

*Secrets of*  
**Pedophilia**  
in an.  
**American**  
**Religion**

Jehovah's Witnesses in Crisis

BARBARA ANDERSON

Court Documents

Grafmyer

vs

Jehovah's Witnesses

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**CASE # 06-C-15281**  
**CIRCUIT COURT OF THE STATE OF OREGON**  
**FOR THE COUNTY OF MARION**

Filed: June 6, 2006

**JARED GRAFMYER**

**Plaintiff,**

**vs.**

**WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.,**  
**WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.**  
**and LANCASTER CONGREGATION OF JEHOVAH'S WITNESSES,**  
**Defendants.**

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER	)	CASE NO. <i>06C15281</i>
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
WATCHTOWER BIBLE AND TRACT	)	COMPLAINT
SOCIETY OF NEW YORK, INC.,	)	(Negligence, Breach of Confidential
WATCHTOWER BIBLE AND TRACT	)	Relationship, Intentional Infliction of
SOCIETY OF PENNSYLVANIA, INC.	)	Severe Emotional Distress)
and LANCASTER CONGREGATION	)	
OF JEHOVAH'S WITNESSES,	)	<i>Not subject to Mandatory Arbitration</i>
	)	
Defendants.	)	Jury Trial Requested

Plaintiff alleges:

COMMON FACTS

1.

Plaintiff JARED GRAFMYER is a resident of Port Lavaca, Calhoun County, Texas.

2.

Defendant Watchtower Bible and Tract Society of New York, Inc., a corporation organized and existing under the laws of the State of New York, with offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its officers, agents, and servants.

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3.

Defendant Watchtower Bible and Tract Society of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania, with offices at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108, has conducted business within the State of Oregon through its officers, agents, and servants.

4.

Defendant Lancaster Congregation of Jehovah's Witnesses is an entity that carries out the functions and responsibilities of the Watchtower Bible and Tract Society of New York, the Watchtower Bible and Tract Society of Pennsylvania, and the "Governing Body" in Marion County, Oregon. Defendant Lancaster Congregation of Jehovah's Witnesses has its office/principal place of business at 4795 Macleay Road SE, Salem, Oregon, 97301.

5.

The Defendant entities are collectively referred to herein as the "Watchtower Defendants". All operate as a single business enterprise.

6.

Venue is proper in Marion County, Oregon, because some of the acts or omissions that give rise to Plaintiff's claims occurred in Marion County and because Defendant Lancaster Congregation of Jehovah's Witnesses, does business in that county.

7.

The Watchtower Defendants comprise a hierarchical organization made up of different corporations and other entities. The Watchtower Bible and Tract Society of New York is the parent organization of all entities of Jehovah's Witnesses in the

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1 United States. The "Governing Body" establishes policies and dictates practices for  
2 Jehovah's Witnesses throughout the world, and operates through various corporate  
3 entities including the Watchtower Bible and Tract Society of Pennsylvania.

4 Local entities are led by officers called Elders and Ministerial Servants who are  
5 appointed by the Governing Body and/or the Watchtower Bible and Tract Society of  
6 New York. Elders and Ministerial Servants are agents of the Watchtower Bible and  
7 Tract Society of New York and the Governing Body. Elders and Ministerial Servants  
8 at all times conduct themselves in the scope and authority of their appointed  
9 positions, which is defined by the Governing Body and the Watchtower Society, and  
10 at all times Elders and Ministerial Servants are under their authority.

11 8.

12 Jerry Anderson Crabb was appointed Ministerial Servant in the Lancaster  
13 Congregation of Jehovah's Witnesses by the Governing Body and/or the Watchtower  
14 Bible and Tract Society of New York. A Ministerial Servant is an agent of the  
15 Watchtower Bible and Tract Society of New York, the Governing Body and the other  
16 Watchtower Defendants.

17 9.

18 A Ministerial Servant is held out by the Watchtower Defendants to be a person  
19 of good character and responsibility and a person one can trust to supervise minor  
20 children. Parents within the Watchtower organization are encouraged to view  
21 Ministerial Servants as role models for their children. Children within the  
22 organization are taught to look up to and respect Ministerial Servants.

23 ///

24

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10.

Jerry Anderson Crabb was a pedophile who had sexually abused a child in early 1964. He was convicted or pled guilty. Nevertheless, he was appointed Ministerial Servant and allowed to occupy a leadership position in the Lancaster Congregation.

11.

In approximately 1991, Crabb used the "position of trust" that his status as Ministerial Servant represented and conferred, to develop a relationship with Jared Grafmyer, age 8, but he betrayed that trust by sexually abusing Plaintiff on multiple occasions.

12.

Crabb used Lancaster Congregation meetings at their facility called Kingdom Hall as opportunities to get to know Jared Grafmyer; he brought presents to the Kingdom Hall to give to Jared and he "groomed" Jared so that Crabb could subsequently molest and abuse him.

13.

Elders in the Lancaster Congregation who know or should have known that Crabb had a history of being a pedophile watched as Crabb developed the close relationship with Jared Grafmyer that would allow Crabb to sexually exploit Jared.

14.

Although elders knew or should have known about Crabb's past, they failed to warn Jared's mother that her son was being stalked by a sexual predator or take any action to prevent the foreseeable abuse.

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15.

After Crabb's abuse of Jared Grafmyer came to light, elders of the Lancaster Congregation of Jehovah's Witnesses instructed Jared Grafmyer's mother not to tell the police.

16.

Jared's father ignored that instruction and reported the crime to police, which resulted in Crabb's confession and conviction.

**COUNT I: NEGLIGENCE**

17.

Plaintiff realleges paragraphs 1 through 16 above.

18.

The Watchtower Defendants were negligent in one or more of the following particulars and that negligence has been a substantial contributing factor to the damages sustained by Plaintiff Jared Grafmyer as alleged below:

- a. Despite the fact that the Watchtower Defendants knew, or should have known, of Jerry Anderson Crabb's history of pedophilia, they negligently appointed him to the office of Ministerial Servant when they knew or should have known that he would be allowed unsupervised access to minor children in the course and scope of his duties;
- b. Despite the fact that the Watchtower Defendants knew, or should have known, of Jerry Anderson Crabb's history of pedophilia, they failed to warn Plaintiff, or his family, of Crabb's history of sexually abusing children;

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1 c. Despite the fact that the Watchtower Defendants knew, or should have  
2 known, of Jerry Anderson Crabb's history of pedophilia, they  
3 negligently permitted him to be alone with children, including Plaintiff,  
4 at their property and at their organized events;

5 d. The Watchtower Defendants negligently failed to supervise Crabb  
6 despite their actual or constructive knowledge that he posed a potential  
7 and foreseeable danger to children.

8 This negligence resulted in severe and permanent emotional distress, embarrassment,  
9 shame and physical harm to Plaintiff, all to his economic damage in the amount of  
10 \$25,000, and to his noneconomic damage in the amount of \$3,000,000.

11 **COUNT II: BREACH OF CONFIDENTIAL RELATIONSHIP**

12 19.

13 Plaintiff realleges paragraphs 1 through 18 above.

14 20.

15 Crabb used his position of Ministerial Servant to create a confidential  
16 relationship between himself and Jared Grafmyer. The Ministerial Servant position is  
17 one of trust and confidence to members of a Jehovah's Witness organization.  
18 Organization members know that a Ministerial Servant has been appointed by the  
19 Governing Body and the Watchtower Society and, therefore, is deemed to be worthy  
20 of trust. Parents are encouraged to entrust the welfare of their children to those such  
21 as Crabb, with appointed positions of authority within the organization. Crabb  
22 misused his position of trust to obtain access to, and sexually abuse, Jared Grafmyer.  
23 As described below, the Watchtower Defendants are liable for their conduct under the  
24 doctrine of respondeat superior.

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1 This breach of confidential relationship resulted in severe, permanent  
2 emotional distress, embarrassment, shame and physical harm to Plaintiff, all to his  
3 economic damage in the amount of \$25,000, and to his noneconomic damage in the  
4 amount of \$3,000,000.

5 **COUNT III: INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS**

6 21.

7 Plaintiff realleges paragraphs 1 through 20 above.

8 22.

9 Crabb's actions exceeded the limits of social toleration and were done with the  
10 knowledge that they would cause Jared Grafmyer grave distress, which they have in  
11 fact caused. Accordingly, Crabb's conduct constitutes the tort of "intentional  
12 infliction of emotional distress." As described below, the Watchtower Defendants are  
13 liable for such conduct under the doctrine of *respondeat superior*, all to Plaintiff's  
14 noneconomic damage of \$5,000,000.

15 **COUNT IV: INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS**  
16 **BY WATCHTOWER DEFENDANTS**

17 23.

18 Plaintiff realleges paragraphs 1 through 22 above.

19 24.

20 The Watchtower Defendant's actions exceed the limits of social toleration and  
21 were done with the knowledge that they would cause Jared Grafmyer grave distress,  
22 which they have in fact caused. Accordingly, the actions of the Watchtower  
23 Defendants constitute the tort of "intentional infliction of severe emotional distress"  
24 all to Plaintiff's noneconomic damage of \$3,000,000.

25

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STATE OF OREGON  
Marion County Circuit Courts  
OCT 16 2006  
**ENTERED**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER,

Plaintiff,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, and  
LANCASTER CONGREGATION OF  
JEHOVAH'S WITNESSES,

Defendants.

No. 06-C-15281

**DEFENDANTS' MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL PRODUCTION**

**(ORAL ARGUMENT REQUESTED)**

Plaintiff's motion to compel production is brought by his Texas attorneys and is based entirely on a waiver argument that fails as a matter of Oregon law and undisputed fact. Also, defendants have responded to plaintiff's document requests and produced dozens of documents. Therefore, plaintiff's motion should be denied.

This is a civil action based on alleged childhood sexual abuse of plaintiff by Jerry Crabb, a former member of the Jehovah's Witnesses Church. Plaintiff served defendants with document requests, and a response was due by the end of July 2006. Plaintiff admits that on June 16, 2006, *before* the deadline to respond, defendants' counsel specifically objected to producing any privileged documents. (Plaintiff's Motion at p. 4.)



1 Defendants' counsel also promised to follow-up with a more detailed response to  
2 plaintiff's document requests. Id. That is exactly what then occurred. Earlier this month,  
3 defendants served plaintiff's counsel with formal responses to each of plaintiff's three sets of  
4 document requests, along with dozens of responsive documents.

5 Plaintiff cites ORCP 43B in support of the argument that defendants are required to  
6 produce all requested documents because no specific objection to the requests was submitted  
7 before the deadline to respond. Id. However, plaintiff is incorrect. First, as plaintiff admits,  
8 before the deadline to respond to plaintiff's requests, defendants' counsel specifically  
9 objected to producing any privileged documents. Id.

10 Second, even if defendants had not timely and specifically objected to plaintiff's  
11 document requests, the court in Citizens' Utility Board v. Oregon PUC, 128 Or App 650  
12 (1994), rejected plaintiff's argument. The court held that ORCP 43B does not dictate that a  
13 defendant waives objections to document requests by not specifically responding and  
14 objecting to the requests within the time specified. Id. at 657-658.

15 Therefore, plaintiff's motion fails as a matter of law and undisputed fact.

16 Pursuant to OEC 506, defendants also object to producing documents subject to the  
17 clergy privilege. OEC 506(2) provides as follows: "A member of the clergy may not be  
18 examined as to any confidential communication made to the member of the clergy in the  
19 member's professional character unless consent to the disclosure of the confidential  
20 communication is given by the person who made the communication."

21 Defendants' OEC 506 objection applies to plaintiff's request for "any and all judicial  
22 committee records" regarding Jerry Crabb; "any and all documents sent by any congregation  
23 to the Service Department" regarding Jerry Crabb; "any and all 'Child Abuse Telememos'"  
24 relating to Jerry Crabb; "any and all reports to the Watchtower Society" concerning Jerry  
25 Crabb "made by any congregation pursuant to the March 14, 1997, and/or July 20 1998,  
26 Letters to All Bodies of Elders;" "any and all documents reflecting or pertaining to" Jerry

1 Crabb's appointment and deletion "as Ministerial Servant, Elder or Pioneer;" any and all  
2 documents reflecting or pertaining to Jerry Crabb "being disfellowshipped  
3 [excommunicated] by any congregation at any time;" and "any and all documents reflecting  
4 or pertaining to any discipline administered to" Jerry Crabb "at any time including, but not  
5 limited to, reproofs or restrictions of privileges." See Plaintiff's Exhibits A-C.

6 In the present case, some of the documents defendants refuse to produce are  
7 confidential communications made to members of defendants' clergy in their capacity as  
8 spiritual advisors. Moreover, there is no evidence that any person who made such a  
9 confidential communication has given consent to disclosure of the communication.  
10 Therefore, the documents plaintiff seeks are privileged and not discoverable under OEC  
11 506(2).

12 The Court stated in a recent teleconference with counsel that it would rely on the  
13 Bankruptcy Court's analysis of this issue in the Catholic Archdiocese of Portland case. In  
14 that case, Judge Perris, construing OEC 506, held that the rule bars discovery relating to  
15 "communications that are made to a clergy person in the capacity of a spiritual advisor." In  
16 re Roman Catholic Archbishop of Portland in Oregon, 335 BR 815, 830 (Bankruptcy D Or  
17 2005). This is precisely the basis of defendants' objection.

18 Judge Perris also held that a plaintiff may not "seek information relating to legal  
19 advice with regard to reports of such sexual abuse" because that information is privileged,  
20 and, therefore, a plaintiff "may not inquire into inquiries to counsel seeking advice or any  
21 advice given by counsel." Id. at 827.

22 This confirms the validity of defendants' attorney-client privilege objection, as well  
23 as defendants' work product privilege objection. See also OEC 503 (codifying the attorney-  
24 client privilege); ORCP 36B(3) (codifying the work product privilege, which applies to  
25 documents "prepared in anticipation of litigation," as well as documents containing "the

26 ///

1 mental impressions, conclusions, opinions, or legal theories of an attorney or other  
2 representative of a party”).

3 The Court should note that plaintiff cites no rule of evidence or other authority to  
4 support his argument that defendants must produce all requested documents. Rather,  
5 plaintiff relies entirely on a waiver argument that fails as a matter of law and undisputed fact,  
6 as shown above. See Citizens' Utility Board, 128 Or App at 657-658; OEC 506(2);  
7 Plaintiff's Motion at p. 4.

8 Plaintiff also requests that defendants produce a “privilege log.” (Plaintiff's proposed  
9 Order at p. 1.) However, the ORCP do not provide for privilege logs. This is significant  
10 because FRCP 26, the counterpart to ORCP 36, *does* provide for privilege logs, but Oregon  
11 did not adopt that subsection of the rule. See FRCP 26(b)(5). Pursuant to ORS 174.010, this  
12 Court cannot add a privilege log provision to the ORCP that it does not contain.

