
12 instructions in this matter. For those who are going to
13 retire to deliberate, you will have a copy of the
14 instruction in that room with you. So as far as
15 instruction, I don't think you need to take notes.

16 My preference, particularly in a case of such
17 sophistication, is to give you the instructions before
18 the closing argument.

19 The studies say, and my observations confirm,
20 that it is often helpful to have you thinking about the
21 instructions as you listen to argument from various
22 counsel in a case like this.

23 So I'm going to ask you all to relax for a
24 moment. It is going to take a little while to read
25 these instructions. Understanding, of course, that you

1 are going to have them in the room with you.

2 You also have -- you can request any exhibits
3 you want, and I will explain to you the process of how
4 you deliberate and under what circumstances in a moment
5 within the context of the instructions.

6 After I finish, counsel will make closing
7 argument. After innate closing argument my bailiff will
8 be sworn, he will be your steward, the ones who go into
9 deliberating, he will be the access point between court
10 and counsel and yourselves.

11 And we have had to play a little musical
12 chairs with, you because we have so many juries going
13 on, but I believe you are in the Department 15, in that
14 jury room for as long as you need to deliberate. We
15 will see what your verdict is and then we will go from
16 there.

17 Having said the same, I'm going to instruct
18 you as follows:

19

20 JURY INSTRUCTIONS BY THE JUDGE

21 THE COURT: Casey 200: Obligation to prove
22 more likely true than not true.

23 A party must persuade you by the evidence
24 presented in court that what he or she is required to
25 prove is more likely to be true than not true. This is

1 referred to as, quote, the burden of proof, end of
2 quote.

3 After weighing all of the evidence, if you
4 cannot decide that something is more likely to be true
5 than not true, you must conclude that the party did not
6 prove it.

7 You should consider all the evidence no
8 matter which party produced the evidence.

9 In criminal trials the prosecution must prove
10 that the defendant is guilty beyond a reasonable doubt,
11 but in civil trials such as this one, the party must
12 only prove that it is more likely to be true than not
13 true.

14 Casey 201: More likely true with clear and
15 convincing evidence.

16 Certain facts must be proved by clear and
17 convincing evidence, which is a higher burden of proof.
18 This means the party must persuade you that it is highly
19 probable that the fact is true. I will tell you
20 specifically which facts must be true by clear and
21 convincing evidence.

22 Casey 202: Direct and indirect evidence.

23 Evidence can come in many forms. It can be
24 testimony about what someone saw or heard or smelled.
25 It can be an exhibit admitted into evidence. It can be

1 someone's opinion.

2 Some evidence proves the fact directly, such
3 as testimony of a witness who saw a jet plane flying
4 across the sky.

5 Some evidence proves the fact indirectly such
6 as testimony of a witness who saw only the white trail
7 that jet planes often leave.

8 This indirect evidence is sometimes referred
9 to as "circumstantial evidence." In either instance,
10 the testimony is evidence that a jet plane flew across
11 the sky.

12 As far as the law is concerned, it makes no
13 difference whether the evidence is direct or indirect.
14 You may choose to believe or disbelieve either account.
15 Whether it is direct or indirect, you should give every
16 evidence weight you think it deserves.

17 Casey 203: Party having power to produce
18 better evidence.

19 You may consider the ability of each party to
20 provide evidence. The party providing the weaker
21 evidence, or it could provide stronger evidence, you may
22 distrust the weaker evidence.

23 Casey 205: Failure to explain or deny
24 evidence.

25 You may consider whether a party failed to

1 explain or deny some unfavorable evidence. Failure to
2 explain or deny unfavorable evidence may suggest that
3 the evidence is true.

4 Casey 206: Evidence admitted for a limited
5 purpose.

6 Certain evidence may be admitted for a
7 limited purpose. You may consider that evidence only
8 for the limited purpose that I described and not for any
9 other purpose.

10 Special instruction.

11 Certain evidence in this case can be asserted
12 only against defendant, Jonathan Kendrick, and not
13 against either defendant, Watchtower, or defendant,
14 North Fremont Congregation.

15 I instruct you that the following evidence
16 can only be considered against Jonathan Kendrick.

17 One: Claudia Francis's testimony that
18 Jonathan Kendrick rollerbladed with Candace Conti.

19 Two: Claudia Francis's testimony that
20 Jonathan Kendrick bought a black bra for Breanna Decker.

21 Three: Claudia Francis's testimony that she
22 saw a photograph of Jonathan Kendrick with children.

23 Four: Claudia Francis's testimony that
24 Jonathan Kendrick bought rollerblades for Candace Conti
25 and gifts for other children.

1 Five: Carolyn Conti Martinez's testimony
2 that Candace Conti sat on Jonathan Kendrick's lap in
3 about 1991 or 1992 during a Bible study at
4 Ms. Martinez's home.

5 You will have that, but that is a limiting
6 instruction. I told you during the course of evidence I
7 would be giving you a limiting instruction. Those
8 incidences, that evidence goes only as to Mr. Kendrick.

9 Casey 2008: Deposition and substantive
10 evidence.

11 During the trial you heard or watched
12 testimony read from a deposition. A deposition is a
13 testimony of a person taken before trial.

14 At a deposition the person is sworn to tell
15 the truth and is questioned by the attorneys. You must
16 consider the deposition testimony that was read to you
17 or presented by video presentation in the same way as
18 you considered testimony given in court.

19 Casey 210: Requests for admissions.

20 Each party has a right to ask another party
21 to admit in writing that certain matters are true. If
22 the other party admits those matters you must accept
23 them as true. No further evidence is required to prove
24 them.

25 Casey 212: Statements of a party.

1 A party may offer into evidence any oral or
2 written statement made by an opposing party outside the
3 courtroom. When you evaluate evidence of such a
4 statement you must consider these questions.

5 One: Do you believe that the party actually
6 made the statement?

7 If you don't believe the party made the
8 statement you may not consider the statement at all.

9 Two: If you believe that the statements
10 made, you believe it was reported accurately, you should
11 view testimony of that oral statement made by the party
12 outside the courtroom with caution.

13 Casey 218: Statements made with previously
14 pre-existing condition.

15 Certain healthcare providers have testified
16 that Candace Conti made statements to them about her
17 medical or mental health history. These statements
18 helped the healthcare providers diagnose the patient's
19 condition.

20 You can use these statements to help you
21 examine the basis of the healthcare provider's opinions.
22 You cannot use them for any other purpose. However, the
23 statement made by Candace Conti to any healthcare
24 provider about her current medical or mental health
25 condition may be considered as evidence of that medical

1 condition.

2 Casey 219: Expert witness testimony.

3 During the trial you heard testimony from
4 expert witnesses. The law allows an expert to state
5 opinions about matters in his or her field of expertise,
6 even if he or she has not witnessed any of the events
7 involved in the trial.

8 You do not have to accept an expert's opinion
9 as to any other witness. It is up to you to decide
10 whether you believe the expert's testimony and choose to
11 use it as a basis for your decision. You may believe
12 all, part or none of an expert's testimony.

13 In deciding whether to believe an expert's
14 testimony you should consider:

15 A, the expert's training and experience;

16 B, the fact the experts relied on;

17 C, the reasons for the expert's opinion.

18 Casey 220: Expert's questions containing
19 assumed facts.

20 The law allows expert witnesses to be asked
21 questions that are based on assumed facts. These are
22 sometimes called "hypothetical questions."

23 In determining the weight to give the
24 expert's opinion that is based on the assumed facts, you
25 should consider whether the assumed facts are true.

1 Casey 221: Conflicting expert testimony.

2 If the expert witnesses disagree with one
3 another, you should weigh each opinion against the
4 other. You should examine the reason given for each
5 opinion and the facts or other matters that each witness
6 relied upon. You may also compare the expert's
7 qualifications.

8 Casey 223: Opinion testimony of a lay
9 witness.

10 If a person who is not testifying as an
11 expert gave an opinion during the trial, you may, but
12 you are not required to, accept that opinion. You may
13 give the opinion whatever weight you think is
14 appropriate.

15 Consider the extent of a witness's
16 opportunity to perceive the matters upon which the
17 opinion is based, the reasons the witness gave for the
18 opinion, and the facts or information on which the
19 witness relied in forming that opinion.

20 You must decide whether the information upon
21 which a witness relied was true and accurate. You may
22 disregard all or any part that you find unbelievable,
23 unreasonable or unsupported by the evidence.

24 Casey 400: Negligence, essential factual
25 elements.

1 Candace Conti claims that she was harmed by
2 Watchtower Bible and Tract Society of New York, Inc. and
3 Fremont California Congregation of Jehovah's Witnesses
4 North Unit.

5 Negligence: To establish this claim, Candace
6 Conti must prove all the following:

7 1, that Watchtower Bible and Tract Society of
8 New York, Inc., or Fremont California Congregation of
9 Jehovah's Witnesses North Unit was negligent;

10 2, that Candace Conti was harmed;

11 3, that Watchtower Bible and Tract Society of
12 New York, Inc. or Fremont California Congregation of
13 Jehovah's Witnesses North Unit's negligence was a
14 substantial factor in causing Candace Conti's harm.

15 Casey 401: Basic standard of care.

16 Negligence is a failure to use reasonable
17 care to prevent harm to one's self or others. A person
18 or an entity can be negligent by acting or by failing to
19 act.

20 A person or entity is negligent if he, she,
21 or it does something that a reasonably careful person or
22 entity would not do in the same situation or fail to do
23 something that a reasonably careful person or entity
24 would do in the same situation.

25 You must decide how a reasonably careful

1 person or entity would have acted in Watchtower Bible
2 and Tract Society of New York, Inc. and Fremont
3 California Congregation Jehovah's Witnesses North Unit's
4 situation.

5 Duty: The defendants Watchtower Bible and
6 Tract Society of New York, Inc. and Fremont Congregation
7 Jehovah's Witnesses North Unit have a duty to take
8 reasonable protective measures to protect Candace Conti
9 from the risk of sexual abuse by Fremont Congregation of
10 Jehovah's Witnesses North Unit member Jonathan Kendrick.

11 In determining whether or not Watchtower
12 Bible and Tract Society of New York, Inc. and Fremont
13 Congregation of Jehovah's Witnesses North Unit took
14 reasonable, protective measures, you may consider the
15 following:

16 1, the presence or absence of any warning;

17 2, whether or not any educational programs
18 were made available to Plaintiff, her parents or to
19 other Jehovah's Witnesses from the Fremont Congregation
20 Jehovah's Witnesses North Unit members for the purposes
21 of sexual abuse education and prevention;

22 3, such other facts and circumstances
23 contained in the evidentiary record here as to the
24 presence or absence of protective measures.

25 Casey 412: Care of children.

1 An adult must anticipate the ordinary
2 behavior of children. An adult must be more careful in
3 dealing with children than with other adults.

4 Casey 413: Custom or practice.

5 You may consider customs or practices in the
6 community in deciding whether persons acted reasonably.
7 Customs and practices do not necessarily determine what
8 a reasonable person would have done in that person's
9 situation. They are only factors for you to consider.

10 Following a custom or practice does not
11 excuse conduct that is unreasonable. You should
12 consider whether the custom or practice is reasonable.

13 Casey 430: Causation as a substantial
14 factor.

15 A substantial factor in causing harm is a
16 factor that a reasonable person would consider to have
17 contributed to the harm. It must be more than a remote,
18 contributing factor. It does not have to be the only
19 cause of the harm. Conduct is not a substantial factor
20 in causing harm if the same harm would have occurred
21 without that conduct.

22 431: Case of causation, multiple causes.

23 A person's negligence or fault may combine
24 with another factor to cause harm. If you find that
25 Jonathan Kendrick, Watchtower Bible and Tract Society of

1 New York, Inc., or Fremont, California Congregation
2 Jehovah's Witnesses North Unit's negligence or fault was
3 a substantial factor in causing Candace Conti's harm,
4 then Jonathan Kendrick, Watchtower Bible and Tract
5 Society of New York, Inc., or the Fremont Congregation
6 of Jehovah's Witnesses North Unit is responsible for the
7 harm.

8 Jonathan Kendrick, Watchtower Bible and Tract
9 Society of New York, Inc., or Fremont, California
10 Congregation of Jehovah's Witnesses North Unit, cannot
11 avoid responsibility just because some other person was
12 or also a substantial factor in causing Candace Conti's
13 harm.

14 Casey 434: Alternative causation.

15 You may decide that one or more of the
16 defendants was negligent or at fault, but the negligence
17 or fault of only one of them could have actually caused
18 Candace Conti's harm.

19 If you cannot decide which defendant caused
20 Candace Conti's harm, you must decide each defendant is
21 responsible for the harm.

22 However, if the defendant proves that it did
23 not cause Candace Conti's harm, then you must conclude
24 that that defendant is not responsible.

25 Casey 1306: Sexual battery essential to

1 factual harm.

2 Candace Conti claims that Jonathan Kendrick
3 committed a sexual battery. To establish this claim
4 Candace Conti must prove the following:

5 1, that Jonathan Kendrick intended to cause a
6 harmful contact with Candace Conti's sexual organs,
7 anus, groin place, or breasts, and a sexually offensive
8 contact with Candace Conti resulted either directly or
9 indirectly;

10 2, that Candace Conti did not consent to the
11 touching;

12 3, that Candace Conti was harmed by Jonathan
13 Kendrick's conduct.

14 Court's duty recessed by issues.

15 In this particular matter you have heard the
16 use of the word, quote, privilege, end of quote. Under
17 the California Evidence Code, certain communications are
18 privileged such that they may not be disclosed upon the
19 assertion of a claim of privilege by a holder of the
20 same.

21 Whether a particular communication is
22 privileged is a matter for decision by the trial court.
23 Your deliberations are to be based solely upon the
24 evidence presented and the instructions given without
25 any consideration whatsoever as to whether any

1 communication within the evidence presented here in this
2 matter was, quote, privileged, end of quote, under
3 California law.

4 2, you have heard two experts here testify as
5 to the standard of care regarding child abuse reporting.
6 Whether there was a statutory duty to report to lawful
7 authorities in purported incident of child abuse by
8 anyone hearing a report of the same is a matter of law
9 for determination by the trial court.

10 Your deliberations are to be based solely
11 upon the evidence presented and instructions given
12 without any consideration whatsoever as to whether there
13 was any statutory duty to report an incident of
14 suspected child abuse to lawful authorities at any time
15 involved within the evidence presented here.

16 Casey 3700: Introduction.

17 A corporation is responsible for harm caused
18 by the wrongful conduct of its agents while acting
19 within the scope of their authority.

20 Casey 3701: Tort liability asserted against
21 principle essential factual elements.

22 Candace Conti claims that she was harmed by
23 the negligence of Elders Gary Abrahamson, Michael
24 Clarke, and elders in the Service Department of the
25 Watchtower Bible and Tract Society of New York, Inc.

1 Candace Conti also claims that Watchtower
2 Bible and Tract Society of New York, Inc. and Fremont
3 California Congregation of Jehovah's Witnesses North
4 Unit are responsible for the harm because Elders Gary
5 Abrahamson and Michael Clarke were acting as its agents
6 when the conduct occurred.

7 Candace Conti further claims that Watchtower
8 Bible and Tract Society of New York, Inc. is responsible
9 for the harm because elders in the Service Department
10 were acting as agents of Watchtower Bible and Tract
11 Society of New York, Inc. at the time of the conduct.

12 If you find that Elders Gary Abrahamson and
13 Michael Clarke's negligence harmed Candace Conti, then
14 you must decide whether Watchtower Bible and Tract
15 Society of New York, Inc. or Fremont California
16 Congregation of Jehovah's Witnesses North Unit are
17 responsible for the harm.

18 Watchtower Bible and Tract Society of New
19 York, Inc., or Fremont California Congregation of
20 Jehovah's Witnesses North Unit are responsible if
21 Candace Conti proves both of the following:

22 1, that Elders Gary Abrahamson and Michael
23 Clarke, or Watchtower Bible and Tract Society of New
24 York, Inc's., or Fremont California Congregation of
25 Jehovah's Witnesses North Unit agents;

1 And 2, that Elders Gary Abrahamson and
2 Michael Clarke were acting within the scope of their
3 agency when the conduct that caused Candace Conti harm
4 occurred.

5 If you find that the negligence of elders of
6 Watchtower Bible and Tract Society of New York, Inc.'s
7 Service Department harmed Candace Conti, then you must
8 decide whether Watchtower Bible and Tract Society of New
9 York, Inc. is responsible for that harm.

10 Watchtower Bible and Tract Society of New
11 York, Inc. is responsible if Candace Conti proves both
12 of the following:

13 1, that elders in the Service Department were
14 Watchtower Bible and Tract Society of New York, Inc.'s
15 agents;

16 And 2, that elders within the Service
17 Department were acting within the scope of their agency
18 at the time that the conduct that caused Candace Conti
19 harm occurred.

20 Casey 3703: Legal relationship not disputed.

21 In this case, Elders Gary Abrahamson and
22 Michael Clarke were the agents of Watchtower Bible and
23 Tract Society of New York, Inc. and Fremont Congregation
24 of Jehovah's Witnesses North Unit.

25 Additionally, elders in the Service

1 Department were the agents of Watchtower Bible and Tract
2 Society of New York, Inc.

3 If you find that Elders Gary Abrahamson and
4 Michael Clarke were acting within the scope of their
5 agency when their conduct that harmed Candace Conti
6 occurred, then Watchtower Bible and Tract Society of New
7 York, Inc. and Fremont Congregation of Jehovah's
8 Witnesses North Unit are responsible for any harm caused
9 by Elders Abrahamson and Clarke's negligence.

10 If you find that elders in the Service
11 Department of Watchtower Bible and Tract Society of New
12 York, Inc. were acting within the scope of their agency
13 when the conduct that harmed Candace Conti occurred,
14 then Watchtower Bible and Tract Society of New York,
15 Inc. is responsible for any harm caused by the
16 negligence of the elders in the Service Department.

17 Casey 3720: Scope of employment.

18 Candace Conti must prove the alleged
19 negligent actors were acting within the scope of their
20 authority when Candace Conti was harmed.

21 Conduct is within the scope of authority if:

22 A, it is reasonably related to kind of tasks
23 the agent was authorized to perform;

24 Or, B, it is reasonably foreseeable in the
25 line of the corporation's business or the agent's

1 responsibility.

2 Sexual battery not imputed. Criminal sexual
3 misconduct falls outside the scope and course of agency
4 and should not be imputed to the principle. A person is
5 otherwise responsible for harm caused by the wrongful
6 conduct of its agent while the agent is acting within
7 the scope of the authority given to him.

8 Jonathan Kendrick was not an agent of the
9 Watchtower Bible and Tract Society or the North Fremont
10 Congregation of Jehovah's Witnesses in the event that
11 you determine a sexual battery occurred here.

12 Casey 3900: Introduction of tort damages
13 liability contested.

14 If you decide that Candace Conti has proved
15 her claim against Jonathan Kendrick, Watchtower Bible
16 and Tract Society of New York, Inc. or Fremont
17 California Congregation of Jehovah's Witnesses North
18 Unit, you must also decide how much money will
19 reasonably compensate Candace Conti for the harm.

20 This compensation is called "damages." The
21 amount of damages must include an award for each item of
22 harm that was caused by Jonathan Kendrick, Watchtower
23 Bible and Tract Society of New York, Inc. or Fremont
24 California Congregation of Jehovah's Witnesses North
25 Unit's wrongful conduct, even if the particular harm

1 could not have been anticipated.

2 Candace Conti does not have to prove the
3 exact amount of damages or provide reasonable
4 compensation of the harm; however, you must not
5 speculate or guess regarding damages.

6 Casey 3902: Economic and non-economic
7 damages.

8 The damages claimed by Candace Conti or the
9 harm by Jonathan Kendrick, Watchtower Bible and Tract
10 Society of New York, Inc. or Fremont California
11 Congregation of Jehovah's Witnesses North Unit fall into
12 two categories called "economic damages" and
13 "non-economic damages."

14 You will be asked on the verdict form to
15 state the two categories of damages separately.

16 Casey 3903: Items of economic damages.

17 The following are the specific items of
18 economic damages claimed by Candace Conti:

19 Future therapy and counseling expenses.

20 Casey 3908: Future therapy and counseling
21 expenses.

22 To recover damages for future therapy and
23 counseling expenses, Candace Conti must prove the
24 reasonable cost of reasonably necessary future therapy
25 and counseling that she may receive.

1 Casey 3904-A: Present cash value.

2 If you decide Candace Conti's harm includes
3 economic damages for future therapy and counseling
4 expenses, then the amount of those future damages must
5 be reduced to their present cash value. This is
6 necessary because money received now will, through
7 investment, promote to a larger amount in the future.
8 Watchtower Bible and Tract Society of New York, Inc. and
9 Fremont, California Congregation of Jehovah's Witnesses
10 North Unit must prove the amount of future damages
11 should be reduced to present value.

12 To define present cash value, you must
13 determine amount of money back if reasonably invested
14 today will provide Candace Conti with the amount of her
15 future damages.

16 3904-B: Use of present value tables.

17 Table A. Use Table A to compute the present
18 value of future therapy and counseling expenses.

19 1, determine the amount of Candace Conti's
20 future therapy and counseling expenses each year. Enter
21 this amount into Worksheet A, Step 1.

22 2, determine the number of years that this
23 loss will continue. Enter this amount into Worksheet A,
24 Step 2.

25 3, select the interest rate you decide

1 represents the most likely rate of return on money
2 invested today over the period of years. Enter this
3 amount into Worksheet A, Step 3.

