

Secrets of
Pedophilia
in an.
American
Religion

Jehovah's Witnesses in Crisis

BARBARA ANDERSON

Court Documents
Churchfield
vs
Jehovah's Witnesses

CONTENTS

CASE # CI12898

**THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
FOR THE COUNTY OF LYON**

Filed: December 5, 1997

**RICHARD CHURCHFIELD and LEZLY CHURCHFIELD, husband and wife;
And LEZLY CHURCHFIELD as Guardian Ad Litem for their minor child, TINA
L. CHURCHFIELD**

Plaintiffs

vs.

**DANIEL STEVEN FITZWATER and; LYNNE FITZWATER; YERINGTON
KINGDOM HALL OF JEHOVAH'S WITNESSES, an unknown entity;
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a new
York corporation; and DOES I through X, inclusive,
Defendants.**

	Page
AMENDED COMPLAINT, Filed 12/5/97	3
ANSWER TO COMPLAINT AND AMENDED COMPLAINT, Filed 2/20/98	10
Deposition of Edward L. Burke, 3/18/99	20
MOTION TO FILE SECOND AMENDED COMPLAINT, Filed 9/7/99	26
SECOND AMENDED COMPLAINT, Filed 9/7/99	31
STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE, Filed 1/26/00	36

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CASE NO. CI12898
DEPT. NO. I

FILE
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MARIAN PINKERTON
LYON COUNTY CLERK
Tommy Thomas
DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

RICHARD CHURCHFIELD and
LEZLY CHURCHFIELD, husband
and wife; and LEZLY
CHURCHFIELD as Guardian Ad
Litem for their minor child,
TINA L. CHURCHFIELD,

Plaintiffs

vs.

AMENDED COMPLAINT

DANIEL STEVEN FITZWATER and;
LYNNE FITZWATER; YERINGTON
KINGDOM HALL OF JEHOVAH'S
WITNESSES, an unknown entity;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a
New York corporation; and
DOES I through X, inclusive,

Defendants.

COMES NOW, the above-named Plaintiffs, by and through
their undersigned counsel, and by way of Amended Complaint against
the above-named Defendants, aver and allege as follows:

FIFTH CAUSE OF ACTION
(Negligence: Kingdom Hall and Watchtower)

I.

That Plaintiffs incorporate herein their First, Second,
and Third Cause of Action of the original Complaint as if set forth
in full and at length herein.

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II.

The Plaintiffs are informed and believe and thereupon allege that Defendant, YERINGTON KINGDOM HALL OF JEHOVAH'S WITNESSES (hereinafter "KINGDOM HALL"), is an unknown entity and is located in Yerington, Nevada.

III.

The Plaintiffs are informed and believe and thereupon allege that Defendant, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. (hereinafter "WATCHTOWER"), is a New York corporation and is the general governing body of all Kingdom Hall of Jehovah's Witnesses, including the Yerington Kingdom Hall.

IV.

At all times alleged herein, the Defendants, and each of them, were acting as principals, agents or representatives, each for the other, and acting within the scope of such agency relationship so that the tortious conduct of each Defendant is imputed by law to every other Defendant.

V.

That Defendants, KINGDOM HALL and WATCHTOWER had a general duty to conduct a reasonable background check on any potential Elder before appointing that Elder and entrusting him to lead a congregation.

VI.

That Defendant DANIEL STEVEN FITZWATER (hereinafter FITZWATER) had a prior history of sexual misconduct, which was known, or should have been known, by the Defendants, KINGDOM HALL and WATCHTOWER.

///

1 VII.

2 That the WATCHTOWER approved the appointment of FITZWATER
3 as an Elder in the Yerington Kingdom Hall, in approximately 1990.

4 VIII.

5 That Elders are responsible for the care, supervision and
6 spiritual guidance of the congregation; that one of the
7 qualifications to be an Elder is that one must be beyond reproach,
8 or free from any accusation; that based on the Elder's position,
9 members are taught, or trained, to submit to these Elders and place
10 their trust in these men and their teachings.

11 IX.

12 That at the time of FITZWATER's sexual lewdness and
13 molestation of the Plaintiff TINA L. CHURCHFIELD, FITZWATER was an
14 Elder in the Yerington Kingdom Hall.

15 X.

16 That had Defendants, KINGDOM HALL and WATCHTOWER,
17 exercised reasonable care in conducting any background check on
18 Defendant FITZWATER, Defendants KINGDOM HALL and WATCHTOWER should
19 not have appointed said Defendant Fitzwater as an Elder.

20 XI.

21 That by the negligent appointment/hiring, supervision and
22 retention of Defendant FITZWATER as an Elder, it was foreseeable
23 that Plaintiffs would incur the damages alleged herein.

24 XII.

25 That as a direct and proximate result of Defendant
26 KINGDOM HALL's and WATCHTOWER's negligent appointment/hiring,
27 supervision and retention of Defendant FITZWATER as an Elder,
28 Plaintiffs incurred the damages as alleged herein.

1 WHEREFORE, Plaintiffs pray for judgment as hereinafter
2 set forth.

3 **SIXTH CAUSE OF ACTION**
4 **(Failure to Warn: Kingdom Hall and Watchtower)**

5 **I.**

6 Plaintiffs incorporate herein their First, Second, Third,
7 and Fifth Causes of Action as if set forth in full and at length
8 herein.

9 **II.**

10 That Defendants, KINGDOM HALL and WATCHTOWER, knew, or
11 should have known in the exercise of reasonable care, of Defendant
12 FITZWATER's prior acts of sexual misconduct and unfitness for the
13 position for which he was appointed.

14 **III.**

15 That Plaintiffs and Defendants were in a special
16 relationship and Defendants were impressed with a duty to warn
17 foreseeable victims of the foreseeable harm.

18 **IV.**

19 That Defendants, KINGDOM HALL and WATCHTOWER, were
20 negligent in that they failed to warn Plaintiffs, and the
21 congregation, about Defendant FITZWATER and his prior sexual
22 misconduct.

23 **V.**

24 That as a direct and proximate result of the aforesaid
25 negligence of the defendants, and each of them, the Plaintiff, TINA
26 L. CHURCHFIELD, was subjected to various acts of sexual lewdness
27 and molestation by Defendant FITZWATER, as alleged in the Complaint
28 on file herein.

1 VI.

2 That as a direct and proximate result of the aforesaid
3 negligence of the defendants, Plaintiffs have sustained damages as
4 alleged in the Complaint on file herein.

5 WHEREFORE, Plaintiffs pray for judgment as hereinafter
6 set forth.

7 **SEVENTH CAUSE OF ACTION**
8 **(Breach of Fiduciary Duty: Kingdom Hall**
9 **Watchtower, and Fitzwater)**

10 I.

11 That Plaintiffs incorporate herein their First, Second,
12 Third, Fifth, and Sixth Causes of Action as if set forth in full
13 and at length herein.

14 II.

15 That Defendants, and each of them, were in a fiduciary
16 relationship with Plaintiffs as Plaintiffs placed and were directed
17 to place a great deal of trust and reliance in said Defendants.

18 III.

19 That Defendants, and each of them, owed a fiduciary duty
20 to deal with the utmost good faith and solely for the benefit of
21 Plaintiffs and the congregation.

22 IV.

23 That by allowing the Defendant FITZWATER to be placed in
24 this position of trust as an Elder, Defendants breached their duty
25 and created a foreseeable danger to Plaintiffs, and others.

26 V.

27 That as a direct and proximate result of this breach of
28 fiduciary duty, Plaintiffs have suffered damages as alleged in the
Complaint on file herein.

1 WHEREFORE, Plaintiffs pray for judgment as hereinafter
2 set forth.

3 **EIGHTH CAUSE OF ACTION**
4 **(Vicarious Liability: Kingdom Hall and Watchtower)**

5 **I.**

6 Plaintiffs incorporate herein their First, Second, Third,
7 Fifth, Sixth, and Seventh Causes of Action as if set forth in full
8 and at length herein.

9 **II.**

10 That the tortious conduct by Defendant, FITZWATER, as
11 alleged in the Complaint on file herein, was done in the course and
12 scope of his agency and/or appointment/employment with Defendants,
13 KINGDOM HALL and WATCHTOWER.