13 Finally, an award of attorney fees to plaintiff is not justified. The Court should note  
14 that plaintiff's counsel called defendants' counsel on September 8, 2006 to “confer” about  
15 plaintiff's motion to compel. However, this effort to confer was not in “good faith” as  
16 required by UTCR 5.010 because **plaintiff's counsel had already drafted the motion and**  
17 **admitted that it would be filed the same day, regardless of defendants' counsel's**  
18 **response**, which is exactly what occurred.

19 Also, plaintiff's Texas counsel continues to press for the production of documents,  
20 while at the same time refusing to respond to defendants' counsel's repeated requests to set  
21 dates for depositions. (The Court may recall that during the recent telephone status  
22 conference with the Court, defendants' counsel again asked plaintiff's Texas counsel to  
23 contact defendants' counsel with available deposition dates. However, plaintiff's counsel  
24 has not responded.) In other words, defendants have produced the requested discoverable  
25 documents as promised, but plaintiff's counsel will not agree to any deposition dates.

26 ///

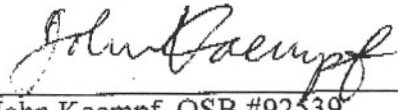
1 Plaintiff cannot stall portions of discovery, but then obtain attorney fees for his own motion  
2 to compel production.

3 Moreover, ORCP 46A(4) only allows for an award of attorney fees when a motion to  
4 compel is granted, *and* the defendants' opposition is not "substantially justified." The facts  
5 and law cited herein show that defendants' opposition is substantially justified. Plaintiff is  
6 suing defendants, religious entities, for millions of dollars based on alleged sexual abuse by  
7 one of the defendant Church's former members. This raises important issues of clergy  
8 privilege, work product privilege, and attorney-client privilege that defendants must assert.

9 Therefore, plaintiff's motion to compel should be denied.

10 DATED: October 9, 2006.

11 BULLIVANT HOUSER BAILEY PC

12  
13 By   
14 John Kaempf, OSB #92539  
E-mail: john.kaempf@bullivant.com

15 Attorneys for Defendants  
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STATE OF OREGON  
Marion County Circuit Courts  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER )  
Plaintiff, ) CASE NO. 06C15281

vs. )

WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF NEW YORK, INC., )  
WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF PENNSYLVANIA, )  
and LANCASTER CONGREGATION )  
OF JEHOVAH'S WITNESSES, )  
Defendants. ) The Honorable Lipscomb

ISSUES

A member, in a leadership role, of the Defendants' organizations sexually abused the Plaintiff, then an 8-year-old member of one of Defendant's membership groups. Plaintiff has alleged that Defendants knew or should have known that the perpetrator had a history of sexually abusing children, was using Defendants' organization to "groom" Plaintiff, and failed to prevent the foreseeable abuse. The scope of discovery is outlined in ORCP 36B(1) and includes any information, not privileged, relevant to Plaintiff's claim, or "reasonably calculated to lead to discovery of admissible evidence".

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1 Plaintiff's Requests for Production were served on all Defendants with  
2 Summons and Complaint. As required by ORCP Rule 43, the requests gave  
3 Defendants 45 days to produce documents.

4 Plaintiff's Complaint was filed on June 6, 2006.

5 Defendant Lancaster Congregation of Jehovah's Witnesses was served on June  
6 13, 2006. (Referred to as "Lancaster Congregation" herein.) Defendant Watchtower  
7 Bible & Tract Society of New York, Inc., was served on June 16, 2006. Defendant  
8 Watchtower Bible & Tract Society of Pennsylvania was served on June 16, 2006.  
9 (Defendants Watchtower Bible & Tract Society of New York, Inc., and Defendant  
10 Watchtower Bible & Tract Society of Pennsylvania collectively referred to herein as  
11 "Watchtower Defendants".)

12 In a letter dated June 15, 2006, Attorney Ronald Bailey, of the Bullivant Houser  
13 Bailey law firm, notified Plaintiff's attorney that their firm would be representing all  
14 Defendants.

15 In an e-mail dated June 16, 2006, to Plaintiff's attorneys, Attorney John  
16 Kaempf, one of the Defendant's attorneys, indicated that they would be providing a  
17 response to Plaintiff's Requests for Production but that they would be objecting to  
18 "privileged" documents.

19 On September 8, 2006 Plaintiff had not yet received responses or other  
20 objections from Defendants; Plaintiff moved this Court to order compelling each  
21 Defendant to make a complete production to each of the 15 requests propounded on  
22 each Defendant. The respective requests are listed in Plaintiff's Motion to Compel, on  
23 file herein.



1 On September 25, 2006 the Court initiated a Case Management Conference  
2 wherein John Kaempf appeared on behalf of the Defendants, and Gregory Love  
3 appeared on behalf of the Plaintiff. During that conference, both counsel discussed  
4 the potential of future conflicts in discovery in connection with the Defendants'  
5 anticipated assertion of a Clergy Privilege under the Oregon Evidence Code (OEC  
6 506). A hearing was scheduled for October 12, 2006. Defendants were to have their  
7 responses to Plaintiff's Requests for Production filed by October 2, 2006.

8 On the afternoon of Friday, October 6, 2006, Plaintiffs received discovery  
9 responses from each Defendant which were essentially the same. (Defendants'  
10 attorney, John Kaempf, did notify Plaintiff's attorneys that his response would be a  
11 few days late.) Defendants object to virtually every request as follows:

12 Defendant objects to this request as overly broad as to time and scope.  
13 Defendant also objects that this request may call for communications and  
14 documents protected by the minister-communicant privilege as set forth in  
15 OEC 506. Further, defendant objects that this request may call for confidential  
16 and personal information involving persons who are not parties to this  
17 lawsuit, and would therefore constitute an invasion of the privacy rights of  
18 non-parties.

19 The only documents Defendants produced with the October 6, 2006 response  
20 were membership rosters and related documents showing the years the perpetrator  
21 was a member of Defendants' organizations.

22 On October 9, 2006, Defendants e-mailed copies of some of the Defendants  
23 policies and procedures and recordkeeping requirements. Of significance is the  
24 Defendants' policy that any of their member organization files relating to alleged  
25 child abuse cases should be marked "Do not destroy" and kept indefinitely.

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1 Plaintiff will address each of these objections below. Before doing so, however,  
2 some background is necessary for the Court to understand some terms and practices  
3 that are unique to the Jehovah's Witnesses organization.

4 **Larry Crabb – Perpetrator**

5 In January 1982, Larry Crabb was appointed by the Watchtower Society to  
6 serve as a Ministerial Servant, a leadership position within the Lancaster  
7 Congregation. In 1991, Crabb sexually abused Plaintiff, a young member of the  
8 Congregation. Crabb was investigated by two or more Elders and then subjected to  
9 a Judicial Committee in or around July 1991. Crabb was then removed by the  
10 Watchtower Society from his position as a Ministerial Servant. Documentation and  
11 reports regarding Crabb's abuse and his disfellowship were sent to the Watchtower  
12 Defendants' headquarters in Brooklyn, New York.

13 **Judicial Committees - Description**

14 Judicial Committees are formed when a member of the Jehovah's Witnesses  
15 organization has been accused of serious wrongdoing, including child sexual abuse.  
16 The Judicial Committee is an adversarial proceeding that is initiated by a report of  
17 wrongdoing. (See deposition testimony of former Elder and Congregation Secretary  
18 of a California Congregation and member of Oregon congregations, Jim Whitney,  
19 attached as Exhibit 1 at 124:10-126:6.) The purpose of a Judicial Committee is to  
20 protect the image of the organization by self-policing. (See Exhibit 1 at 118:9-120:9  
21 and 122:18-124:9.)

22 The report of wrongdoing is then "investigated" by one or more congregation  
23 elders. (See Exhibit 1 at 118:9-122:17.) If the elders determine that the allegation of  
24 serious wrongdoing has merit, the congregation elders will form a Judicial

1 Committee that is made up of two to five elders to hear the matter. (See Exhibit 2 at  
2 pg. 109.) The person subject to the Judicial Committee is then summoned to a  
3 hearing and confronted. (See Exhibit 1 at 195:12-196:23.) The procedural rules for this  
4 adversarial proceeding are found in the Watchtower publication entitled "Pay  
5 Attention to Yourselves and to All the Flock." (Excerpts of the Flock Book are  
6 attached hereto as Exhibit 2).

7 In the "Flock" book's procedural provisions, the proceeding is referred to as "a  
8 hearing" and the person subject to the review of the Judicial Committee is referred to  
9 as "the accused", wherein the accused is informed as to the "charges" being brought  
10 against him. (See Exhibit 2 at pgs. 110 and 119.) The procedural rules for this  
11 "hearing" include things such as rules of evidence, rules for witness testimony, and  
12 appeals. (See Exhibit 2 at pgs. 111, 119, and 124-128.)

13 The procedural rules require that the Judicial Committee create written records  
14 of Judicial Committee hearings (see Exhibit 2 at pg. 122), and that the written  
15 summaries be kept by the Congregation Secretary (Elder) at the Kingdom Hall. (See  
16 Exhibit 1 at 149:12-24; 152:25-153:20; and 161:15-162:1.) The Judicial Committee files  
17 are kept according to the rules promulgated by the Society. (See Exhibit 1 at 154:18-  
18 156:5.) A Judicial Committee file can contain information regarding a person's child  
19 molestation history, the number of offenses, the sexes and ages of victims, and how  
20 the Society handled the child molester and/or victims. (See Exhibit 1 at 164:6-169:9  
21 and 172:2-7.)

22 ///

23 ///

24

1 OREGON CLERGY PRIVILEGE DOES NOT APPLY

2 Defendants argue that most of Plaintiff's discovery requests violate the  
3 privilege for confidential communications to clergy under OEC 506. OEC 506(2)  
4 provides:

5 (2) A member of the clergy may not be examined as to any confidential  
6 communication made to the member of the clergy in the member's  
7 professional character unless consent to the disclosure of the confidential  
8 communication is given by the person who made the communication.

9 This provision was closely evaluated by the Honorable Elizabeth L. Perris,  
10 United States District Court for the District of Oregon, in *In Re: Roman Catholic*  
11 *Archbishop of Portland in Oregon et al* (Bankruptcy Case No. 04-37154-e1p11). The  
12 District Court held that "[i]n light of the purpose of the privilege, and the fact that it  
13 was originally directed at confession, I conclude that it should be applied only to  
14 communications that are made to a clergy person acting in the capacity of a spiritual  
15 advisor." (See Memorandum Opinion p. 19; attached hereto as Exhibit 3.)

16 The Judicial Committee and related documents requested by Plaintiff seeks the  
17 type of information that does not fall within the protections of OEC 506. The  
18 communications arising from the hearings of the accused do not contemplate privacy  
19 with one person, but instead, by their very nature, require at least two to five people  
20 to be present and preside over the hearing. They advocate evidentiary procedures  
21 with witnesses providing testimony and an appeals process, which hardly promotes  
22 the clergy's duty to keep such communications secret. Further, the Elders  
23 participating in this adversarial process are acting as investigators and judiciary, not  
24 as spiritual advisors providing spiritual comfort.

25 Watchtower Defendants should not be allowed to stand behind the clergy-  
penitent privilege and use it as a shield to hide evidence regarding Larry Crabb's  
Page 6. Plaintiff's Reply Memorandum to Defendants' Opposition...  
Grafmyer v. Watchtower et al.

1   perpetration of child sexual abuse and their knowledge of these facts in an effort to  
2   avoid civil liability. The privilege just does not apply under the present circumstances.

3                   **California Supreme Court has Rejected Watchtower Defendants' Position**

4           At present, there are several similar cases being pursued by victims of sexual  
5   abuse against the Watchtower Defendants and other congregations; the California  
6   cases have been coordinated in Napa County. Virtually identical requests for  
7   production were propounded on the Watchtower Defendants and the California  
8   version of the clergy privilege was asserted. After briefing and oral argument, the  
9   Napa Court granted the motion to compel and held as follows:

10           Defendants object to the production of a number of documents requested  
11           by plaintiffs on the ground that they are protected by the penitential  
12           communication privilege contained in Evidence Code section 1032. This  
          court finds that the privilege does not apply to communications between  
          the alleged abusers and the Judicial Committee.

13   (See Ruling on Submitted Motion to Compel, attached hereto as Exhibit 4.)

14           The Napa Court reasoned further that "Evidence presented by both sides  
15   establishes that communications with the Judicial Committee do not fall within the  
16   scope of the privilege" (emphasis in original). The Watchtower Defendants sought to  
17   overturn the Napa Court ruling at the California Court of Appeal and the California  
18   Supreme Court; both applications for writ were refused.

19                   **Burden of Proof**

20           When a party asserts a privilege in lieu of answering discovery, the burden is  
21   on the party asserting the privilege to establish the existence and proper application  
22   of the privilege. Defendants have not met their burden.

23   ///

24

25   Page 7.           Plaintiff's Reply Memorandum to Defendants' Opposition...  
                          Grafmyer v. Watchtower et al.

1 **Plaintiff's Requests are not Overly Broad**

2 In the General Objections portion of their responses, Defendants assert that  
3 Plaintiff's requests are overly broad as to time:

4 The relevant time period is defendant's alleged actions during the time  
5 when the alleged conduct involving plaintiff occurred. Plaintiff alleges that  
6 he was abused in 1991. The scope of proper inquiry should therefore be  
7 limited to 1991. Thus the responses that follow are limited to that time  
8 period, unless otherwise noted.

9 Plaintiff's requests are specific and narrowly tailored to obtain the information  
10 that is related to the matters raised in Plaintiff's Complaint. Information prior to 1991  
11 is critical to establish Defendants' awareness that Crabb was a child sexual abuser or  
12 that there were prior Judicial Committee actions accusing Crabb of sexually  
13 inappropriate behavior prior to or during his appointment as a Ministerial Servant.  
14 Information subsequent to 1991 is important to understand the Defendants' practice  
15 and policy changes, if any, after learning of the dangers of child sexual abuse.  
16 Additionally, on March 14, 1997, the Watchtower Defendants directed that all U.S.  
17 congregations, including the Congregation Defendant, evaluate all of their  
18 congregation records regarding past sexual abusers and submit a detailed report to  
19 the Watchtower Defendants' headquarters in Brooklyn; the report was to include:

20 However, the body of elders should discuss this matter and give the  
21 Society a report on anyone who is currently serving or who formerly  
22 served in a Society-appointed position in your congregation who is  
23 known to have been guilty of child molestation in the past.