4 4, select appropriate present value factor
5 from Table A. To locate this factor, use the number of
6 years from Step 2 on the worksheet and the interest rate
7 from Step 3 on the worksheet, and find the number that
8 is the intersection of the interest rate column and
9 number of years row.

10 For example, if the number of years is 15 and
11 the interest 10 percent, the corresponding present
12 factor is 7.61. Enter this factor into Worksheet A,
13 Step 4.

14 5, multiply the amount of Candace Conti's
15 annual future loss from Step 1 by the factor from Step
16 4. This is the present value of Candace Conti's total
17 future loss. Enter this amount into Worksheet A, Step
18 5.

19 3905: Items of non-economic damages.

20 The following are the specific items of
21 non-economic damages claimed by Candace Conti.

22 3905-A: Physical pain, mental suffering and
23 emotional distress non-economic damages.

24 1, past and future physical pain, mental
25 suffering, depression, anxiety, humiliation and

1 emotional distress.

2 No fixed standard exists for deciding the
3 amount of these non-economic damages. You must use your
4 judgment to decide a reasonable amount based on the
5 evidence and your common sense.

6 To recover for future physical pain, mental
7 suffering, depression, anxiety, humiliation and
8 emotional distress, Candace Conti must prove that she is
9 reasonably certain to suffer that harm.

10 For future physical pain, mental suffering,
11 depression, anxiety, humiliation and emotional distress,
12 determine the amount in current dollars paid at the time
13 of judgment that will compensate Candace Conti for
14 future physical pain, mental suffering, depression,
15 anxiety, humiliation and emotional distress.

16 This amount on non-economic damages should
17 not be further reduced to present cash value because
18 that reduction should only be performed with respect to
19 economic damages.

20 3924: Punitive damages.

21 You must not included in your award any
22 damages to punish or make an example of Jonathan
23 Kendrick, Watchtower Bible and Tract Society of New
24 York, Inc. or Fremont California Congregation of
25 Jehovah's Witnesses North Unit. You must award only the

1 damages that will fairly compensate Candace Conti for
2 her harm.

3 Casey 3925: Attorney argument not evidence.

4 The arguments of the attorneys are not
5 evidence of damages. Your award must be based on your
6 reason, judgment applied to the testimony of witnesses
7 and the other evidence submitted and admitted during
8 trial.

9 3932: Life expectancy. If you decide that
10 Candace Conti suffered damages that will continue for
11 the rest of her life, you must determine how long she
12 will probably live.

13 According to national vital statistics for
14 June 28, 2010, a 26-year-old female is expected to live
15 another 56.1 years. This is the average life
16 expectancy. Some people live longer and others die
17 sooner.

18 This calculates how long a person is likely
19 to live, but it is not inclusive. In deciding a
20 person's life expectancy you should also consider, among
21 other factors, that person's known health and
22 occupation.

23 3934: Damages for multiple legal theories.

24 Candace Conti's damages from Jonathan
25 Kendrick, Watchtower Bible and Tract Society of New

1 York, Inc. and Fremont California Congregation of
2 Jehovah's Witnesses North Unit, under more than one
3 legal theory.

4 However, each item of damages may be awarded
5 only once regardless of the number of legal theories
6 alleged.

7 You will be asked to determine whether
8 Watchtower Bible and Tract Society of New York, Inc. or
9 Fremont California Congregation of Jehovah's Witnesses
10 North Unit are liable to Candace Conti under the
11 following legal theories:

12 Negligence. You will be asked to decide
13 whether Jonathan Kendrick is liable to Candace Conti
14 under the following legal theory:

15 Sexual battery.

16 The following items are recoverable only once
17 under all legal theories:

18 1, physical, mental and emotional injuries;
19 And 2, future therapy and counseling
20 expenses.

21 3964: Attorneys fees or costs.

22 You must not consider or include as part of
23 any award attorney's fees or expenses of the parties
24 incurred in bringing or defending this lawsuit.

25 Casey 3946: Punitive damages.

1 If you decide that Watchtower Bible and Tract
2 Society of New York, Inc.'s. conduct caused Candace Conti
3 harm, you must decide whether that conduct justifies an
4 award of punitive damages. The amount, if any, of
5 punitive damages will be an issue decided later. At
6 this time, you must decide whether Candace Conti has
7 proved that Watchtower Bible and Tract Society of New
8 York, Inc. engaged in that conduct with malice.

9 To do this, Candace Conti must prove one of
10 the following by clear and convincing evidence:

11 1: That the conduct constituting malice was
12 committed by one or more officers, directors or managing
13 agents of Watchtower Bible and Tract Society of New
14 York, Inc. who acted on behalf of Watchtower Bible and
15 Tract Society of New York Inc.

16 Or 2: That the conduct constituting malice
17 was authorized by one or more officers, directors or
18 managing agents of Watchtower Bible and Tract Society of
19 New York, Inc.

20 Or 3: That one or more officers, directors
21 or managing agents of Watchtower Bible and Tract Society
22 of New York, Inc. knew of the conduct constituting
23 malice and adopted or approved that conduct after it
24 occurred.

25 Malice means that Watchtower Bible and Tract

1 Society of New York, Inc. actually meant to intend to
2 cause injury or that Watchtower Bible and Tract Society
3 of New York, Inc.'s conduct was despicable and was done
4 with a horrible and knowing disregard of the rights or
5 safety of another.

6 A person acts with knowing disregard that he
7 or she is aware of the probable dangerous consequences
8 of his or her conduct and deliberately failed to avoid
9 those consequences.

10 Despicable conduct is a conduct that is so
11 vile or contemptible that it would be looked down on and
12 despised by reasonable people.

13 An employee is a managing agent if he or she
14 exercises substantial independent authority and judgment
15 in his or her decision-making such that his or her
16 decisions ultimately determine corporate policy.

17 Casey 5000: Duties of the judge and jury.

18 Members of the jury, you have now heard all
19 of the evidence and will hear all the closing arguments
20 of the attorneys. You must follow these instructions I
21 have given. Again, you will have a copy of these
22 instructions with you when you go to the jury room to
23 deliberate.

24 You must decide what the facts are. You must
25 consider all the evidence and then decide what you think

1 happened.

2 You must decide the facts based on the
3 evidence admitted in this trial. Do not allow anything
4 that happens outside this room to affect your
5 decision.

6 Do not talk about this case or the people
7 involved with anyone, including family and persons
8 living in your household, friends and co-workers,
9 spiritual leaders, advisers or therapists.

10 Do not do any research on your own or as a
11 group. Do not use dictionaries fiction or reference
12 material.

13 These prohibitions on communications and
14 research extend to all forms of electronic
15 communications.

16 Do not use any electronic devices or media
17 such as cell phone or smart phone, PDA, computer, Tablet
18 device, the Internet, any Internet service, any text or
19 instant messaging service, any internet chat rooms,
20 social networking sites or websites or online outlets to
21 send or receive any information to or from anyone about
22 this case for your experience as a juror until after you
23 have been discharged from your jury duty.

24 Again, do not investigate the case or conduct
25 any experiments. Do not contact anyone to assist you

1 such as a family accountant, doctor or lawyer.

2 Do not visit or view the scene of any event
3 involved in this case. If you happen to pass by the
4 scene, do not stop and investigate. All jurors must see
5 or hear the same evidence at the same time.

6 You must not let bias, prejudice or public
7 opinion influence your decision.

8 You must follow the law exactly as I have
9 begin it to you even if you disagree with it.

10 Again, if the attorneys say anything
11 different about what the law means, you must follow what
12 I say.

13 In reaching your verdict, do not guess what I
14 think you verdict should be from anything I have said or
15 done.

16 Please pay careful attention to the
17 instructions that I have given you. All the
18 instructions are important because together they state
19 the law used in this case. You must consider all of the
20 instructions together.

21 After you have decided what the facts are,
22 you may find that some instructions apply. In that
23 case, all the instructions that do apply, you can use
24 that together with the facts to reach your verdict.

25 If I have repeated any ideas or rules of law

1 during these instructions, that does not mean that these
2 ideas or rules are more important than others, and in
3 addition, the order in which the instructions are given
4 does not make any difference.

5 Casey 5002: Evidence.

6 Sworn testimony, documents or anything else
7 may be admitted into evidence. You must decide what the
8 facts are in this case from the evidence you have seen
9 or heard during this trial, including any exhibits that
10 I have admitted into evidence.

11 You may not consider as evidence anything
12 that you saw or heard while the court was not in
13 session, even something done or said by one of the
14 parties, attorneys or witnesses.

15 What the attorneys say during the trial is
16 not evidence. These are only statements, and in the
17 closing arguments the attorneys talk to you about the
18 law and the evidence.

19 What the lawyers say may help you understand
20 the law, but their statements and arguments are not
21 evidence. The attorneys questions are not evidence.
22 Only the witnesses answers are evidence.

23 You must not think something is true just
24 because an attorney's question suggested that it was
25 true.

1 Each side had the right to object to evidence
2 offered by the other side. If I sustained an objection
3 to a question, you must ignore the question. If the
4 witness denied answering, you must not guess at what he
5 or she might have said or why I sustained the objection.
6 If the witness already answered, you must ignore the
7 answer.

8 Casey 5003: Witnesses.

9 A witness is a person who has knowledge
10 related to the case. You will have to decide whether
11 you believe each witness and how important each
12 witness's testimony is to the case.

13 You may believe all, part or none of a
14 witness's testimony. In deciding whether to believe a
15 witness's testimony, you may consider among other
16 factors the following:

17 A, how well the witness sees, hears or
18 otherwise says what he or she described;

19 B, how well he or she remembered and
20 described what happened;

21 C, how the witness looked, acted and speak
22 relative to testifying;

23 D, did the witness have any reason to say
24 something that was not true?

25 Did the witness show any bias or prejudice?

1 Did the witness have a personal relationship
2 with any of the parties involved in the case?

3 Does the witness have a personal stake in how
4 this case is decided?

5 E, what was the witness's attitude towards
6 this case while testifying?

7 Sometimes the witness may say something that
8 was not consistent with something else he or she said.
9 Sometimes different witnesses will give different
10 versions of what happened.

11 People often forget things or make mistakes
12 in what they remember.

13 Also, two people may see the same event but
14 remember it differently.

15 You may consider these differences but do not
16 decide the testimony is untrue just because it differs
17 from other testimony.

18 However, if you decide a witness deliberately
19 testified untruthfully about something important, you
20 may choose not to believe anything that witness said.

21 On the other hand, if you think a witness
22 said testified untruthfully about some things, but told
23 the truth about others, you may accept the part you
24 think is true and ignore the rest.

25 Do not make any decision simply because there

1 were more witnesses on one side than on the other. If
2 you believe it is true that the testimony of a single
3 witness is enough to prove a fact.

4 You must not be biased in favor of or against
5 any witness because of his or her disability, gender,
6 race, religion or ethnicity, sexual orientation, age,
7 national origin or socioeconomic status.

8 Casey 5005: Multiple parties.

9 There are three defendants in this trial.
10 You should decide the case against each defendant
11 separately as if it were a separate lawsuit. Each
12 defendant is entitled to separate consideration of his
13 or her own defenses.

14 Different aspects of the case involve
15 different party defendants. Each instruction will
16 identify the parties and to whom it applies. Pay
17 particular attention to the parties named in each
18 instruction.

19 Casey 5006: Non-person party.

20 Two corporations, Watchtower Bible and Tract
21 Society of New York, Inc. and Fremont California
22 Congregation of Jehovah's Witnesses North Unit are
23 parties in this lawsuit.

24 Watchtower Bible and Tract Society of New
25 York, Inc. and Fremont California Congregation of

1 Jehovah's Witnesses North Unit are entitled to the same
2 fair and impartial treatment that you would give to an
3 individual in this case.

4 You must decide this case with the same
5 fairness you would use if you were deciding the case
6 between individuals.

7 When I use words like person or he or she in
8 the instructions, it refers to a party. These
9 instructions also apply to Watchtower Bible and Tract
10 Society of New York, Inc. and Fremont California
11 Congregation of Jehovah's Witnesses North Unit.

12 Casey 5009: Pre-deliberation instructions.

13 When you go to the jury room, the first thing
14 you should do is choose a presiding juror. The
15 presiding juror should see to it that your discussions
16 are orderly and that everyone has a fair chance to be
17 heard.

18 It is your duty to talk with one another in
19 the jury room and consider the views all of the jurors.

20 Each of you must decide the case for
21 yourself, but only after you have considered all the
22 evidence with the other members of the jury.

23 Feel free to change your mind if you are
24 convinced your position should be different.

25 You should all try to agree but do not give

1 up because others think differently.

2 Please do not state your opinions too
3 strongly at the beginning of your deliberations or
4 immediately announce how you plan to vote, as it may
5 interfere with an open discussion.

6 Keep an open mind so that you and your fellow
7 jurors can easily share ideas about the case.

8 You should use your common sense but do not
9 use or consider any special training or unique personal
10 experience that any of you have in matters involved in
11 this case. Your training or experience is not part of
12 the evidence involved in this matter.

13 Sometimes jurors disagree or have a question
14 about the evidence or about what the witnesses said in
15 their testimony. If that happens, you may ask to have
16 testimony read back to you or ask to see any exhibits
17 admitted into evidence that have been not been provided
18 to you.

19 Also a juror may incur an explanation about
20 the laws as a part of this case. If this happens during
21 your discussions, write down your questions and give
22 them to my court attendant.

23 I will talk with the attorneys before I
24 answer so it may take some time. You should continue
25 your deliberations while you wait on my answer. I will

1 do my best to answer them.

2 When you write a note do not tell me how you
3 voted on the issue unless or until I ask for this
4 information in open court.

5 At least nine jurors must agree on a verdict.
6 When you finish filling out the form, the presiding
7 juror must write the date and sign at the bottom and
8 then notify my court attendant.

9 Your decision must be based on your personal
10 evaluation or evidence presented in this matter. Each
11 of you may be asked in open court how you voted on each
12 question.

13 While I know you will not do that, I'm
14 required to advise you that you must not base your
15 decision on chance, such as the flip of a coin.

16 If you decide to award damages, and you
17 cannot agree in advance, simply add up the amount each
18 juror thinks is right and then without further
19 deliberation make the average your verdict.

20 You may take breaks, but do not discuss this
21 case with anyone, including each other, until all of you
22 are back in the jury room.

23 Casey 5010: Taking notes during the trial.

24 If you're taking notes during the trial, you
25 may take your notebooks with you into the jury room.

1 You may use your notes only to help you remember what
2 happened during the trial. Your independent
3 recollection of the evidence should govern your verdict.
4 You should not allow yourself to be influenced by the
5 notes of the other jurors if those notes differ from
6 what you remember.

7 At the end of the trial your notes will be
8 collected and destroyed.

9 Casey 5011: Reading back of trial testimony
10 to the jury.

11 You may request in writing that trial
12 testimony be read to you. I will have the court
13 reporter read the testimony to you.

14 You may request that all or part of a
15 witness's testimony be read.

16 Your request should be as specific as
17 possible. It will be helpful if you state the name of
18 the witness, the subject of the testimony you would like
19 to have read, and the name of the attorney or attorneys
20 asking the questions when the testimony was given.

21 The court reporter is not permitted to talk
22 with you when he or she is reading the testimony
23 requested. While the court reporter is reading the
24 testimony you may not deliberate or discuss the case.
25 You may not ask the court reporter to read testimony

1 that was not specifically mentioned in the original
2 request.

3 If your memory is different from the
4 testimony, you must accept the court reporter's record
5 as accurate.

6 Casey 114: Bench conferences and conferences
7 in chambers.

8 From time to time during this trial it was
9 necessary for me to talk with the attorneys outside of
10 your presence, either by having a conference at the
11 bench or by calling a recess to discuss matters outside
12 of your presence.

13 The purpose of these conferences would not be
14 relevant information from you, but to decide how certain
15 evidence is to be treated under the rules of evidence.
16 Please do not be concerned with what I might have said
17 or try to guess what was being said.

18 Casey 116: Why electronic communication and
19 research are prohibited.

20 I know that many of us are used to
21 communicating and perhaps even more by electronic
22 communications and research.

23 However, there are good reasons why you must
24 not electronically communicate or do any research on
25 anything having to do with this trial or the parties.

1 In court, jurors must make important
2 decisions that have consequences for the parties. These
3 decisions must be based only on the evidence that you
4 heard in this courtroom.

5 The evidence that is presented in court can
6 be tested. It can be shown to be right or wrong by
7 either side, and it can be questioned. And it can be
8 contradicted by other evidence which you might read or
9 if you are on your own, it could be wrong, out of date
10 or inapplicable to this case.

11 The parties can receive a fair trial only if
12 the facts or information on which you base your decision
13 are presented to you as a group with each juror having
14 the same opportunity to see, hear and evaluate the
15 evidence.

16 Also, the trial is a public process. It
17 depends upon the disclosure in the courtroom of the
18 facts and evidence. Using information gathered in
19 secret by one or more jurors undermines the public
20 process and violates the rights of the parties.

21 Casey 5012: Introduction of special verdict
22 form.

23 You will be given a verdict form with
24 questions you must answer. I have already instructed
25 you on the law which you are to use in answering these

1 questions. You must follow my instructions and the
2 special verdict form carefully. You must consider each
3 question separately.

4 Although you may discuss the evidence and the
5 issues that you decide in any order, you must answer the
6 questions on the special verdict form in the order they
7 appear.

8 After you answer the question, the form tells
9 you what to do next. All twelve of you must deliberate
10 on and answer each question.

11 At least nine of you must agree on the answer
12 before all of you can move on to the next question.
13 However, the same nine or more people do not have to
14 agree on each answer.

15 When you have finished filling out the form,
16 your presiding juror must write the date and sign at the
17 bottom and then notify my court attendant that you are
18 ready to present your verdict in the courtroom.

19 Casey 5016: Judges commenting on the
20 evidence.

21 In this case, I exercised my right to comment
22 on the evidence. However, you, the jury, are the
23 exclusive judges of all the questions of fact and the
24 credibility of the witnesses.

25 Casey 5017: Polling the jury.

1 After your verdict is read in open court, you
2 may be asked individually and indicate whether your
3 verdict expresses your personal vote. This is referred
4 to as polling the jury and it is done to insure that at
5 least nine jurors have agreed to each question.

6 The verdict forms that you will receive ask
7 you to answer several questions. You must vote, again,
8 separately on each question.

9 Although nine or more jurors must be on each
10 answer, it does not have to be the same nine for each
11 answer; therefore, it is important for each of you to
12 remember how you voted on each question, so that if you
13 are polled, each of you will be able to answer
14 accurately about how you voted.

15 Each of you will be provided a draft copy of
16 the verdict form for your use in keeping track of your
17 vote.

18 Casey 5020: Demonstrative evidence.

19 During the trial materials have been shown to
20 you to help explain testimony or other evidence in the
21 case. Some of these materials have been admitted into
22 evidence, and you will be able to review them during
23 your deliberations.

24 Other materials have been also been shown to
25 you during the trial, but they have not been admitted

1 into evidence. You will not be able to use them during
2 your deliberations because they are not, themselves,
3 evidence or proof of any facts. You may, however,
4 consider the testimony given in connection with those
5 materials.

6 Mr. Simons, do you have closing argument on
7 behalf of the Plaintiff?

8 MR. SIMONS: Thank you, your Honor. I do.

9

10 CLOSING ARGUMENT BY MR. SIMONS

11 MR. SIMONS: And, your Honor, and counsel,
12 Ladies and Gentlemen, I would begin by thanking you, not
13 just for your jury service, but also for the attention
14 that you have given to this case.

15 As the Court has noted and we have all noted
16 as the attorneys, the degree of attention that you have
17 paid to the testimony of the evidence in this case is
18 very much appreciated and very much acknowledged.

19 We know jury service is a service. It is a
20 manner in which disputes between two parties may be
21 resolved by a mutual voice of the community. It is a
22 way in which the community can pass on whether or not an
23 individual charged with a crime is guilty or not guilty.
24 It is a service.

25 But occasionally your work as a juror in a

1 civil case is a larger task. It is a task that involves
2 setting standards that will apply, not just to the
3 parties in a given case, but will be heard and followed
4 as a standard by others who know of the verdict.

5 It is a way that the community passes
6 judgment on what is or is not a standard. And the
7 community coming together from many different
8 backgrounds, from many different experiences, speaks
9 with one voice.

10 And in this case there is an opportunity to
11 speak to a very significant issue, and that issue is
12 whether or not the standards that apply to organizations
13 who have activities involving youth together, whether
14 those standards for the prevention of further abuse by a
15 known child sex molester will be applied equally to all.

16 Now, I think the story that we heard really
17 begins in the home of the Kendricks. In the meeting
18 that was held with Elders Abrahamson and Clarke and with
19 Evelyn Kendrick, Jonathan Kendrick and -- or at least
20 some of the time with Andrea Kendrick.

21 What the elders took away from that meeting,
22 according to their own testimony here, was that Kendrick
23 had committed an act of sexual abuse on a child, and he
24 had lied about it to them.

25 Now, it took a little work to get

1 Mr. Abrahamson to say, "Yeah, Kendrick lied."

2 I think it took me asking three times. And
3 he said, "Well, it wasn't a complete story."

4 It was a little misinformation.

5 I said, "That's a lie?"

6 "Yes."

7 They knew he lied about it. And the fact it
8 took so much effort to get Mr. Abrahamson to acknowledge
9 that to me says there is still an element of protecting
10 Mr. Kendrick in the approach that the elders have to
11 this case.

12 If we are to follow what Evelyn and Andrea
13 Kendrick told us -- and I really do not see any reason
14 that their testimony would not be credible -- there was
15 a lot more that was said during that meeting.