14 **III.**

15 That the Defendants, KINGDOM HALL and WATCHTOWER, are
16 vicariously liable for the torts of their agent/employee, Defendant
17 FITZWATER.

18 **IV.**

19 That in the alternative, Defendant FITZWATER was aided in
20 accomplishing the tortious conduct by the existence of the
21 agency/employment relation, by which case, Defendants KINGDOM HALL
22 and WATCHTOWER are vicariously liable.

23 **V.**

24 That as a direct and proximate result of said
25 agency/employment relation, Plaintiffs suffered damages as alleged
26 in the Complaint on file herein.

27 ///

28 ///

1 WHEREFORE, Plaintiffs pray for judgment against the
2 Defendants as follows:

3 A. For Plaintiff TINA L. CHURCHFIELD:

4 1. Damages for humiliation, mental anguish and
5 emotional and physical distress and damages to her body in
6 excess of TEN THOUSAND DOLLARS (\$10,000).

7 B. For Plaintiffs RICHARD CHURCHFIELD and LEZLY
8 CHURCHFIELD:

9 1. For all costs of treatment, counseling and
10 other related expenses according to proof.

11 2. For loss of Services and enjoyment of Plaintiff
12 TINA L. CHURCHFIELD in excess of TEN THOUSAND DOLLARS
13 (\$10,000).

14 C. For all Plaintiffs against the Defendant FITZWATER
15 only:

16 1. Punitive and exemplary damages in excess of TEN
17 THOUSAND DOLLARS (\$10,000) and according to proof.


18 D. For all Plaintiffs:

19 1. Actual attorney's fees incurred as an item of
20 damages, together with costs of suit.

21 2. For such other and further relief as to the
22 Court may seem proper in the premises.

23 DATED this 24 day of October, 1997.

24 TERZICH & JACKSON, LTD.

25
26 
27 By: MILOS TERZICH, ESQ.
28 1470 Highway 395
 Post Office Box 1210
 Gardnerville, NV 89410
 (702) 782-2700

1 Case No. CI12898

FILE

2 Dept. No. I

98 FEB 20 PM 1:06

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MARIAN PINKERTON

Jane Scuring
CLERK
DEPUTY

4

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5

IN AND FOR THE COUNTY OF LYON

6

7 RICHARD CHURCHFIELD and
8 LEZLY CHURCHFIELD, husband
and wife; and LEZLY CHURCHFIELD
as Guardian ad Litem for their minor
9 child, TINA L. CHURCHFIELD,

10

Plaintiffs.

11

vs.

ANSWER TO COMPLAINT
AND AMENDED COMPLAINT

12

DANIEL STEVEN FITZWATER and;
LYNNE FITZWATER; YERINGTON
13 KINGDOM HALL OF JEHOVAH'S
WITNESSES, an unknown entity;
14 WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a
15 New York corporation; and
DOES I through X, inclusive,

16

Defendants.

17

18

COME NOW the WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

19

and the ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, YERINGTON, NEVADA,

20

an unincorporated association improperly named herein as "YERINGTON KINGDOM HALL

21

OF JEHOVAH's WITNESSES, and in answering the FIRST CAUSE OF ACTION of the

22

Complaint on file herein, admit, deny and aver as follows:

23

I.

24

Admits the allegations and averments contained in Paragraph I.

25

II.

26

Defendants are without knowledge or information sufficient to form a belief as to the

27

truth of the allegations and averments contained in Paragraph II and therefore, deny the same.

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III.

Admit the allegations and averments in Paragraph III.

IV.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and averments contained in Paragraph IV and therefore, deny the same.

V.

Deny the allegations and averments contained in Paragraph V insofar as said allegations or averments relate to these answering Defendants.

VI.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and averments contained in Paragraphs VI through XIII, inclusive, and therefore, deny the same.

In answering the SECOND CAUSE OF ACTION of the Complaint on file herein, Defendants admit, deny and aver as follows:

I.

Adopt by reference and make a part hereof each and all of the statements, allegations and averments contained in Paragraphs I through VI, inclusive, of their answer to said First Cause of Action hereinabove.

II.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and averments contained in Paragraphs II and III of said Second Cause of Action and therefore, deny the same.

In answering the THIRD CAUSE OF ACTION of the Complaint on file herein, Defendants admit, deny and aver as follows:

I.

Adopt by reference and make a part hereof each and all of the statements, allegations

1 and averments contained in Paragraphs I through VI, inclusive, of their answer to said First
2 Cause of Action hereinabove and Paragraphs I and II of their answer to said Second Cause of
3 Action hereinabove.

4 II.

5 Defendants are without knowledge or information sufficient to form a belief as to the
6 truth of the allegations and averments contained in Paragraphs II and III of said Third Cause
7 of Action and therefore, deny the same.

8
9 In answering the FOURTH CAUSE OF ACTION of the Complaint on file herein,
10 Defendants admit, deny and aver as follows:

11 I.

12 Adopt by reference and make a part hereof each and all of the statements, allegations
13 and averments contained in Paragraphs I through VI, inclusive, of their answer to said First
14 Cause of Action hereinabove, Paragraphs I and II of their answer to said Second Cause of
15 Action hereinabove and Paragraphs I and II of their answer to said Third Cause of Action
16 hereinabove.

17 II.

18 Defendants are without knowledge or information sufficient to form a belief as to the
19 truth of the allegations and averments contained in Paragraphs II through IV, inclusive, of said
20 Fourth Cause of Action and therefore, deny the same.

21
22 In answering the FIFTH CAUSE OF ACTION of the Amended Complaint on file herein,
23 Defendants admit, deny and aver as follows:

24 I.

25 Adopt by reference and make a part hereof each and all of the statements, allegations
26 and averments contained in Paragraphs I through VI, inclusive, of their answer to said First
27 Cause of Action hereinabove, Paragraphs I and II of their answer to said Second Cause of
28 Action hereinabove, Paragraphs I and II of their answer to said Third Cause of Action

1 hereinabove and Paragraphs I and II of their answer to said Fourth Cause of Action
2 hereinabove.

3 II.

4 Admit that the ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES,
5 YERINGTON, NEVADA, is an unincorporated association.

6 III.

7 Admit that the WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. is a
8 New York not for profit corporation used by the governing body to facilitate preaching and
9 teaching of Jehovah's Witnesses in the United States. Deny the remaining allegations and
10 averments contained in Paragraph IV of said Fifth Cause of Action insofar as said allegations
11 and averments relate to these answering Defendants.

12 IV.

13 Deny the allegations and averments contained in Paragraph V.

14 V.

15 Defendants are without knowledge or information sufficient to form a belief as to the
16 truth of the allegations and averments contained in Paragraph VI and therefore, deny the same.

17 VI.

18 Admit that the appointment of FITZWATER as an Elder was approved. Admit the
19 remaining allegations and averments of Paragraph VII.

20 VII.

21 Admit that Elders are responsible for the teaching and shepherding of the congregation
22 and that members are encouraged to place their trust in the spiritual direction and guidance
23 provided by the Elders. Deny the remaining allegations and averments of Paragraph VIII.

24 VIII.

25 Defendants are without knowledge or information sufficient to form a belief as to the
26 truth of the allegations and averments contained in Paragraph IX and therefore, deny the same.

27 IX.

28 Deny the allegations and averments contained in Paragraphs X through XII, inclusive.

1 In answering the SIXTH CAUSE OF ACTION of the Amended Complaint on file herein,
2 Defendants admit, deny and aver as follows:

3 I.

4 Adopt by reference and make a part hereof each and all of the statements, allegations
5 and averments contained in Paragraphs I through VI, inclusive, of their answer to said First
6 Cause of Action hereinabove, Paragraphs I and II of their answer to said Second Cause of
7 Action hereinabove, Paragraphs I and II of their answer to said Third Cause of Action
8 hereinabove, and Paragraphs I and II of their answer to said Fourth Cause of Action
9 hereinabove and Paragraphs I through X, inclusive, of their answer to said Fifth Cause of
10 Action hereinabove.