24 In your report please answer the following questions: How long ago did  
25 he commit the sin? What was his age at the time? What was the age of his  
26 victim(s)? Was it a one-time occurrence or a practice? If it was a practice,  
27 to what extent? How is he viewed in the community and by the  
28 authorities? Has he lived down any notoriety in the community? Are  
29 members of the congregation aware of what took place? How do they  
30 and/or his victim(s) view him? If he has moved to another congregation,  
31 please identify the congregation to which he has moved. Was that  
32 congregation advised of his past conduct of child molestation, and, if so,

Page 8. Plaintiff's Reply Memorandum to Defendants' Opposition...  
Grafmyer v. Watchtower et al.



1 when? [If you have not advised them, this should be done now, and you  
2 should send a copy of your letter to the Society along with any other  
3 observations that the body of elders has. Please send this to the Society in  
4 the "Special Blue" envelope so that the factors involved may be given due  
5 consideration; this information is not to be made available to those not  
6 involved.

7 (See March 14, 1997 letter, pgs 2-3; attached hereto as Exhibit 5.)

8 In 1997, the Watchtower Defendants instructed that the Lancaster  
9 Congregation prepare a specific report related to Crabb's past sexually abusive  
10 behavior. The information requested by the Watchtower Society headquarters is  
11 eerily similar to Plaintiff's requests for production. Limiting Plaintiff's inquiry would  
12 allow Defendants to withhold information that bears directly on Crabb's abuse of  
13 Plaintiff and others, as well as how the Defendants responded in 1991 and thereafter.

14 In the matter *In Re: Roman Catholic Archbishop of Portland*, the Honorable  
15 Elizabeth L. Perris, United States District Court for the District of Oregon, addressed  
16 the assertion of an objection that discovery was overbroad as to time; the Catholic  
17 Defendants, too, asserted that the appropriate scope of discovery was the actual year  
18 the abuse occurred. Judge Perris of the District Court rejected that position by  
19 holding as follows:

20 I will not limit the time frame for questions about debtor's patterns,  
21 practices, and policies with regard to dealing with allegations of clergy  
22 sexual misconduct with minors. This is discovery. The test is whether the  
23 information sought "appears reasonably calculated to lead to the  
24 discovery of admissible evidence."

25 (See Memorandum Opinion p. 19; attached hereto as Exhibit 3.)

### THERE IS NO "INVASION OF PRIVACY" PRIVILEGE

26 The final objection urged by Defendants asserts that the information sought by  
27 Plaintiff may call for confidential and personal information involving non-parties. To  
28 begin with, there is no privacy "privilege"; certainly Defendants are not urging this  
29 Page 9. Plaintiff's Reply Memorandum to Defendants' Opposition...  
30 Grafmyer v. Watchtower et al.



1 Court to allow them to withhold production of information to protect the sexual  
2 abuser, Larry Crabb.

3 CONCLUSION

4 Defendants have not met the burden of proof. Naked allegations of privilege  
5 alone are not sufficient. Defendants claim of privilege were rejected when considered  
6 by the Oregon District Court and by the California Superior Court under similar  
7 facts. Defendants should be ordered to produce all requested documents. If the  
8 Court is in doubt as to any specific request, Defendants should be ordered to produce  
9 the documents to the Court for an *in camera* review.

10 DATED this 10th day of October 10, 2006.

11 NELSON & MacNeil, PC

12 By:   
13 \_\_\_\_\_

14 James G. Nelson, OSB #74230  
15 Of Attorneys for Plaintiff

16  
17  
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STATE OF OREGON  
MARION COUNTY  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER ) CASE NO. 06C15281

Plaintiff,

vs.

WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF NEW YORK, INC., ) AFFIDAVIT OF JAMES G.  
WATCHTOWER BIBLE AND TRACT ) NELSON  
SOCIETY OF PENNSYLVANIA, )  
and LANCASTER CONGREGATION )  
OF JEHOVAH'S WITNESSES, )

Defendants.

STATE OF OREGON )  
County of Linn )

I, JAMES G. NELSON, being first duly sworn, do hereby depose and state:

I am one of the attorneys for Plaintiff.

On information and belief, Exhibit 1 to Plaintiff's Reply Memorandum to Defendant's Opposition to Plaintiff's Motion Compel Production of Documents is a true copy of excerpts of deposition testimony from the captioned Jehovah's Witnesses sex abuse case in Sonoma County, California.

On information and belief, Exhibit 2 and Exhibit 5 to Plaintiff's Reply Memorandum to Defendant's Opposition to Plaintiff's Motion Compel Production of

NELSON & MacNEIL, P.C.  
Attorneys at Law  
P.O. Box 946  
Albany, OR 97321  
Phone: (541) 928-9147

1 Documents are true copies of publications of Defendant Watchtower Bible & Tract  
2 Society of New York, Inc.

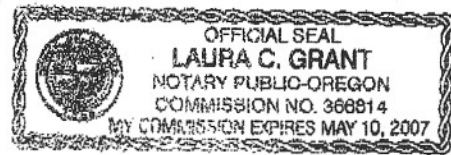
3 DATED this 10th day of October, 2006.

4 NELSON & MacNEIL, P.C.

5  
6 By: James G. Nelson OSB #74230  
Of Attorneys for Plaintiff

7 Subscribed and sworn to before me this 10th day of October, 2006, by James G.  
8 Nelson.

9 Laura C. Grant  
Notary Public for Oregon  
10 My commission expires: 5-10-07



11  
12 SUBMITTED BY:  
13 James G. Nelson OSB #74230  
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IN THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

JOCELYN A., a minor, by and )  
through her Guardian ad Litem, )  
JOE A., REBECCA G., MICHAEL G., )  
and NICHOLAS S., )  
Plaintiffs, )

-vs-

No. 234320

WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF NEW YORK, INC., )  
WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF PENNSYLVANIA, )  
CHRISTIAN CONGREGATION OF )  
JEHOVAH'S WITNESSES, SANTA ROSA )  
CONGREGATION OF JEHOVAH'S )  
WITNESSES, PETALUMA CONGREGATION )  
OF JEHOVAH'S WITNESSES, DONALD )  
GLEW, and DOES 1 through 20 )  
inclusive, )  
Defendants. )

---

DENNIS S., FRED F., and SHIRLEY )  
D., )  
Plaintiffs, )

-vs-

ROES 1 through 100 and DOES 110 )  
through 120 inclusive, )  
Defendants. )

---

The discovery deposition of JAMES  
WALTER WHITNEY, called by the defendants for  
examination, pursuant to notice, taken before Judy A.  
Landauer, CSR, a Certified Shorthand Reporter and  
Notary Public within and for the County of Cook and

XHIBIT 1  
1022

1 State of Illinois, at the Westin O'Hare Hotel, 6100  
2 River Road, Rosemont, Illinois, on March 9, 2004, at  
3 the hour of 8:59 o'clock A.M.  
4 PRESENT:

5 GREGORY S. LOVE, ESQ.  
(of the firm of Messrs. Love & Norris,  
6 Western Union Building, 314 Main Street,  
7 Suite 300, Fort Worth, Texas 76102)

8 and  
9 WILLIAM L. BRELSFORD, JR., ESQ.  
(of the firm of Messrs. Nolen, Saul &  
10 Brelsford, 350 University Avenue, Suite  
11 280, Sacramento, California 95825)  
12 appeared on behalf of the plaintiffs;

13 ROBERT J. SCHNACK, ESQ.  
(of the firm of Messrs. Bullivant, Houser  
14 & Bailey, PC, 11335 Gold Express Drive,  
15 Suite 105, Gold River, California  
16 95670-6310)  
17 appeared on behalf of the Watchtower  
18 defendants.

19 ALSO PRESENT:

20 MR. ROBERT C. JAMES  
21 Associate General Counsel, Watchtower  
22 Bible and Tract Society of New York, Inc.;

23 MR. BRIAN C. FALK  
24 Legal-Ease Video Services.

1 MR. FALK: We're going on video  
2 record at 8:59 A.M. My name is Brian Falk.  
3 I am the legal videographer from Legal-Ease  
4 Video Services in association with Central  
5 Reporters.

6 My address is 3550 North Lake  
7 Shore Drive, Chicago, Illinois. The court  
8 reporter is Judy Landauer of Central  
9 Reporters.

10 This is the videotaped  
11 discovery deposition of James W. Whitney  
12 taking place on Tuesday, March 9, 2004 at  
13 the Westin O'Hare Hotel, 6100 River Road,  
14 Rosemont, Illinois.

15 This deposition is being taken  
16 in the matter of Jocelyn, et al, vs.  
17 Watchtower Bible and Tract, et al, case No.  
18 234320, and Dennis Reid and Sherry --

19 MR. BRELSFORD: Dennis S.  
20 MR. FALK: Dennis S., Fred F., and  
21 Sherry D., plaintiffs, vs. Roes 1 through  
22 100 and Does 110 through 120 inclusive.

23 This deposition is being taken  
24 on behalf of Watchtower New York, et al.

1 INDEX

2  
3 WITNESS

4 James Walter Whitney  
5 Direct examination by Mr. Schnack..... Page 5

6  
7 EXHIBITS

8 Deposition Exhibit No. 1 ..... Page 159  
9 Deposition Exhibit No. 2 ..... Page 209  
10 Deposition Exhibit No. 3 ..... Page 226  
11 Deposition Exhibit No. 4 ..... Page 233

1 The party at whose instance this deposition  
2 is being recorded on an audiovisual  
3 recording device is Watchtower New York,  
4 et al.

5 Will counsel please announce  
6 their appearances for the record?

7 MR. LOVE: My name is Greg Love. I  
8 represent the plaintiffs.

9 MR. SCHNACK: Bob Schnack. I  
10 represent the entity defendants.

11 MR. BRELSFORD: My name is Bill  
12 Brelsford on behalf of the plaintiffs.

13 MR. FALK: Will our court reporter  
14 now swear the witness, please?  
15 (Witness sworn.)

16 MR. FALK: Please proceed.  
17 JAMES WALTER WHITNEY  
18 having been first duly sworn, was examined and  
19 testified as follows:

20 DIRECT EXAMINATION  
21 BY MR. SCHNACK

22 Q. Please state your full name, please.

23 A. James Walter Whitney.

24 Q. Mr. Whitney, we were introduced a few

EXHIBIT 2 22

1 fornication, drunkenness, drug abuse, child sexual  
 2 abuse, and other less serious matters.  
 3 Q. What are some other less serious  
 4 matters that Judicial Committees would be formed  
 5 to handle?  
 6 A. Possibly, let's say, smoking.  
 7 Q. Did you ever serve on a Judicial  
 8 Committee?  
 9 A. Yes.  
 10 Q. At what congregation?  
 11 A. Petaluma West.  
 12 Q. How many times?  
 13 A. It was four or five times I was on a  
 14 committee, yes.  
 15 Q. And what types of matters came before  
 16 the Judicial Committees on which you sat?  
 17 A. Smoking, masturbation, theft,  
 18 fornication. I forget the -- I forget the other  
 19 one.  
 20 Q. Did any of them deal with childhood  
 21 sexual abuse?  
 22 A. On the committees I served on, no.  
 23 Q. Describe the procedure as to how a  
 24 Judicial Committee gets formed.

1 A. Normally when there is an accusation  
 2 two Elders are assigned to look into a matter.  
 3 Based on their findings, they will recommend  
 4 usually to the presiding overseer to form a  
 5 Judicial Committee.  
 6 Q. Is that the way it happened in the  
 7 Petaluma West Congregation?  
 8 A. More or less.  
 9 Q. What do you -- when you give a  
 10 qualifier I'm going to follow up. What do you  
 11 mean, more or less?  
 12 A. It didn't always 100 percent of the  
 13 time perfectly follow procedure, but it was very  
 14 close to procedure.  
 15 Q. Why would it differ? How would it  
 16 differ from what you've described?  
 17 A. Sometimes events do not happen in  
 18 a -- in a perfect world where they happen  
 19 according -- events don't happen according to  
 20 procedure, so perhaps in one case of a minor child  
 21 having a problem they talk to an Elder, so maybe  
 22 instead of two Elders investigating it might only  
 23 be one.  
 24 Q. And do you have any information as to

1 how Judicial Committees were formed at the Saint  
 2 Helens Congregation?  
 3 A. They would be formed the same  
 4 procedure, by the same procedure.  
 5 Q. And how do you know that?  
 6 A. Because all congregations of  
 7 Jehovah's Witnesses everywhere on this earth  
 8 follow the same procedure as directed by its  
 9 Governing Body through the Watchtower Society  
 10 Q. With respect to Judicial Committees,  
 11 what actions can be taken by a Judicial Committee  
 12 for those persons who are not deemed repentant?  
 13 A. What actions? They can be  
 14 disfellowshipped.  
 15 Q. Anything else?  
 16 A. They can be declared disassociated.  
 17 Q. What is disfellowshipping?  
 18 A. When a person is removed from  
 19 membership in the congregation and they are  
 20 totally shunned by all of their associates,  
 21 friends, family, whatever.  
 22 Q. What are the reasons that someone  
 23 might be disfellowshipped?  
 24 A. For serious wrongs.

1 Q. Is that a term of art, serious  
 2 wrongs?  
 3 A. No, I use that to try to concisely  
 4 convey to you what it would be.  
 5 Q. Okay. Give me a list of what some  
 6 serious wrongs might be.  
 7 A. Adultery, fornication, homosexuality,  
 8 child abuse, of course, pedophilia. And when I  
 9 say child abuse I also meant it in a broader  
 10 category of physical abuse, violence.  
 11 It could be smoking, drunkenness,  
 12 drug abuse. And what would be also considered  
 13 serious may be not following the society's  
 14 policies and procedures.  
 15 Q. And what is disassociation?  
 16 A. Disassociation generally is an action  
 17 that is considered taken by the person themselves  
 18 to disassociate from the congregation, but they  
 19 are treated the same as if they are  
 20 disfellowshipped.  
 21 Q. And you also mentioned above -- just  
 22 a few minutes ago that someone could be declared  
 23 disassociated?  
 24 A. Yes.