16 The elders were told that it was skin-to-skin
17 contact and included inside of pants, that Andrea had
18 been given some Vicodin and was under the influence of
19 some drug at the time that the abuse occurred, that the
20 Evelyn and Andrea -- that the Kendricks had come to the
21 elders because that was the Jehovah's Witnesses ways,
22 when there is a problem you go to the elders, and that's
23 what they did.

24 And they went to the elders not because they
25 wanted this to be private. In fact, they said just the

1 opposite, they did not want this to be private.

2 "We wanted to be saved."

3 And they brought the elders in to help them
4 find safety when they were not able to deal with
5 Mr. Kendrick on their own for sometime after the act of
6 abuse occurred.

7 And the elders, if you believe Evelyn
8 Kendrick -- and, again, why would she make this up --
9 did not provide them safety.

10 In fact, it was a few weeks later there was
11 another incident, and the police were called and
12 eventually, as you heard from Officer Davila, there were
13 criminal charges brought.

14 And not only were there not elements of
15 safety provided, but Evelyn was told, "This is your
16 fault because you did not have enough sexual
17 relationships with Jonathan Kendrick, and that's why
18 this happened."

19 And that is such a profound misunderstanding
20 of what child abuse involves.

21 So the elders reported back to New York, and
22 they received their instructions. And we know what they
23 did to this person who they knew had abused the child
24 and lied about it.

25 They took away his title of ministerial

1 servant and they didn't let him pass out books at the
2 Kingdom Hall.

3 And if you believe the defense, that is a
4 severe and harsh punishment for committing child sexual
5 abuse and lying about it.

6 But let's look a little closer at what they
7 didn't do. They didn't tell anyone. They didn't tell
8 the parents, the first line of defense, they didn't give
9 any ammunition to them.

10 And I'm not saying they should be gossipping,
11 you know, "Oh, you know what Jonathan did to Andrea,"
12 you know, it's not that kind of telling.

13 It's, "Jonathan Kendrick has been removed as
14 a ministerial servant because he sexually abused a
15 child."

16 That is all they had to say and every would
17 know.

18 Not a single woman in the congregation was
19 aware of his abuse of Andrea.

20 Not a single mother was aware of the abuse of
21 Andrea.

22 And so they didn't tell anyone. And that's
23 not all they didn't do. They didn't restrict Mr.
24 Kendrick in any way that was meaningful.

25 He is still a minister.

1 He is still Brother Kendrick.

2 He is still a member in good standing of the
3 congregation.

4 He is still sitting or sleeping in the back
5 row or whatever it was of the Kingdom Hall there with
6 children and adults all present.

7 And he is still a baptized publisher going
8 out in the neighborhoods and collecting and spreading
9 the Jehovah's Witnesses message.

10 He is doing all of that with children.

11 Now, we heard from Mr. Shuster that there is
12 a policy. "No, he would never have been allowed to go
13 out into field service with a child. That's our
14 policy."

15 And when I say, "Okay, well, can I see it?"

16 No policy produced.

17 Is there really a policy? We heard from all
18 the elders, of course, that would never happen. But we
19 heard from Carolyn Martinez differently.

20 And again Carolyn Martinez drove up here from
21 San Diego to testify in a case involving a brat who she
22 didn't even like when she was a kid, and when she was
23 married to Candace's father she really didn't have much
24 a relationship with Candace, and she hasn't talked to
25 her now in 13, 14 years, and she came up here to tell us

1 what she saw, because it's so important that we hear the
2 truth from those who are willing to speak it.

3 Now, let's look at what else they didn't do.
4 They didn't monitor Mr. Kendrick. They said they did.
5 "Oh, we kept an eye on him. We were watching." We
6 heard that from the elders. But they never discussed
7 Mr. Kendrick, again, in another elder's meeting. Never
8 came up again.

9 Elders come, elders go, like everyone else,
10 you can change the congregation with new elders and have
11 no information about Mr. Kendrick.

12 They said, "Well, we kept an eye on him."

13 But no one had the specific responsibility to
14 monitor Mr. Kendrick. And we know that when no one has
15 the responsibility and everyone just kind of says,
16 "Well, we will do it," that no one does it. No one took
17 that responsibility. No one was assigned that
18 responsibility.

19 We know that they didn't actually get very
20 involved in Mr. Kendrick's life because we heard a
21 little bit about where that was going. They weren't
22 monitoring Mr. Kendrick and helping him with the
23 problems that he was having, and getting more an idea
24 where he was at and what was going on in his life.

25 They weren't monitoring in any reasonable

1 way.

2 So we have a lot of things that were not done
3 in this case.

4 When we talk about the standards, which I'm
5 going to get to in a moment and which his Honor just
6 read to you, that is important testimony. That is
7 important evidence to keep in mind.

8 Now, we know because it is undisputed that
9 the elders are all the agents of Watchtower. They are
10 agents of Fremont because they are the managers of the
11 Fremont Jehovah's Witnesses corporation. They are also
12 agents -- remember I read that first day after
13 Mr. Abrahamson testified that request for admission,
14 that is just a way the instructions cover it for you.
15 That's a way of showing this is not disputed, that these
16 elders are agents of Watchtower Bible and Tract Society
17 of New York when they're acting as elders, so we know
18 that.

19 We know that the elders must follow all of
20 the policies and instructions provided to them from the
21 Service Department in New York. They have no ability to
22 deviate from that.

23 And we know that the governing body, seven
24 elders in New York, is the group that sets each and
25 every policy for Watchtower; and therefore for every

1 elder and every congregation throughout the United
2 States. See, this is the Service Department.

3 And I would like to show you a couple of
4 quick clips, because Mr. Shuster, remember we had his
5 video deposition, he testified as the Watchtower. He
6 was the designated person at the Watchtower, so this is
7 corporate testimony from Watchtower.

8 And Mr. Shuster told us that the body of
9 Elder letters, including the policy letter we are going
10 to talk about, that came from the governing body.

11 (Whereupon, the video recording was played)

12 BY MR. SIMONS:

13 Q. Was this body of elder letter approved by
14 either the committee or the entire governing body prior
15 to its circulation?

16 A. Yes.

17 (Whereupon, the video recording was stopped)

18 MR. SIMONS: And we were told that all the
19 things we learned about in the Awake Magazines
20 were approved by the governing body.

21 (Whereupon, the video recording was played)

22 BY MR. SIMONS:

23 Q. Were all of the members of the then existing
24 governing body who would review articles from Awake or
25 Watchtower?

1 A. I can't say for certainty. But what I do say
2 for certainty is that some members of the governing body
3 would review it, yes.

4 (Whereupon, the video recording was stopped)

5 MR. SIMONS: And in addition, we were told
6 that the Service Department supervisors are the
7 governing body.

8 (Whereupon, the video recording was played)

9 BY MR. SIMONS:

10 Q. And how many members of the Service Committee
11 are members of the governing body?

12 A. All of them.

13 (Whereupon, the video recording was stopped)

14 MR. SIMONS: So it is the policies of the
15 governing body that we are here to discuss.

16 I want to bring up Candace Conti for a moment
17 to talk about why we have this lawsuit.

18 Candace has emerged from her personal
19 nightmare of years to say that the policy that keeps
20 secret known child molesters in the congregations is
21 wrong and needs to be changed.

22 She told that to Cliff Williams in the three
23 conversations you heard about, one on the phone, one a
24 couple of months later on the phone, and an in-person
25 meeting.

1 You notice Mr. Williams never reported
2 anything to New York about the sexual abuse that Candace
3 reported.

4 But she told him, and she told the elders the
5 same thing when she met with them in Fremont, that this
6 is about protecting children so that what happened to
7 her doesn't happen to someone else.

8 That's why we are here.

9 Now, the particular policy that we are
10 concerned with is Plaintiff's Exhibit 1. And I just
11 want to go through it again a little bit now that we
12 have heard so much about it.

13 Let's take another look.

14 First of all, I want to note the date, July
15 1, 1989.

16 We heard from Dr. Salter that that's the time
17 frame when the public was beginning to be aware of
18 lawsuits against, primarily the Catholic Church. She
19 had that San Jose Mercury news article that she showed
20 us.

21 That people were beginning to bring lawsuits
22 against the church, Louisiana and other places, for
23 hiding sexual molesters and allowing them to offend
24 again.

25 So that was in the mind of everyone who ran

1 these major religious organizations in 1989. That's the
2 timing of it. So if we look at this first paragraph, it
3 says:

4 "Dear Brothers, we are writing to
5 help you regarding the handling of your duties
6 that involve legal issues or questions."

7 This is about legal matters. This is about
8 legal issues. This is not a religious policy memo.

9 Let's look down a little further.

10 Now the wording is:

11 "The elders must be careful not to divulge
12 information about personal matters."

13 That's an interesting set of words, that's a
14 very particular set of words. It doesn't say "privilege
15 matters." It says "information about personal matters."

16 And it says:

17 "Improper use of the tongue can
18 result in serious legal problems for the
19 individual congregation and even the Society."

20 Now, we were told we wouldn't want to be sued
21 by a convicted child molester who accused us of
22 defamation. But, in fact, the only lawsuits of any kind
23 involving this issue that we have heard any evidence
24 about are sexual abuse lawsuits by children who were
25 molested within these institutions. That's the only

1 lawsuits that were out there then. That's the only
2 lawsuits that are out there now.

3 And will the persons be quick to resort to
4 lawsuits if they feel their rights have been violated.

5 Well, again, this is about lawsuits.

6 Let's go a little further. We will go up to
7 the top.

8 "The spirit of the world has
9 sensitized people to their legal rights and
10 what may happen is people may initiate
11 lawsuits against the society."

12 Further:

13 "If the elders fail to follow the Society's
14 directions --"

15 In other words, that all the instructions are
16 coming from the top.

17 -- in handling confidential matters, such
18 mistakes could result in successful litigation by those
19 offended, substantial money damages."

20 This is about lawsuits. And the only
21 lawsuits we have heard about are child sex abuse
22 lawsuits.

23 Let's go to the next page.

24 Now we heard that child abuse is just a very
25 small part of this policy letter. The first section

1 involves their internal processes. That's not our
2 concern.

3 The second section involves child abuse. So
4 there is one subject matter, specific subject matter
5 that it is about. Child abuse.

6 The third subject matter is search warrants.

7 Again, that's a process. That's not subject
8 matter.

9 "No elder should ever consent to the
10 church of Kingdom Hall or any other place
11 where confidential records are stored."

12 And then we go down to the next section about
13 crimes and criminal investigations. Well, child sex
14 abuse is a crime. It certainly pertains to that. We
15 don't have a separate section on any other crime.

16 Let's go to the next page.

17 "When servants and publishers move" is the
18 next section. All right.

19 Well, Jonathan Kendrick moved, but that's not
20 a section that talks about a different subject matter.
21 So far the only specific subject matter that we have
22 talked about is child abuse.

23 And then we have F:

24 "When the lawsuits are threatened."

25 I think I might have mentioned this is about

1 lawsuits.

2 Let's go to the next page.

3 "Child custody."

4 All right, we are still dealing with
5 children, with issues of child custody that come up.

6 And then we get down to "Points to remember."

7 So now we talk about all the specific subject
8 matters that are specified and drawn out and emphasized
9 in this policy letter.

10 It's about child abuse.

11 "Confidential information about the private
12 lives of others."

13 There's that strange phrasing again.

14 "Unauthorized disclosure, confidential
15 information can result in costly lawsuits."

16 That's because people like Candace Conti will
17 learn that Jonathan Kendrick was known to have molested
18 before.

19 And let's go from there to the signature
20 page.

21 The signature, as we pointed out earlier, is
22 the corporate signature. No individual signs it.

23 And then it says this:

24 "Please do not make any copies of
25 this letter, nor should it be read by others.

1 It should be kept in the congregation's
2 confidential files."

3 So I guess the question will be: If this is
4 a plain old memo about you have to follow the rules
5 about confessions, then why is this a top secret memo
6 that shouldn't be copied or disclosed to anyone, it
7 should remain only in the files.

8 What is top secret about keeping confessions
9 private?

10 Let's take that down. Thank you.

11 Now, his Honor read an instruction on the
12 issue of privilege. I want to go back over it because
13 it's going to make your job a lot easier.

14 There is a lot of confusing things that we
15 have had to deal with so the Court has decided to
16 clarify this for us.

17 You heard the word "privilege" brought up.
18 Whether a particular communication is privileged is a
19 decision for the Court. That is his Honor's job. We
20 don't decide whether a communication is privileged or
21 not.

22 So you get to decide this case based solely
23 upon the evidence presented and the instructions given
24 without any consideration whatsoever as to whether a
25 communication was privileged. That has all been

1 decided. That is not your matter to discuss.

2 The whole privilege issue is not part of what
3 your deliberations are. You are to decide the case
4 based on the evidence you heard in court and the
5 exhibits that will be sent to you.

6 There is a second part to this, and I'll just
7 detour for you, if I might. And that's about the
8 question about the laws are mandated and reporting and
9 there is questions back and forth about, and you have
10 heard two experts testify about that.

11 Your deliberations are to be based solely
12 upon the evidence presented and the instructions given
13 without any consideration whatsoever as to whether there
14 was any statutory duty to report an incident of
15 suspected child abuse.

16 That, again, has nothing to do with what the
17 standards are of care and negligence issues.

18 To put it another way, there might be a
19 policy that a youth group adopts that says an adult and
20 child cannot be together behind a closed door. That's a
21 standard to prevent child abuse.

22 But there is no law that says a child and
23 adult can't be together behind a closed door. It's a
24 different set of thinking.

25 So we are dealing with the evidence of

1 standards of care, and the instructions -- we will go
2 over them in a minute -- that the Court has given us.

3 Thank you.

4 Now, we have sexual abuse in this case. We
5 have an abuse of the concept of what is confidential.
6 And we have something more.

7 I would like to look at now, if we could,
8 Exhibit 65, which is also 049. This is one of the Awake
9 Magazines that we have seen so much of.

10 And this quotation, I highlighted it, because
11 Jesus used children as an example of humble innocence.
12 Children are vulnerable to abuse by a scheming adult
13 whom they know and trust. The congregation has a
14 responsibility before Jehovah to protect its children.

15 And the biblical citation is to Matthew. And
16 that's interesting, because that's the quote that I
17 think every one of us, whether we were religious or not
18 has heard, and that is:

19 "Who shall offend against the little ones --"
20 Who shall harm a child.

21 "-- it is better that he have a millstone
22 hung around his neck and be sunk in the depths of the
23 deepest sea."

24 That's not quite the same as keeping it quiet
25 and saying he can't pass out the books.

1 Let's change subjects for a minute and talk
2 about Candace for a minute. Every healthcare provider
3 who testified basically said exactly the same thing
4 about Candace Conti.

5 And I want to start with Dr. Afruma who saw
6 her one time when she was 16. She doesn't remember it.
7 But we have the record. That survived.

8 And in that record we see, first of all, up
9 at the top, that "Please call her back. The
10 psychiatrist is saying that can't see her until
11 October."

12 She is having a hard time getting in. So
13 let's scroll down.

14 So she sees Dr. Afruma. And Dr. Afruma notes
15 that she's got a low attention span. She's depressed.
16 She's crying a lot. She's complaining of depression.
17 And she discloses to Dr. Afruma sexual abuse from ages
18 nine to question 13.

19 Dr. Afruma does not discuss it further for
20 reasons that Dr. Ponton talked about.

21 Let's go to the next page.

22 We see in this note the Assessment, Question,
23 PTSD. Depression, insomnia. She is encouraged to talk
24 to a psychiatrist or counselor and consider therapy.

25 Dr. Afruma mentions how about alcohol or

1 drugs and even prescription medications can be used as a
2 way to numb the experiences, and that it is best to have
3 a diagnosis and treatment plan.

4 All of that was set out when Candace was 16.
5 And this is before she is using. This is before she has
6 turned to self-medication.

7 And we know that because one of the pages in
8 Exhibit 55 is a drug test. There it is. And every drug
9 is tested for negative, negative, negative, negative,
10 negative.

11 She is not able to get into a psychiatrist
12 and soon thereafter she is, as she said, running from
13 the post-traumatic stress and running from the
14 nightmares into other means of self-medicating. So
15 that's Dr. Afruma.

16 Let's look at what Dr. Walton who is treating
17 her now down at Kaiser said.

18 (Whereupon, the video recording was played)

19 A. So addiction, post-traumatic stress disorder,
20 which is chronic, and drug abuse at (unintelligible)

21 (Whereupon, the video recording was stopped)

22 MR. SIMONS: And --

23 (Whereupon, the video recording was played)

24 A. PTSD, to account her story and to relive it
25 as it has happened. And there is inherent emotional

1 consequences to reliving a story over and over again.

2 (Whereupon, the video recording was stopped)

3 MR. SIMONS: And.

4 (Whereupon, the video recording was played)

5 A. PTSD can go into remission, but there is no
6 cure.

7 (Whereupon, the video recording was stopped)

8 MR. SIMONS: And one more.

9 (Whereupon, the video recording was played)

10 A. Maybe a psychotic disorder and in order to
11 feel normal they will turn to alcohol and drugs until
12 they're diagnosed or treated for PTSD and anxiety or
13 depression and given (unintelligible).

14 (Whereupon, the video recording was stopped)

15 MR. SIMONS: Then let's refresh ourselves.

16 This is what Dr. Laura Fraser said. She said
17 she saw Candace when she was 12 and 13. And 14 years
18 later, now down in San Diego, still remembers her.

19 Let's see what Dr. Fraser said.

20 (Whereupon, the video recording was played)

21 A. She felt like a child who had been sexual
22 abused.

23 (Whereupon, the video recording was stopped)

24 MR. SIMONS: And most significantly because
25 this was actually in response to a question that my

1 colleague asked.

2 (Whereupon, the video recording was played)

3 BY MR. SCHNACK:

4 Q. And yet you still don't find it surprising
5 that Candace would not have told you about her own
6 sexual abuse?

7 A. I absolutely do not find it surprising.
8 There was no safety for this child. Her parents -- we
9 just discussed so many different things that occurred
10 for this child.

11 She could not have longer than 20 minutes of
12 safety with a parent.

13 There was no way she could disrupt -- I mean,
14 there wasn't any safety for her. It had been so
15 disruptive to her.

16 She was still rescuing both parents. What
17 would they say if she disclosed that this had happened?
18 How -- could she stay connected to her father?

19 Would her mother say, "Well, my abuse is
20 worse than yours?"

21 There was a myriad of possibilities. This
22 kid had no safety.

23 (Whereupon, the video recording was stopped)

24 MR. SIMONS: And lastly we heard from
25 Dr. Ponton. Dr. Ponton is a professor who has been a

1 pioneer in sexual abuse trauma. She is a professor at
2 one of the leading medical universities in the world,
3 and she had three very simple things to offer us.

4 One: She said, you know, we know we are on
5 the right diagnosis with PTSD because the patient is
6 responding to the treatment. If you are treating her
7 for the wrong thing and with the wrong vehicles and the
8 wrong therapies and the wrong medications, she's not
9 going to respond.

10 So the diagnosis of PTSD is confirmed because
11 the medication and treatment work and she responds, and
12 Candace is doing better, as we heard, and as we are all
13 glad to hear.

14 She told us secondly that Candace met all the
15 criteria from the DSM, the big book that she had, the
16 diagnostic and statistical manual that mental healthcare
17 providers use in their evaluation of patients, and has
18 all kinds of stuff in it, included in that PTSD.

19 She mentioned that, and she gave her a test
20 to conclude that. And we heard from Dr. Ponton that
21 Kaiser has been doing a great job but what this young
22 woman really needs is a program of intensive therapy.

23 She put the bill on it of \$160,000, she needs
24 to be able to do more than what they can do and the
25 kinds of programs that she's been able to participate

1 in.

2 So all of the healthcare providers agree.

3 Now, we heard from Dr. Salter that she
4 disagreed with Dr. Williams who examined Candace on
5 behalf of the defense.

6 And Dr. Williams, Candace told -- she went
7 down there and told him, "Yeah, I was abused in field
8 service," because he asked.

9 And Dr. Salter said she didn't agree with his
10 testing methods.

11 And Dr. Williams said, "Well, he will be here
12 to explain them."

13 But we don't have any Dr. Williams. He
14 wasn't called to testify.

15 And so don't we think that if there was a
16 single thing that any of the healthcare providers said
17 that could be reasonably disputed in any way, that we
18 would have heard some professional testimony from a
19 mental healthcare expert of some kind to the contrary?
20 But we didn't.

21 So what do we know? Well, we know Candace
22 was abused in serial fashion in a somewhat very
23 intrusive manner.

24 We know that she suffered mightily and
25 relived it over and over, because she couldn't tell

1 anybody, it was trapped inside of her as a
2 nine-year-old, as a ten-year-old, as an 11-year-old, as
3 a 12-year-old, all the way up to 16 and beyond,
4 nightmares, reliving it over and over again, no one to
5 be able to share it with.

6 In the nightmares over and over again. Even
7 when she might just be awake and see his truck in
8 Fremont until everybody moved away. It is that feeling
9 and reliving that experience of being crushed by this
10 monster.

11 And so we know as well from Mr. Lewis about
12 Child Sexual Abuse Accommodation Syndrome, and that's
13 that kids are not reliable in the number of times when
14 they say something happened, because they are reliving
15 it over and over again inside them, and they perceive
16 things differently, and they are not keeping a diary,
17 they're not keeping a calendar.

18 Mr. Lewis is not just a police officer. I
19 mean, he's the state president of the Child Sexual Abuse
20 Protection Professional Association.

21 He's the state president of all the mental
22 healthcare and child protection. They get together and
23 try to address the issues of child abuse. And so we
24 know that.