11 II.

12 Deny the allegations and averments contained in Paragraphs II through IV, inclusive.

13 III.

14 Deny the allegations and averments contained in Paragraphs V and VI insofar as said
15 allegations and averments refer or pertain to these answering Defendant.

16
17 In answering the SEVENTH CAUSE OF ACTION of the Amended Complaint on file
18 herein, Defendants admit, deny and aver as follows:

19 I.

20 Adopt by reference and make a part hereof each and all of the statements, allegations
21 and averments contained in Paragraphs I through VI, inclusive, of their answer to said First
22 Cause of Action hereinabove, Paragraphs I and II of their answer to said Second Cause of
23 Action hereinabove, Paragraphs I and II of their answer to said Third Cause of Action
24 hereinabove, and Paragraphs I and II of their answer to said Fourth Cause of Action
25 hereinabove, Paragraphs I through X, inclusive, of their answer to said Fifth Cause of Action
26 hereinabove and Paragraphs I through III, inclusive, of their answer to said Sixth Cause of
27 Action hereinabove.

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II.

Deny the allegations and averments contained in Paragraphs II and III insofar as said allegations and averments refer or pertain to these answering Defendants.

III.

Deny the allegations and averments contained in Paragraph IV.

IV.

Deny the allegations and averments contained in Paragraph V insofar as said allegations and averments refer or pertain to these answering Defendants.

In answering the EIGHTH CAUSE OF ACTION of the Amended Complaint on file herein, Defendants admit, deny and aver as follows:

I.

Adopt by reference and make a part hereof each and all of the statements, allegations and averments contained in Paragraphs I through VI, inclusive, of their answer to said First Cause of Action hereinabove, Paragraphs I and II of their answer to said Second Cause of Action hereinabove, Paragraphs I and II of their answer to said Third Cause of Action hereinabove, and Paragraphs I and II of their answer to said Fourth Cause of Action hereinabove, Paragraphs I through X, inclusive, of their answer to said Fifth Cause of Action hereinabove, Paragraphs I through III, inclusive, of their answer to said Sixth Cause of Action hereinabove and Paragraphs I through IV, inclusive, of their answer to said Seventh Cause of Action hereinabove.

II.

Deny the allegations and averments contained in Paragraphs II through V, inclusive.

As and for a FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as follows:

I.

Said Complaint and Amended Complaint fail to state a claim upon which relief can be

1 granted in favor of Plaintiffs, or any of them, or against these Defendants, or either of them.

2

3 As and for a SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as
4 follows:

5

I.

6 Plaintiffs' Complaint and Amended Complaint fail to state a claim against these
7 answering Defendants for punitive and/or exemplary damages.

8

9 As and for a THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as
10 follows:

11

I.

12 Plaintiffs' Complaint and Amended Complaint fail to state a claim against these
13 answering Defendants for attorney's fees pursuant to the laws of the State of Nevada.

14

15 As and for a FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as
16 follows:

17

I.

18 These Defendants are informed and believe and upon such information and belief aver
19 that prior to and at or about the time and place mentioned in said Complaint and Amended
20 Complaint, Plaintiffs were negligent in and about the matters referred to in said Complaint and
21 Amended Complaint, which negligence proximately caused and contributed to said incident
22 and any and all injuries or damages allegedly resulting therefrom.

23

II.

24 At all times denying that these Defendants, or either of them, were negligent or
25 otherwise at fault with regard to the matters averred to in said Complaint and Amended
26 Complaint, these Defendants aver that the negligence and/or fault of Plaintiffs must be
27 compared to that of these Defendants, if any, in accordance with the terms and provisions of
28 the Nevada Revised Statutes and other applicable laws of the State of Nevada.

1 III.

2 At all times denying any negligence, fault or responsibility on their part, these
3 Defendants aver that if they are found to be negligent, at fault or otherwise responsible for
4 Plaintiffs' injuries and damages, if any there were, and without admitting the same, the
5 principles of law and equity relative to comparative negligence require that the relative
6 degrees of negligence of all parties be ascertained so that these Defendants be liable to
7 Plaintiffs, if at all, for no more than an amount equal to their relative degree of fault,
8 negligence or responsibility, if any there is, as compared to the fault, negligence or conduct
9 of all parties to this matter.

10
11 As and for a FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as
12 follows:

13 I.

14 These answering Defendants are informed and believe and thereupon aver that the
15 injuries and damages sustained by the Plaintiffs, if any, were caused by the acts or conduct of
16 third parties who were and are not the agents or employees of these Defendants, nor acting
17 on behalf of these Defendants.

18
19 As and for a SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as
20 follows:

21 I.

22 At all times and places relevant hereto, these Defendants and their agents or employees
23 acted in good faith and without malice toward the Plaintiffs and each of them.

24
25 As and for a SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as
26 follows:

27 I.

28 Defendants are informed and believe and thereupon aver that Plaintiffs failed to

1 mitigate their losses and damages, if any there were.

2

3 As and for an EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants aver as
4 follows:

5

I.

6 Pursuant to the terms and provisions of Rule 11 of the Nevada Rules of Civil Procedure,
7 at the time Defendants filed this Answer, all possible affirmative defenses may not have been
8 alleged inasmuch as insufficient facts and other relevant information and documents may not
9 have been available after reasonable inquiry, and therefore, Defendants reserve the right to
10 amend this Answer to allege additional affirmative defenses if subsequent investigation
11 warrants the same.

12

13 WHEREFORE, Defendants pray that Plaintiffs take nothing by reason of said
14 Complaint and Amended Complaint and that these Defendants have judgment against
15 Plaintiffs for costs of suit and a reasonable attorney's fee herein.

16

17

ERICKSON, THORPE & SWAINSTON, LTD.
99 West Arroyo Street, P.O. Box 3559
Reno, Nevada 89505

18

19

20

By 

21

JOHN A. ABERASTURI
Attorneys for Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC. and the ENGLISH
CONGREGATION OF JEHOVAH'S WITNESSES,
YERINGTON, NEVADA

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ERICKSON, THORPE & SWAINSTON, LTD. and that on this date I mailed a true copy of the attached document addressed as follows:

Mr. Milos Terzich
Attorney at Law
P.O. Box 1210
Gardnerville, Nevada 89410

2/18, 1998

S. Diers

1 CASE NO. CI 12898
 2 DEPT. NO. 1
 3
 4 THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF LYON
 --oO--
 5 RICHARD CHURCHFIELD and LEZLY :
 6 CHURCHFIELD, husband and wife, and :
 7 LEZLY CHURCHFIELD as Guardian Ad :
 8 Litem for their minor child, :
 9 TINA L. CHURCHFIELD, :
 Plaintiffs, :
 10 vs. :
 11 DANIEL STEVEN FITZWATER and LYNNE :
 FITZWATER, YERINGTON KINGDOM HALL :
 12 OF JEHOVAH'S WITNESSES, an unknown :
 entity; WATCHTOWER BIBLE AND TRACT :
 13 SOCIETY OF NEW YORK, INC., a :
 New York corporation; and DOES 1 :
 14 through X, inclusive, :
 Defendants. :

 15
 16 DEPOSITION OF
 17 EDWARD L. BURKE
 18 THURSDAY, MARCH 18, 1999
 19 RENO, NEVADA
 20
 21 Reported by: CAROL HUMMEL, RPR, CCR #340
 22 -- Computer --
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 2 PAGE ATTORNEY'S NOTES/CORRECTIONS BY WITNESS
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 4 A.A.
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 6 APPEARANCES
 7
 8 FOR THE PLAINTIFFS:
 9 TERZICH & JACKSON
 Attorneys at Law
 10 By: MILOS TERZICH, ESQ.
 1470 Highway 395
 11 Gardnerville, Nevada
 12
 13 FOR THE DEFENDANTS:
 14 ERICKSON, THORPE & SWAINSTON
 Attorneys at Law
 15 By: JOHN ABERASTURI, ESQ.
 99 West Arroyo Street
 16 Reno, Nevada
 AND
 17 MARIO MORENO, ESQ.
 Associate General Counsel
 18 Watch Tower Bible and Tract
 Society of Pennsylvania
 19 100 Watchtower Drive
 Patterson, New York
 20
 21 ALSO PRESENT:
 22 Richard Churchfield
 23 A.A.
 24
 25