1 Q. What did you mean by that?  
 2 A. Well, for example, they may take some  
 3 action, join the military. They don't write a  
 4 letter and say, "Hi, I'm disassociating myself,"  
 5 but rather the congregation learns of it and  
 6 declares them disassociated by their action.  
 7 Q. Are you familiar with public reproof?  
 8 A. Yes.  
 9 Q. What is that?  
 10 A. That is where an announcement is made  
 11 to the congregation by a member of the Elders, the  
 12 Body of Elders, stating that a person -- and they  
 13 will state the person's name -- has been publicly  
 14 reproofed.  
 15 It acknowledges that that person has  
 16 met with the Elders and has received some level of  
 17 discipline for some unspecified conduct.  
 18 Q. What are the requirements to be  
 19 publicly reproofed?  
 20 A. As opposed to disfellowshipping?  
 21 Q. Yes.  
 22 A. Repentance. Therefore, the Elders  
 23 determine not to disassociate -- not to  
 24 disfellowship but to instead publicly reprove,

1 let's say.  
 2 Q. Were any Judicial Committees ever  
 3 formed to address some type of wrongdoing on your  
 4 part?  
 5 A. Yes.  
 6 Q. Which congregations?  
 7 A. In Petaluma prior to it becoming a  
 8 split in the two congregations. There was a -- I  
 9 don't know where else a committee would have been  
 10 formed, let's say.  
 11 Well, there would have been in Saint  
 12 Helens because of the letter and then in Petaluma.  
 13 Yes, it would be in Petaluma when -- Petaluma West  
 14 or what became Petaluma West.  
 15 Q. So there were three formed in  
 16 Petaluma with respect to you, is that correct?  
 17 A. Two in Petaluma. And I don't recall.  
 18 There was one also in Richland. That would be  
 19 three.  
 20 Q. Okay. Tell me about the one in  
 21 Richland first.  
 22 A. Well, there was a Judicial Committee  
 23 formed in Richland and I was given private  
 24 reproof.

1 Q. What was the wrongdoing on your part?  
 2 A. Smoking.  
 3 Q. And you said there were two formed in  
 4 Petaluma?  
 5 A. Yes.  
 6 Q. What was the first one formed for?  
 7 What type of conduct on your part was addressed?  
 8 A. Smoking.  
 9 Q. And what about the second one?  
 10 A. The second one was formed because I  
 11 had had a hooker in my hotel room.  
 12 Q. By hooker you mean prostitute?  
 13 A. Yes.  
 14 Q. And how did that information come to  
 15 the congregation such that a Judicial Committee  
 16 was formed?  
 17 A. I volunteered it. I came forward and  
 18 confessed.  
 19 Q. Were there other things you confessed  
 20 to as a part of that Judicial Committee?  
 21 A. I don't recall.  
 22 Q. Do you recall anything about your  
 23 conduct in Portland at all dealing with  
 24 prostitutes?

1 A. No, there was none there.  
 2 Q. How about in San Francisco?  
 3 A. No.  
 4 Q. With adult entertainment clubs?  
 5 A. No.  
 6 Q. Masturbation to pornography?  
 7 A. No. Masturbation but not to  
 8 pornography.  
 9 Q. Did you ever use the telephone to do  
 10 dial-up porn or anything like that?  
 11 A. Not that I recall, no.  
 12 Q. What years were these Judicial  
 13 Committees held in Petaluma?  
 14 A. The first one for smoking I forget.  
 15 It was '71 or '72, right in there. The second one  
 16 would have been sometime in '80 -- I believe it  
 17 was late '85.  
 18 I just don't recall the exact time  
 19 frame.  
 20 Q. Would '87 sound about right?  
 21 A. I don't recall a Judicial Committee  
 22 in '87.  
 23 Q. So you think it was about 1985?  
 24 A. I think so.



1 Q. What was the result of the Judicial  
2 Committee with respect to having the hooker in  
3 your hotel room?  
4 A. The result, I was given private  
5 reproof, restrictions, and I resigned as an Elder.  
6 Q. When had you been appointed an Elder?  
7 A. I believe in -- sometime early in  
8 '84.  
9 Q. And then you would have resigned as  
10 an Elder when, the next year?  
11 A. About 15, 18 months later perhaps.  
12 Q. Were you ever an Elder in any other  
13 congregation?  
14 A. Not appointed, no.  
15 Q. Are there unappointed Elders?  
16 A. There are Ministerial Servants used  
17 in capacities similar to that of an Elder in  
18 anticipation of appointing them, so that maybe  
19 that's more of a distinction on my part, I guess.  
20 Q. So after you resigned as an Elder in  
21 the Petaluma -- was it Petaluma West?  
22 A. Yes.  
23 Q. Did you hold any positions after that  
24 in the Petaluma Congregation?

1 A. No.  
2 Q. In the Saint Helens Congregation I  
3 think you testified earlier that you were a  
4 Ministerial Servant?  
5 A. Yes.  
6 Q. Did you resign from that position or  
7 were you removed?  
8 A. I resigned.  
9 Q. Why did you resign?  
10 A. My wife's health was the primary  
11 reason and because I intended to eventually fade  
12 away from Jehovah's Witnesses.  
13 Q. That's when you wrote the letters to  
14 resign, is that correct?  
15 A. Yes.  
16 Q. Do you know what time frame that was  
17 roughly?  
18 A. I believe I presented the first  
19 letter late April of '92, and then the second  
20 letter was presented in the summer, perhaps  
21 July/August time frame, of '92.  
22 Q. Why did you have to write the second  
23 letter?  
24 A. Because the Body of Elders had

1 received instruction from the society through  
2 the -- I believe through their meeting with the  
3 circuit overseer at the circuit assembly that if  
4 they valued an individual Ministerial Servant or  
5 an Elder that they could vote to not accept a  
6 resignation but keep them in kind of a holding  
7 pattern until they could resume their activity.  
8 When the circuit overseer visited in  
9 July/August of '92 I wanted the resignation to be  
10 in effect.  
11 I didn't want to remain in a holding  
12 pattern, so I presented that letter during his  
13 visit.  
14 Q. Did the congregation then accept your  
15 resignation?  
16 A. They did.  
17 Q. Is that the same then as a  
18 disassociation at that point?  
19 A. None whatsoever.  
20 Q. Okay. What's the difference?  
21 A. My resignation is as a -- as a  
22 Ministerial Servant. I did not resign as one of  
23 Jehovah's Witnesses.  
24 Q. Okay. Let's shift gears. Have you

1 ever threatened to sue the Watchtower Society?  
2 A. I made a veiled threat to sue the  
3 Body of Elders in Saint Helens, Oregon, not the  
4 Watchtower Society directly.  
5 Q. When did you make that veiled threat?  
6 A. In a letter to the Watchtower's Legal  
7 Department addressed to Don Adams.  
8 Q. And why did you threaten to sue them?  
9 A. Because of the harassment my family  
10 and I received that was affecting my wife's  
11 health.  
12 I was concerned about serious issues  
13 in the congregation, although I didn't detail them  
14 in that letter, but I made a reference to serious  
15 issues going on.  
16 Q. What type of harassment took place  
17 from your point of view?  
18 A. Although we were in no way  
19 disassociated, we still attended meetings, my  
20 children were being told by other children that  
21 Elders and others in positions were discouraging  
22 people from associating with my family and doing  
23 so based on false information, spreading rumor,  
24 gossip, and lies about us.

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1 Q. What types of rumors, gossips, and  
 2 lies were being spread?  
 3 A. I don't recall all of them. I don't  
 4 even recall any at the moment now other than just  
 5 a general issue.  
 6 Q. So you can't tell me anything that  
 7 was supposedly said?  
 8 A. Not offhand. In generalities we were  
 9 bad associates, for example.  
 10 Q. Bad associates?  
 11 A. Bad associates.  
 12 Q. What does that mean in your point of  
 13 view?  
 14 A. That would be not conforming to  
 15 the -- according to them, I should say, not  
 16 conforming necessarily to the Watchtower policies  
 17 and beliefs, procedures, whatever.  
 18 Q. It sounds like, though, at that same  
 19 time frame you didn't believe or adhere to those  
 20 policies and procedures?  
 21 MR. LOVE: Objection.  
 22 THE WITNESS: I can't -- I can't say  
 23 that for a certainty, because I was -- I  
 24 was going through an evolution, a turmoil

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1 in my life, and trying to decide what to  
 2 do, so I wasn't doing anything out of  
 3 harmony with the Watchtower policies and  
 4 practices and teachings.  
 5 MR. SCHNACK Q. At that time you  
 6 weren't?  
 7 THE WITNESS A. No.  
 8 Q. And the letter you wrote to Don Adams  
 9 was in June of '93, is that correct?  
 10 A. That sounds right.  
 11 Q. So at that time you still considered  
 12 yourself to be a part of the Jehovah's Witnesses?  
 13 A. Yes.  
 14 Q. Again correct me if I'm wrong. I  
 15 thought you said you quit attending meetings and  
 16 that in April of '93?  
 17 A. I didn't quit attending entirely. I  
 18 began phasing down my attendance somewhat because  
 19 I needed time with my family, and that's what I  
 20 explained in my letter of resignation.  
 21 It would not make sense to say I need  
 22 more time with my family and then continue to  
 23 spend all my time at the Kingdom Hall, but I  
 24 hadn't yet quit, resigned, disassociated as a

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1 member of Jehovah's Witnesses, and I still very  
 2 much wanted to continue my association.  
 3 Q. What was your wife's medical  
 4 condition or conditions at that time?  
 5 A. Clinical depression.  
 6 Q. And were you working at that point,  
 7 employed outside the house?  
 8 A. Yes.  
 9 Q. You were still at the nuclear plant,  
 10 correct?  
 11 A. I believe so, yes.  
 12 Q. Okay. Let's change topics again  
 13 here. Have you ever seen a transcript of any  
 14 deposition of any Watchtower or Jehovah's  
 15 Witnesses representative?  
 16 A. No.  
 17 Q. Have you ever seen an affidavit or a  
 18 sworn declaration from any Watchtower or Jehovah's  
 19 Witness representative?  
 20 A. Yes.  
 21 Q. Okay. What have you seen?  
 22 A. I saw a copy of an affidavit.  
 23 Q. Whose affidavit?  
 24 A. Don Adams.

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1 Q. When did you see it?  
 2 A. In the book Crisis of Conscience, I  
 3 believe.  
 4 Q. And that's the book written by Franz?  
 5 A. Yes.  
 6 Q. Have you seen any other affidavits or  
 7 sworn declarations of any Watchtower or Jehovah's  
 8 Witness representative other than the Don Adams  
 9 affidavit you referenced?  
 10 A. I believe -- I believe I may have in  
 11 parts of very old trial transcripts going back to  
 12 the 1950s and '40s and beyond, but not currently,  
 13 no.  
 14 Q. Nothing in the last 20, 30 years?  
 15 A. No.  
 16 Q. What was the Don Adams affidavit that  
 17 you referenced?  
 18 A. It had to do with the Kingdom Hall  
 19 issue in Bonham, Texas.  
 20 Q. What was the Kingdom Hall issue in  
 21 Bonham Texas in general terms?  
 22 A. Yes. There was a lawsuit between a  
 23 congregation and the society over ownership of the  
 24 Kingdom Hall.

EXHIBIT 1  
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1 Q. What time frame was that affidavit  
2 signed, do you know?  
3 A. I don't recall.  
4 Q. Was it in the last ten years?  
5 A. I believe it was longer than that,  
6 but I don't know.  
7 Q. Do you know if it was in the 1970s?  
8 A. I don't recall the date on it. It's  
9 been a long time since I saw that.  
10 Q. Have you seen any other sworn  
11 testimony, transcripts, affidavits, sworn  
12 declarations, anything like that from any  
13 Watchtower or Jehovah's Witness representative  
14 other than what you've referenced so far?  
15 A. Well, the trial transcripts of 1918  
16 with Joseph Rutherford. There was a trial  
17 transcript in 1952 in Scotland, a trial there, the  
18 Olam Oil trial in the late '30s, I believe.  
19 He was a former Watchtower attorney  
20 who prevailed in a lawsuit against the society.  
21 And I can't think of any others at the moment.  
22 No recent since those, no other trial  
23 transcripts.  
24 Q. Has Mr. Love referenced any such

1 transcripts or declarations or affidavits in his  
2 discussions with you?  
3 A. No.  
4 Q. Have any other legal representatives  
5 involved in the California lawsuits referenced any  
6 such transcripts, affidavits, or sworn  
7 declarations to you?  
8 A. No.  
9 Q. I can get this letter out, if we  
10 need. I'm referring to a letter that was sent to  
11 us by Rudy Nolen of Mr. Brelsford's law firm that  
12 says your testimony would impact certain  
13 plaintiffs in the California cases, so I'm going  
14 to just list their names, and I'll show you the  
15 letter after lunch here --  
16 A. Okay.  
17 Q. -- if we need to. Do you know who  
18 Deanna [REDACTED] is?  
19 A. Deanna [REDACTED]?  
20 Q. [REDACTED]. She was allegedly abused by  
21 Vince Diorio.  
22 A. Yes, I would know Deanna.  
23 Q. Okay.  
24 A. Not as [REDACTED].

1 Q. What was the last name that you know  
2 her as?  
3 A. Diorio.  
4 Q. And what is Deanna [REDACTED] relationship  
5 to Vince Diorio?  
6 A. Stepdaughter.  
7 Q. Do you know Jocelyn [REDACTED]?  
8 A. No.  
9 Q. She was allegedly abused by Don Glew.  
10 A. I don't know the name.  
11 Q. Do you know Sherry [REDACTED] or  
12 Sherry [REDACTED]?  
13 A. I briefly met her once.  
14 Q. Okay. What were the circumstances of  
15 that meeting?  
16 A. We were at a family gathering of  
17 several people, several Witnesses, which Don Glew  
18 and his family attended.  
19 Q. And what is Sherry's relationship to  
20 Don Glew?  
21 A. I thought she was his daughter at the  
22 time, and I assume she is his daughter.  
23 Q. You don't know anything different as  
24 you sit here today?

1 A. I believe -- I believe she may have  
2 been his stepdaughter, but I don't recall how I  
3 learned that.  
4 Q. So as far as you know, she was either  
5 his daughter or his stepdaughter?  
6 A. Yes.  
7 Q. And when did you meet her? When was  
8 that one time, how long ago?  
9 A. That would be sometime in the  
10 mid-'80s.  
11 Q. Where was that gathering?  
12 A. At Howard Whitney's house.  
13 Q. Any relation?  
14 A. No.  
15 Q. Are you in contact with Howard  
16 Whitney --  
17 A. No.  
18 Q. -- any longer? No. But there's no  
19 family relationship between you and Howard  
20 Whitney?  
21 A. No. A coincidence of last name.  
22 Q. Do you know who Fred [REDACTED] is?  
23 A. No.  
24 Q. Do you know who Dennis [REDACTED] is?