25 And yet, with that knowledge, what we still

1 have by the defense in this case is a fixation on the
2 number of times it occurred.

3 And I want to show you some of the
4 cross-examination of Candace.

5 This is by my colleague Mr. Schnack.

6 (The following was read by Mr. Simons)

7 "Question: But your testimony is it
8 occurred several times a month, perhaps over a
9 two or three-year period. Correct?"

10 Answer: That's what it feels like.

11 Question: What do you mean when you
12 say that's what it feels like?

13 Answer: Well, it happened over and
14 over again and didn't stop.

15 Question: It sounds like you are not
16 certain on the time frame.

17 Answer: I think that's fair.

18 Question: So you are saying it could
19 have happened five or ten times and that's it.
20 That's it."

21 (end of reading by Mr. Simons)

22 MR. SIMONS: See, here's the thing. If it
23 happened once, that's too many. That's what they don't
24 get. If a perpetrator who has already molested one
25 child in the a small congregation gets to molest a

1 second, that is unacceptable.

2 There is no way to erase the harm that is
3 done to a child who is abused.

4 I think we have all had the common experience
5 of being kids in this age group, and maybe it was a big
6 room, the auditorium at the elementary school or
7 something we would go to and maybe we got to get up on
8 stage or whatever and it seemed like such a big room.

9 And maybe we got a tree that we would climb
10 and it just so far up to the top of that branch.

11 And maybe it was a new dress or pair of shoes
12 we got at the time that made us feel so grown up. And
13 the shoes are so big they almost come off our feet.

14 Maybe it was a baseball bat that we got as a
15 kid.

16 You know, it seemed like a telephone pole to
17 us at the time, but when you go back and you look at
18 these things as an adult, you know, it's a 27-inch bat.
19 The dress, the kids shoes, the trees, there is the
20 branch. The room is not that big.

21 This is how children perceive things, and
22 this is how Candace perceives things because she is
23 frozen in time as a nine-year-old and ten-year-old
24 experiencing and re-experiencing and re-experiencing
25 abuse by Kendrick. It doesn't matter if it happened

1 only -- only -- only ten times.

2 Now, I would like to look at the jury verdict
3 form that we are going to answer because this is
4 important.

5 The first question -- can we blowup question
6 one.

7 Did Jonathan Kendrick sexually batter Candace
8 Conti?

9 That is under the more likely to be true than
10 not true. And this is where you can consider some of
11 the other stuff that you heard, the black bra for
12 Brianna, the rollerblading, all that stuff, the
13 pictures, all that stuff can come in on this particular
14 question, I think that is more likely than not that he
15 did.

16 So Question 2 is: Did it cause harm?

17 We know that sexual abuse of a child causes
18 harm.

19 And let's go to Question 3. And Question 3
20 is a long one. And it breaks down whether or not Mr.
21 Abrahamson or Mr. Clarke as the agents of Watchtower and
22 North Fremont were negligent.

23 And then separately, were the elders in the
24 Service Department in New York negligent?

25 So to figure out the answer to this question,

1 you have to look at the instruction that says:

2 What is the obligation here?

3 Did they violate their obligation?

4 Well, let's look at the instruction that
5 addresses that.

6 So the defendants, Watchtower and Fremont,
7 had a duty to take reasonable protective measures --

8 Reasonable protective measures.

9 -- to protect Candace Conti from the risk of
10 sexual abuse by the Fremont Congregation of Jehovah's
11 Witnesses North Unit member Jonathan Kendrick.

12 In determining whether or not reasonable
13 protective measures were taken you may consider the
14 following:

15 The presence or absence of any warning.

16 We talked about that.

17 Whether or not any educational programs were
18 made available to Plaintiff or her parents for the
19 purpose of sexual abuse education and prevention.

20 Two parts: Sexual abuse education and
21 prevention.

22 And I make that distinction because of the
23 testimony that Dr. Applewhite gave on behalf of the
24 defense in which, we kind of heard, at least to me, that
25 she was saying that their sexual abuse education and

1 prevention programs were exceptional.

2 And so I asked her in the video about that.

3 And here's what she said.

4 (Whereupon, the video recording was played)

5 BY MR. SIMONS:

6 Q. You talked about the exceptional child abuse
7 prevention program that, in your opinion, the Jehovah's
8 Witnesses had in place.

9 Can you tell me whether or not you agree that
10 whether a program is effective or not in child sex abuse
11 prevention and education is best evaluated by whether it
12 has reduced or prevented child sexual abuse occurring
13 within the institution?

14 A. Well, let me begin by saying that what I said
15 was that it was an excellent parent education program,
16 which is different than a sexual abuse prevention
17 program.

18 (Whereupon, the video recording was stopped)

19 MR. SIMONS: She never said that they had a
20 reasonable sexual abuse prevention program. It got
21 right by me, but she made it clear. And we went through
22 the numbers that she was paid. If you did the math, it
23 turned out to be \$60,000 for the two cases that she
24 worked on this year, and we couldn't get her to say that
25 the child sex abuse prevention program met the

1 standards. She wouldn't say it.

2 When I asked her about it and lumped it
3 together, she said, "That's not what I said."

4 So we don't have any evidence that says their
5 prevention program was up to standard.

6 Can we go back to the instruction?

7 Lastly, such other facts and circumstances as
8 contained in the record. And that's where the so-called
9 monitoring comes in.

10 Did they really watch this guy like a hawk?
11 Or is that something that we hear now in the courtroom?

12 There is the obligation, I think because that
13 obligation was not met, reasonable measures were not
14 taken, that all of the elders, the ones in the field
15 carrying out the instructions and the ones in the
16 Service Department giving the instructions were
17 negligent.

18 And it comes from this policy of keeping it
19 secret.

20 Okay. Let's go a little further down the
21 verdict form.

22 Next question is: Was that a cause of
23 Candace's harm?

24 Well, to prevent a known sexual molester
25 within the congregation from being able to figure out

1 some way to get to the kids.

2 So that answer I would submit is yes.

3 Then we go to Number 5. And this is the
4 question of damages. In order to answer this, I'm going
5 to come back to this in a minute because there is two
6 more questions that still pertain to this whole fault
7 and responsibility question, responsibility to the
8 organization.

9 So let's skip down, first of all, to Number
10 7. The very last question is an important one.

11 And that's this question: Do you find by
12 clear and convincing evidence, in other words, that's
13 different than just more likely to be true or not true.
14 It has to be clear to you. You have to be convinced
15 that the negligent conduct of Watchtower that was a
16 substantial factor, was engaged in with malice by a
17 managing agent of Watchtower.

18 Now, the managing agents are the governing
19 body. They are the ones that give all the instructions.
20 And that part isn't the hard part.

21 Malice. What does malice mean? Does it mean
22 somebody in New York who never met her meant to
23 specifically harm Candace Conti? Does it mean that?

24 No. Here is what it means:

25 Malice means they acted with intent to cause

1 injury to Candace.

2 They didn't intend to injure Candace.

3 Or -- or that the conduct was despicable and
4 was done with a willful and knowing disregard of the
5 rights and safety of another.

6 A person acts with knowing disregard when he
7 or she is aware of the probable dangerous consequenced
8 and conduct and deliberately fails to avoid those
9 consequences.

10 So now the question becomes: Did the
11 governing body set policies where the elders had to
12 knowingly disregard the probable consequences of their
13 conduct?

14 Did the governing body set policies knowing
15 the probable dangerous consequences of hiding known
16 sexual molesters within the congregation?

17 And I want to show you some of the Awake
18 Magazine articles, which are relative to that point.

19 Let's go first to Exhibit 59, which is 017.

20 "What did they know?

21 Well, in 1985 they knew, "Who would molest a
22 child? Most parents would answer this question wrong.

23 Parents, the first line of defense? Don't
24 know.

25 They knew that religious people from

1 religious church groups would molest.

2 Let's look then at Exhibit Number 64/037:

3 They knew that fostering a hush-hush attitude
4 about it, silence gives safe haven to abusers, not to
5 victims.

6 And they knew it was a general conspiracy of
7 silence that a lot of gross child abuse to persist among
8 Catholics for decades.

9 They knew this before Jonathan Kendrick was
10 identified positively as a child molester.

11 Let's look at Number 65/049.

12 Experience has shown that such an adult may
13 well molest other children. Not everyone does, but many
14 do.

15 And so they knew that Jonathan Kendrick
16 was at risk to molest another. They knew that
17 individuals who are identified as molesters in their
18 congregation that they were keeping secret were at risk
19 to molest others.

20 That is deliberate and indifference to the
21 safety of other children in the congregations, and that
22 is despicable.

23 And so your answer to Question 7, I believe,
24 should be yes.

25 Now, let's go back up to Question 6 for a

1 moment.

2 You are going to be asked to assign
3 percentages of fault between Watchtower, Kendrick and
4 North Congregation.

5 So Kendrick, he's the abuser. I think
6 everybody should agree that he gets the largest share.
7 He is the molester.

8 And so Watchtower. Well, Watchtower is
9 certainly complicit, because while Kendrick may be the
10 vicious dog, Watchtower knew he was vicious and let him
11 run around anyway.

12 And then we have North Congregation. The
13 elders in North Congregation are following the
14 instructions and policies from Watchtower.

15 So in my view, Kendrick gets 51 percent,
16 Watchtower New York forty percent, Fremont, single
17 digits, nine percent.

18 The real responsibility here lies with those
19 who are the most culpable, and they are at the top of
20 your form.

21 Now let's go back to Question Number 5,
22 damages.

23 Again, the question of how to determine
24 damages is an expression of the community given by a
25 consensus of a jury. It is a statement of values. How

1 do you value the losses and harm that have been
2 experienced by Candace Conti from her abuse?

3 How do we say through a number what is
4 important to us in the protection of children?

5 And we do that by assigning a value to a
6 child who has lost the things that you lose when you are
7 abused as a kid.

8 She has lost those things of innocence, a
9 healthy relationship and all the things we heard about.
10 She's lost sleep, she's lost happiness, she's lost the
11 ability to have friends. She lived in isolation and
12 depression.

13 She has lost the sanctity of her own body,
14 both from the abuse itself and the from the toxic
15 substances that she filled it with.

16 These are all losses. They are the loss of
17 the integrity of a young child for a sustained period of
18 time. That's the harm we are measuring.

19 So if we value having our children be free
20 from this kind of harm, if that is an important
21 statement for us to make, then the number should reflect
22 that.

23 And yes, that would be a large number because
24 this is a large issue of great importance in our values.
25 And so we treat harm to a child of this nature

1 seriously. And that number has to reflect it in this
2 case.

3 And secondly, the number has to reflect all
4 the different permutations and ramifications of what
5 this young woman has gone through.

6 Can we see the instruction?

7 We have to consider, not just her physical
8 pain, but mental suffering, depression, anxiety,
9 humiliation and emotional distress. All of these
10 things.

11 And we have to consider over four separate
12 time periods. While the abuse is occurring the year,
13 year-and-a-half, and the quiet years the years when she
14 is 11 and 12 and reliving it, no one to tell up until
15 she is 16, 17, the time period when she is in turmoil
16 and flight from herself and from her experience, drug
17 using, and then the rest of her life starting almost two
18 years ago when she went sober.

19 And you have to consider all four of those
20 time periods. And each one has a little bit different
21 ramifications and each has a little bit different
22 significance.

23 And I would say that, no, you might say that
24 the actual abuse itself and experience of child abuse is
25 worth a hundred thousand dollars.

1 But I don't think that would fairly reflect
2 how serious child sexual abuse is and what our values
3 are on that issue.

4 We could say that's worth a million dollars.
5 You could say it is worth \$10 million.

6 But I think we have to find something that
7 reasonably reflects how our society values it. I would
8 submit that should be a million dollars.

9 And then the second period of time when she
10 is in turmoil, and the kid that Dr. Fraser told us
11 about. I would submit another million dollars for that
12 time period and another million dollars for the years of
13 her life that were lost and will never become hers
14 again.

15 And lastly, there is the rest of her life.
16 Over 50 years. She is 26. PTSD, you can treat it, but
17 you can't cure it. And she is at risk the rest of her
18 life.

19 She is doing well now, but we are still
20 facing nightmares and the long tragedy is not over. The
21 long tragedy will go for many a year to come. And the
22 long tragedy was caused by the organization to which she
23 committed herself to be the best Jehovah's Witness that
24 she could be. She committed herself to that and the
25 organization betrayed her into the hands of Jonathan

1 Kendrick.

2 So for that last period of time for the rest
3 of her life, I would say you should submit a figure of
4 \$2 million to \$3 million. That's a lot of money. I
5 know it. And it's an important statement to make.

6 And so again, I appreciate the attention that
7 each of you have given throughout the trial. I
8 appreciate you listening to me for such a long time, and
9 I appreciate your service in this case. Thank you.

10 THE COURT: Let's take a 15-minute break and
11 come back at 11:25.

12 (Break taken).

13 THE COURT: All right. To the jury, defense
14 counsel will make their closing argument, and then after
15 that we will swear Mr. Martin to be your steward. We
16 have ordered lunch for all, paid for by counsel, and all
17 twelve jurors and the three alternates.

18 Now I'm going to deal with the three
19 alternates independently, once the deliberation has
20 commenced.

21 I think it was set up so you all can have
22 lunch together, including the alternates, but I need an
23 article of faith from you that you will not talk about
24 the case while you're having a simple lunch together.

25 To the alternates, the members of the jury,

1 can I have that article of faith with you that you won't
2 start deliberating over sandwiches?

3 I don't think that's going to take very long.
4 We have already ordered them.

5 Then the twelve jurors will commence
6 deliberations after a short lunch, and you will continue
7 to deliberate until you reach a verdict. And I have
8 already given you the deliberation instructions and
9 whatnot.

10 But I wanted to highlight for you that,
11 apparently -- it is a very hot day outside. As a matter
12 of fact, I do not know that, but I do have
13 circumstantial evidence about it, so...

14 But we decided to do that to accommodate you,
15 to take care of your lunch, and perhaps keep you out of
16 the heat.

17 And having said that, Mr. McCabe, you have a
18 closing argument.

19 MR. McCABE: Yes, sir, I do, your Honor.
20 Thank you.

21

22 CLOSING ARGUMENT BY MR. McCABE

23 MR. McCABE: May it please the Court,
24 counsel, members of the jury, thank you very much for
25 your, really your most valuable possession, which is

1 your time.

2 And you are giving it to us maybe not
3 entirely freely, but we appreciate that you have been
4 here. And I think the judge commented and Mr. Simons
5 commented you have been a very attentive jury. And we
6 know it is not easy to have your lives disrupted like
7 this, to come into court and take part of this process,
8 but for our system of justice to work, it is essential
9 you do what you do, and we thank you for it. We can't
10 thank you enough for it.

11 Like I said in my opening remarks, this is an
12 important case. It's important for Mrs. Conti who has
13 been here and bared her soul, and told through medical
14 records, and told you about intimate details of her life
15 and her early upbringing, which was rough, to say the
16 least.

17 But on every case there is two sides. And on
18 the other side, my clients are represented here by Mr.
19 Abrahamson, Mr. Clarke and Mr. Lamerdin, the Fremont
20 Congregation of Jehovah's Witnesses.

21 And I think it is an important case to them
22 because their dedication and devotion, not only their
23 faith, but to what they do in their congregation is on
24 trial here.

25 I know we talked a little bit about during

1 the -- we were going through the finishing touches of
2 the voir dire process. I asked you if you all were
3 nervous, and I got a lot of head nods. It is not easy
4 to ask questions to a room full of strangers, but we
5 appreciate that you cooperated. I think we have a very
6 good jury here.

7 Hopefully you are not nervous anymore. But I
8 still am, because I represent some decent people. And I
9 think this is a very important case for them.

10 It has been hard for them to sit here, too,
11 and hear the claims of things that happened to someone
12 that they cared about, someone that was precious in
13 their congregation when she was a little girl.

14 It was hard for them because they would have
15 never, ever, wanted anything like Ms. Conti described to
16 happen.

17 No one ever wants a child to be abused. No
18 one in the Fremont Congregation, no one in this
19 courtroom would want for any child to ever be abused.
20 And that was certainly true of the members of the
21 congregation that came to testify; Bernice Munoz, her
22 daughter-in-law, Sylvia; Pam Figuerido, and even former
23 members like Carolyn Martinez and Claudia Francis.

24 I think it was kind of the whole feeling that
25 all of us could share and join in with Mr. Shuster's

1 comment, the last witness who testified when he said
2 Jehovah's Witnesses, abhor child abuse. We all abhor
3 it. We hate it.

4 But my clients are here to stand up for the
5 good work they do do in their congregation and say to
6 all of you they didn't allow, they didn't condone, and
7 they didn't cover up and they didn't cause, they didn't
8 turn a blind eye.

9 They didn't perpetrate child abuse or
10 negligently allow it to happen on their watch to Ms.
11 Conti.

12 But I think as Mr. Simons brought out about
13 the standards in the community, this case is not only
14 important to my clients in the congregation and to Ms.
15 Conti, but it is important to groups who deal with
16 families and children on an everyday basis.

17 I think it is also important to our sense of
18 confidentiality and the need that human beings have to
19 go to a counselor or pastor, a priest, a therapist, a
20 lawyer, a doctor, and reveal confidential things about
21 themselves, private things to expose their needs, their
22 fears, their insecurities, sometimes their flaws, maybe
23 even sometimes like in this case a serious, serious sin.

24 So this case is not only important to members
25 of the Fremont Congregation, but I think it is important

1 to members of all congregations, regardless of religious
2 backgrounds.

3 I think it is important to other groups like
4 soccer clubs, the Little League, PTAs, anybody who deals
5 with families, with children.

6 It is important because the allegations here
7 essentially say that an organization, any organization
8 can be held responsible for the sexual abuse committed
9 by a member of that organization, even when the sexual
10 abuse has nothing to do with the organization. It
11 doesn't happen on their property. It doesn't happen
12 while an organization function is going on, and no one
13 from the organization even knows it's happening.

14 And when Ms. Conti and her attorney had to
15 acknowledge that they worked out a deal with Mr.
16 Kendrick not to pay 1 cent for his alleged crime, I
17 submit that we learned what this case is really about.

18 What it is really about is not holding the
19 alleged villain, the monster, accountable, but it is for
20 holding the church accountable for what a villain did
21 that they didn't know about.

22 So the problem with that is, though, it says
23 that an organization, any organization should be held
24 accountable, but Mr. Kendrick, the alleged perpetrator
25 should not, the villain, the monster.

1 Why? Because they made a secret deal that
2 they won't have to pay.

3 So the message is not a good message to send
4 to our community. That there are people like this, that
5 Mr. Kendrick did what he did, did what she claims he
6 did, and strike a deal and cover it over enough to
7 punish and pay for it.

8 Remember what I told you at the beginning of
9 my opening remarks at the beginning of the trial. I
10 told you what this case is not about.

11 And I think that is important for us to
12 recall for just a minute, that inevitably after this
13 case is over, after you have given your verdict, your
14 friends and family are going to say, okay, what have you
15 been doing? What is going on? Tell us about the case.

16 And I think you want to remember, you can
17 tell them very succinctly and positively that this was
18 not a case where a pastor or a member of the clergy
19 abused a child and gained that child's trust and
20 confidence.

21 It is not a case where the abuse happened in
22 the church or in the back room of a church.

23 It is not a case where a pastor or clergy
24 member saw what was going on and turned a blind eye and
25 let it go.

1 It is not a case where the church transferred
2 the molester from one location to another.

3 It is not the kind of case where any of us,
4 friends or relatives, or anyone here in this courtroom
5 have read about in the media.

6 But what it is about is what I'm hear to talk
7 about today and sum it up with your indulgence. I want
8 to tell you what I think the evidence has revealed in
9 this case and what it's really about.

10 And I want to stand up for some decent people
11 who I represent who did not know, have a way of knowing
12 or stopping any of the abuse that Ms. Conti may have
13 suffered.

14 This case is also about our concepts of
15 justice and fairness. In our system, one cannot be
16 responsible for something that they did not know was
17 happening, did not know was occurring, did not cover up,
18 did not cause.

19 What I believe, to review the evidence with
20 you -- I would just like to mention that -- before I do
21 that, the burden of proof, as the judge has instructed
22 you, rests with the Plaintiff. They have that
23 responsibility.

24 And if after weighing all the evidence that
25 you decide the fact is probably true, more likely true

1 than not true, then that is a fact.

2 But if you can't make that decision, then you
3 must decide that the Plaintiff has failed to meet their
4 burden of proof.

5 My clients have no responsibility to produce
6 any evidence in this case. They start off on that level
7 playing field we have talked about, and they don't have
8 any obligation to produce evidence.

9 But they did so. About nine members of the
10 Jehovah's Witnesses testified in this trial. Most of
11 them were called by me to tell you their story and to
12 round out the evidence for your review.

13 So the question is: How do you discharge
14 your duty to decide the facts in this case?

15 Well, it is not rocket science. It is just
16 the simple way that you make important decisions in your
17 own personal family affairs. You make those decisions
18 every day and you need to make those decisions in this
19 case, and we look forward to you coming to those
20 conclusions.

21 When we selected you as jurors in this case,
22 we did talk about that level playing field. It is
23 simply of way of saying the scales of justice. There is
24 nothing on the scale coming into the trial. Most
25 parties start off with zero. And the evidence comes in

1 in bits and pieces, and we have to put it together.

2 So what I would like to do and I'm going to
3 do it within an hour is kind of tie up in what I think
4 is logical fashion of what the evidence shows in this
5 case and do it logically, because it's not like the
6 television dramas where we see everything is tied up in
7 a neat, little package within 60 minutes, less the
8 commercials. Everything you have seen comes in in bits
9 and pieces.