1
 2 -oO-
 3 RENO, NEVADA; THURSDAY, MARCH 18, 1999; 9:00 A.M.
 4 -oO-
 5
 6 EDWARD L. BURKE
 7 having been duly sworn by the notary public,
 8 was examined and testified as follows:
 9
 10 EXAMINATION
 11 BY MR. ABERASTERI:
 12 Q Sir, would you state your full name for
 the record, please.
 13 A My full name is Edward L. Burke.
 14 Q Would you spell your last name for the --
 15 A B-u-r-k-e.
 16 Q Mr. Burke, we discussed briefly off the
 17 record, but just so we're clear, you're here to give
 18 your deposition today in the matter of a lawsuit that's
 19 been filed by Mr. Churchfield, who's here, and his
 20 family, against the Watch Tower Bible and Tract
 21 Society, and the local congregation of Jehovah's
 22 Witnesses in Yerington. Is that your understanding?
 23 A I understand that.
 24 MR. TERZICH: And Mr. Fitzwater.
 25 BY MR. ABERASTERI:

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 3 A.A.
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 5 INDEX
 6 EXAMINATION BY: PAGE:
 Mr. Aberasteri 5,67
 Mr. Terzich 20,70
 7
 8
 9
 10 EXHIBITS:
 11 1 - Recommendation for Dan Fitzwater 34
 12 2 - List of elders 41
 13 3 - Annual Statement to Trustees 58
 14 4 - Two-page document 61
 15
 16 A.A.
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1 Q I'm sorry. Also named as a defendant are
 2 Mr. and Mrs. Fitzwater, who are not represented at this
 3 deposition. Is that your understanding?
 4 A Right.
 5 Q Have you ever given a deposition before?
 6 A No.
 7 Q Just a couple of things on the record to
 8 make sure that we're of the same mind. First of all,
 9 the record itself. The court reporter is taking down
 10 everything that we say here in the room, so because of
 11 that there are a couple of things that are important.
 12 First of all, to use regular words in
 13 responding to questions. It's difficult to type out
 14 shakes of the head and uh-huhs and huh-uhs, so if you
 15 fall into that, as people do often, and say something
 16 like uh-huh, I might say, "Does that mean yes?" I'm
 17 not being thick, I'm just trying to make sure the
 18 record is correct.
 19 A Yes or no.
 20 Q Second is in order to read the record
 21 later on, it's important that you let me get to the end
 22 of my question before you start your answer. In
 23 regular conversation we always have an idea where we're
 24 going, and we kind of talk over each other. That
 25 doesn't type out very well either, so it just makes it

7

1 clearer. And I will try to let you finish your answers
 2 before I start my questions. Okay?
 3 A All right.
 4 Q The last thing is this is not designed to
 5 be an unpleasant process, it's designed to get the
 6 information that you have. So if there comes a point
 7 in time you need a break, for whatever reason, just let
 8 us know, and we'll gladly accommodate you if it's the
 9 appropriate time.
 10 Where do you live?
 11 A Elko, Nevada, Cittridge Canyon.
 12 Q How do you spell Cittridge?
 13 A C-a-t-t -- C-i-t-t-r-i-d-g-e.
 14 Q And how long have you lived in Elko?
 15 A Five years.
 16 Q How old are you?
 17 A 74.
 18 Q With whom do you live?
 19 A By myself.
 20 Q Are you working or retired?
 21 A Retired.
 22 Q What did you do for pay before you
 23 retired, what work did you do last?
 24 A I was a superintendent for Tibbles
 25 Construction in Yerington.

8

1 Q How long --
 2 MR. TERZICH: Excuse me, what
 3 construction?
 4 THE WITNESS: Tibbles.
 5 BY MR. ABERASTERI:
 6 Q How long were you with Tibbles
 7 Construction?
 8 A Eighteen years.
 9 Q And have you been retired for the same
 10 five years that you have been living up in Elko?
 11 A Yeah.
 12 Q Before moving to Elko, where did you live?
 13 A Yerington.
 14 Q Did you live in Yerington for 18 years?
 15 A Right.
 16 Q Were you a member of the Yerington
 17 congregation of Jehovah's Witnesses while you lived in
 18 Yerington?
 19 A Yes, I was.
 20 Q How long have you been a Jehovah's
 21 Witness?
 22 A About 32, 33 years, something like that.
 23 Q Where were you originally baptized?
 24 A At Springfield, Oregon.
 25 Q I've been given to understand that there's

9

1 actually two congregations in the Yerington area, is
 2 that correct, an English congregation and a Spanish
 3 language congregation?
 4 A Right.
 5 Q I presume from the way you're talking, you
 6 were a member of English congregation, correct?
 7 A Right.
 8 Q While you lived in Yerington did you ever
 9 serve as an elder in that English congregation?
 10 A Yes, I did.
 11 Q And approximately when did you become an
 12 elder?
 13 A 1983, I believe, or '2. I don't know
 14 which for sure.
 15 Q '82, '83, somewhere in there?
 16 A One of them, yes.
 17 Q About how long did you serve?
 18 A About ten years.
 19 Q And again, are you a little bit unsure
 20 about the actual date when you stepped down from being
 21 an elder?
 22 A I don't know for sure what the date was.
 23 Q But if we said the early '90s, we would be
 24 pretty close to being right?
 25 A Pretty close.

10

1 Q During the time that you were an elder,
 2 did you know Mr. Churchfield, who is here at the table
 3 with us?
 4 A Yes.
 5 Q And obviously you lived in Yerington for a
 6 few years after you finished your service, is that
 7 correct?
 8 A Right.
 9 Q Did you also know Daniel Fitzwater?
 10 A Yes.
 11 Q How did you come to know Daniel Fitzwater?
 12 A Through the congregation.
 13 Q Had you known Mr. Fitzwater before he
 14 moved into Yerington?
 15 A Not before he originally -- well, I don't
 16 know. He moved in and out, so I don't know.
 17 Q You didn't know him when you were living
 18 up in Oregon, for example?
 19 A No.
 20 Q You only knew him in Yerington?
 21 A In Yerington.
 22 Q And you said that Mr. Fitzwater moved in
 23 and out of town a couple of times, is that correct?
 24 A Couple three times, if I remember.
 25 Q Did you meet him through the congregation

11

1 as opposed to through work or --
 2 A Yes, the congregation.
 3 Q Did there come a point in time when
 4 Mr. Fitzwater was recommended to be an elder?
 5 A Yes.
 6 Q How did that work?
 7 A Well, I had received a letter from where
 8 he was down in Georgia recommending him to be an elder,
 9 recommending him as an elder here, so I went on that
 10 assumption.
 11 Q And when you received that letter, is that
 12 something that he brought with him when he moved back
 13 into town from Georgia?
 14 A That I don't recall whether he mailed it
 15 to me or whether he brought it back.
 16 Q That was a bad question.
 17 But he had been living in town and moved
 18 away to Georgia --
 19 A Right.
 20 Q -- is that correct?
 21 And then later moved back into town, into
 22 Yerington?
 23 A Right.
 24 Q And during the time that he was coming
 25 back into town from Georgia, you were the elder or an

12

1 elder in the congregation?
 2 A Yes, I was the presiding officer.
 3 Q As a general proposition, I've learned in
 4 this case that when a member or one of Jehovah's
 5 Witnesses moves, a letter of introduction goes with
 6 them to their new congregation, is that right
 7 generally?
 8 A I think it has -- you have to write the
 9 secretary normally.
 10 Q The letter goes to -- the new congregation
 11 gets a letter from the old congregation?
 12 A Right.
 13 Q And if they've been an elder or a
 14 ministerial servant, there will be a recommendation in
 15 that letter generally about whether or not they should
 16 be --
 17 A Reinstated.
 18 Q -- reinstated?
 19 A Right.
 20 Q And that's what we're talking about with
 21 Mr. Fitzwater here?
 22 A Right.
 23 Q You obviously had known this gentleman
 24 before just because he had been in your congregation?
 25 A Right.