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1 A. No.  
2 Q. Do you know who Nicholas [redacted] is?  
3 A. No.  
4 Q. Do you know who Michael [redacted] is?  
5 A. I know of him.  
6 Q. How do you know of him?  
7 A. I believe he would have been at the  
8 family gathering at Howard Whitney's house.  
9 Q. And do you know Michael [redacted]  
10 relationship to Donald Glew?  
11 A. I believe he would have been his son.  
12 Q. Blood son or stepson?  
13 A. I don't know.  
14 Q. Do you know who Rebecca [redacted] is?  
15 A. The name rings a bell, and I don't  
16 recall offhand whether she would be another  
17 daughter or a wife.  
18 I don't -- I don't remember.  
19 Q. She's a plaintiff in one of these  
20 suits.  
21 A. Okay.  
22 Q. Would that help you?  
23 A. I would presume she's his daughter or  
24 stepdaughter.

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1 Q. Of Don Glew?  
2 A. Yes, but I do recall the name as I  
3 met the Glew family.  
4 Q. How did you come to meet Donald Glew?  
5 A. At Howard Whitney's house. Howard  
6 introduced him as a longtime friend.  
7 Q. Is that the first time you met Don  
8 Glew?  
9 A. Yes.  
10 Q. Had you heard of him previously?  
11 A. Yes, Howard Whitney had made mention  
12 of him.  
13 Q. And was Donald Glew a friend of  
14 Howard Whitney?  
15 A. Yes.  
16 Q. And what had Howard Whitney said  
17 about Donald Glew before you met him?  
18 A. That they were friends.  
19 Q. How many people were at this  
20 gathering at the Howard Whitney house?  
21 A. I recall the three families; my  
22 family, Howard's family, and the Glew family, and  
23 I believe that would have at least been somewhere  
24 close to 20 people.

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1 Q. And Donald Glew was married at the  
2 time?  
3 A. Yes.  
4 Q. Who was his wife?  
5 A. I forget her first name.  
6 Q. And how many children did the Glews  
7 have, whether they were theirs or stepchildren?  
8 A. I don't recall how many children they  
9 had. It seemed like they had four or more, but  
10 I'm not really sure.  
11 Q. Did you know anything about Donald  
12 Glew before that gathering other than what Mr.  
13 Whitney had told you?  
14 A. No.  
15 Q. When did you next meet Donald Glew?  
16 A. I don't recall meeting him after  
17 that. Perhaps one more time at Howard's house,  
18 but I -- that's a vague recollection.  
19 Q. So it would have been another social  
20 gathering?  
21 A. Yes.  
22 Q. Any other contact you've had with  
23 Donald Glew then other than those two social  
24 gatherings?

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1 A. No.  
2 Q. Do you have any information about his  
3 alleged sexual abuse of any of these people I've  
4 listed; Jocelyn [redacted], Sherry [redacted], Fred  
5 [redacted], Dennis [redacted], Nicholas [redacted],  
6 Michael [redacted], or Rebecca [redacted]?  
7 A. Can I -- can I -- what kind of  
8 information do you mean?  
9 Q. Any type of information. First of  
10 all, do you have any -- let's break it down. Do  
11 you have any personal knowledge of the abuse that  
12 he allegedly perpetrated on them?  
13 A. Personal?  
14 Q. You didn't witness it, I assume?  
15 A. No, I didn't witness it, no.  
16 Q. Okay. Tell me then what you've  
17 heard.  
18 A. Whatever I heard is a result of my  
19 contact with Howard Whitney and his wife, Karen,  
20 their children through my children, as well as Joe  
21 Risonsky, an Elder in the Petaluma West Kingdom  
22 Hall.  
23 And I'm sure there were other  
24 discussions with others. Ron LaForce I know I had

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1 discussions -- no, you need to strike that.  
 2 Ron LaForce had no discussion with me  
 3 about Don Glew.  
 4 Q. Okay. So you've had discussions with  
 5 Karen and Howard Whitney?  
 6 A. Yes.  
 7 Q. And who were the other persons you  
 8 mentioned?  
 9 A. Joe Risonksy.  
 10 Q. Okay. And anyone else?  
 11 A. I don't recall.  
 12 Q. Okay. What did Karen Whitney tell  
 13 you about Donald Glew and the abuse of these  
 14 persons?  
 15 A. I believe with her it's more of a  
 16 vague recollection, because she was upset over  
 17 what happened to their children, and I believe it  
 18 was in just general discussion as our -- as we  
 19 visited, grieving the fact of her child being  
 20 molested by Don Glew, but there was nothing beyond  
 21 that with her specifically that I recall.  
 22 Q. You said her child was molested by  
 23 Don Glew?  
 24 A. Yes.

1 Q. Did he tell you the source of that  
 2 information?  
 3 A. No.  
 4 Q. When was Don Glew arrested, do you  
 5 know?  
 6 A. I don't recall the time other than  
 7 the mid-'80s when I was living there, but I don't  
 8 recall the date or time.  
 9 Q. My understanding is -- something I've  
 10 read from the counsel on the other side of the  
 11 table is that he was either convicted or went to  
 12 jail in 1989.  
 13 Does that seem accurate from your  
 14 memory?  
 15 A. It's possible that he -- because I  
 16 don't know -- from the time of his arrest 'til  
 17 conviction I don't know what time frame elapsed.  
 18 Q. Okay. How many times did you talk to  
 19 Howard Whitney about Don Glew and the sex abuse?  
 20 A. A few times, but I don't remember how  
 21 many.  
 22 Q. Who else was present when you had  
 23 these discussions with Howard Whitney?  
 24 A. Well, at times Karen was present

1 Q. Okay.  
 2 A. Karen Whitney's, yes.  
 3 Q. Yes. Okay. And that's what -- again  
 4 I'm having trouble hearing --  
 5 A. Okay.  
 6 Q. -- because of the echoes in here, so  
 7 I apologize.  
 8 A. Okay.  
 9 Q. So I just wanted to make sure that's  
 10 what you had said as opposed to me hearing  
 11 something differently, okay?  
 12 A. No.  
 13 Q. Okay. Now, with respect to Howard  
 14 Whitney, what did he tell you about Donald Glew?  
 15 A. He learned as a result of this event  
 16 with his children, and he had also conveyed to me,  
 17 first of all, that Don had been recently arrested.  
 18 That's how a lot of it came out with  
 19 respect to abusing his own children or  
 20 stepchildren.  
 21 And Howard relayed that what he  
 22 learned is that Don had also molested children in  
 23 many other congregations over a long period of  
 24 time.

1 but -- or my wife might have been present. I  
 2 don't recall our children being present.  
 3 Most of my discussions with Howard  
 4 were just between he and I.  
 5 Q. And Joe Risonksy, when did you have  
 6 discussions with Joe?  
 7 A. I don't know exactly when. During  
 8 that time frame.  
 9 Q. How many did you have?  
 10 A. Probably two or three discussions.  
 11 Q. And what was discussed?  
 12 A. I asked about Don Glew. I asked  
 13 about all of the events in general. I asked him  
 14 what he knew, what was going to happen.  
 15 A number of people were concerned,  
 16 but so -- but I don't recall the overall -- I  
 17 don't recall the total substance, just --  
 18 Q. How did he respond when you asked  
 19 those questions?  
 20 A. He was fairly open with information,  
 21 but he -- I don't recall everything he told me.  
 22 Q. Tell me what you do recall.  
 23 A. Well, he also confirmed the arrest.  
 24 And I had asked him what the Elders were going to

1 do, and he said, "Well, there's nothing for us to  
 2 do. He's arrested."  
 3 I recall that. I don't recall  
 4 anything else in particular of his response.  
 5 Q. And did he say anything about Donald  
 6 Glew having molested children in other  
 7 congregations?  
 8 A. I don't recall. I believe - I  
 9 believe he did, but I don't recall exactly what he  
 10 said.  
 11 I just know that his conversation was  
 12 confirming what Howard had told me.  
 13 Q. Confirming in what sense?  
 14 A. Well, that Don had a record. And I  
 15 know Joe Risonky, that would have been a concern  
 16 to him.  
 17 Q. With respect to Donald Glew, was he  
 18 in Risonky's congregation?  
 19 A. In Petaluma West, or where are you?  
 20 Q. Wherever.  
 21 A. I don't know. He could have been.  
 22 Q. Why were you asking Joe those  
 23 questions?  
 24 A. Well, because I was concerned with

1 A. In any of the Petaluma Congregations.  
 2 Q. Correct.  
 3 A. Correct. He did not that I know of.  
 4 Q. I apologize if I asked you this. Do  
 5 you know who Jocelyn [redacted] is?  
 6 A. No.  
 7 Q. You don't know a Jocelyn by some  
 8 other last name?  
 9 A. If I knew the last name there's a  
 10 possibility. The name Jocelyn does not ring a  
 11 bell, either.  
 12 Q. Do you know Joe [redacted], J-O-E?  
 13 A. No.  
 14 Q. Because the reason I ask that, in one  
 15 of the lawsuits Jocelyn A. is a minor by and  
 16 through her guardian ad litem, Joe A., and I know  
 17 they provided the name of [redacted] for Jocelyn.  
 18 A. Yes.  
 19 Q. So I assume Joe is also [redacted], but  
 20 that doesn't ring a bell to you?  
 21 A. Not offhand, no.  
 22 Q. Okay. And are you familiar with any  
 23 Smiths that were in the Petaluma Congregations  
 24 while you were there?

1 respect to what went on. That's a very serious  
 2 thing to be arrested for child abuse, child  
 3 molestation, and clearly among a man that I had  
 4 and my family had associated with, a man around my  
 5 children, so I asked Joe because of his position  
 6 as an Elder, a trusted friend as well, but  
 7 primarily as an Elder, because I knew he would  
 8 have some kind of take on the situation, and I  
 9 wanted to know is the guy going to go to jail,  
 10 were there other children in our congregation  
 11 affected, were there children elsewhere, and Joe  
 12 was able to confirm that, but he didn't confirm  
 13 specifics for me.  
 14 Q. So again, though, you're not sure if  
 15 Donald Glew was in that Petaluma Congregation?  
 16 A. I don't recall Donald Glew ever being  
 17 a member of the Petaluma Congregation. If he was,  
 18 it was never during a time that I was there.  
 19 Q. So he was never a member of any of  
 20 the Petaluma Congregations while you were there?  
 21 A. Correct.  
 22 Q. It goes without saying then that  
 23 Donald Glew didn't hold any positions in any of  
 24 those congregations while you were there?

1 There's a Dennis [redacted] listed as  
 2 one of the victims, so I assume there's a Dennis  
 3 [redacted], Sr.  
 4 A. No.  
 5 Q. But that doesn't ring a bell for you,  
 6 either?  
 7 A. No.  
 8 Q. What do you know of the circumstances  
 9 as to where Donald Glew committed the sex abuse?  
 10 What did you hear about that?  
 11 A. Where? In other congregations. I  
 12 believe the one congregation, Tracy, California  
 13 rings a bell or in that general area.  
 14 I believe he may have been in the  
 15 East Bay Congregation and also North Bay Marin  
 16 County area.  
 17 Those are general recollections. I  
 18 understand he was in a number of congregations,  
 19 and in some he served as a Ministerial Servant.  
 20 Q. With respect to Deanna [redacted] or Deanna  
 21 [redacted] what do you know about the circumstances  
 22 of Vince Diorio's alleged abuse of her?  
 23 Do you know where it occurred, for  
 24 example, what location in the house? Was it

X-NDT 1  
 10 22

1 someplace else?  
 2 A. No, I don't know those circumstances.  
 3 Q. Do you -- do you have any of that  
 4 information with respect to any of these victims  
 5 that I've listed?  
 6 A. No, none of the ones that you've  
 7 listed.  
 8 Q. So, for example, with respect to  
 9 ~~Michelle~~, you didn't hear anything about where  
 10 Donald Glew perpetrated the sex abuse, whether it  
 11 was in the house --  
 12 A. No.  
 13 Q. -- or some other location?  
 14 A. No.  
 15 Q. The same question with respect to  
 16 Rebecca ~~Smith~~?  
 17 A. No.  
 18 Q. And I assume the same response,  
 19 because you don't know who the Smiths are?  
 20 A. Correct.  
 21 Q. And Fred ~~Smith~~?  
 22 A. No.  
 23 Q. And Sherry ~~Smith~~ or Sherry ~~Smith~~,  
 24 again no details --

1 A. Right.  
 2 Q. -- as to where that occurred?  
 3 A. Not the details, no.  
 4 Q. So other than the two contacts you  
 5 had with Donald Glew and his family at those two  
 6 social gatherings, there's really no interaction  
 7 between you and the Glews at all, is that correct?  
 8 A. Myself and the Glews, no.  
 9 Q. Okay. What about others in your  
 10 family?  
 11 A. My children -- and this was the cause  
 12 of concern that Howard Whitney contacted me. My  
 13 children had stayed the night at their home when  
 14 Don Glew stayed there during the time that he  
 15 molested one of Howard's children and possibly two  
 16 children, but I know for sure one child, and --  
 17 Q. They stayed at the Glew home, you  
 18 said?  
 19 A. No, Howard Whitney's home.  
 20 Q. At Howard Whitney's home?  
 21 A. Because the Glews were there visiting  
 22 and the Glews stayed over the night, so I was  
 23 concerned because my -- there was a potential that  
 24 if one of his children or two of his children were

1 molested during that time frame, perhaps one of  
 2 mine.  
 3 Q. Was the Glew family from out of town  
 4 then that they stayed overnight there?  
 5 A. Yes.  
 6 Q. Where were they from at that point?  
 7 A. I don't recall it. I have a vague  
 8 recollection of Tracy, California or an East Bay  
 9 area congregation, but I don't recall the town at  
 10 this time.  
 11 Q. And Howard and Karen Whitney then  
 12 lived in Petaluma?  
 13 A. Yes, at that time.  
 14 Q. Okay. Who told you about Donald  
 15 Glew's alleged abuse of others in other  
 16 congregations?  
 17 A. Howard Whitney and Joe Risonsky  
 18 confirmed the same thing.  
 19 Q. Anyone else?  
 20 A. I don't recall anyone else.  
 21 Q. How do you recall the Donald Glew  
 22 abuse coming to light? Was it the arrest that  
 23 triggered it from your point of view?  
 24 A. Well, the arrest is what brought it

1 to light for the congregation, yes.  
 2 Q. And who reported him to the  
 3 authorities such that he was arrested?  
 4 A. I understand that his stepdaughters  
 5 and possibly his wife were in some kind of  
 6 gathering or meeting.  
 7 I am not sure what it was about,  
 8 perhaps something like a 12-step program for maybe  
 9 alcoholics, something like that, and that one of  
 10 the daughters finally broke down, and then the  
 11 other one did, too, and the person in charge of  
 12 the meeting -- this would not have been a Witness  
 13 meeting -- as I understand, is the one that  
 14 contacted the authorities.  
 15 Q. But the first you heard about it then  
 16 was after the arrest had been made?  
 17 A. Correct.  
 18 Q. And Howard Whitney is the same thing?  
 19 The first thing he heard about it was after the  
 20 arrest had been made?  
 21 A. I believe so, yes.  
 22 Q. Karen Whitney, the same thing?  
 23 A. Yes.  
 24 Q. And how about Joe Risonsky?