10 But if you will bare with me, these are four
11 things that I want to discuss with you, which I think
12 are the crux or the heart of this case. And we will
13 walk through them to see if the Plaintiff met their
14 burden of proof in this case.

15 The first question is: Did Plaintiff prove
16 that her abuse happened as she testified?

17 And I'm going to spend the majority of my
18 time speaking about that issue, and the other three
19 issues will be less time.

20 The second one is: Did Plaintiff prove that
21 the situation with Andrea has any bearing on this case,
22 and the claims of this case.

23 And Number 3 is: Did Plaintiff legally prove
24 that keeping a private family matter private following a
25 Biblical standard somehow proves that the elders were

1 negligent in allowing the abuse of Ms. Conti.

2 And my fourth one is going to be simply: Did
3 Plaintiff prove that any act or any failure on the part
4 of the elders might be due to negligent really cause
5 Plaintiffs's damage?

6 First, did Plaintiff prove that the abuse
7 happened as she said?

8 Well, what's the evidence?

9 Let's put it on a scale.

10 Plaintiff says she was abused, and admittedly
11 this trial is a pretty hard thing to put yourself
12 through if it didn't happen.

13 So you might think, well, that's more
14 probably true than not true just the mere fact she has
15 gone through the trial.

16 So we can put her testimony, her direct
17 testimony on the scale, and it begins to weigh down.

18 You might think even because we are here in
19 court today discussing this, it is probably more true
20 than not true.

21 But remember in our opening discussions, we
22 talked about a criminal case and a civil case.

23 The criminal case goes through filters before
24 it gets in front of a judge and a jury.

25 A civil case is just you file a lawsuit, and

1 it will end up here.

2 So filing a lawsuit does not make the claims
3 true.

4 And also as the judge instructed you, you
5 can't be swayed by emotion, sympathy, conjecture or
6 guesswork.

7 Everyone hates child abuse. Everyone feels
8 emotional for someone who has been the victim of a child
9 abuse.

10 For Ms. Conti, the horrible upbringing she
11 had. We all feel sympathy for her. If she was abused
12 on top of that, it is not only horrible, it is tragic.

13 But this is an extremely emotional issue. So
14 it's important that you as the arbiters of the facts of
15 this case follow the facts. Because we all feel for Ms.
16 Conti. We can't guess what happened to her.

17 So what are the facts?

18 Well, on Plaintiffs's side we have Ms.
19 Conti's testimony, and it weighs on the scale.

20 On direct examination, Ms. Conti told you
21 what she had experienced as a child with the abuse that
22 she suffered.

23 She mentioned that it was several Sundays a
24 month at the Kendrick home.

25 Ms. Conti stated her mom and dad let Jonathan

1 Kendrick take her to his home week after week, and he
2 abused her several hours and then returned her to her
3 parents, either at the Kingdom Hall or at the family
4 home.

5 Now Plaintiff would have us believe that
6 because she's now told her therapist and others that the
7 abuse was more likely to happen.

8 When she told Dr. Ponton, she said the same
9 thing. Basically, she started off in her testimony and,
10 of course here, that it happened hundreds of times over
11 a two- or three-year period.

12 She also told the Kaiser doctors that she was
13 abused repeatedly.

14 She also testified in a deposition, just
15 before she met for the first time with Dr. Ponton.

16 And I would like to read to you what she said
17 on Page 28, line 6, I asked her:

18 "Did the abuse ever increase to be more than
19 bear hugs?"

20 She said yes.

21 "When did it increase to be more; how old
22 were you?"

23 "Still nine," was her answer.

24 "QUESTION: What happened?"

25 "ANSWER: He would take me to his house after

1 meetings."

2 "Were those day meetings or night meetings?

3 "ANSWER: Sunday meetings."

4 "QUESTION: Sunday meetings? What happened
5 when he would take you to his house after Sunday
6 meetings?"

7 And she answers.

8 And then the question: "How many times did
9 this incident take place where he would use pens?"

10 She said, Answer: "Several times a month."

11 "Over what a period of time? A number of
12 years or all within one year?"

13 "ANSWER: A couple of years."

14 "When did the abuse stop?"

15 "When he moved."

16 "QUESTION: He moved at about 1997 when your
17 parents divorced?"

18 "ANSWER: Yes, that's correct."

19 So the abuse started when she was nine in
20 1994 and continued until sometime in the year 1997.

21 But if we look at the scales, the testimony
22 is really all Ms. Conti.

23 What she told me in the deposition is the
24 same that she told on her direct examination. It is the
25 same thing that she told her doctor. So really it is

1 100 percent her testimony.

2 The doctors take history. They base their
3 treatment and diagnosis based on solely what the patient
4 tells them.

5 So really when we start looking at the scale
6 we need to take off the deposition, the Kaiser
7 therapist, the doctor, Dr. Ponton, and we still just
8 have Ms. Conti's testimony.

9 But what about the other side of the scale?
10 What about the Defendant's side?

11 First of all in the Defendant's presentation,
12 you heard Mr. Simons already talk about Plaintiffs's
13 cross-examination, when she was asked how many times it
14 took place after hearing all the testimony in the court.

15 And she backed off "hundreds of times."

16 She said it might have been five or ten, and
17 it seemed like more.

18 And the reason that testimony is important is
19 because it comes in after we examine the living
20 situation of Jonathan Kendrick.

21 Jonathan Kendrick did not live alone. He was
22 not a bachelor. He lived with his wife, Evelyn, and
23 their stepdaughter, Andrea.

24 And when you think about it, that's very
25 important because they lived together in the same house.

1 Week after week, month after month. They lived
2 together.

3 So where is the evidence that Jonathan
4 Kendrick could have access to her week after week at his
5 house? Going home after the Sunday meetings?

6 I submit to you, ladies and gentlemen, that
7 it couldn't have happened that way. It just couldn't
8 happen that way.

9 Think about that. They were only separated
10 from October 11, 1996. He only lived alone for a month
11 before moving to the Francis home.

12 We have heard about shady testimony from Mr.
13 Abrahamson. But I think the Plaintiff started shading
14 her testimony when she saw all the evidence when
15 Mr. Schnack cross-examined her. It had only been five
16 to ten times.

17 But then we have to add to that,
18 cross-examination experience. We have to add to the
19 testimony of Kathy Conti. We have to add the testimony
20 of Neal Conti. We have to add the testimony of the
21 three elders who have testified. We have to add the
22 testimony of the women who came forward from the
23 congregation testify.

24 And none of them, not one of them saw the
25 things happen which Ms. Conti described as happening

1 week in and week out.

2 Namely, Ms. Conti leaving with Jonathan
3 Kendrick in his truck to go to his home to be abused by
4 him.

5 None of them saw Ms. Conti testify to that it
6 happened on a weekly basis, the big bear hugs, the
7 squeezing and holding her until she would answer the
8 question "Who loves you" and saying "You do," then he
9 would let her go. The sitting on his lap.

10 Then we have the testimony of Carolyn
11 Martinez, Claudia Francis, their own witnesses did not
12 see any of these things happening at the Kingdom Hall.

13 You might wonder what the parents were doing.

14 I think it is shaded that Neal Conti might
15 have been a little cold and not caring so much.

16 That isn't what I saw when he testified. He
17 had a very difficult situation dealing with a very ill
18 and emotional life. He was struggling to keep his job,
19 keep his family together, and then he had to flee the
20 family home when she came back from a suicide attempt so
21 angry. He had to leave to protect the children.

22 I remember, though, Kathleen Conti when Mr.
23 Simons asked her, "Did you let your child go alone with
24 anyone, to service, to Kingdom Hall, to Bible studies?"

25 And remember the look she gave? She was

1 stunned, she was incredulous. She couldn't believe that
2 he would even think that she allowed that to happen.

3 Yet we are supposed to believe it happened
4 week after week after week.

5 Now Carolyn Martinez said the same thing.
6 She said that it did not happen. She didn't see it when
7 she was at the Kingdom Hall.

8 It is very troubling, especially because if
9 we think about mom. The Plaintiff lives with her mom.
10 She's helping to take care of her mom right now. Her
11 mom a hundred percent supports her in this lawsuit.
12 She's even testified she has been to counseling sessions
13 with her.

14 If the mom let Ms. Conti go with Jonathan
15 Kendrick once, twice, a dozen times, why wouldn't she
16 just come out and tell us?

17 But she didn't because it didn't happen. She
18 wouldn't allow it.

19 And if she didn't do it but she knew that
20 Neal did it, he allowed Ms. Conti to go with Jonathan
21 Kendrick week in and week out, well, why not point the
22 finger at him?

23 And again, she didn't do that because it
24 didn't happen.

25 Additionally, when the elders of the church

1 came in and told you that they had admonished Jonathan
2 Kendrick to stay away from children, to be careful
3 because they were watching him, there was no evidence
4 that they did not watch him. They all said that they
5 watched him.

6 And they watched. And they did not see
7 Jonathan Kendrick take Candace Conti from the Kingdom
8 Hall in his truck week after week after week. Not even
9 once.

10 The three elders testified they didn't see
11 it. We could have brought all twelve of them in, but
12 three is a significant number.

13 If you need more reason and more evidence to
14 see that this didn't happen in the way Ms. Conti
15 testified to, we have Sylvia Munoz's testimony, Bernice,
16 her mother-in-law, we have Pam Figuerido. Each of them
17 told you that they did not see Ms. Conti being taken
18 away from the Kingdom Hall every week for years. And
19 these are women with children. Grandchildren.

20 Now, one of them Sylvia, has a child, has a
21 son who is now the same age as Ms. Conti. They were in
22 the congregation together. They did not see what Ms.
23 Conti testified to happening week after week or even
24 once.

25 They did not see the bear hugs, the

1 squeezing, the sitting on the lap.

2 Now, if they had seen it, they would have
3 talked about it.

4 If they had seen it, they would have
5 commented on it to the elders.

6 If they had seen it, Pam Figuerido stated it
7 wouldn't have been tolerated. It wouldn't be
8 appropriate congregation activity.

9 The things that Ms. Conti told me, told Dr.
10 Ponton would happen for a couple of years week in and
11 week out just didn't happen.

12 Now, if the evidence does not allow for that
13 conclusion, but it shows that Ms. Conti has PTSD, well,
14 where does that come from? Could it have been from
15 having to flee the home when the father and mother
16 attempted suicide? Was it something else?

17 We heard some of the other things it possibly
18 could be, eight years of drug abuse.

19 Has Ms. Conti confused reality with some of
20 the nightmares that she has experienced?

21 I don't know and I'm not going to say because
22 I just don't know.

23 But I think it shows us that there is a lack
24 of proof there. She hasn't proved it by the evidence.

25 But remember, it is her burden. She has the

1 duty to prove the evidence of what caused her PTSD.

2 And I want to make something very, very
3 abundantly clear -- I think it is clear, but just to go
4 on the record with all of you.

5 I do not represent Jonathan Kendrick. I have
6 nothing to do with Jonathan Kendrick. I'm not arguing
7 he is not guilty of horrible crimes, all I'm saying is
8 that Plaintiff has not met the burden of proof.

9 Plaintiff calls this man a monster. So even
10 if we assume that Jonathan Kendrick did abuse Ms. Conti,
11 as counsel said, one time, that's horrible. That's too
12 many times.

13 But I'm pointing all this out because we need
14 to question Ms. Conti's credibility on this point. It
15 is extremely important because it tells us something
16 about my clients. It points out how little the elders
17 knew. How little the congregation could have known that
18 abuse was taking place, how their actions could not have
19 been negligent because they didn't see bear hugs,
20 sitting on the lap, be ferried away from the
21 congregation week after week, because whatever happened
22 between Ms. Conti and Jonathan Kendrick did not happen
23 because of their involvement in the congregation of the
24 Jehovah's Witnesses in North Fremont.

25 Only one person said that she ever saw Ms.

1 Conti sit on Jonathan Kendrick's lap. That was Carolyn
2 Martinez. She said that it happened at her home when
3 Ms. Conti was four, five or six years old in 1991 and
4 1992.

5 And there was no testimony that there were
6 any elders present at that event. And anyone else that
7 saw it would have considered that it was not unusual for
8 a little girl to be sitting on a man's lap.

9 But I think it is important that we look at
10 that in view of the testimony that she gave me last
11 August in her deposition.

12 Here is what she said about the bear hugs,
13 the lap sitting.

14 I asked her: "Where did this abuse take
15 place?"

16 She answered: "The Kingdom Hall, the North
17 Fremont Kingdom Hall Congregation."

18 "Where in the Kingdom Hall?"

19 "Just in the Kingdom Hall."

20 I asked her: "Was it in the main
21 auditorium?"

22 She said yeah.

23 "What took place in the Kingdom Hall; what
24 did he do to you?"

25 "He would grab hold of me, on to me."

1 "Where would he grab you?"

2 She answered: "Just like a bear hug and hold
3 me."

4 I asked her: "Were there people present when
5 this happened?"

6 She said yes.

7 "QUESTION: Who was present?"

8 She answered: "The attendees of the North
9 Fremont Congregation."

10 And I asked: "During the meeting?"

11 She answered yes.

12 "During the time the meeting was going on?
13 Before or after?"

14 And she answered: "Before and after."

15 "Other than the bear hug, what did he do?"

16 "ANSWER: He used to make me sit on his lap
17 during meetings."

18 "Where were your parents? Were they at these
19 meetings?"

20 She answers: "My dad was."

21 "QUESTION: So the first time this took place
22 was when you were about nine years old?"

23 And she answered by shaking her head
24 affirmatively.

25 "How many times did this take place, these

1 bear hugs?"

2 "ANSWER: I couldn't give you a number."

3 I asked: "Frequently?"

4 She said: "Very frequently."

5 I asked: "At every meeting?"

6 She said: "I would -- I could safely say
7 that it happened at every meeting."

8 The hugs, the sitting on the lap, but why
9 didn't everybody else see it?

10 And that's what is important why we look at
11 her story, why we look at her credibility. Why didn't
12 anyone else see it? And equally important why didn't
13 anybody, if they saw it, tell the elders?

14 Well, because this is not a case where a
15 clergyman was transferred from one church to another or
16 where the elders buried their heads in then the sand, or
17 where the entire group in the congregation, the mothers,
18 the grandmothers and the elders together looked on while
19 Ms. Conti was being ferried away from Kingdom Hall week
20 after week.

21 The congregation did not know or have a
22 reason to know that Jonathan Kendrick had targeted Ms.
23 Conti.

24 So the evidence in this case demonstrates
25 that any sexual abuse could not have taken place the way

1 Ms. Conti said it did.

2 If Mr. Kendrick abused Ms. Conti, it happened
3 in some other way that we have seen in this trial. And
4 no one could have known about it or stopped it but
5 Jonathan Kendrick.

6 If Jonathan Kendrick abused Ms. Conti in any
7 way, at any time, just one time, then he is at fault.
8 Not the elders, not the congregation, not the church.

9 But here is where I'm really having a hard
10 time with Ms. Conti's evidence. Not Ms. Conti herself.
11 I'm talking about the evidence. She called Jonathan
12 Kendrick a monster.

13 I don't know. Maybe he is. We just haven't
14 had enough evidence on that.

15 And then she told me and you that she wanted
16 the monster, Jonathan Kendrick, to pay for her future
17 therapy and counseling, and she wanted him to pay for
18 her pain and suffering.

19 And she said she wanted the money. She filed
20 a lawsuit asking for money damages against him. He
21 wasn't just another necessary party, he was the
22 principal defendant. He was the one who intentionally
23 and criminally touched her.

24 But then that changed when I brought out the
25 agreement. Notice it wasn't brought out in her direct

1 testimony. Mr. Simons didn't bring it up. I brought it
2 up.

3 I had to bring it up and say, well, do you
4 have an agreement with Mr. Kendrick that no matter what
5 the jury awards in this case, no matter what how many
6 millions of dollars you may award, she will not try to
7 collect 1 penny from Mr. Kendrick.

8 Why?

9 Because they had a secret deal, a secret deal
10 they didn't tell us about directly and openly.

11 So doesn't that make you wonder as a juror in
12 this case, why are we here?

13 If you look at the document, the exhibit, you
14 will take it in the jury room, you will see both Mr.
15 Simons' signature on it and Ms. Conti's signature on it.
16 It is not just something that the lawyer did on his own.
17 They did it together. They agreed on this.

18 But doesn't that make you wonder why we are
19 here? We are letting this man off.

20 I think -- remember Mr. O'Brian in the Voir
21 Dire? He was kind of colorful. He said he didn't think
22 this case should be here in this court. It is the wrong
23 court. It should be in criminal court.

24 I think that Ms. Conti and Mr. Simons agree.
25 If he doesn't want money from them, then he should be

1 prosecuted. He should have to pay in some way for what
2 she is claiming he did.

3 Mr. Simons refers to a policy of secrecy on
4 the part of Jehovah's Witnesses, and this document
5 shines the light really on the policy of secrecy. It is
6 a secret deal that the Plaintiff has made with the
7 monster.

8 Now, Jonathan Kendrick is responsible for Ms.
9 Conti's damage. If he is not, who is?

10 And really, you heard the testimony that he
11 was a man that had a serious problem. He had sexually
12 touched his stepdaughter in 1993.

13 But if he went on from there to abuse Candace
14 Conti, I think what he really is, is not a monster but a
15 chameleon, a man who changes his personality to fit his
16 audience and circumstances to get what he wants.

17 Remember some of the testimony? Some
18 witnesses said he was quiet and contemptible; others
19 said he was loud and outrageous and full of life. He
20 was a rough and tumble iron worker; yet he played the
21 violin.

22 Like a lizard changes colors, Mr. Kendrick
23 did these things. He changed colors. He would be what
24 he could be in front of whoever he needed to fit into
25 his audience to get what he wanted.

1 And isn't that what child abusers do? They
2 hide what they want, they bury themselves in
3 organizations. They hide what they want. They hide in
4 society, they hide in the local church or the soccer
5 club, the Boys and Girls Club and the local church.

6 But in all of this do you see what is
7 missing? The evidence. We just have Ms. Conti's
8 testimony and it doesn't stack up against any of the
9 other evidence in the case.

10 Now, maybe you think Claudia Francis saw
11 something. She saw and talked to you about the
12 rollerblading incident. But it is interesting because
13 Ms. Conti doesn't say she was abused when she went
14 rollerblading with Mr. Kendrick.

15 And, you know, when she saw this, Claudia
16 Francis didn't think it was some part of a dirty plot on
17 Mr. Kendrick's part to abuse Ms. Conti. They came
18 rollerblading over to her home. And I think her
19 testimony was that Mr. Kendrick was then living at their
20 home.

21 You heard testimony that Ms. Conti lived a
22 few blocks away. They rollerbladed over.
23 Significantly, she didn't report this event to the
24 elders.

25 She didn't say, I saw Mr. Kendrick with

1 Ms. Conti and I think it's suspicious."

2 Had she done so, the elders would have done
3 something about it. They would have looked into it.
4 They would have told Mr. Kendrick he wasn't supposed to
5 be around children.

6 And Ms. Conti didn't tell us anything about
7 that. And that's why the judge just gave you a limiting
8 instruction that this incident and the other incidents
9 involving Mr. Kendrick, they were outside of the purview
10 of the elders. They weren't done in the Kingdom Hall.
11 They weren't done on the Congregation's watch. It
12 cannot be used against them.

13 So we need to take Claudia Francis off that
14 side of the table, because you cannot legally,
15 intellectually put that testimony on my clients. And
16 that is because of our system of justice.

17 It is simply because they didn't know that it
18 happened. No one told them. You can't be held
19 negligent for things that you did not cause or that you
20 did not know were happening or that you did not cover
21 up.

22 So where is negligence on the part of
23 Mr. Clarke and Mr. Abrahamson? It doesn't exist.

24 The plaintiff on this key issue, really the
25 only issue in this case is still back on her side of the

1 scale without tipping it at all, she has her testimony
2 sitting on his lap, getting the bear hugs, leaving the
3 Kingdom Hall.

4 No one else supports that testimony. No one
5 else has any evidence to support it at all.

6 Now if Ms. Conti was abused by Mr. Kendrick,
7 it's horrible, and we all feel sorry for her. But we
8 can't give her a verdict because we feel sorry for her.
9 She has the burden of proving it and she hasn't met that
10 burden.

11 So what did the elders do to allow this
12 abuse? How were they negligent in not protecting
13 Ms. Conti?

14 There is no question about it that they
15 relied on their understanding of the Bible principle and
16 they kept the matter of the home visit at the Kendrick
17 family confidential.

18 But it didn't stop there. That wasn't the
19 end of the evidence. They came back to the body of
20 elders, they removed Mr. Kendrick as a ministerial
21 servant, they announced it, and they said they watched
22 him, and they admonished him to stay away from children.

23 And there is no evidence that they didn't
24 watch him. They watched him.

25 There is no evidence that Ms. Conti was in

1 danger from this man.

2 Had they seen any event, they would have
3 acted to protect her.

4 Jonathan Kendrick simply did not have the
5 access to Ms. Conti that she claims that he had every
6 week, several times a month for a number of years.

7 So the evidence in this case demonstrates
8 that any sexual abuse could not have taken place the way
9 Ms. Conti said it did.

10 If Mr. Kendrick did abuse Ms. Conti, it
11 happened some other way than we have heard in this
12 courtroom, and no one could know about it or stop it,
13 except Mr. Kendrick.

14 Now if Mr. Kendrick abused Ms. Conti in any
15 way, at any time, it's his fault, not the elders' fault,
16 not the congregation's fault, not the church's fault.