31

1 Q Did she attend meetings at the Kingdom
2 Hall?
3 A Yes.
4 Q How would you describe Dan Fitzwater's
5 relationship with Dawn, his stepdaughter, at the time
6 you knew him?
7 A Nothing out of the ordinary that I can
8 remember.
9 Q You don't recall whether or not he
10 attended to her specially, put his arms around her a
11 lot, had her sit on his lap, or anything like that?
12 A At the meetings once in a while she would
13 sit on his lap.
14 Q Just once in a while?
15 A I never paid that much attention, you
16 know.
17 Q I believe you stated that you were asked
18 if you and Dan Fitzwater were good friends, and I
19 believe you stated Dan would not be a friend, "not the
20 type of man I would want as a friend." Do you remember
21 that?
22 A That's right.
23 Q Why do you say that?
24 A He's just not my type, just not the type
25 of man I would have for a friend. Spiritual brother,

32

1 yes.
2 Q But why do you say that?
3 A Well, I guess I just never clicked with
4 him.
5 Q Did you feel he was too controlling?
6 A Well, he tried to be from time to time.
7 Q With you?
8 A Well, I don't know whether he ever tried
9 it with me or not.
10 Q Did you particularly like him outside of
11 the congregation?
12 A Well, we associated once in a while. Not
13 outside the congregation we surely didn't.
14 Q In 1979 do you recall that Dawn was going
15 over questions for baptism around the time after they
16 moved to Yerington in '79?
17 A No, I'm not aware of that at all.
18 Q Were you aware -- did you become aware
19 that Dawn, Dan's stepdaughter, was placed in foster
20 care in approximately 1983?
21 A I wasn't aware of that either.
22 Q You weren't?
23 A No.
24 Q You were there in 1983?
25 A Right.

33

1 Q And you were an elder?
2 A That's just when I became an elder, yeah.
3 Q Did you ever become aware in 1983 or
4 thereabouts that Dawn had made allegations against Dan
5 as to him improperly touching her?
6 A No, wasn't aware of that.
7 Q Did you become aware that Dawn no longer
8 lived with Dan and his wife at any time?
9 A No.
10 Q So according to your memory, Dawn lived
11 with Dan and his wife Lynne up until the time you left
12 Yerington?
13 A Well, let's see. They had moved away and
14 came back. I don't recall of anything like that.
15 Q Well, our records show that the Fitzwaters
16 moved to Florida in 1983. Were you aware of that?
17 A I was aware of that.
18 Q And was Dawn with them at that time?
19 A That I don't recall.
20 Q That apparently from there Dan moved to
21 Hazlehurst, Georgia?
22 A I was aware of that.
23 Q Back in 1990 he moved back to Yerington.
24 Do you recall that?
25 A Yes.

34

1 Q Did you know this was the third time that
2 he had moved back to Yerington?
3 A I recall something like that, third or
4 fourth time.
5 Q Do you recall any discussions or talk
6 among the members of the congregation about possible
7 allegations against Dan Fitzwater regarding the fact
8 that he improperly touched Dawn prior to October of
9 1992?
10 A No, I wasn't aware of that fact either.
11 Q Do you recall that Dawn stopped coming to
12 the Kingdom Hall in the early '80s before they moved to
13 Florida?
14 A No, I wasn't aware of that either.
15 Q You and Dan were elders together for about
16 six months?
17 A Something like that, yeah.
18 Q During that time did he ever confide in
19 you as to any potential problems that he had with his
20 stepdaughter Dawn?
21 A No, he never did.
22 (Exhibit 1 marked.)
23 BY MR. TERZICH:
24 Q Let me show you what's been marked as
25 Exhibit 1 and ask you to identify that.

35

1 A That he was recommended in -- let's see.
2 Okay.
3 Q Do you recognize that document?
4 A Yes.
5 Q This is the document where Dan Fitzwater
6 was recommended to become an elder in 1990, is that
7 correct?
8 A Right about that date, yeah.
9 Q Is that the date that's at the top there?
10 A Okay.
11 Q At the very top there it says, "The
12 Governing Body has approved the recommendations on the
13 reverse side as indicated by the Watchtower Society
14 stamp below." Is there a reverse side to this
15 document?
16 A I don't recall whether there was or not.
17 Q I believe we discussed this before with
18 another witness, and I have never been provided with a
19 reverse side.
20 MR. ABERASTERI: I don't know. This is
21 all that's in the file. I think there is two
22 possibilities; one, that this is both sides copied on
23 one page, which I think is the most likely possibility,
24 that this is the obverse side, but we don't have any
25 other documents, at least at this point, and we

36

1 continue to look. Obviously the recommendation is on
2 this document right here.
3 BY MR. TERZICH:
4 Q I believe you testified when
5 Mr. Aberasteri was questioning you that you were the
6 presiding overseer at this time?
7 A That's right.
8 Q I notice at the top it says presiding
9 overseer is Frank Cardoza, and you were the secretary.
10 Is that error?
11 A No, that is correct. It's Frank in there
12 about that time, yeah.
13 Q So you were not the presiding overseer?
14 A No, not while we built the Kingdom Hall.
15 Q Now, the typewritten part there where it
16 says comments of circuit overseer, that would have been
17 typed in by?
18 A Rainer.
19 Q By Rainer?
20 A Uh-huh.
21 Q By your name it says name and date of
22 appointment of elders in the congregation, Edward L.
23 Burke, 2-11-87. That's an incorrect date, is it not?
24 A I believe that is incorrect.
25 Q Because you were an elder in '82 or '83?

37

1 A Right.
 2 Q Do you know who typed this document?
 3 A No.
 4 Q Down at the bottom it says Gilbert
 5 Hernandez, Jr., and Gilbert Hernandez, Sr. Why would
 6 they be mentioned on this form?
 7 MR. ABERASTERI: There at the bottom where
 8 it says ministerial servants in the congregation, and
 9 they are identified as the three gentlemen.
 10 THE WITNESS: Yeah.
 11 MR. TERZICH: Juan Berumen is crossed out
 12 on my --
 13 THE WITNESS: Juan Berumen.
 14 BY MR. TERZICH:
 15 Q Would Gilbert Hernandez, Jr. and Senior
 16 have joined in that representation?
 17 A I don't believe so. I don't remember.
 18 Q Do you know why their names would be
 19 appear on this form?
 20 A No, I don't.
 21 MR. ABERASTERI: Other than the fact that
 22 they are identified as ministerial servants on the
 23 form?
 24 THE WITNESS: That would be the only
 25 thing.

38

1 MR. ABERASTERI: Were they ministerial
 2 servants at the time?
 3 MR. TERZICH: Wait just a minute. It's my
 4 deposition, if you want to cross-examine him
 5 afterward --
 6 MR. ABERASTERI: You're confusing him, it
 7 says why they're there, they're listed as "Names and
 8 date of appointment of ministerial servants."
 9 MR. TERZICH: You can point that out when
 10 you're questioning him. When I question I don't want
 11 you interrupting with other questions like you did
 12 before, please.
 13 BY MR. TERZICH:
 14 Q Did you do an independent investigation of
 15 Dan Fitzwater before you recommended him to be an
 16 elder?
 17 A Just myself and Frank from when we talked
 18 things over. I mean, all the information we had.
 19 Q What was the information that you had?
 20 A Good recommendation. I mean, we had
 21 nothing against him.
 22 Q You had a letter from Hazlehurst, Georgia
 23 which said he was in good standing?
 24 A Right.
 25 Q And that letter recommended him to be an

39

1 elder, do you recall?
 2 A As far as I know, it did.
 3 Q Other than that, receiving that letter
 4 from Hazlehurst, Georgia, did you do an independent
 5 investigation before you recommended him to be an
 6 elder?
 7 A Well, by his works and his actions and so
 8 forth. We didn't set up a committee to check him out
 9 or anything like that.
 10 Q Did you interview Dan or question him
 11 about his past before you recommended him?
 12 A Just what he had done when he had been
 13 gone down there in Hazleton, (sic).
 14 Q Did you or any of your committee talk to
 15 Dan Fitzwater before you recommended him as an elder?
 16 A Yes. And the circuit overseer too.
 17 Q And you had conversations with him about
 18 his past?
 19 A Just from what his works were in the
 20 congregation. What he was, he was recommended a
 21 circuit overseer down there in Hazleton, (sic), where
 22 he is at in Georgia, and I believe he was a presiding
 23 overseer in one of the congregations.
 24 Q Did you contact the Hazlehurst, Georgia
 25 congregation elders or the overseer regarding Dan's

40

1 service there?
 2 A No.
 3 Q Were you aware that he had a problem in
 4 the Hazlehurst congregation, but they claimed it was
 5 cleared up?
 6 A No, I'm not aware of that.
 7 Q Did you know that Lynne and Daniel --
 8 excuse me. Did you know Danielle Fitzwater?
 9 A Uh-huh.
 10 Q Yes?
 11 A Yes.
 12 Q Did you know that Lynne -- whether or not
 13 Lynne or Daniel had emotional problems while in
 14 Hazlehurst?
 15 A No, I'm not aware of that.
 16 Q Did you ever hear the name Metzger?
 17 A No.
 18 Q So if I understand you correctly, you
 19 didn't even make a telephone call to the Hazlehurst
 20 elders or the overseer with regard to Dan Fitzwater
 21 before you recommended him?
 22 A No.
 23 Q Were you involved in recommending Lee
 24 Le Gros as an elder?
 25 A No.