1 A. I believe so.  
 2 Q. How is it that your planned testimony  
 3 in this case is going to impact each of these  
 4 victims that I've listed their names?  
 5 A. I don't know.  
 6 Q. So that's not something they talked  
 7 with you about, Mr. Love, for example?  
 8 A. No, we didn't discuss the impact of  
 9 my testimony.  
 10 Q. When's the last time you saw Howard  
 11 Whitney? Was that years ago?  
 12 A. Yes.  
 13 Q. Do you know where he lives now?  
 14 A. By way of rumor I heard in the  
 15 midwest somewhere, possibly Missouri, but I don't  
 16 know.  
 17 Q. When's the last you talked to him?  
 18 A. It would have to be before I left  
 19 Oregon. He and his family came up to visit my  
 20 family when I lived in Saint Helens, so up to  
 21 sometime in the early '90s, I guess.  
 22 I don't know.  
 23 Q. And you know Vince Diorio?  
 24 A. Yes.

1 Q. How did you meet Vince Diorio?  
 2 A. He was in the Petaluma Congregation  
 3 when I became a Witness in 1970.  
 4 Q. How old is Vince generationally?  
 5 A. I would say he's about 15 years older  
 6 than I am, thereabouts.  
 7 Q. And did you have contact with Vince  
 8 from time to time?  
 9 A. Fairly frequently, yes.  
 10 Q. And what's fairly frequently?  
 11 A. Well, at the meetings every week or  
 12 at least twice a week at the Kingdom Hall.  
 13 Sometimes when we went out door to door I may have  
 14 worked with him door to door.  
 15 Q. And how did it come to light that he  
 16 had sexually abused Deanna [REDACTED] or Deanna [REDACTED]?  
 17 A. How did it come to light to me?  
 18 Q. Yes.  
 19 A. When I was congregation secretary I  
 20 received the judicial files along with the other  
 21 congregation records maintained by the secretary.  
 22 Those files were in disarray, falling  
 23 out of envelopes, not filed in accordance with the  
 24 society procedure, and I sat down and went through

1 them and sorted them out, which involved reading  
 2 those files, and that is how I read about Vince  
 3 Diorio.  
 4 Q. Okay. What did you read about him in  
 5 those files?  
 6 A. I recall one judicial file dealing  
 7 with Vince and his molesting his -- two of his  
 8 daughters, and then the other file dealt with one  
 9 of his daughters, who had her own separate  
 10 judicial file where that topic was discussed.  
 11 Q. Okay. And which two daughters did he  
 12 molest, according to those files?  
 13 A. The ones I recall were [REDACTED] and  
 14 [REDACTED].  
 15 Q. And from what time frame were those  
 16 judicial files?  
 17 A. When I became secretary in --  
 18 sometime in early '84, those files predated, I  
 19 believe, 1980.  
 20 I just don't recall the exact date.  
 21 Q. And had he confessed and repented?  
 22 A. I don't recall whether he confessed  
 23 or they confronted him.  
 24 Q. Did he repent?

1 A. I don't recall. I would have to  
 2 assume not, because at some point subsequent to  
 3 that he was disfellowshipped.  
 4 Q. What did you do when you saw those  
 5 files?  
 6 A. I finished organizing them, put them  
 7 in the proper sealed manila envelopes, marked them  
 8 properly according to society procedure, and put  
 9 them back in the file.  
 10 Q. Did you talk to anybody about it?  
 11 A. No.  
 12 Q. Why not?  
 13 A. As a -- as an Elder we maintained  
 14 confidence according to society procedure.  
 15 MR. SCHNACK: Let's go ahead and take  
 16 a lunch break, gentlemen.  
 17 MR. FALK: We are going off video  
 18 record at 12:23 P.M.  
 19 (Whereupon the further hearing of  
 20 said deposition was adjourned to  
 21 March 9, 2004, at the hour of 1:25  
 22 o'clock P.M.)  
 23  
 24

WIT 1  
 12-22

1 (Whereupon, the further deposition of  
2 James Walter Whitney was reconvened on  
3 March 9, 2004, at the hour of approximately  
4 1:25 P.M., pursuant to the noon  
5 adjournment.)  
6

7 There were present at the taking of this  
8 deposition the following counsel:  
9

10 Mr. Gregory S. Love  
11 Mr. William L. Brelsford, Jr.  
12 Mr. Robert J. Schnack  
13

14 MR. FALK: We're back on video record  
15 at 1:25 P.M.

16 JAMES WALTER WHITNEY  
17 having been previously duly sworn, was examined  
18 and testified further as follows:

19 DIRECT EXAMINATION (Continued)  
20 by MR. SCHNACK

21 Q. Okay. Mr. Whitney, you understand  
22 you're still under oath?

23 A. Yes.

24 Q. I'll hand you what we'll mark as

1 A. The relationship of Elders and  
2 Ministerial Servants to the congregation, their  
3 positions of authority, trust, responsibility.

4 Q. And what are the differences of the  
5 responsibilities and duties of Elders versus  
6 Ministerial Servants?

7 A. Their roles are very similar. The  
8 primary difference is in teaching.

9 Q. And how is the primary difference in  
10 teaching? How does that manifest itself?

11 A. I'm not sure quite what you mean, how  
12 it manifests itself.

13 Q. Why don't you explain what the  
14 differences are in teaching then between Elders  
15 and Ministerial Servants.

16 A. Well, the Elders are primarily  
17 responsible for teaching and are considered by the  
18 Watchtower Society qualified to do so.

19 Ministerial Servants are -- can  
20 teach, but they are not considered responsible for  
21 the teaching in the congregation.

22 Q. Do Ministerial Servants sit on  
23 Judicial Committees?

24 A. They can.

1 Exhibit 1. It's a letter that was sent to me by  
2 Rudy Nolen of Mr. Brelsford's firm, and in  
3 particular I'm just going to reference the ten  
4 items on which you are going to testify about on  
5 Page 2.

6 They are listed as Roman numeral,  
7 correct?

8 A. Correct.

9 Q. Do you see those?

10 A. Yes.

11 Q. Okay. Let's go through them briefly.

12 The first one says that you're going to testify  
13 about the Watchtower Society organizational and  
14 operational structure?

15 A. Yes.

16 Q. In general terms what do you intend  
17 to testify about in that regard?

18 A. How we function as a congregation,  
19 our relationship to the Watchtower Society, and  
20 the procedures and directions we receive from the  
21 Watchtower Society and how we would follow them.

22 Q. Okay. And with respect to how the  
23 Jehovah's Witnesses functioned as a congregation,  
24 what would your testimony be in that regard?

1 Q. In your experience, have they ever  
2 sat on a Judicial Committee?

3 A. I don't recall. I don't recall a  
4 specific situation. I do recall one person who  
5 did.

6 Q. Who was that?

7 A. His name is Lloyd Armstrong. He had  
8 been a Ministerial -- he had been an Elder and he  
9 was serving again as a Ministerial Servant, and I  
10 believe in one case he was asked to sit in on a  
11 Judicial Committee, but that's all I recall about  
12 it.

13 Q. Which congregation was that?

14 A. Petaluma West.

15 Q. Were you a member at that time?

16 A. Yes.

17 Q. So other than that one example, you  
18 can't think of any time in your own experience  
19 where a Ministerial Servant served on a Judicial  
20 Committee?

21 A. No.

22 Q. Any other differences between Elders  
23 and Ministerial Servants other than primarily for  
24 teaching?

13 22

1 A. No, that's primarily teaching is all  
2 I can think of at the moment.  
3 Q. Do Elders and Ministerial Servants  
4 undergo the same training?  
5 A. Fundamentally, yes.  
6 Q. What do you mean, fundamentally?  
7 A. Well, the Elders are perhaps given a  
8 little bit more training as a result of their  
9 position.  
10 They will -- for example, part of  
11 their training might be a meeting with the circuit  
12 district overseer at a circuit assembly, where  
13 Ministerial Servants might not participate in that  
14 meeting.  
15 There may be some training offered  
16 there, new information that the circuit district  
17 overseer might convey that would be considered  
18 part of their training.  
19 Q. How about the Kingdom Ministry  
20 Schools? Can you describe those?  
21 A. Those schools are for Elders and  
22 Ministerial Servants. They have -- in my  
23 experience, they have operated in different ways  
24 at different times.

1 Q. How often are those schools given?  
2 A. It varies. I can't say how often,  
3 because it's whenever they schedule it.  
4 Q. So there's no set rotation; every 24  
5 months, every 12 months, anything like that?  
6 A. I don't recall a set schedule.  
7 Q. Are the duties and responsibilities  
8 set out in writing for Ministerial Servants?  
9 A. Yes.  
10 Q. Are the duties and responsibilities  
11 for Elders set out in writing?  
12 A. Yes.  
13 Q. Are there other positions for which  
14 the duties and responsibilities are set out in  
15 writing?  
16 A. Yes.  
17 Q. What are those other positions?  
18 A. Regular Pioneers, Special Pioneers,  
19 Auxiliary Pioneers.  
20 Q. Anything else?  
21 A. I can't think of anything.  
22 Q. With respect to Roman numeral three,  
23 you are going to testify about instructional  
24 materials and their use within the Watchtower?

1 Sometimes both the Elders and  
2 Ministerial Servants attended both days, sometimes  
3 Ministerial Servants attended with the Elders one  
4 day and then just the Elders the next day.  
5 The difference again would be in the  
6 information conveyed to the Elders.  
7 Q. The Elders get different information  
8 from the Ministerial Servants?  
9 A. Additional information that would be  
10 different or maybe more intense discussion of the  
11 same information expanded.  
12 Q. Did you ever attend a Kingdom  
13 Ministry School?  
14 A. Yes.  
15 Q. How many times?  
16 A. I don't recall the exact number of  
17 times. It seems like it was three.  
18 Q. And what positions did you hold at  
19 the times you attended those schools?  
20 A. In all situations I was a Ministerial  
21 Servant.  
22 Q. So you were never an Elder when you  
23 attended one of those schools?  
24 A. No.

1 A. Yes.  
2 Q. Is this based on your personal  
3 experience?  
4 A. Yes.  
5 Q. Is it based on anything else?  
6 A. Yes. Well, or secondhand information  
7 I received from Elders but primarily my personal  
8 experience.  
9 Q. And when did you receive this  
10 secondhand information from Elders?  
11 A. Over the course of the years of my  
12 being involved in the congregation, just my  
13 interaction with Elders, they would share  
14 information.  
15 Q. And that was again while you were a  
16 practicing Jehovah's Witness?  
17 A. Yes.  
18 Q. Roman numeral four concerns the  
19 policies and procedures regarding Judicial  
20 Committees and the files and materials they  
21 generate?  
22 A. Yes.  
23 Q. Do you see that?  
24 A. Yes.

1 Q. What are you going to testify to in  
2 that regard?

3 MR. LOVE: Objection, I mean, just to  
4 the extent that I've given you a list of  
5 the areas I intend to cover by what I  
6 expect he knows.

7 I don't want you to think that  
8 the testimony he's giving you is something  
9 we have prearranged, so I object to the  
10 extent he knows what I'm going to ask him.

11 MR. SCHNACK Q. Okay. What do you  
12 expect to testify about in that regard on this  
13 topic?

14 THE WITNESS A. I guess I'm a little  
15 confused here by the interaction. I don't know  
16 what questions precisely are going to be asked by  
17 either party at any time, but by looking at this I  
18 can tell you if I'm asked questions about the  
19 topic of Judicial Committees and files and the  
20 materials generated that I'm going to talk about  
21 my role as an Elder, my role both in taking notes  
22 on Judicial Committee and in maintaining those  
23 files and records for the congregation as  
24 congregation secretary.

1 Q. Okay. Well, let's go back to that  
2 then. You were an Elder in roughly what, 1984 to  
3 1985?

4 A. Correct.

5 Q. And what files, in your experience,  
6 back then were generated by Judicial Committees?

7 A. What files?

8 Q. Yes. My understanding is you're  
9 going to testify -- and I grant this is counsel's  
10 rendition of the topic, but what would you testify  
11 to if you were asked what types of files get  
12 generated by Judicial Committees?

13 A. Well, the types of files would be  
14 primarily disciplinary action at one degree or  
15 another.

16 Q. And what type of materials actually  
17 get generated by the Judicial Committees when they  
18 deal with these disciplinary matters?

19 A. File notes that the Elders take.  
20 Each Elder may take extensive notes or short  
21 notes, but they're all compiled and put into a  
22 sealed manila envelope.

23 And if there is an action taken, such  
24 as disfellowshipping, there will be a society form

1 attached that is used to notify the society of  
2 that action.

3 The envelope is marked with the names  
4 of the Elders on the committee and the name of the  
5 individual who was dealt with and any other --  
6 probably a date of some sort.

7 Especially if they have ongoing  
8 action with the individual, there will be some  
9 kind of dating.

10 Q. What are the purposes underlying the  
11 Judicial Committees from the church standpoint?

12 A. The overriding phrase is to -- and  
13 the most important is to keep the congregation  
14 clean, to protect the image of the organization.

15 Q. What do you mean, to keep the  
16 congregation clean?

17 A. Well, that's what I -- that was part  
18 of my second statement, to keep the image of the  
19 organization, the reputation of the organization  
20 looking good in their minds to the public.

21 Q. And where do you get that opinion as  
22 to the purpose of the Judicial Committees?

23 A. Twenty-five years of association with  
24 Jehovah's Witnesses. It's just -- it develops

1 over time.

2 You can also find it in various  
3 publications.

4 Q. That the purpose is to protect the  
5 image of the organization to the outside public?

6 A. That is the -- I don't know if it's  
7 used in those exact words, but that's what you  
8 would understand, sure.

9 They want to protect the image of the  
10 organization, yes.

11 Q. And there's no other purpose to these  
12 Judicial Committees, in your view?

13 A. Well, I said that was the prime  
14 purpose.

15 Q. Okay. Is there any other prime  
16 purpose?

17 A. If possible, to work with the  
18 individual who's accused in some way, but the  
19 prime purpose, and as stated in our training, is  
20 the image of the congregation, to keep the  
21 congregation clean, but if we can help the  
22 individual on some level, great.