17 And that brings us to our second and shorter
18 question that I want to ask. It is a question that
19 Plaintiffs's counsel has made one of the primary issues
20 in this case.

21 Has Plaintiff proved anything about the
22 situation with Andrea? Does it have any bearing on this
23 case? Or does it prove that the elders were negligent
24 concerning in the abuse of Ms. Conti?

25 I submit to you it is really a smoke screen.

1 It is a false clue. It is designed to divert attention
2 from the real issue or the real problems in this case.

3 This trial is not the end. You didn't see
4 anywhere on the verdict form where it said Jonathan
5 Kendrick abused Andrea. He confessed to that.

6 Instead, this information just diverts our
7 attention.

8 When talking about Andrea, there is only one
9 important question that needs to be asked, and that is:
10 Did the elders respond appropriately to the private
11 allegations raised by the Kendrick family at that time?

12 I think you heard Mr. Simons' argument and my
13 argument. You remember what the evidence is. But it
14 wasn't Evelyn Kendrick that called the elders over to
15 the house, it was Mr. Kendrick. He testified that he
16 called Mr. Clarke and asked if they would come over and
17 address the family.

18 And what happened? Mr. Clarke and Mr.
19 Abrahamson, fathers themselves, workers, volunteers they
20 took their bibles on a Thursday afternoon, and in 1993,
21 in November, they went to the Kendrick family home.

22 They were invited in, they sat down at the
23 kitchen table, and they opened with prayer, and they
24 used the Bible after they listened to the family.

25 Jonathan Kendrick disclosed what he did, the

1 family was sitting there. He -- Kendrick said it was
2 inadvertent. You don't confess to something that is
3 inadvertent. They weren't fooled.

4 And what was the confession? That four
5 months earlier this event had taken place near Andrea's
6 birthday in July. The family had kept it confidential
7 until November.

8 Four months later, the elders met with them,
9 going to the police was discussed as an option.

10 No hush-hush here by the elders, no counsel
11 not to talk about it to anybody else, not to go to the
12 police.

13 And remember, no one told the elders anything
14 until November. Remember, it happened four months
15 earlier.

16 Well, after they did what they did with
17 Mr. Kendrick, admonished him, told him to stay away from
18 children, be careful, they were going to watch him.

19 They went back to the congregation and met
20 with the rest of the body of elders. And they had a
21 meeting and they all agreed that Mr. Kendrick was no
22 longer qualified to be in the menial task of being a
23 ministerial servant.

24 But they kept the matter confidential. They
25 thought they should.

1 You heard conflicting testimony from Evelyn
2 and Andrea that they didn't consider the matter
3 confidential, they didn't care. But they didn't tell
4 anybody else other than the two elders until late
5 February when they went to the Fremont Police and made a
6 report about the abuse.

7 Now, I told you at the beginning, this event
8 took place 20 years ago, 19 years ago, that memories
9 would be different. People would say different things
10 happened. And that's what happened in this case.

11 Evelyn says that more was disclosed, but
12 Evelyn couldn't remember whether Andrea was at the
13 entire meeting. Andrea didn't remember being at the
14 meeting at all. So memories fade.

15 But the important think is, it is not whether
16 she had a Vicodin before the incident or whether it took
17 place in the bedroom or the living room. The important
18 thing is that the elders knew and understood what this
19 was. This was child abuse. And they called it exactly
20 what it was. It was child abuse. And they acted
21 accordingly.

22 They wrote a letter to Watchtower and said it
23 was child abuse. And they said that they removed him
24 from being a ministerial servant in the congregation.
25 And they asked for some spiritual clarification,

1 direction.

2 If there was an incident about Vicodin or if
3 there was something about the bedroom or if there was
4 something about skin-to-skin contact or more contact
5 than just the touching of the breast, why would they
6 withhold it when they are asking for guidance of counsel
7 two days after the incident was reported to them?

8 Well, of course, they had no reason to
9 falsify their letter to Watchtower, so they reported
10 what they were doing.

11 But the important thing is, what the elders
12 knew is that Mr. Kendrick had a problem with his
13 stepdaughter, and it was inappropriate child abuse.

14 They reported it as it was. They removed him
15 as a ministerial servant. They didn't cover over the
16 matter.

17 They didn't tell the victim to be silent, not
18 to go to the police. In fact, they told her she had an
19 absolute right to. The congregation did not shield
20 Jonathan Kendrick from the authorities.

21 In fact, when you think about it, think about
22 the terms of the family wanting to keep something quiet,
23 they continued to live -- Andrea and her mother, Evelyn,
24 continued to live with Mr. Kendrick for another two
25 years, six, seven months. They did not separate until

1 almost three years later from the report being given to
2 the elders in October of 1996.

3 But then think about this. As was their
4 absolute right, they went to the police in late
5 February. They went to Fremont Police, reported it.
6 Child Protective Services investigated it.

7 Officer Davila's testimony is interesting
8 because he knew the elders were involved prior to his
9 involvement and he saw no reason to follow up.

10 Why not?

11 Because the elders didn't do anything wrong.
12 They were ministers. They did their job as ministers.

13 He was a policeman and he was doing his job
14 as a policeman. And regardless of whether some of the
15 things the policeman was told or not, it doesn't really
16 matter because they removed him as a ministerial servant
17 and his position because of child abuse.

18 As much as this Plaintiff would like to focus
19 this case on what happened with the Andrea situation,
20 it's really just a smoke screen.

21 The only important issue is: Did the elders
22 respond to it? They acted appropriately. They, along
23 with the other elders, continued to watch Mr. Kendrick
24 after this point.

25 Again, this is not about Andrea, what

1 happened to her. That case was dealt with by the
2 elders, by the Fremont Police, by the Child Protective
3 Services, by the District Attorney's office. Where is
4 this cover up? Where is this conspiracy of silence?
5 Where is the smoking gun? Where is the hush-hush that
6 Mr. Simons just talked about on the part of Evelyn or
7 Andrea?

8 On the contrary, it is out in the open. That
9 leads me to our third question: Does Plaintiff's attack
10 on confidentiality somehow prove that the elders were
11 negligent in allowing the abuse of Ms. Conti?

12 Now, Plaintiffs say that the elders kept the
13 abuse confidential. I don't think they did. It is
14 clear they did not stand Mr. Kendrick up in the middle
15 of the congregation. You see the pictures of what their
16 hall looked like. Four seats on one side, about six in
17 the middle, and four seats on the other end. They
18 didn't stand him up the next Sunday and say, "Mr.
19 Kendrick, I want everybody in the congregation to know
20 that he sexually touched his stepdaughter in July, about
21 5 months ago."

22 They didn't do that. But confidentiality is
23 a policy that's promoted by Dr. Salters, their expert.
24 Confidentiality is not a four letter word. It is not
25 identified by Jehovah's Witnesses. It is practiced by

1 religion, doctor, therapist, social worker and so forth.

2 Now, we talked a lot about, from Mr. Simons,
3 this July 1, 1999 letter, which was Exhibit 26. And
4 when we talked about that, we didn't talk anything about
5 Laura Fraser.

6 I bring her up not as any attack on her at
7 all. She was a good therapist who was doing a job to
8 try to help a very troubled child going through a very
9 acrimonious divorce.

10 But think about this: Laura Fraser kept
11 confidential the things that Ms. Conti was telling her
12 about her mother, walking around naked in front of her
13 and doing other outrageous things with alcohol and
14 drugs. She did not tell the divorce mediator in the
15 case. She did not tell the father, Neal, so he could
16 protect his daughter. Why not? Confidentiality.

17 These are concepts that we live with in our
18 society.

19 Dr. Applewhite testified about that. And she
20 also said that it is important for all organizations.
21 So this policy letter that's been picked on by
22 Plaintiffs, this July 1, 1989 letter to all bodies of
23 elders, I invite you to read it because it really has
24 only one paragraph about child abuse. It is on Page 3,
25 paragraph B.

1 And maybe we can make it a little bigger.
2 This is the policy that Watchtower handed down to the
3 congregation. It says:

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

10 What is the cover up there?

11 We have, as we heard, child reporting laws.
12 Every state has a different one. They need to get legal
13 advice to find out what they need to do in response to
14 this allegation.

15 Now you read the letter as a whole, and along
16 with the rest of evidence before you, and I think you
17 will see that the Defendants care a great deal for
18 children.

19 Like Mr. Lamerdin testified on
20 Cross-Examination, they were precious, they were the
21 future.

22 So confidentiality is not a nasty word, it is
23 not a concept that is unique to Jehovah's Witnesses, and
24 it is not a concept that caused the elders to be
25 negligent in this case.

1 No one. No one. Not Ms. Conti's mom, not
2 her dad, not her therapist, not others in the
3 congregation, not her grandmother, no one saw or heard
4 anything that showed them that Candace Conti was in
5 danger of being abused by Mr. Kendrick.

6 Confidentiality has nothing to do with the
7 complete lack of evidence on this point.

8 Now, Mr. Simons' tells you it was the
9 standard. But that if Jonathan Kendrick was stood up in
10 the middle of the congregation and was labeled as a
11 child abuser, it wouldn't have changed the facts in this
12 case.

13 No one saw him holding her on his lap, a 9,
14 10, 11-year-old girl. No one saw him giving the big
15 bear hugs in the middle of the congregation, squeezing
16 her.

17 No one saw them leaving week after week from
18 the congregation meetings alone together in the vehicle.

19 The evidence in this case just demonstrates
20 that any sexual abuse could not have taken place the way
21 Ms. Conti said it did.

22 Jonathan Kendrick, if he did abuse her, it
23 happened in a way that hasn't been presented as
24 evidenced in this courtroom. It hasn't been before you.

25 No one could have known about it or stopped

1 it but Mr. Kendrick, and only he can be responsible for
2 it.

3 Which brings me to my final question. The
4 link between negligence and causation. And the judge
5 just read you the causation instruction. It mentioned
6 that to be responsible, the elders' negligence, and I
7 submit that I don't think the evidence leads there, but
8 if you see that it does in some fashion, it must be
9 contributed to the harm.

10 It must be more than a remote or trivial
11 factor. It doesn't have to be the only cause of harm.
12 Conduct is not a substantial factor in causing harm if
13 the same harm would have occurred without the conduct.

14 So the only negligent conduct that Mr. Simons
15 talks about is the elders didn't reach their
16 responsibility to keep this matter confidential. They
17 didn't stand Mr. Kendrick up in the congregation
18 labeling him as a child abuser.

19 So what does that mean?

20 Well, if you believe that there is evidence
21 that it is more likely than not that they were
22 negligent, you need to next find that their negligence,
23 their not standing him up in the middle of the
24 congregation and labeling him as a child abuser caused
25 harm to Ms. Conti.

1 But to answer that question, you need to look
2 at two issues. And the first one is since Plaintiffs
3 spent so much time -- like the situation we had with
4 Andrea. What the elders did or did not do is a
5 substantial factor in causing of her harm. Not Andrea's
6 harm, but the Plaintiffs's harm.

7 But if that's the case, if they didn't label
8 him as a child abuser in the congregation, and that's
9 the negligence that we are looking at here, what would
10 you say about Officer Davila and the Fremont Police?

11 They knew the congregation was involved.
12 They didn't go down there and start telling people.
13 Child Protective Services didn't, the District
14 Attorney's Office didn't.

15 Were not any of these the cause of the
16 Plaintiff's harm?

17 Well, you might look to me and say, "Well,
18 that's pretty much of a stretch."

19 And I say it is a stretch, too, for the
20 elders.

21 Why is Mr. Simons only pointing to the church
22 and the elders, and not to these other agencies?

23 Well, I think we know, why isn't he pointing
24 to Mr. Kendrick?

25 He's saying he's only 51 percent responsible

1 for the horrible abuse that he perpetrated over a two-
2 to three-year period?

3 Well, I think we know the answer to that. It
4 is the covenant. It is the covenant not to go after him
5 no matter what your jury verdict is.

6 You can award the \$260,00 or the \$160,000 in
7 special damages. You can award the, what did he say?
8 \$5 million to the \$8 million in damages? But we won't
9 go after Mr. Kendrick.

10 That's just hard to understand.

11 And the only substantial factor in the cause
12 of Ms. Conti's abuse was the criminal acts of one man,
13 the chameleon, the iron worker, the violinist, the
14 quiet, contemplative man, the extrovert, the man who
15 could be what he wanted to be.

16 And if he did this abuse just one time to Ms.
17 Conti, he is the monster, he is the true villain, not
18 Michael Clarke, not Gary Abrahamson.

19 If he did this he should be held 100 percent
20 responsible. You should put the blame where it goes.
21 If you say he is only 99 percent liable, what message
22 are we sending to the community about the child abuse
23 that's out there?

24 You can shift your responsibility. You can
25 blame your institution, your organizations. We don't

1 blame you for causing abuse.

2 If he did this, he has gotten away with it
3 for far too long, and he should be finally be held
4 accountable for what he's done. But Ms. Conti and her
5 lawyer have made a secret deal to take your power away.

6 I sincerely believe that this case, like
7 Mr. Simons says, has more far reaching implications than
8 for the two parties before you, or the three parties
9 before you.

10 It is not just a case that has implications
11 for churches, but it has implications for all
12 organizations that deal with families.

13 It basically says that if you have knowledge
14 that any member of your organization has ever committed
15 a sexual battery before, even when you have no knowledge
16 that he is doing anything currently or presently, even
17 if what he's doing doesn't happen on your organization's
18 property or your organization's functions, you are going
19 to be held responsible.

20 Now, I'm not saying this to shirk
21 responsibility. If Mr. Kendrick had been an elder, I
22 wouldn't be here defending the congregation, I would
23 advise them to settle this case, pay, whatever they
24 want.

25 If this abuse had happened in the middle of

1 the Kingdom Hall or in the back room, I think that would
2 be inexcusable, it would be on their watch. I would not
3 be here defending them.

4 But this is not a case where that happened.
5 This is not that case. It's going too far to attribute
6 responsibility to these good men and to their
7 congregation.

8 Now, you can disagree with their faith. Many
9 of us do. We disagree with their teachings. We may
10 find it irritable if they showed up on our door step on
11 Saturday morning. But I think we can all agree that
12 they are decent people trying to do what is right. They
13 are not here covering up. They are not here condoning.
14 They are not here encouraging child abuse.

15 So I would like to conclude by just asking
16 you to tell Mr. Simons that you don't care for his
17 secret deal that he made with Jonathan Kendrick.

18 Don't let your time be wasted here. Don't
19 let Mr. Simons and Ms. Conti take away the power that
20 you have to really send a message in this case.

21 Stand up for what is right and not what is
22 craftily devised by a clever lawyer. Use your power to
23 send a message back to all the congregations and the
24 groups that work with children, the Little League
25 coaches, the soccer coaches.

1 The congregations of elders who shepherd
2 their flocks. Tell them coach the kids, encourage them
3 to excel, to do better.

4 Do your job. Just let all these groups do
5 the good they do in the community without the fear that
6 they will be held responsible for what a monster did
7 that they didn't know was happening. They didn't cause
8 and they didn't cover up.

9 Justice really is about affixing blame. And
10 I think what this trial has shown to all of us is that
11 if anyone is to blame, it is Jonathan Kendrick. He is
12 absolutely 100 percent to blame and not Jehovah's
13 Witnesses.

14 Plaintiff and her attorney are looking for
15 the wrong sort of justice. I think they are in the
16 wrong court.

17 If she called him a monster, she should
18 charge him with a crime. She said she went to the
19 Fremont Police, but we don't know when. It wasn't
20 revealed to us.

21 We are here today deciding about money, money
22 for a crime. Not time in jail like it should be. But
23 money. Money that actually wouldn't come from a
24 criminal. And I think this is an abuse of our system of
25 justice.

1 It would be an injustice to make good people
2 pay on this set of facts and on this set of evidence.
3 This is simply the wrong court and the wrong defendant.

4 And I encourage you. I know you will do your
5 duty as the judge has instructed you on competence, that
6 you will feel a great satisfaction of sending a message
7 to child molesters that if you operate like they do in
8 secret, we won't let you make a secret deal with the
9 Plaintiff so you can shift your responsibility, your
10 accountability to some organization or institution.

11 Send a message to the Plaintiff's bar
12 association, to the lawyers out there, don't make secret
13 deals with people who operate in secret.

14 Child abuse is a horrible thing. Ms. Conti
15 suffered enough. I don't think she should have been
16 manipulated the way she has been in this case, and I
17 encourage you to send that message, that good people
18 should do what they do best, and let them coach,
19 shepherd, inspire.

20 I thank you for your time.

21 MR. SIMONS: May we approach?

22 THE COURT: Sure.

23 (sidebar discussion)

24 THE COURT: Mr. Schnack?

25 MR. SCHNACK: Thank you, your Honor.

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CLOSING ARGUMENT BY MR. SCHNACK

MR. SCHNACK: Like the other two lawyers have talked to you, I appreciate your time and energy that you devoted to this.

It is difficult to disrupt your lives and we sincerely appreciate it, and you have paid undue attention without question.

I'm not going to be as smooth in my presentation as Mr. Simons or Mr. McCabe. I'm more of in-the-trenches type of lawyer. So don't hold that against me or my client.

I think you have heard a number of witnesses now, and you have seen a number of exhibits in the case.

And the question can be, as Mr. McCabe suggested, why are we here?

This really appears to be the wrong court and the wrong defendants.

Again, it is going to be somewhat repetitive of what Mr. McCabe said, but this is not a situation where a priest abused a child, this is not a situation where the elders in the congregation, or an elder from Watchtower abused a child. This isn't a soccer coach who abused a child, this isn't a scout leader. This is a rank and file member of the congregation who allegedly abused Ms. Conti. And that's what brings us here.

1 But what is missing? The claimed sexual
2 abuser isn't here. They struck a deal. Candace Conti
3 and her attorney struck a deal. And you saw it before.
4 It was on the screen. And you will have it in the room.

5 Candace Conti signed that agreement herself.
6 And rather than ask you to hold him responsible for what
7 he did, they decided to let him off the hook.

8 As a result of this deal -- and again, you'll
9 see the deal. It says, if you don't show up here, I
10 agree not to pursue, I will not try to collect any money
11 that the jury might award. That's what it basically
12 says.

13 And what was really strikingly absent, Mr.
14 Simons talked for over an hour to you this morning, he
15 didn't read it.

16 You can ask yourself why? Why didn't he
17 address it so that Mr. McCabe and I could respond?

18 Now he is going to have a rebuttal so he can
19 address it then, and we don't get a chance to respond.

20 Is that fair?

21 That's for you to decide.

22 But nonetheless, let's be clear. Mr.
23 Kendrick is not here because Plaintiff struck a deal
24 that if he did not appear at trial, if he did not
25 participate in depositions, if he didn't show up at

1 court hearings, then we won't pursue you for any money
2 no matter what you as a jury might decide.

3 As Mr. McCabe says -- we need to be clear.
4 No one who is here in court today wishes any harm on
5 Candace Conti.

6 She has had many challenges in her life.
7 Laura Fraser's testimony, you hear what happened to her
8 as a result of what her mother did. It shouldn't happen
9 to anyone.

10 But for there to be justice in this case here
11 on the evidence that was presented, the information on
12 which you base your verdict has to be done with reliable
13 and trustworthy testimony.

14 Keep that in mind. With accusation comes
15 responsibility. That's the burden of proof. If you
16 accuse people of things, you have the responsibility to
17 prove it.

18 You were here when Candace Conti said in open
19 court that she wanted money from Mr. Kendrick. The
20 monster she called him.

21 You will also hear just minutes later, she
22 said, yes, I have an agreement with him that I won't
23 take any money from him.

24 Why did she contradict herself within
25 minutes?

1 We probably would never know.

2 Perhaps she thought she could get away with
3 not telling the truth on that first question.

4 I think Mr. Simons, when he talked about Mr.
5 Abrahamson, he said he had to press Mr. Abrahamson, did
6 Mr. Kendrick lie to you?

7 Well, can we ask the question? Did Candace
8 Conti lie to you when she said she wanted money from
9 Kendrick?

10 Again, we won't know the reasons why she said
11 what she did, but she showed right in that minute that
12 she's not always reliable and trustworthy in her
13 testimony.

14 Let me turn to the burden of proof. And,
15 again, this has been addressed. But I want to reiterate
16 what Mr. McCabe told you and what the Court instructed
17 you.

18 Watchtower, my client, has no burden of proof
19 here. They don't have to prove anything. It is the
20 Plaintiff who has the burden of proof by a ponderance of
21 the evidence. Again, an accusation, no responsibility.

22 After reviewing and weighing the evidence, I
23 think you as a jury -- well, let me just go into the
24 evidence. Mr. McCabe addressed that.

25 Let me address what the evidence shows about

1 Ms. Conti's claims. First, the evidence is undisputed
2 that Jonathan Kendrick was only a rank and file member
3 of the congregation at the time Ms. Conti says he abused
4 her.

5 The evidence also showed that he did not have
6 unrestricted access to her. The evidence was undisputed
7 that in the Jehovah's Witnesses faith children are not
8 separated from parents.

9 They also told you there is no Sunday School
10 for kids, they don't have Vacation Bible School, they
11 don't have any summer camps. The children are not
12 separated from their parents.

13 Mr. Kendrick did not have any unique or
14 special access to Candace Conti or any other children.
15 You heard Dr. Applewhite testify to that in her trial
16 testimony.

17 It is also undisputed that Candace Conti
18 never went to the Kingdom Hall without one or both of
19 her parents. She even confirmed that in her deposition
20 testimony and she testified to that here in trial as
21 well. So, again, she was never at the Kingdom Hall
22 unless either one or both of her parents were there.