41

1 Q You were not?
 2 A No.
 3 Q You had already stepped down?
 4 A Uh-huh.
 5 Q That's yes?
 6 A Yes.
 7 Q Do you know Lee Le Gros?
 8 A Yes.
 9 Q When did you first meet him?
 10 A I think he was on an official trip down in
 11 Yerington, and he come to the congregation, if I
 12 remember right.
 13 Q That was before he moved to Yerington?
 14 A Right.
 15 Q Do you know whether he and Dan knew each
 16 other before Lee Le Gros moved to Yerington?
 17 A The best of my knowledge he didn't.
 18 Q But you just happened to meet him fishing?
 19 A Right.
 20 (Exhibit 2 marked.)
 21 BY MR. TERZICH:
 22 Q This is a test.
 23 A This is a test?
 24 Q I'm going to show you Exhibit 2, and ask
 25 you to the best way you can if you can write the years

42

1 that you know that any of these people were elders in
 2 the Yerington congregation. Do you have a pen?
 3 A No.
 4 Q You can use that one. Let me help you
 5 out. How about Luther Kanning, did you know what years
 6 he was an elder in the Yerington congregation?
 7 A Well, I know he was an elder there in '77
 8 when I moved there, but that's all.
 9 Q Can you write down 1977 then.
 10 A '77.
 11 Q Excuse me, 1977, sorry. And you don't
 12 know how long he was an elder?
 13 A No.
 14 Q How about Allen Zaring?
 15 A He never was an elder that I know of. Not
 16 while I was there. I guess he was before I got there.
 17 Q How about Charles, Charlie or Charles
 18 Kattmig?
 19 A Yeah, he was an elder.
 20 Q Do you remember what years?
 21 A No, I sure don't.
 22 Q How about Jim Johnston?
 23 A Yes, I know he was in '77.
 24 Q Do you remember how long he was an elder?
 25 A Oh, boy. No, I can't recall.

67

1 I'm sorry if these are a little disjointed.
 2 FURTHER EXAMINATION
 3 BY MR. ABERASTERI:
 4 Q One of the last questions you were asked
 5 was where you heard about the problems with
 6 Mr. Churchfield - or excuse me with Mr. Fitzwater, and
 7 you told us about reading the stuff in the paper that
 8 your friend brings up when he comes up on the truck?
 9 A Yeah.
 10 Q You also had an occasion where
 11 Mr. Churchfield gave you a call?
 12 A Right.
 13 Q And in that call he told you about the
 14 allegations against Fitzwater, did he not?
 15 A Briefly. We didn't have too long a
 16 conversation.
 17 Q Just to make that clear.
 18 A Uh-huh.
 19 Q Going back to the time that Mr. Fitzwater
 20 was recommended to be an elder, and you've seen the
 21 document that was presented to you at that time, or in
 22 the time that you continued to serve as an elder, did
 23 you have any information or any concerns about
 24 Mr. Fitzwater with regard to sexual impropriety toward
 25 children?

68

1 A No.
 2 Q At the time that Mr. Fitzwater became an
 3 elder, was he asked the standard questions about
 4 whether or not there was anything in his life or
 5 background which would preclude his service as an
 6 elder?
 7 A Right. He was asked that question, yes.
 8 Q And that's relative to the question -
 9 A Yes.
 10 Q - that elders, proposed elders, are
 11 asked?
 12 A Right.
 13 Q Does that question include any allegations
 14 or problems that they might have had in their past?
 15 A Right.
 16 Q At the time that Mr. Fitzwater was
 17 recommended to be an elder you had received contacts
 18 from the Georgia congregation, is that correct?
 19 A Yes, we did.
 20 Q And the recommendation that he be allowed
 21 to serve as an elder -
 22 A Right.
 23 Q - is that correct?
 24 The document that we have seen, Exhibit 1,
 25 which is that recommendation sheet, includes some

69

1 typing that was done, the comments of the circuit
 2 overseer. If you could look back at Exhibit 1 there.
 3 A Yes, at the top there.
 4 Q And the first sentence of that document is
 5 "Brother Daniel Fitzwater comes to us with fine
 6 recommendation from Hazlehurst, Georgia as an elder."
 7 A Right.
 8 Q When he said served here some years ago,
 9 he was, in fact, a member of the congregation and
 10 served in the congregation prior to this
 11 recommendation, is that right?
 12 A As an elder?
 13 Q No, in the congregation?
 14 A Yes, he was in the congregation.
 15 Q Every congregation member, every Jehovah's
 16 Witness serves, is that correct?
 17 A Right.
 18 Q That's one of the key tenants of your
 19 participation as a Jehovah's Witness?
 20 A Yes.
 21 Q You, in fact, knew Mr. Fitzwater before he
 22 moved back to town when he had lived there back in the
 23 '70s when you were there?
 24 A When I first met him back then.
 25 Q And then the other comments are comments

70

1 made by the circuit overseer relative to his service
 2 mindedness and things like that, is that correct?
 3 A Right.
 4 Q And he was unanimously recommended by the
 5 elders, which was you and Mr. Cardoza?
 6 A Right, Cardoza and myself.
 7 Q Where is Charlie Kattning now, as far as
 8 you know?
 9 A In a rest home, as far as I know, down in
 10 Vegas.
 11 Q How old is he?
 12 A 80-some years old, if he's still alive.
 13 Last I heard, he was. I don't know.
 14 MR. ABERASTERI: Thank you, sir. That's
 15 all I have.
 16 MR. TERZICH: Just a couple more.
 17 FURTHER EXAMINATION
 18 BY MR. TERZICH:
 19 Q You said that standard questions asked of
 20 prospective elders, include Dan Fitzwater, is there
 21 anything in your past that you should reveal to us that
 22 may affect our recommendation or some words to that
 23 effect - how was the question phrased?
 24 A Is there any reason they would be
 25 disqualified as a servant, if there was anything.

71

1 That's asking whether there's any reason he cannot
 2 serve as an elder servant. Just how it was worded, I
 3 don't recall for sure.
 4 Q His answer was there was nothing?
 5 A Yeah, nothing in his past.
 6 Q And you have since learned that that was
 7 not true?
 8 A Yes.
 9 Q Going back to Exhibit 1, it says - where
 10 it says, "He served here some years ago," then the
 11 third sentence says, "The brothers are familiar with
 12 him and have seen his family grow spiritually strong."
 13 Did you feel that he and his family had grown
 14 spiritually strong?
 15 A Well, I can't recall, because he was in
 16 and out up until that time. What he was doing right at
 17 that time, he seemed to be making good progress.
 18 Q Was Dawn with him at that time?
 19 A Dawn?
 20 Q Dawn.
 21 A No.
 22 Q In 1990?
 23 A No, she was living in Reno here.
 24 Q How about Danielle?
 25 A Danielle was living with him, yeah.