23 Q. But that's secondary, in your  
24 opinion?



1 A. It's secondary, yes.  
 2 Q. Any other materials that are created  
 3 by Judicial Committees other than what you've  
 4 identified here today?  
 5 A. I can't think of any at the moment.  
 6 Q. Okay. What about the policies with  
 7 respect to Judicial Committees? How would you  
 8 describe the church policies in that regard?  
 9 A. With respect to Judicial Committees?  
 10 Could you be a little more specific?  
 11 Q. Are there policies within the  
 12 Jehovah's Witnesses organization that addresses  
 13 Judicial Committees?  
 14 A. Yes.  
 15 Q. Okay. Describe those for me.  
 16 A. Well, I can describe where they're  
 17 found. I'm not sure how you want them described.  
 18 For example, they're found in the -- one example  
 19 would be the Organized to Accomplish Our Ministry  
 20 book, prior to that Organization for Kingdom  
 21 Preaching, Disciple Making.  
 22 Those are sources of information.  
 23 From time to time in the Watchtower. From time to  
 24 time policies will be stated in the forms of

1 training at conventions.  
 2 Q. And who does this training?  
 3 A. Well, the Watchtower Society  
 4 oversees, directs the training. They send  
 5 representatives from New York to the conventions  
 6 and they oversee our conventions.  
 7 Q. And how about the procedures with  
 8 respect to Judicial Committees? Are there written  
 9 procedures for those?  
 10 A. Yes.  
 11 Q. And where are those found?  
 12 A. The organization books that I  
 13 referenced, also the book Pay Attention to  
 14 Yourself and to All the Flock, which is a manual  
 15 given exclusively to Elders.  
 16 Q. Okay. Let's go to Roman numeral  
 17 five. It says Watchtower Society's policies,  
 18 procedures, practices regarding reporting of child  
 19 sex abuse to the authorities?  
 20 A. Yes.  
 21 Q. Are you familiar with those policies  
 22 and procedures?  
 23 A. Yes.  
 24 Q. Where do you obtain this information?

1 What are the sources?  
 2 A. The source for that comes primarily  
 3 from the oral training we're given.  
 4 Q. Is there anything in writing?  
 5 A. I'm sure there is. I don't happen to  
 6 have anything in writing at the moment that I  
 7 could think of to convey to you.  
 8 Q. But have you seen any written  
 9 policies with regard to child sex abuse and  
 10 reporting it to the authorities?  
 11 A. Yes, I have.  
 12 Q. When's the last time you saw that?  
 13 A. That would be months and months ago.  
 14 I looked at some recent letters sent to the Body  
 15 of Elders.  
 16 When I say recent, since I left the  
 17 religion.  
 18 Q. And you left the religion what? You  
 19 resigned from Ministerial Servant in '92 and you  
 20 left in '95?  
 21 A. I was -- yes, July '95.  
 22 Q. So that's coming up on nine years  
 23 ago. Okay. So there's letters more recent than  
 24 than that?

1 A. That I have seen, yes.  
 2 Q. Okay. And where did you get those?  
 3 A. Various individuals I know that are  
 4 former Witnesses. Some may still be active or  
 5 were active at the time.  
 6 Q. Okay. And what did the written  
 7 policy say? Give me an overview.  
 8 A. At the moment -- let me just think a  
 9 second. One of them, as I recall, discouraged  
 10 Witnesses from seeking professional help.  
 11 Another one that was actually in a  
 12 more general publication available to all  
 13 publishers was in Our Kingdom Service, a 1977  
 14 vintage.  
 15 I'd have to pull the month out. But  
 16 in that one it talked about the policy of keeping  
 17 confidential the name of the abuser.  
 18 The victim would be instructed to  
 19 keep the molester's name confidential, things of  
 20 that nature.  
 21 Q. Okay. I thought you were referring  
 22 to things more recent, you had said.  
 23 A. Well, yes, I am, but I harken back to  
 24 that one for a moment because it popped into my

EXHIBIT 1  
 Page 16 of 22

1 head as an example of things in writing.  
 2 But more recent, that would be those  
 3 letters I just -- I don't have a great deal of  
 4 recollection at the moment.  
 5 Q. And you haven't seen those letters in  
 6 the last few months?  
 7 A. I haven't looked at them, no.  
 8 Q. Do you have them?  
 9 A. No, I don't.  
 10 Q. Where did you see them?  
 11 A. They came to me in the form of an  
 12 e-mail.  
 13 Q. From whom?  
 14 A. Some of them came from Bill Bowen.  
 15 Q. When's the last time you had contact  
 16 with Bill Bowen?  
 17 A. A year and a half.  
 18 Q. So back in what, in '02?  
 19 A. Correct.  
 20 Q. Was that the last -- so he would have  
 21 e-mailed them to you over 18 months ago?  
 22 A. Yes, yes, probably closer to two  
 23 years or longer.  
 24 Q. Okay. Do you have any dispute with

1 Q. And who were you told not to report  
 2 about?  
 3 A. Bill Elliott.  
 4 Q. And how did you come to know that  
 5 Bill Elliott had committed sex abuse?  
 6 A. An Elder in the congregation called  
 7 me and told me.  
 8 Q. Who was that Elder?  
 9 A. Joe Risonsky.  
 10 Q. And when you got the information from  
 11 Joe, what did you do?  
 12 A. Immediately I didn't do anything. I  
 13 subsequently talked to Ron Strubb about it.  
 14 Q. And Ron told you then what, to go to  
 15 the circuit overseer, or he went to --  
 16 A. No, he told me not to report to the  
 17 authorities, and then he went to the circuit  
 18 overseer.  
 19 Q. What information did you get with  
 20 respect to Bill Elliott?  
 21 A. That he had been caught molesting  
 22 non-Witness children in his apartment complex in  
 23 Petaluma, California and that they met with him  
 24 and quickly disfellowshipped him.

1 Watchtower's policies, practices, or procedures  
 2 regarding reporting of child sex abuse to the  
 3 authorities?  
 4 A. Yes.  
 5 Q. Okay. What is your dispute with it?  
 6 A. That we're instructed not to report  
 7 to the authorities.  
 8 Q. That's what you believe Watchtower  
 9 instructs?  
 10 A. Yes.  
 11 Q. And what do you base that belief on?  
 12 A. When I was told by the presiding  
 13 overseer not to report a molester in our  
 14 congregation to the authorities, and he confirmed  
 15 that with the circuit overseer.  
 16 Q. Okay. When was that?  
 17 A. That would be back in either late '85  
 18 or early '86, sometime in that time frame.  
 19 Q. And who was the presiding overseer?  
 20 A. That told me not to report?  
 21 Q. Correct.  
 22 A. That would be Ron Strubb.  
 23 Q. And who was the circuit overseer?  
 24 A. Harry Snow.

1 Q. Any other information you had  
 2 regarding Bill Elliott?  
 3 A. Yes.  
 4 Q. Go ahead and tell me.  
 5 A. What would you like to know? I  
 6 mean --  
 7 Q. Everything. I'm going to exhaust  
 8 your knowledge on him. When did you first meet  
 9 him?  
 10 A. I first met Bill Elliott in -- it  
 11 would be the 1985 time frame.  
 12 Q. What were the circumstances?  
 13 A. He was asked to move into our  
 14 congregation. He took over as presiding overseer  
 15 to give us assistance.  
 16 Q. Okay. What happened next with  
 17 respect to Bill Elliott?  
 18 A. After that time he -- you know,  
 19 months later he was -- that's when I got the call  
 20 that he was being disfellowshipped due to his  
 21 molesting non-Jehovah's Witness children.  
 22 Q. Anything else with respect to Bill  
 23 Elliott and childhood sex abuse?  
 24 A. I was also told by Joe Risonsky that

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1 Bill had a track record that he learned of that  
2 went back over several congregations of having  
3 molested other children for which he received mild  
4 discipline.

5 Q. What other congregations?

6 A. I don't recall. North of Petaluma  
7 primarily.

8 Q. In California?

9 A. Yes.

10 Q. But up the coast?

11 A. It was not up the coast but up U.S.  
12 101, congregations up in that corridor. I just  
13 don't remember which ones he was in.

14 I mean, I can give you a list, a  
15 litany of congregations, but I just don't know  
16 which ones he was in.

17 Q. But you'd be speculating --

18 A. Yes.

19 Q. -- as to which ones? Okay. Any  
20 other information that leads you to believe that  
21 Watchtower instructs persons not to report to the  
22 authorities with respect to childhood sex abuse?

23 A. Nothing comes to mind at the moment.

24 Q. So in your mind as you sit here today

1 it's that one incident?

2 A. No. I'm sorry. I thought -- okay.  
3 I misunderstood you. Another instance is in Saint  
4 Helens, Oregon when I told the Elders that they  
5 needed to report an individual for his long  
6 history of molestation.

7 Q. Who was that?

8 A. And the -- who was who?

9 Q. The abuser.

10 A. The abuser? John Allen.

11 Q. Okay. Go ahead.

12 A. And they begged me not to, and then I  
13 was finally told to keep my trap shut.

14 Q. Okay. Who begged you not to report  
15 it?

16 A. Our congregation secretary, Gene  
17 Church.

18 Q. And when did you go to Gene Church  
19 with this information?

20 A. He was in my home.

21 Q. What time frame?

22 A. I believe that was in April of '93.

23 Q. And how did you come to know that  
24 John Allen had committed sex abuse?

1 A. Some of the Elders' children who were  
2 friends with my children mentioned it. I  
3 confirmed it with other Witnesses I knew, and I  
4 then confronted Gene Church when he was in my  
5 home.

6 Q. How did you confirm it with other  
7 Witnesses that you knew?

8 A. That they knew or that John was a  
9 molester? I had talked to one individual who had  
10 been a past presiding overseer Congregation  
11 Servant, and he knew of John's history.

12 I believe the current presiding  
13 overseer in that congregation -- when I say  
14 current, current at the time -- Jack Fields, had  
15 confirmed it for me.

16 In my living room another Elder, our  
17 school overseer, Curt Hardy, was there. He  
18 confirmed it. So they -- no one denied that John  
19 Allen was a child molester.

20 The county sheriff said that there  
21 was a file at child services on him and talked  
22 about investigating into John further.

23 Q. How did you find out the sheriff had  
24 a file?

1 A. Because I went to the sheriff and  
2 told him about John Allen.

3 Q. So you reported it?

4 A. Yes.

5 Q. Any other instances from your  
6 experience that suggest the Watchtower  
7 organization instructs people not to report child  
8 abuse to the authorities?

9 A. My many experiences with people who  
10 have been Jehovah's Witnesses over the years who  
11 have likewise received similar instruction in  
12 various forms, whether they were victims, families  
13 of victims, Elders, Ministerial Servants.

14 Q. That's what others have told you?

15 A. Yes.

16 Q. Any other personal experiences for  
17 you other than the two you've mentioned?

18 A. I believe there are. I just -- I  
19 would like to leave that open and come back to  
20 that some other time, because I just don't recall  
21 at the moment.

22 Q. Okay. I don't -- I don't get another  
23 time.

24 A. Okay.

XHIBIT 1

18 22



1 Q. So I want you to check your memory  
2 right now as close as you can.  
3 A. I don't recall any other specific  
4 instances other than the implication in the Don  
5 Glew case, in that I asked what they were going to  
6 do.  
7 I didn't specifically insist anyone  
8 went to the authorities, because Don was already  
9 arrested, but in that I was trying to have  
10 dialogue about what we do now; do we get  
11 professional help, what if we have other  
12 molesters, do we take those to the authorities,  
13 but the discussion was pretty well shut down, that  
14 once he was arrested there's nothing left for us  
15 to do, meaning as a congregation, meaning as a  
16 Body of Elders there's nothing left to do, so it  
17 was a strong implication that we just bury it and  
18 go on.  
19 Q. But the whole issue with Don Glew  
20 came up after he was arrested?  
21 A. In that case, yes, and I think I  
22 stated that. But there is more to do besides  
23 arresting a perpetrator, so --  
24 Q. Well, we were talking about going to

1 the authorities.  
2 A. Yes.  
3 Q. And it sounds like the authorities  
4 already knew about it when it came to light.  
5 A. Yes, but then it also triggers, okay,  
6 now what if we get another molester, do we go to  
7 the authorities about that molester.  
8 And we did have other molesters,  
9 because Bill Elliott popped up in the scene, so it  
10 was certainly in the -- in my mind regarding Simms  
11 and Diorio.  
12 Q. Well, let's go back, though, because  
13 you had said that Elliot came up in either late  
14 '85 or early '86.  
15 A. Yes.  
16 Q. And Glew was arrested after that.  
17 A. That may be, but I would -- I would  
18 still be asking the question, okay, now he's  
19 arrested, now what do we do?  
20 Q. Okay. Maybe I misunderstood your  
21 answer then, because I thought you said after Glew  
22 then Bill Elliott came up.  
23 A. I may have. I may have misspoken.  
24 Q. Let's go back to Judicial Committees.

1 Is there a biblical basis for Judicial Committees?  
2 A. No, not in my mind.  
3 Q. What about in the mind of Jehovah's  
4 Witnesses?  
5 MR. LOVE: Objection.  
6 MR. SCHNACK: You can go ahead and  
7 answer.  
8 THE WITNESS: Okay. Well, I thought  
9 I heard the word objection.  
10 MR. SCHNACK: You did, but that  
11 doesn't mean you can't answer.  
12 THE WITNESS: Okay. Yes, Jehovah's  
13 Witnesses believe in -- that there is a  
14 biblical basis.  
15 MR. SCHNACK Q. So why do you believe  
16 there is not a biblical basis for it?  
17 THE WITNESS A. Because I haven't  
18 found it in the Bible.  
19 Q. Roman numeral eight on the sheet  
20 there in front of you, Exhibit 1, mentions  
21 congregation policies, procedures, and practices?  
22 A. Mm-hmm.  
23 Q. Are there any congregation policies,  
24 procedures, and practices that are distinct to

1 certain congregations?  
2 A. They're the same for all  
3 congregations worldwide.  
4 Q. So it's identical worldwide --  
5 A. Yes.  
6 Q. -- in every congregation?  
7 A. Yes.  
8 Q. Roman numeral nine said that you're  
9 going to talk about your own experiences with  
10 child sexual abuse and abusers within Watchtower  
11 A. Yes.  
12 Q. Okay. Why don't you tell me about  
13 your own experiences with child sexual abuse and  
14 abusers within Watchtower.  
15 A. Well, that would involve the  
16 perpetrators we've already discussed; Bill  
17 Elliott, Jim Simms, Vince Diorio, Don Glew, John  
18 Allen, my experiences in interactions that we've  
19 pretty much hit on throughout our discussion  
20 today.  
21 Q. Okay. Let's talk about Jim Simms.  
22 A. Okay.  
23 Q. Did you know Jim Simms?  
24 A. Yes.