23 She also testified, Ms. Conti did, that
24 Jonathan Kendrick bear hugged her at the Kingdom Hall at
25 every meeting.

1 You can show Candace Conti's deposition, Page
2 27, lines 5 through 11.

3 It says on the screen.

4 "How many times did it take place, the bear
5 hugs?"

6 She answered: "I couldn't give you a
7 number."

8 "Frequently?"

9 She said, "Very frequently."

10 "Every meeting?"

11 Then she said, "I could safely say that it
12 happened at every meeting."

13 She also testified that Jonathan Kendrick
14 made her sit on his lap at the Kingdom Hall. Again, she
15 testified that her parents were present every time she
16 went to the Kingdom Hall.

17 She also testified that she was allowed to
18 leave the Kingdom Hall alone with Jonathan Kendrick when
19 Kendrick took her to his house. And that's where she
20 says Kendrick sexual abused her.

21 She claims this happened hundreds of times,
22 like Dr. Ponton testified.

23 Let me go through what Dr. Ponton said that
24 Candace Conti told her. I'm going to read this. This
25 came from Dr. Ponton's report.

1 Dr. Ponton said that for three years she had
2 been abused, quote, more than twice per month, and often
3 it happened four to six times a month, close quote.

4 And then upon further questioning, Dr. Ponton
5 said she had written, quote, in summary, Candace's
6 sequence of abuse by Jonathan took place over three
7 years and involved hundreds of episodes of sexual abuse,
8 close quote.

9 Now that's what Candace told Dr. Ponton.

10 Did she ever tell Dr. Ponton, "Well, I was
11 only 9 to 11, I wasn't sure." You know, it could have
12 been more, it could have been less? No. She was very
13 resolute. Dr. Ponton testified she told her that it was
14 basically hundreds of episodes of sexual abuse.

15 Candace's parents -- again, I'm going to talk
16 about a lot of things that Mr. McCabe talked about. But
17 Candace's parents, both Neal and Kathy Conti both
18 testified that they never allowed Candace to sit
19 on Jonathan Kendrick's lap at the Kingdom Hall, and that
20 they never saw Kendrick bear hug her at the Kingdom
21 Hall.

22 Candace's parents also testified that they
23 never allowed her to leave the Kingdom Hall alone with
24 Jonathan Kendrick.

25 Neal Conti testified that Candace never went

1 on field service unless he was with her. And, indeed,
2 Carolyn Martinez who is, again, like Mr. Simons said,
3 drove up here from Southern California to testify for
4 Candace. Let's see what she said and what she saw
5 Candace in field service.

6 It's at Page 36, lines 1 through 3.

7 She was asked:

8 "Did you ever see Candace Conti come to field
9 service without one or both of her parents?"

10 And Carolyn Martinez said no.

11 So any suggestion that Candace was in field
12 service alone with Kendrick based on what Ms. Martinez
13 said is just false. The testimony just isn't there.

14 You also heard the three elders, and they are
15 sitting here today, Mr. Abrahamson, Mr. Clarke, Mr.
16 Lamerdin. They each testified that they kept an eye on
17 Mr. Kendrick. They didn't see anything. They didn't
18 see the hugs at the Kingdom Hall, they didn't see
19 Kendrick having Candace sit on his lap. They didn't
20 send children out in field service without their
21 parents.

22 The four women from the congregation, Claudia
23 Francis, Bernice Munoz, Sylvia Munoz, Pam Figuerido,
24 they all came and testified, well, they didn't see any
25 bear hugs at the Kingdom Hall. They didn't see Candace

1 sitting on Kendrick's lap at the Kingdom Hall. They
2 didn't see Candace leave the Kingdom Hall alone with
3 Kendrick.

4 That's a count of nine different witnesses.
5 And I think they were on the scales there that Mr.
6 McCabe showed, but nine different witnesses. All
7 regular attenders at the Kingdom Hall, none of them saw
8 any of this happen that Candace said happened.

9 If, indeed, it happened, why didn't Mr.
10 Simons bring in witnesses? Why didn't he bring in
11 people that said, you know, what Candace said is true.
12 I saw it happen. He didn't do that.

13 Why?

14 You are going to have to ask yourselves that.

15 You know, I earlier talked about Ms. Conti's
16 testimony and how she contradicted herself about the
17 secret agreement she had with Mr. Kendrick.

18 Again, that testimony in and of itself is not
19 reliable, not trustworthy. And as the judge instructed
20 you, if you are false in part of your testimony, then
21 you're entitled to disbelieve the other parts of the
22 testimony.

23 But there were other inconsistencies that she
24 presented to you. Again, when Dr. Ponton testified
25 about the, her words, hundreds of instances -- or what

1 was the word again? "Hundreds of episodes of child
2 abuse." Candace told that to Dr. Ponton.

3 She also testified in deposition -- go ahead
4 and show that clip. It is Page 30, lines 13 to 14,
5 counsel. It says, and the question:

6 "Can you tell me about how many times this
7 incident took place where he would use pens?"

8 And again you recall she testified that
9 Jonathan Kendrick used pens to violate her.

10 She said: "Several times a month."

11 "QUESTION: Over what time period? Number of
12 years? All within one year?"

13 Candace said: "After it escalated?"

14 "QUESTION: Yes."

15 "A couple of years," she said.

16 "When did the abuse stop?"

17 "When he moved. When Kendrick moved."

18 Now, I showed you the deposition transcript
19 and indeed what the instructions from the judge about
20 depositions -- that's sworn testimony as if it occurred
21 in court. So you should treat that just as if it was
22 live on the witness stand.

23 Two, you saw in the deposition testimony, as
24 well, she was told that she had the right to change that
25 transcript if the testimony was incorrect.

1 She and her attorney knew that, but they
2 never changed it. They didn't even try to qualify that.
3 They didn't say, "Well, that might have been wrong," but
4 she was only 9 to 11. They didn't change that
5 testimony. So keep that in mind.

6 She also testified in her deposition that the
7 abuse by Kendrick occurred at his house when he lived
8 alone after his marriage to Evelyn Kendrick had ended.

9 Can you show that? It's at Page 43, line 23,
10 to 44, line 5, counsel.

11 It says:

12 "QUESTION: Referring to the abuse that took
13 place at Kendricks's home, was anyone else present
14 during any of those instances?"

15 "ANSWER: No."

16 "QUESTION: Was he married at the time?"

17 "ANSWER: No."

18 "QUESTION: Did he live alone?"

19 "ANSWER: Yes."

20 Again, that was Candace Conti's testimony
21 back in August of last year, and she had the absolute
22 right to change that testimony if she thought she had
23 testified incorrectly. She and her attorney made no
24 changes to that testimony whatsoever. Again, they
25 didn't try to qualify it to say it wasn't totally

1 accurate. Again, they let that evidence stand.

2 Here at trial, though, what did we learn?

3 Again, Mr. McCabe touched on this. The
4 evidence became clear that Jonathan Kendrick only lived
5 at his house alone for three, maybe four weeks.

6 Evelyn came in -- Mr. Simons called her as a
7 witness -- and she testified that they separated on
8 October 11, 1996. That's when she and Andrea moved out
9 of the house.

10 It also came out from the next witness,
11 Claudia Frances, that Mr. Kendrick then moved into her
12 and her husband's home in early November. So that's
13 three weeks plus. Maybe four weeks.

14 Evelyn also testified, when Mr. Simons asked
15 her, "Oh, yeah. We were gone every weekend."

16 At least that's what Mr. Simons wanted you to
17 believe.

18 When I went back in on cross-examination,
19 what came out?

20 In '94, in '95 and January 1 of '96, she
21 moved out in the winter of '96, she and Andrea were out
22 of the home, what, five to eight weekends during that
23 approximately two years and nine months.

24 It wasn't that Jonathan had free reign of
25 that house on weekends. It's just not what she

1 testified to. It's not what the Plaintiff would like
2 you to believe.

3 She did say they were out one or two hours on
4 some Sundays. But again, for what Candace alleges
5 Jonathan Kendrick did, the violations of her that she
6 said he did, the photographing of her when she was
7 naked, all the things that you heard, within an hour or
8 two? Ladies and Gentlemen, I just submit it doesn't add
9 up.

10 Again, I apologize. I'm not feeling that
11 well today. I kind of came down with a cold. So let me
12 apologize here.

13 And again, let's talk about the secret
14 agreement that came up. They didn't tell you about
15 that. It didn't come up in opening. The agreement
16 didn't come up in Mr. Simons' direct examination of Ms.
17 Conti.

18 What also didn't come up was that either
19 during the opening or Ms. Conti's direct examination was
20 that she said she reported Kendrick to the police.

21 If it was so important to her that Kendrick
22 be stopped, why didn't they bring that up in opening
23 argument? Why didn't she testified to that in her
24 direct examination?

25 It was only after Mr. McCabe got her to admit

1 that, "Oh yeah, I forgot, I do have this agreement. I
2 don't want money from Kendrick."

3 Then she brought up, "Oh well, it was
4 important for me to go to the police."

5 Well, did they bring a police officer in here
6 to verify that?

7 They certainly knew how to bring the police
8 in. Officer Davila testified about his 1994
9 investigation. But they didn't bring anybody in here to
10 confirm that.

11 And I asked, why?

12 So what does all this evidence show? I
13 submit to you that the evidence shows that Jonathan
14 Kendrick did not have the unrestricted access to Candace
15 that she said he did.

16 No other witnesses corroborate what Ms. Conti
17 said happened at the Kingdom Hall. Like I said, there
18 were regular attenders who said they did not see
19 anything like what Ms. Conti said happened.

20 Neal Conti said that given what his wife had
21 been through, he was even more vigilant with protecting
22 his daughter.

23 You recall that Kathy Conti said she had been
24 abused as a child. Neal said that as a result of that,
25 he was even more vigilant in protecting his daughter.

1 Has Plaintiff met her burden of proof here?
2 That's for you to decide. And again, I'm not going to
3 speculate why Candace Conti has given the various
4 versions of events here today. But this does raise
5 questions that you as a judge of fact, I think, should
6 ask and should consider.

7 Again, I want to be clear, like Mr. McCabe
8 mentioned -- and Mr. Simons suggested that I was being
9 glib with the phrasing of a question, that somehow I
10 condone child abuse?

11 Don't be fooled by his deliverance on that.
12 Everyone here abhors child abuse. And if Jonathan
13 Kendrick abused Candace Conti, he is the one who should
14 pay. Not the church. Not the congregation.

15 And to suggest for some reason I condone
16 child abuse is just -- it is just off the charts.

17 Another point on this case. This case in my
18 experience -- again, I'm probably the spring chicken of
19 the three lawyers here at 59, but this is an unusual
20 case, because I have never seen one of these agreements
21 made with the child abuser like this, that they don't
22 want money from him.

23 This is a very unusual set of circumstances
24 to have the Plaintiff who said she was abused hundreds
25 of times let the child abuser off the hook. It just

1 makes no sense.

2 Were they going to tell you about it? You
3 know, the way this has been handled in this courtroom, I
4 think probably not.

5 Why? Is there an answer for that?

6 I'm not sure there is.

7 Perhaps it is because they wanted to shift
8 the blame.

9 To who? To the church? To the congregation?

10 They want to have the church and the
11 congregation do what the Fremont Police didn't do, what
12 the Child Protective Services didn't do, what the DA's
13 office didn't do.

14 They are asking the same thing. Think about
15 it. The Fremont Police and the Child Protective
16 Services had the same information that the local elders
17 had about Candace Conti.

18 But who do they want to pay? They want the
19 church, they want the congregation, they do not want
20 Mr. Kendrick to pay.

21 And I think that -- is that justice?

22 Let me move to the claimed policy of secrecy
23 that Mr. Simons refers to. And I think far from any
24 policy of secrecy what we presented to you shows that
25 Watchtower, through its publications, through its body

1 of elder letters exposed the issue of child abuse in our
2 society, not try to hush it up.

3 The July 1, 1989 letter that reminded the
4 elders the importance of maintaining confidentiality in
5 their church duties, they had to maintain the trust of
6 their congregation members.

7 The letter specifically dealt with subpoenas,
8 child custody matters, search warrants, criminal
9 matters.

10 And even when Mr. Simons -- and you will have
11 this letter in the jury room -- Mr. Simons kind of
12 glossed over when he showed you the criminal matters.
13 "Oh, that's child abuse."

14 Well read that. It says theft, it says
15 assault, it says various things. This was not a letter
16 focused on child abuse.

17 The one short paragraph that addresses child
18 abuse -- and you have seen it a number of times, we
19 don't have to put it up on the screen here. But first
20 it said call the Legal Department.

21 Why?

22 Because Watchtower wants you to comply with
23 your legal obligations in every state. Every state has
24 different reporting laws. So call and see what you have
25 to do in your state.

1 Second they want to protect the children.

2 That's what those two or three sentences in
3 that paragraph say.

4 Mr. Simons tried to portray this letter as
5 some sinister policy of secrecy to avoid lawsuits.

6 Was this secrecy?

7 Let's look at the facts.

8 In November 1993, when the elders met with
9 the Kendrick family, what was the evidence? That they
10 told Evelyn Kendrick and Andrea Kendrick that you could
11 report this to the authorities. You go to the police.

12 Was that secrecy?

13 Clearly, the answer is no.

14 Watchtower was ahead of the curve, not only
15 within religious organizations, but also within
16 organizations at large that deal with youth by
17 publishing and distributing information so that parents
18 or the church members could learn how to protect their
19 children, how to educate them.

20 You have seen the 1995 Awake article. It
21 says parents should go so far to question your ministers
22 even, that it could be a leader in your church, it could
23 be someone you know down your street, it could be
24 neighbor.

25 Is that a policy of secrecy?

1 I don't think so.

2 Those Watchtower articles also said that
3 victims and parents have the absolute right to report
4 this to authorities.

5 Is that secrecy?

6 Go report it to the police?

7 I think not.

8 Watchtower also has a longstanding policy
9 that child abusers cannot serve as either ministerial
10 servants or elders.

11 You heard Mr. Shuster testify on behalf of
12 Watchtower. I think he said he's been an elder since
13 1979, and that policy draft has been in place at least
14 that long. So that's, what, 30 years plus or more, if
15 my math is correct?

16 Again, the article helped to educate parents
17 and families about child molesters, what methods they
18 use, what parents can do to protect their children, how
19 parents can work with their children so the molesters
20 don't get access to them.

21 Clearly this is no policy of secrecy.

22 What the testimony also shows is that the
23 elders in the local congregation deal with many
24 confidential matters in their role as elders. They deal
25 with couples who have had marital problems, with

1 families that have issues.

2 There is a lot of other issues that come up.
3 And the whole function of the elders in those situations
4 is to provide spiritual guidance, direction, spiritual
5 assistance, all based on the teachings of the Bible.

6 The relationship between elders and the
7 congregation members has to be based upon trust and
8 confidentiality. That is no different than other
9 religious organizations.

10 And, indeed, it's just like therapists and
11 counselors, who testified in this case about the issue
12 of trust and confidentiality in their relationships.

13 Remember Laura Fraser? She testified about
14 trust and confidentiality.

15 You saw the clip of the psychiatrist
16 Dr. Wolfe down in Downey, down at Kaiser. You recall
17 her testimony too, that was videotaped and presented.
18 She addressed the issue of trust within the relationship
19 with a client.

20 The bottom line is, if members of the
21 congregation thought elders would disclose their
22 information to the others in the congregation, would
23 those members ever go to the elders again?

24 The answer, I think, is clearly no.

25 You can call that Dr. Applewhite testified

1 about that in her testimony, and that's precisely the
2 issue here, is should the elders breach their
3 confidentiality and do certain things?

4 Also, as of the time this July 1, 1989
5 letter, confidentiality was already a longstanding
6 Bible-based policy that was needed to protect the
7 privacy of the congregation members.

8 And let's go to the second page. And if you
9 blowup that highlighted paragraph.

10 It says:

11 "The need for elders to maintain a strict
12 confidentiality has been repeatedly stressed."

13 And then it references the Watchtower of
14 April 1, 1971.

15 And then it goes to September 1, 1987.

16 There is also reference to a September 1977.

17 So is this a new policy of confidentiality like Mr.
18 Simons suggests?

19 This is Bible-based policy, and to suggest
20 that liability can be imposed for a Bible-based policy?
21 That's not what we are here about.

22 There is also evidence before you that other
23 religious organizations did not undertake educational
24 efforts for families until the Catholic Church crisis
25 was ten, twelve, 15 years ago. But Watchtower was

1 providing educational material in the 1980s.

2 Watchtower actually published an article on
3 child abuse itself, separate from sex abuse, in the
4 mid-'70s.

5 Dr. Applewhite testified that Jehovah's
6 Witnesses far exceeded the standard of care for
7 organizations in educating parents and members on child
8 sexual abuse.

9 She also testified that the congregation of
10 elders did not fall below the standard of care by not
11 informing the congregation members that Kendrick
12 molested his stepdaughter.

13 Think about it. If you go to the church, and
14 you know, if there is Catholic confessional, what are
15 they supposed to do?

16 Mr. Simons suggested, "Oh, we removed Mr.
17 Kendrick. He's a child molester."

18 So you go to Catholic Church. Do you want
19 the priest to stand up and say, "Well, Mr. Kendrick in
20 pew four, stand up, everyone should know he is a child
21 molester."

22 Does any church do that?

23 Does any church organization do that?

24 Does a PTA do that? Go to parent/teacher
25 association at school. Are they going to stand someone

1 up and say, "Oh, stand up. Please, identify yourself as
2 a child abuser."

3 That just doesn't happen.

4 What is also interesting here, as I
5 mentioned, the police and Child Protective Services are
6 trained professionals, and they have the same
7 information that the elders did. But they aren't here
8 today, they aren't sitting at the table with us.

9 The bottom line here is that there is simply
10 no evidence that this July 1, 1989 letter is some policy
11 of secrecy. That's purely Mr. Simons' spin on it. And
12 again, it's a smoke screen by the Plaintiff here to
13 suggest that this July 1, 1989 letter somehow affects
14 this case.

15 What is the other evidence that even suggests
16 that Watchtower is negligent here, that Plaintiff has
17 satisfied her burden of proof with proving that
18 Watchtower is negligent?

19 Again, Mr. Kendrick was a rank and file
20 member of the congregation. He wasn't an elder. And we
21 probably beat that to death, but that is a key fact
22 here.

23 He wasn't an agent of Watchtower when Ms.
24 Conti -- when he sexually abused her. The judge
25 instructed you on that. Mr. Kendrick was not an agent

1 of Watchtower.

2 Ms. Conti and her lawyer will have you
3 believe that Mr. Kendrick's confession to the elders in
4 November of 1993 creates liability here because they did
5 not announce Mr. Kendrick's sin to the congregation.

6 What he is suggesting is they should
7 announce, "Oh, by the way, he has been removed, and he
8 did it because he committed the sin of child abuse."

9 That's what he suggests should have been
10 done.

11 But remember the role of the elders. They
12 were not police, they were not Child Protective
13 Services. They had no role to protect the public there.
14 The elders were religious leaders within the
15 congregation. Their role was to listen in confidence
16 when Jonathan Kendrick confessed and to assist the
17 families by providing spiritual comfort.

18 That's the reason they were called to the
19 Kendrick home. And they did their best by opening that
20 meeting with prayer. They had their Bibles with them.
21 They gave spiritual counsel and comfort to the family.

22 But again, what did they tell Evelyn?

23 What did they tell Andrea?

24 You have the absolute right to report this to
25 the authorities.

1 And within a couple of months that's what
2 they did.

3 That's not secrecy. That's not negligence.

4 The elders also took immediate steps. They
5 removed Jonathan Kendrick as a ministerial servant.
6 They announced his removal to the congregation. They
7 monitored him there.

8 And there is no evidence that anyone in that
9 congregation saw what Ms. Conti said happened there.

10 No one saw her sitting on Kendricks's lap.

11 No one saw her being bear hugged against her
12 will by Kendrick, or even with her will.

13 No one saw a bear hug.

14 No one saw her leave the Kingdom Hall with
15 Jonathan Kendrick.

16 Also, it is interesting, I think, about this
17 case. The people most involved with Candace Conti's
18 life in '94, '95, '96, her parents; you have Laura
19 Fraser, her therapist; you have Dana Takamoto, who was
20 her school counselor. We haven't heard from any school
21 teachers. Her grandmother, none of those people
22 suspected she was being abused at that time. And yet
23 the elders are supposed to be responsible? It just
24 doesn't add up.

25 I submit to you that the elders in this case,

1 whether it is Watchtower or the congregation, should not
2 be held negligent because they asked the congregation,
3 the elders and whom -- the members of the congregation,
4 that they instilled their trust and confidence in them,
5 that the elders should not be held liable because they
6 followed what the Bible states on confidentiality.

7 The is scriptural reasons for what the elders
8 did here, and that's been explained to you from the
9 witness stand.

10 Let's turn to the actual claim that Ms.
11 Conti is making here against the local elders. They say
12 the local elders should inform the congregation that
13 Kendrick sinned by inappropriately touching his
14 stepdaughter.

15 If they had done that, how would the evidence
16 be different here today?

17 Remember, no one testified that they saw
18 Kendrick give Candace a bear hug.

19 No one testified that they saw Kendrick put
20 Candace on his lap.

21 No one testified that they saw Candace leave
22 the Kingdom Hall by herself with Jonathan Kendrick.

23 No one testified to any of the things she
24 saw. There were indeed nine witnesses who disputed
25 that.

1 Would other testimony have presented that the
2 elders breached their vow of confidentiality?

3 Plaintiff would have you speculate about
4 that. But if those witnesses were out there, they would
5 have been here to testify in this trial the last couple
6 of weeks. They weren't.