72

1 Q So when you're saying the family grows
 2 spiritually strong, who were you referring to?
 3 A Those right there, Danielle and his wife
 4 and himself.
 5 MR. TERZICH: That's all I have.
 6 MR. ABERASTERI: Nothing further.
 7 (Deposition was concluded at 10:55 A.M.)
 8 -oOo-
 9 I, EDWARD L. BURKE, hereby declare under
 10 penalty of perjury that I have read the foregoing pages
 11 1 through 72, that any changes made herein were made
 12 and initialed by me; that I have hereunto affixed my
 13 signature.
 14 Dated: _____
 15
 16 EDWARD L. BURKE
 17 (If signed before a notary public, have
 18 notary public fill out page 74.)
 19
 20
 21
 22
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 24
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73

1 STATE OF NEVADA)
) ss.
 2 COUNTY OF WASHOE)
 3
 4
 5 I, CAROL HUMMEL, a notary public in
 6 and for the County of Washoe, State of Nevada, do
 7 hereby certify:
 8
 9
 10 That I was personally present for the
 11 purpose of acting as notary public and Certified Court
 12 Reporter in the matter entitled herein; that the
 13 witness was by me duly sworn;
 14
 15
 16 That said transcript which appears
 17 hereinbefore was taken in verbatim stenotype notes by
 18 me and thereafter transcribed into typewriting as
 19 herein appears to the best of my knowledge, skill and
 20 ability and is a true record thereof.
 21
 22
 23 CAROL HUMMEL, CCR #340
 24
 25

74

1 STATE OF NEVADA)
) ss.
 2 COUNTY OF WASHOE)
 3
 4
 5
 6 I, _____, a
 7 notary public in and for the County of _____,
 8 _____, State of
 9 _____, do hereby certify:
 10 That on the _____ day of _____
 11 _____, 19____, before me
 12 personally appeared the witness whose deposition
 13 appears herein;
 14 That the deposition was read to or by the
 15 witness;
 16 That any changes in form or substance
 17 desired by the witness were entered upon the deposition
 18 by the witness;
 19 That the witness thereupon signed the
 20 deposition under penalty of perjury.
 21 DATED: At _____
 22 this _____ day of _____, 19____.
 23
 24 _____
 25 NOTARY PUBLIC

75

1 OFFICER'S ACTIONS RE SIGNING OF DEPOSITION _____
 2 PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE _____
 3
 4 DATE LETTER SENT TO WITNESS _____
 5
 6 4-2-99 AT DIRECTION OF COUNSEL ORIGINAL
 7 WAS SENT TO: Mr. Aberasteri
 8
 9 WITNESS SIGNED DEPOSITION
 10 ORIGINAL SENT TO: _____
 11
 12 OTHER ACTIONS
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

1 CASE NO. CI 12898

FILE

2 DEPT. NO. I

99 SEP -7 PM 2:32

NIKKI A. BRYAN
LYON COUNTY CLERK

Kathy Thomas DEPUTY

6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON

9 RICHARD CHURCHFIELD and
10 LEZLY CHURCHFIELD, husband
11 and wife, and LEZLY
12 CHURCHFIELD as Guardian Ad
13 Litem for their minor child,
14 TINA L. CHURCHFIELD,

15 Plaintiffs,

16 vs.

**MOTION TO FILE SECOND
AMENDED COMPLAINT**

17 DANIEL STEVEN FITZWATER and
18 LYNNE FITZWATER; YERINGTON
19 KINGDOM HALL OF JEHOVAH'S
20 WITNESSES, an unknown entity;
21 WATCHTOWER BIBLE AND TRACT
22 SOCIETY OF NEW YORK, INC., a
23 New York corporation; and
24 DOES I through X, inclusive,

25 Defendants.

26
27 COME NOW the above named Plaintiffs, by and through their
28 undersigned counsel, and hereby move this Court for leave to file
their Second Amended Complaint pursuant to NRCP 15 in order to add
a Ninth Cause of Action as against the Defendants, YERINGTON
KINGDOM HALL OF JEHOVAH'S WITNESSES, an unknown entity, and the
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York
corporation.


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This motion is made and based upon the following Points and Authorities, the Affidavit of Plaintiff, RICHARD CHURCHFIELD, which was attached as Exhibit "A" to the First Motion to Amend Complaint filed herein on October 27, 1997, the Plaintiffs' proposed Second Amended Complaint alleging a Ninth Cause of Action to the Complaint, attached hereto as EXHIBIT "A."

DATED this 3^d day of September, 1999.

TERZICH & JACKSON, LTD.


By: MILOS TERZICH, ESQ.
1470 Highway 395
Post Office Box 1210
Gardnerville, NV 89410
(775) 782-2700

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF SECOND AMENDED COMPLAINT**

3 **I. STATEMENT OF FACTS**

4 Plaintiffs incorporate all of the Statements of Facts set
5 forth in their First Motion to Amend Complaint filed herein on
6 October 27, 1997, including the Affidavit of Richard Churchfield.

7 **II. STANDARDS FOR GRANTING A MOTION TO AMEND**

8 Pursuant to the Court's Scheduling Order, the Plaintiffs
9 have until October 1, 1999, within which to file a Motion to amend
10 their Complaint. Nevada Rules of Civil Procedure 15 prescribe the
11 manner in which a complaint may be amended. NRCP 15(a) states as
12 follows:

13 "(a) Amendments. A party may amend his
14 pleading once as a matter of course at any
15 time before a responsive pleading is served
16 or, if the pleading is one to which no
17 responsive pleading is permitted and the
18 action has not been placed upon the trial
19 calendar, he may so amend it at any time
20 within 20 days after it is served. Otherwise
21 a party may amend his pleading only by leave
22 of court or by written consent of the adverse
23 party; and leave shall be freely given when
24 justice so requires . . ." (Emphasis supplied).

20 A motion for leave to amend pursuant to NRCP 15(a) is
21 addressed to the sound discretion of the trial court. Connell v.
22 Carl's Air Conditioning, 97 Nev. 436, 439, 634 P.2d 673 (1981).
23 Further, leave to amend should be freely given in the absence of
24 undue delay, bad faith, or dilatory motive. Stephens v. Southern
25 Nev. Music Co., 89 Nev. 104, 105, 507 P.2d 138 (1973).

26 Plaintiffs seek to add an additional cause of action
27 against the Defendants, Yerington Kingdom Hall of Jehovah's
28 Witnesses and the Watchtower Bible and Tract Society of New York,

1 Inc., which allegations will give rise to punitive damages, based
2 upon information discovered through the numerous depositions that
3 have been taken in this action and other information determined by
4 research.


5 Plaintiffs' Motion is not unduly delayed, in bad faith,
6 or for dilatory motive, leave to amend should be freely given in
7 this instance.

8 With respect to the additional cause of action, if the
9 statute of limitations has not run, relation back to the original
10 Complaint is unnecessary. Fernandez v. Kozar, 107 Nev. 446, 814
11 P.2d 68 (1991). The tortious acts giving rise to Plaintiffs'
12 claims were discovered in June of 1996. There is no statute of
13 limitations problem with Plaintiffs' additional claims and leave to
14 amend would still be appropriate. Further, the Plaintiff, Tina
15 Churchfield, is a minor and the statute of limitations is extended.
16 See NRS 11.250.

17 Plaintiffs also incorporate all of their Points and
18 Authorities in Plaintiffs' Motion to Amend Complaint filed on
19 October 27, 1997, and specific reference is made to paragraph D.,
20 pp. 14-18 of said Motion to Amend.

21 DATED this 30th day of September, 1999.

22 TERZICH & JACKSON, LTD.

23
24 
25 By: MILOS TERZICH, ESQ.
26 1470 Highway 395
27 Post Office Box 1210
28 Gardnerville, NV 89410
(775) 782-2700

CERTIFICATE OF MAILING

Pursuant to NRCPC 5(b), and that on the 3rd day of
September, 1999, I mailed a true and correct copy of the foregoing
to:

John A. Aberasturi, Esq.
ERICKSON, THORPE & SWAINSTON, LTD.
Post Office Box 3559
Reno, Nevada 89505

Lynne Fitzwater
at her last known address of:
330 West Nye Lane, Apt. 17
Carson City, Nevada 89705

Daniel Fitzwater
Back No.: 58445
c/o Northern Nevada Correctional Center
Post Office Box 7000
1721 Snyder Avenue
Carson City, Nevada 89702

DATED this 3rd day of September, 1999.


SHARON COATES

1 CASE NO. CI 12898

2 DEPT. NO. I

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IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF LYON

8

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RICHARD CHURCHFIELD and
LEZLY CHURCHFIELD, husband
and wife, and LEZLY
CHURCHFIELD as Guardian Ad
Litem for their minor child,
TINA L. CHURCHFIELD,

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Plaintiffs,

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vs.

SECOND AMENDED COMPLAINT

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DANIEL STEVEN FITZWATER and
LYNNE FITZWATER; YERINGTON
KINGDOM HALL OF JEHOVAH'S
WITNESSES, an unknown entity;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a
New York corporation; and
DOES I through X, inclusive,

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Defendants.

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COME NOW the above named Plaintiffs, by and through their
undersigned counsel, and by way of Second Amended Complaint against
the above-named Defendants, aver and allege as follows:

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NINTH CAUSE OF ACTION
(Kingdom Hall and Watchtower)

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I.

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That Plaintiffs incorporate herein all of the allegations
contained in their First, Second, and Third Causes of Action of the

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EXHIBIT "A"

1 original Complaint filed herein on the 8th day of April, 1997, and
2 Plaintiffs' Errata to Complaint filed herein on the 23rd day of
3 June, 1997, as if set forth in full and at length herein; that
4 Plaintiffs further incorporate herein their Fifth, Sixth, Seventh
5 and Eighth Causes of Action of their Amended Complaint, filed
6 herein on the 5th day of December, 1997, as if set forth in full
7 and at length herein.

8 II.

9 That Plaintiffs are informed and believe and thereupon
10 allege, that the Defendant, DANIEL STEVEN FITZWATER (hereinafter
11 "Fitzwater"), was publicly reprovved for his sexual molestation
12 conduct against his step-daughter, Dawn Schilling Bradley,
13 subsequent to the allegations brought against him by the
14 Plaintiffs, although the reason for his public reprovval was not
15 related to the congregation or the Plaintiffs.

16 III.

17 That Plaintiffs are informed and believe and thereupon
18 allege, that although the Defendant, FITZWATER, was convicted of
19 two felony counts of Lewdness with a Child, to-wit: Tina L.
20 Churchfield, the Defendant, FITZWATER, was not privately or
21 publicly reprovved or disfellowshipped by reason of his conduct with
22 respect to Tina L. Churchfield.

23 IV.

24 That Plaintiffs are informed and believe and thereupon
25 allege, that the Defendants, YERINGTON KINGDOM HALL OF JEHOVAH'S
26 WITNESSES (hereinafter "Kingdom Hall"), and WATCHTOWER BIBLE AND
27 TRACT SOCIETY OF NEW YORK, INC. (hereinafter "Watchtower") either
28 had or should have had advance knowledge that the Defendant,

1 FITZWATER, was unfit for the purposes of being an elder and said
2 Defendants recommended and approved the Defendant FITZWATER to
3 become an elder in the KINGDOM HALL congregation with a conscious
4 disregard of the rights or safety of others.

5 V.

6 That Plaintiffs are informed and believe and thereupon
7 allege, that the Defendants, KINGDOM HALL and WATCHTOWER
8 ratified the wrongful conduct of the Defendant, FITZWATER, as
9 herein alleged, as against the Plaintiff, Tina L. Churchfield.

10 VI.

11 That Plaintiffs are informed and believe and thereupon
12 allege, that the Defendants, KINGDOM HALL and WATCHTOWER, in the
13 conduct alleged in this cause of action, were guilty of oppression,
14 fraud and/or malice, express or implied.

15 VII.

16 That Plaintiffs are informed and believe and thereupon
17 allege, that the Defendants KINGDOM HALL and WATCHTOWER are guilty
18 of fraud in that they intentionally conspired to conceal and cover
19 up the Defendant FITZWATER's conduct regarding his sexual
20 misconduct toward minor children, including Defendant FITZWATER's
21 step-daughter, Dawn Schilling Bradley; that the Defendants KINGDOM
22 HALL and WATCHTOWER's conduct in concealing the Defendant
23 FITZWATER's improprieties with minor children was a direct and
24 proximate cause of the injuries sustained by the Plaintiffs, Tina
25 L. Churchfield and her parents.

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VIII.

That Plaintiffs are informed and believe and thereupon allege, that the Defendants KINGDOM HALL and WATCHTOWER have in the past, and presently have, established a course of conduct to cover up and conceal sexual molestation and sexual improprieties committed by elders, not only from their own congregation, but also from the general public, to the detriment and injury of the Plaintiffs, other congregation members, and the general public.

IX.

That said Defendants' fraud also consists of their intent to deceive or conceal material facts with respect to the molestation of children or improper acts toward children by elders with the intent to deprive the minor children and their parents of their rights and otherwise injure the sexually molested child and their parents, specifically including the Plaintiffs.

X.

That said Defendants' conduct, as hereinabove alleged and described, was and is in conscious disregard of the probable harm and consequences of their wrongful acts and their willful and deliberate failure to act in order to avoid these consequences, which directly and proximately caused injury to the Plaintiffs.

XI.

That by reason of the aforementioned conduct of the said Defendants, as herein alleged, the Plaintiffs have suffered general damages in excess of TEN THOUSAND DOLLARS (\$10,000).

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XII.

That by reason of the aforesaid conduct of the said Defendants, as herein alleged, they are liable to pay the Plaintiffs punitive damages in a sum in excess of TEN THOUSAND DOLLARS (\$10,000).

WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

1. For all damages, as set forth in the original Complaint and the Amended Complaint.
2. For additional general damages against all Defendants in excess of TEN THOUSAND DOLLARS (\$10,000).
3. For punitive and exemplary damages in excess of TEN THOUSAND DOLLARS (\$10,000), and according to proof.
4. For attorney's fees and costs of suit.
5. For such other and further relief as to the Court may seem proper in the premises.

DATED this _____ day of _____, 1999.

TERZICH & JACKSON, LTD.

By: MILOS TERZICH, ESQ.
1470 Highway 395
Post Office Box 1210
Gardnerville, NV 89410
(775) 782-2700

1 Case No. CI12898
2 Dept. No. I

FILE

00 JAN 26 PM 3:25

NIKKI A. BRYAN
LYON COUNTY CLERK

Nikki A. Bryan

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6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON
8

9 RICHARD CHURCHFIELD and
10 LEZLY CHURCHFIELD, husband
and wife; and LEZLY CHURCHFIELD
11 as Guardian ad Litem for their minor
child, TINA L. CHURCHFIELD,

12 Plaintiffs.

13 vs.

14 DANIEL STEVEN FITZWATER and;
15 LYNNE FITZWATER; YERINGTON
KINGDOM HALL OF JEHOVAH's
16 WITNESSES, an unknown entity;
WATCHTOWER BIBLE AND TRACT
17 SOCIETY OF NEW YORK, INC., a
New York corporation; and
18 DOES I through X, inclusive,

19 Defendants.

20 STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

21 The above-entitled action having been fully settled, compromised and satisfied,
22 IT IS HEREBY STIPULATED, by and between the parties hereto, through their
23 respective counsel, that said action shall be dismissed with prejudice, and without
24 costs or fees to any party.

25 IT IS FURTHER STIPULATED that the jury deposit in the amount of \$120.00

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1 posted by ERICKSON, THORPE & SWAINSTON, LTD. may be returned to that firm by
2 the Clerk of the Court.

3 DATED: 1/20, ^{2000.} 1999.

4 TERZICH & JACKSON
5 1470 Highway 395, P.O. Box 1210
6 Gardnerville, Nevada 89410

7 By Milos Terzich
8 MILOS TERZICH
9 Attorney for Plaintiffs

10 ERICKSON, THORPE & SWAINSTON, LTD.
11 99 West Arroyo Street, P.O. Box 3559
12 Reno, Nevada 89505

13 By John A. Aberasturi
14 JOHN A. ABERASTURI
15 Attorneys for Defendants

16 IT IS SO ORDERED.

17 DATED: January 26, 2000

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19 David A. Huff
20 DISTRICT JUDGE

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