7 They had the opportunity to call witnesses to
8 support their case. You can assume because they didn't
9 bring them in, they don't exist.

10 Let me try to wrap up here so we can move on.
11 I know you are all pretty eager to get into the jury
12 room with this.

13 Let me address the issue of punitive damages.
14 As the judge advised you during the instructions this
15 morning, Candace Conti seeks punitive damages only
16 against Watchtower.

17 Have you thought about that?

18 Why are they not seeking punitive damages
19 against Jonathan Kendrick?

20 If he did what Candace alleges, these
21 hundreds of incidents of abuse, why would they not want
22 to punish him?

23 Punitive damages, by their nature, are to
24 punish. But they don't want to punish Jonathan
25 Kendrick?

1 It must be a theme from that side of the
2 table. We don't want money from him, and we don't want
3 to punish him, even though if he did these vile things
4 to my client. That's what he's saying.

5 Does that make sense?

6 Now, the judge instructed you on the burden
7 of proof for award of punitive damages. It is not
8 preponderance of the evidence; it is clear and
9 convincing evidence. It is much higher burden of proof;
10 it's a much higher standard.

11 And if you recall, Mr. McCabe illustrated the
12 preponderance of the evidence with the scales. Well, if
13 one scale is slightly longer, that is a preponderance,
14 but that is not clear and convincing evidence. It is
15 more than just the judging of the scale on one side.
16 You have to make a fact highly probable. You have to be
17 persuaded that it is, indeed, a fact.

18 Now, if you decide that Watchtower's conduct
19 caused Candace Conti harm -- again, I don't think you
20 should do that -- but if you do make that finding, then
21 you have to decide that she and her attorney proved by
22 clear and convincing that Watchtower's conduct justifies
23 an award of punitive damages.

24 But as I discussed, if you decide that
25 Watchtower was not responsible, that Plaintiff, Candace

1 Conti, has not met her burden of proof, then there is no
2 need to even address the last question on that verdict
3 form.

4 And that's what I do ask you to do here.
5 There is no finding of negligence on the part of
6 Watchtower here.

7 But again, turning to punitive damages, if
8 you do get to that issue, there is three things they
9 have to prove. They have to prove, one, that by clear
10 and convincing evidence. That's Number 1.

11 Two, that Watchtower acted with malice
12 through a managing agent of Watchtower.

13 So what does that mean?

14 Proving negligence is not enough.

15 Also, proving negligence by a mere agent is
16 not enough.

17 What does that mean? A mere agent?

18 Well, the local elders that we talked about,
19 Mr. Shuster, those are agents, but they are not managing
20 agents.

21 The judge instructed you on what a managing
22 agent was. They have to be able to effect corporate
23 policy, create corporate policy. So any suggestion that
24 any of the elders sitting there in that front row, that
25 their conduct could lead to punitive damages is just

1 wrong.

2 The judge defined the term malice for you.
3 And even as Mr. Simons put that up there, I think in
4 reading that, I think that answers the question for you.
5 Malice means that Watchtower acted with the intent to
6 cause injury in issuing that July 1, 1989 letter.

7 That's quite a statement. Just a statement
8 makes it sound just absolutely false.

9 The second element of that: Was Watchtower's
10 conduct despicable and done with a willful and knowing
11 disregard?

12 It has to be despicable and then "and" going
13 to what Mr. Simons talked about with the willful and
14 knowing disregard.

15 Now, the judge also defined despicable
16 conduct for you. And, again, you are going to have
17 these instructions in the room with you. But if you get
18 to this point -- again, I don't think you should -- but
19 if you get to this point, look at the instruction.

20 The judge defined despicable conduct to mean
21 conduct that is so vile, contemptible, that it would be
22 looked down on and despised by reasonable people.

23 That July 1, 1989 letter, does that meet
24 that?

25 I think clearly not.

1 And, again, Mr. Simons made it clear. He
2 relies totally on this July 1, 1989 letter. There is
3 nothing else that he relies on to suggest that this was
4 malice as defined by the judge.

5 We have looked at that letter. We can go
6 through it again? Again, with time moving on, I am
7 going to try to cut this short. But I don't believe
8 there is any evidence in this case that that letter,
9 even with the preponderance standard, meets the malice
10 standard.

11 But that's not the standard. It is by clear
12 and convincing evidence, you would have to find by clear
13 and convincing evidence that letter was malicious, it
14 was malice, in the way it was, it was despicable. And
15 the evidence just isn't there. It hasn't been presented
16 to you.

17 Indeed, I think, the only testimony in that
18 letter was favorable testimony from these folks. No one
19 from the Plaintiffs testified about that letter. It is
20 purely a spin from Mr. Simons.

21 Just in closing -- well, let me just move to
22 closing, so we can move this on. Mr. Simons is going to
23 have the opportunity to give a rebuttal. He gets the
24 last word. The reason the court procedures have it is
25 the party with the burden of proof gets to have the last

1 word. We can debate whether that is fair or not. But
2 that's what is going to happen.

3 What you should do when he gives you his
4 rebuttal, think to yourself what questions would Mr.
5 McCabe, what questions would I ask? What information
6 would we have to counter that?

7 We are not going to be able to get up and
8 talk again after Mr. Simons' rebuttal. So keep those
9 types of things in mind.

10 Just a few more remarks, as Mr. McCabe
11 mentioned, this case on the Plaintiff's side is about
12 holding the organization responsible for conduct about
13 which it did not know, didn't know what was going on.
14 It didn't happen on its premises; it didn't happen at
15 any organization sponsored activity.

16 That doesn't just affect this church. It
17 affects other churches, it affects Little League, it
18 affects public schools, it affects Boy Scouts, Girl
19 Scouts, Boys and Girls Clubs, you name it. So this case
20 has implications well beyond this.

21 I would submit to you that holding any
22 organization responsible under these facts just creates
23 a wrong precedent.

24 Is that the message you want to send to the
25 community?

1 I don't think it is.

2 Particularly when you have got a Plaintiff
3 who is in cahoots with the perpetrator, and saying,
4 well, we are just going to try to shovel fault off and
5 shift it over to the organization.

6 Fifty-one percent. I don't know how that
7 strikes you, but what Mr. Simons is suggesting you do
8 with 51 percent is, "Hell, Mr. Kendrick, you know
9 49 percent of what you did wasn't your fault."

10 Does that make sense to you? Telling a child
11 abuser that 49 percent of what he did wasn't his fault?

12 I think you can send a message clearly that
13 in this case if something happened to Candace Conti, Mr.
14 Kendrick should be a 100 percent at fault.

15 I ask you to return a zero percent verdict
16 that, again, Watchtower was not negligent, that the
17 congregation was not negligent, and then we can all move
18 on.

19 Again, I appreciate your time. I know it has
20 been a long drill for you. We are getting to the end of
21 it. Thanks for your attention. God bless.

22 THE COURT: All right. And the call is my
23 initiative. I am going to allow Mr. Simons to do his
24 rebuttal now. And there is many reasons for that,
25 including just continuity of argument.

1 I can assure you we have lunch for you. And
2 again, once he is finished, and it is a rebuttal
3 argument, and there are some inherent limitations to
4 that, we are going to swear Hill. He will become your
5 steward and we are going to set you up for lunch.

6 I need a couple of minutes with our
7 alternates. I need to address you independently. After
8 which you are going to huddle for lunch together without
9 talking about the case until we put the twelve in the
10 room to commence deliberation. Again, we all have that
11 understanding.

12 Mr. Simons, to you for rebuttal argument.

13 MR. SIMONS: Yes, your Honor. May we inquire
14 if anyone needs a quick restroom break?

15 THE COURT: Would anyone like to take a
16 five-minute break?

17 Let's take a five-minute comfort break.

18 Back at 1:20. We will be ready to roll.

19 (Break taken)

20 THE COURT: All right. Mr. Simons rebuttal
21 on behalf of the Plaintiff.

22

23 REBUTTAL ARGUMENT BY MR. SIMONS

24 MR. SIMONS: Thank you. Ladies and
25 Gentlemen, this is my opportunity to reply to the

1 arguments that you have just heard from my colleagues on
2 the defense side.

3 And first of all, let me say that I am not
4 offended by the kind of, what you might say, attack-type
5 of arguments that we have heard, and particularly once
6 you focus on me, because I understand and I think you
7 should understand that that is part of the give and take
8 of our system.

9 And it does give you the opportunity to hear
10 everybody's perspective candidly so that you can get a
11 better understanding of what the real dynamics are on
12 the case.

13 But I want to talk a little bit about the
14 secret deal. Now, first of all, I always thought if it
15 is a secret deal, nobody knows about it. But if the
16 lawyers all know about it, it is not really a secret
17 deal.

18 But let's go a little further than that.

19 First of all, let's take a look at Exhibit
20 18/106. And this is the letter about Jonathan Kendrick
21 sent out to the Oakley Congregation in '09 about
22 Mr. Lamerdin and Mr. Clarke after they met with Candace
23 Conti and she talked a little bit about what the things
24 were that were on her mind, and in particular if we go
25 down to the paragraph there at the very bottom of the

1 page that is almost all blacked out, her biggest concern
2 seems to be protecting other children from harm.

3 That was her biggest concern in 2009.

4 But the reason that letter is interesting is
5 because, as his Honor pointed out, when we had the
6 testimony about the secret agreement that Mr. Kendrick
7 had defaulted on this lawsuit, he had failed to appear
8 and lost all right to be part of the lawsuit, and wasn't
9 in the lawsuit at all until January of this year when,
10 as our May trial date approaches, suddenly out of Oakley
11 comes Mr. Kendrick saying, "I want to have my default
12 vacated, set aside. I want the right to appear in this
13 case and to confront all of the witnesses."

14 Now, who put him up to that? We don't know.
15 But there he was. And it was quickly decided by
16 Ms. Conti that we were not about to let this case and
17 the important witnesses who had things to say be
18 hijacked by Jonathan Kendrick.

19 And so the important part of the agreement,
20 if we could see it, is right here. In exchange for not
21 collecting any money against Mr. Kendrick, there is no
22 evidence that he has any, there is evidence he lost his
23 house, but no evidence he has any. Neither he nor his
24 attorneys shall in any way harass, molest, intimidate,
25 contact or annoy Plaintiff, and not only the Plaintiff,

1 but also Evelyn Kendrick, Andrea, Claudia, Kathleen and
2 Carolyn Martinez.

3 In other words, Mr. Kendrick was pushed out
4 of this case so that you could hear the truth from these
5 witnesses without being subject to intimidation.

6 And where was he pushed to? He was pushed to
7 the Fremont Police Department where his plan to stalk
8 whoever he was going to stalk here could be stalked.
9 And that's where the case is, for active investigation.

10 And so all this secret agreement stuff is
11 really a smoke screen to distract us from what the case
12 has always been about, and that's the policy with regard
13 to known childhood sexual abusers.

14 So on that question: There were two words
15 that I did not hear from my colleague, Mr. McCabe. One
16 is "field" and the other is "service." He never spoke
17 of the words at all.

18 And field service is where they are out in
19 the neighborhoods. And Candace was out with
20 Mr. Kendrick. And that's where he got the best
21 opportunity to abuse her.

22 Now, that is actually related to the
23 Jehovah's Witnesses because field service is what they
24 do. But Mr. Schnack, who did address this subject said,
25 but Carolyn Martinez said she never went to field

1 service without her parents, and he showed you a book
2 and her testimony about going to the field service
3 meetings before they go out into the field.

4 Here's what was not mentioned in that
5 particular part of the argument.

6 Here's Carolyn Martinez:

7 "And you saw Jonathan Kendrick and Candace
8 Conti together in field service?"

9 "Yes."

10 "And more than once?"

11 "Yes."

12 "And that was during the time that Candace
13 was still living with her parents? They were married
14 together?"

15 "Yes."

16 Well, someone did see something. We heard
17 all the things that people said they didn't see. But we
18 also heard, Number 1, that nobody had any reason to
19 look.

20 Why would you be looking at Jonathan Kendrick
21 out of all the people in the congregation?

22 No one knows he is an abuser except a few
23 people at the time, and New York.

24 So all the nice women who came and testified:

25 "Did you have any reason to keep an eye on

1 Jonathan Kendrick?"

2 "No. Just seemed like another nice man from
3 another nice family," I think one them said, "in the
4 congregation."

5 And what about not seeing things like, oh,
6 the stuff that Claudia Francis testified about?

7 You know, if somebody had seen something, we
8 heard from Mr. McCabe, they would have said something.

9 Well, yeah, but remember Claudia Francis told
10 us at the end of her testimony that it was only after
11 she learned that he had molested Andrea that she then
12 "connected the dots." Those were the words in the
13 question.

14 And so it is not really fair to say nobody
15 saw anything, therefore, it didn't happen. Nobody
16 looked for anything because they did not have the
17 information that they needed to be able to see what was
18 in front of them.

19 We have heard a lot of argument about
20 confessions. Actually, what we heard in the testimony
21 was this was not a confession. Kendrick lied to them.
22 He didn't confess anything. They didn't believe him.
23 That's not a confession.

24 This isn't in some booth like a -- maybe an
25 analogy of a Catholic priest. This is five people. And

1 it's not a confession. And if it was, something that
2 had the privilege attached to it, it wouldn't be in
3 evidence.

4 But the instruction we reviewed earlier said
5 all the evidence before you, you may consider. The
6 judge is the gatekeeper here on this issue. And so that
7 argument justifies you of the right to listen to the
8 evidence and consider it, and that's what you should do.

9 Now, it was also said that it is just like
10 Laura Fraser. But remember what Laura Fraser said about
11 her very first meeting with Candace Conti.

12 And she said:

13 "I told her right at the very beginning.
14 There are some things I can't keep in confidence. And
15 if you tell me about sexual abuse, I can't keep that
16 confidential."

17 So not everything that is said is
18 confidential. And, in fact, "confidential" is, in this
19 case, an excuse to keep secret child sex abuse.

20 We have heard every major religion, from
21 Dr. Salter, about Methodists, and all the others had
22 adopted resolutions by this time about transparency and
23 reporting and not keeping child sex abuse a secret,
24 except one. And that's the defendants, whose policies
25 are before you now.

1 We heard that the police should have gone
2 around and done something. Well, you know, Mr. Shuster
3 said it best. He said the Jehovah's Witnesses
4 congregation is like family, and it is a family of
5 people who are together and close and spend a lot of
6 their time together.

7 The police aren't part of that family. Child
8 Protective Services isn't part of that family. It is
9 not their job to go around and warn the congregation.
10 The congregation already knew.

11 Officer Davila said the congregation already
12 knew, he knew all the elders knew. Why did he know? He
13 didn't have any evidence from them. He had sufficient
14 evidence to do his job, and he did his job.

15 The people who did not do right, who did not
16 take the responsibility, and still will not take the
17 responsibility for letting a known child molester in a
18 small family, congregation, get a second kid. That's
19 the folks who are before us in this case.

20 We heard a little bit about Exhibit 1, and I
21 went through it in such detail. And, again, I just want
22 to raise a question that wasn't answered. Why, if this
23 was nothing secret and nothing new, and just sort of a
24 restatement of the old rules we always had and everyone
25 always knows.

1 And why, Number 1, is it about lawsuits,
2 about twelve times.

3 And why, Number 2, is it to be kept locked in
4 the safe, confidential, no one is supposed to see it?

5 If it is just the average thing that we all
6 deal with, why is it top secret?

7 It just doesn't make sense. It is like what
8 we said about Mr. Kendrick's supposed confession. He
9 said it was inadvertent, but he was feeling like he
10 needed to confess it.

11 Why would you confess to something that's
12 inadvertent? They don't fit together.

13 This doesn't fit together, and that's because
14 the shine that is being put on it isn't true.

15 What we are seeking to do in this case is to
16 impose responsibility on the people -- on an
17 organization that knew of important information and
18 didn't act on it.

19 The instruction I went through with you is
20 very clear on what the duty is.

21 The instruction I went through with you is
22 very clear on what you should consider in terms of the
23 duty.

24 The instruction that we went through is very
25 clear on what you don't consider.

1 And all you have to do is read and follow
2 those instructions and apply the evidence, and you will
3 find the responsibility on an organization that refuses
4 to join with every other organization in the country and
5 expose known child molesters before they molest again.

6 That's what our case is about. That's what
7 our case is about from day one. That's what our case
8 was about before there even was a case. And that's what
9 our case would be about when you have completed your
10 deliberations.

11 Let me see 60/29 please.

12 Here is one of the Awakes.

13 "Overwhelming, damaging and humiliating
14 assault."

15 Let's see the other quote, please.

16 "The helpless child cannot run, dare not
17 scream, and dare not tell anyone, but yet she may have
18 to face her abuser every day and act as if nothing
19 happened."

20 That's the evidence in this case. That, from
21 Awake Magazine, is what happened to Candace Conti.

22 And Ladies and Gentlemen, to say that it has
23 nothing to do with us when the one piece of information
24 that could have protected her was withheld from her
25 parents.

1 And believe me, since Kathy Conti had been
2 abused herself, there is no way if she knew about that,
3 she would have ever let her kid anywhere near Jonathan
4 Kendrick. And that's before she became so
5 dysfunctional.

6 To blame her in '95 and '96 when the abuse
7 was going on and as she said couldn't take care of
8 herself, that's attacking the victim and her family.

9 To say, well, Mr. Kendrick's house, he was
10 still living Andrea and Evelyn. Well, they were living
11 pretty separate lives, as we heard that Mr. Kendrick
12 knew just how to get them out of the house, start a
13 fight, get them out of the house, he knew when he could
14 bring a kid over here. He knew when the house was
15 empty.

16 As Candace said, she thought they were
17 already divorced. Evelyn and Andrea were never there.
18 So to take that kind of shot at the victim, that's
19 attacking the victim.

20 I think in every way that we have heard the
21 numbers of times it happened, numbers of perceptions how
22 this happened and when it happened, when there is
23 corroborating evidence, and we heard people who saw
24 things, but didn't have the information. It is all just
25 a way to attack the victim rather than take

1 responsibility for what happened, and should never have
2 happened, and should never happen again. Thank you.

3 THE COURT: Madame Clerk, would you swear our
4 attendant, please.

5 (Attendant Mr. Hill Martin was sworn)

6 THE COURT: All right. Mr. Attendant, will
7 you take our jury, and you can all stay for a minute,
8 and I will get you down for lunch in three minutes.

9 (Whereupon, the following proceedings
10 were heard outside the presence of jurors)

11 THE COURT: All right. To our alternate
12 jurors, please be seated.

13 First of all, all the juror admonitions in
14 terms of not discussing the case between yourselves, as
15 a set of alternate jurors or with the jurors,
16 particularly in a moment you will have lunch.

17 It is my rule that -- let me say this,
18 because I want to say it to all twelve jurors whenever
19 they return a verdict. Each of you was most impressive
20 in terms of your diligence and attention throughout this
21 trial. I always try to walk in other people's shoes. I
22 know with alternate jurors, sometimes it is more
23 difficult because there is a sense you are in a little
24 more different zone.

25 But each you was very impressive in terms of

1 your commitment to listening to the evidence and being
2 in a position to judge as a juror.

3 I want to be very clear in terms of history,
4 and I believe in history, oftentimes we need to replace
5 jurors. So what I do in this department is give you an
6 option. Certainly you are going to have lunch with the
7 jury in a moment. You can be at the courthouse if you
8 would like to be close in the event you are needed.

9 Or alternatively, if I can have your
10 assurance, if you give me a method of contacting you,
11 whether it is by handheld device or telephone, and that
12 you can return to court within 30 minutes, then I will
13 set you free for that period of time so that you can get
14 back to some normalcy in your everyday life, as long as
15 we have an understanding if I were need to call you that
16 I would be able to get you back here in a reasonably
17 short period of time.

18 I generally use 30 minutes. If it is 45, we
19 can work with it. But we have 12 jurors, we have the
20 lawyers, we have a number of interested witnesses and
21 participants otherwise here.

22 So the choice is each of yours whether -- if
23 you are around the courthouse, by the way, we have some
24 very interesting trials going on here. You can do that
25 as long as I know where you are. Or alternatively, go

1 back to your lives and your daily circumstances.

2 I can assure each of you if you choose the
3 latter course, that we will call you and make sure you
4 are brought up to speed as to what the jury does in
5 terms of rendering a verdict. I think common courtesy
6 dictates that.

7 So I can assure you that were you to choose
8 to leave and go otherwise, that we can keep in contact
9 with you and make sure you are fully informed as to what
10 the ultimate result is.

11 So what would you like to do? Of course, we
12 have this afternoon. The jury can deliberate as long as
13 it takes. I am not the steward of that.

14 ALTERNATE JUROR: I could be available
15 because I live eight minutes away in a car, 15 minutes
16 on a bus. I can hang around. How long would I be
17 hanging around for?

18 THE COURT: As long as you want, as long as I
19 can contact you.

20 ALTERNATE JUROR: But today, not tomorrow,
21 just any time?

22 THE COURT: Give me your number and then you
23 are fine.

24 And then gentlemen, what would you guys like
25 to do?

1 ALTERNATE JUROR: You can call me. I can
2 still be here.

3 THE COURT: And sir, what would you like to
4 do.

5 ALTERNATE JUROR: I will just be around here.

6 THE COURT: Okay. Why don't the two of you
7 come on up here and give my clerk the contact numbers,
8 and then you can keep in contact with Hill as to where
9 you are going to go, and otherwise go and enjoy your
10 lunch.

11 (Proceedings were adjourned at 3:47 p.m.)

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REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

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

Dated this ____ day of _____, 2012.

KATHRYN LLOYD, CSR No. 5955