1 Q. Okay. How did you come to know him?  
 2 A. He moved into our congregation.  
 3 Q. Which one?  
 4 A. Petaluma West.  
 5 Q. What time period?  
 6 A. It was in the early to mid-'80s. I  
 7 forget the exact time frame.  
 8 Q. And what interactions did you have  
 9 with Jim Simms?  
 10 A. Numerous, but he was in my book  
 11 study. I was a book study conductor, Elder.  
 12 Q. Okay. And what interactions did you  
 13 have with Mr. Simms with respect to child sex  
 14 abuse?  
 15 A. I didn't have direct interactions  
 16 with him on that topic. That is, I did not talk  
 17 to him about it. Because I was congregation  
 18 secretary, I obtained judicial file notes on Jim  
 19 Simms.  
 20 They were unprotected in a -- they  
 21 were not in a sealed envelope, and I followed  
 22 procedure and put them in a sealed envelope.  
 23 Prior to doing so I reviewed those  
 24 notes.

1 Q. Okay. What did they contain?  
 2 A. They contained his admission of  
 3 committing various crimes with children involving  
 4 sexual molestation.  
 5 Q. And what happened? What was the  
 6 action taken by the Judicial Committee?  
 7 A. They privately reprovved him, gave him  
 8 a complete set of restrictions. What that means  
 9 is that other than coming to a meeting and sitting  
 10 there, there was little else he could do.  
 11 He could socialize before and after,  
 12 but he could not comment, he could not read  
 13 Watchtower articles or other publications for the  
 14 group, he could not say a prayer, for example.  
 15 Q. Is that the only information you have  
 16 about Simms was from that Judicial Committee file  
 17 concerning the sex abuse?  
 18 A. A brief amount of information from  
 19 one of the Elders on the committee when I notified  
 20 him that I had the notes and what I did with those  
 21 notes and his comments there, and following that  
 22 there's been little else.  
 23 Q. Who was that Elder?  
 24 A. His name was Jon, spelled J-O-N,

1 Hummel.  
 2 Q. H or P?  
 3 A. H.  
 4 Q. Hummel?  
 5 A. H-U-M-M-E-L.  
 6 Q. And why did you go to Jon Hummel?  
 7 A. Because these were his notes.  
 8 Q. And why did you feel the need to tell  
 9 him about the notes?  
 10 A. Because he didn't follow procedure  
 11 and put them in a sealed manila envelope, properly  
 12 marked, according to Watchtower directions.  
 13 Q. Anything else with respect to Jim  
 14 Simms then and childhood sex abuse?  
 15 A. I understand his wife divorced him  
 16 and that he moved -- when he moved to Petaluma  
 17 that was their separation.  
 18 Later on his two children moved in  
 19 with him, which concerned me at the time, but it  
 20 was generally greeted among the other members of  
 21 the congregation, because she was now drawing away  
 22 from Jehovah's Witnesses, so they were more  
 23 concerned over that than they were the fact that  
 24 he was a molester and, therefore, he could be

1 endangering his own children.  
 2 Q. Do you have any information that Jim  
 3 Simms was involved in molesting any of the  
 4 plaintiffs we've talked about here today?  
 5 A. No.  
 6 Q. How about Jim McKay?  
 7 A. Jim McKay? Be more specific.  
 8 Q. Wasn't he on your list as well?  
 9 A. I don't recall him being discussed.  
 10 Q. Does his name show up there?  
 11 A. Okay. Because I never have seen  
 12 this, so I --  
 13 MR. SCHNACK: No, I understand that.  
 14 MR. LOVE: I think he shows up on my  
 15 list.  
 16 MR. SCHNACK: Well, Mr. Nolen wrote  
 17 to me that perpetrators about whom Whitney  
 18 will provide testimony, and one of them was  
 19 Jim McKay.  
 20 THE WITNESS: Okay.  
 21 MR. LOVE: Okay.  
 22 MR. SCHNACK: And I don't know who  
 23 authored the letter between you and Mr.  
 24 Nolen, so --

1 in April of '93.  
 2 Q. Who did you confront in your home  
 3 about this?  
 4 A. Gene Church and Curt Hardy.  
 5 Q. Were they there for some other  
 6 purpose initially?  
 7 A. Yes.  
 8 Q. What was the other purpose?  
 9 A. To shepherd me back into activity.  
 10 Q. And how did you confront them with  
 11 this?  
 12 A. I told them that I was not going to  
 13 return to their Kingdom Hall until they cleaned  
 14 out the problem and turned this guy over to the  
 15 authorities.  
 16 Q. And how did they respond?  
 17 A. They tried suggesting I go to a  
 18 different Kingdom Hall, that they would handle it  
 19 and I said, "No, I'm not going to be driving 20  
 20 and 30 miles just to go to a different Kingdom  
 21 Hall. You are either going to clean it out or I'm  
 22 not coming back."  
 23 Q. And you never did go back, is that  
 24 correct?

1 A. No, I never did.  
 2 Q. Anything else with respect to John  
 3 Allen and childhood sex abuse?  
 4 A. I can't think of anything at the  
 5 moment.  
 6 Q. Well, we've talked about Bill  
 7 Elliott, have we not?  
 8 A. I believe we did talk about him.  
 9 Q. Well, we can go through the same  
 10 questions.  
 11 A. Okay.  
 12 MR. SCHNACK: Let me find my notes.  
 13 (Pause.)  
 14 MR. SCHNACK Q. Okay. We earlier  
 15 talked about Elliot in 1985, when he moved into  
 16 the congregation?  
 17 THE WITNESS A. Right.  
 18 Q. Anything we haven't talked about with  
 19 respect to Bill Elliott along these same lines?  
 20 A. I can't think of anything.  
 21 Q. Okay. I just don't want to waste  
 22 your time here on it if we've covered it.  
 23 A. Okay.  
 24 Q. What about Vince Diorio? Anything

1 other than what we've talked about earlier? You  
 2 saw a Judicial Committee file on Vince --  
 3 A. I saw --  
 4 Q. -- that you think was pre-1980?  
 5 A. I saw a file. And, of course, I  
 6 became concerned, as did Joe Risonsky, when Vince  
 7 Diorio was finally reinstated.  
 8 Joe wanted to keep a close eye on  
 9 him. And ultimately I did interact with Vince on  
 10 a Judicial Committee, not under the allegation  
 11 that he abused anyone, but he was smoking.  
 12 His wife had caught him at it. But I  
 13 removed myself from that committee and let the  
 14 other Elders -- another Elder step in, and they  
 15 redifellowshipped Vince.  
 16 His wife ultimately divorced him a  
 17 second time. And I understand that there was even  
 18 more discussion about more molestation that they  
 19 hadn't uncovered earlier.  
 20 Q. Why did you remove yourself from that  
 21 Judicial Committee?  
 22 A. I felt a conflict of interest,  
 23 because I had smoked earlier and Vince was on the  
 24 committee.

1 No, not then, but earlier when I  
 2 mentioned to you I was a Ministerial Servant and I  
 3 had smoked, and Vince was on that committee and  
 4 had been very helpful to me, and I didn't want to  
 5 sit in judgment of him.  
 6 I felt it was just not appropriate,  
 7 so I asked the other Elders if they could just let  
 8 me off this one.  
 9 I felt emotionally involved that I  
 10 wouldn't make a fair decision.  
 11 Q. Okay. Well, we got on this topic  
 12 through Roman numeral No. 9 --  
 13 A. Yes.  
 14 Q. -- back on Page 2 where we were  
 15 talking about your experiences with childhood sex  
 16 abuse and abusers within Watchtower.  
 17 A. Yes.  
 18 Q. Anything else with respect to that  
 19 topic and Watchtower's response and handling of  
 20 childhood sex abuse?  
 21 A. In this -- my other experience has to  
 22 do with my sister, who was molested by my father  
 23 when my father came to live with me. That created  
 24 some terrible emotional problems.

**“PAY ATTENTION  
TO YOURSELVES  
AND TO  
ALL THE FLOCK”**

**ACTS 20:28**

**Kingdom Ministry School  
Textbook**

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EXHIBIT 2

PAGE 1 of 2

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*"Pay Attention to Yourselves and to All the Flock"*

English (ks91-E)

Made in the United States of America

EXHIBIT 2  
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Below is an Opinion of the Court.

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ELIZABETH PERRIS  
U.S. Bankruptcy Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case  
          ) No. 04-37154-elpl1  
ROMAN CATHOLIC ARCHBISHOP OF )  
PORTLAND IN OREGON, AND SUCCESSORS, )  
A CORPORATION SOLE, dba the ) MEMORANDUM OPINION  
ARCHDIOCESE OF PORTLAND IN OREGON, )  
Debtor. )

In this chapter 11<sup>1</sup> case filed by the Archbishop of Portland in Oregon, and Successors, a Corporation Sole, dba the Archdiocese of Portland in Oregon, the tort claimants have submitted a list of topics for depositions of four witnesses regarding debtor's patterns, practices, and policies with regard to allegations of sexual misconduct with a minor by any priest while working in an Archdiocesan ministry assignment. The witnesses designated by the tort claimants, including Archbishop William J. Levada, object to some of the topics. This matter came before the

<sup>1</sup> 11 U.S.C. § 1101 et seq.



1 court for resolution of the objections in advance of the depositions.

2 Debtor and Archbishop Levada have raised numerous objections to the  
3 lists of topics for pattern and practice depositions provided by the tort  
4 claimants.<sup>2</sup> Some of the objections apply to all witnesses; some apply  
5 only to the questions proposed to be put to Archbishop Levada. I will  
6 address the common objections together, and those specific to Archbishop  
7 Levada separately.

8 In federal court, a party is entitled to discovery of  
9 any matter, not privileged, that is relevant to the claim or defense  
10 of any party . . . . For good cause, the court may order discovery  
11 of any matter relevant to the subject matter involved in the action.  
12 Relevant information need not be admissible at the trial if the  
13 discovery appears reasonably calculated to lead to the discovery of  
14 admissible evidence.

15 Fed. R. Civ. P. 26(b)(1), made applicable to the adversary proceedings by  
16 Fed. R. Bankr. P. 7026. "The burden is on the party objecting to  
17 discovery to show that discovery should not be allowed." Meller v.  
18 Walker, 124 F.R.D. 654, 656 (D. Or. 1989).

19 These depositions are being taken pursuant to the January 14, 2005  
20 Order Regarding Premediation Discovery by Tort Claimants, in which the  
21 court concluded that evidence regarding debtor's "patterns, practices,  
22  
23

24 <sup>2</sup> Archbishop Levada filed a Motion to Modify Subpoena, pursuant  
25 to Fed. R. Civ. P. 45(c), made applicable to bankruptcy cases by Fed. R.  
26 Bankr. P. 9016. That rule allows the court that issued a subpoena to  
quash or modify the subpoena if, among other things, it "requires  
disclosure of privileged or other protected matter and no exception or  
waiver applies," Fed. R. Civ. P. 45(c)(3)(A)(iii), or if it "subjects a  
person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). Debtor filed  
objections to the list of topics for the three other pattern and practice  
witnesses. The procedure chosen is not critical; the point is to present  
the dispute to the court before the depositions so the parties know what  
matters are properly the subject of questioning at the depositions.

1 and policies' in regards to allegations of sexual misconduct with a minor  
2 by any priest while working in an Archdiocesan ministry assignment is  
3 relevant for discovery purposes to the negligence claims of various tort  
4 claimants." Order Regarding Premediation Discovery by Tort Claimants at  
5 p. 1, ¶ 1. That is because the defendant's knowledge of sexual  
6 misconduct of priests with minors, and knowledge about whether priests  
7 who engage in such behavior may safely be returned to ministry involving  
8 children, bears upon whether debtor was negligent in how it handled  
9 allegations of abuse, and because the extended statute of limitations for  
10 child abuse cases set out in ORS 12.117(1) provides that the statute is  
11 extended with regard to "an action based on conduct that constitutes  
12 child abuse or conduct knowingly allowing, permitting or encouraging  
13 child abuse[.]" The order provided that "Tort claimants may depose up to  
14 four witnesses, to be chosen jointly by the tort claimants, for purposes  
15 of discovering Debtor's 'patterns, practices, and policies' in regard to  
16 the abuse or molestation of minors by priests." Order Regarding  
17 Premediation Discovery by Tort Claimants at p. 3, ¶ 2.

18 COMMON OBJECTIONS

19 1. Evidence of clergy sexual misconduct

20 In a number of the topics included on the tort claimants' list, they  
21 seek various types of information about clergy "sexual misconduct."  
22 Debtor objects, arguing that questions should be limited to sexual  
23 misconduct with minors by a priest working in an Archdiocesan ministry  
24 assignment, because the claims at issue involve minors, and the court's  
25 order holds that evidence of debtor's patterns and practices with regard  
26 to "allegations of sexual misconduct with a minor by any priest while

1 working in an Archdiocesan ministry assignment" is relevant to these  
2 claims. The tort claimants respond that they do not intend to ask  
3 questions about clergy sexual contact with adults, "unless it is in a  
4 context in which there is clear relevance." Tort Claimants' Reply to  
5 Debtor's Responses and Objections to Topic Listing for Pattern and  
6 Practice Witnesses (Non-Levada) at 11. As an example, the tort claimants  
7 indicate they might want to question witnesses "about a prison chaplain's  
8 sexual contact with inmates, be they adolescent boys at MacLaren or young  
9 men at Oregon State Correctional Institution." Id.

10 The order allowing these pattern and practice depositions was  
11 limited to debtor's patterns and practices with regard to sexual abuse of  
12 minors. The tort claimants may inquire into debtor's practices and  
13 policies with regard to priest sexual misconduct with minors, not with  
14 adults. If debtor had patterns, practices, or policies with regard to  
15 sexual abuse by priests in general, which applied to abuse of both minors  
16 and adults, that information would be discoverable. Information about  
17 patterns, practices, or policies relating to sexual abuse of adults is  
18 not discoverable, unless the patterns, practices, or policies applied to  
19 minors as well.

20 Debtor also argues that questions should be limited to debtor's  
21 patterns and practices regarding misconduct of clergy working within the  
22 Portland Archdiocese. The claims against debtor are based on alleged  
23 misconduct by Archdiocesan clergy or non-Archdiocesan clergy who were  
24 working in an Archdiocesan ministry, and debtor's response to that  
25 conduct. Evidence of debtor's response to allegations of sexual  
26 misconduct with minors by clergy who were either Archdiocesan clergy or

1 were working in the ministry of the Archdiocese is discoverable. Inquiry  
2 is not limited to clergy who were directly employed by the Archdiocese.  
3 That means that debtor's patterns and practices with regard to  
4 Archdiocesan clergy and clergy who were part of a non-diocesan order but  
5 who were working in the Archdiocese's ministry are discoverable.  
6 Evidence of debtor's response to allegations of sexual misconduct by  
7 clergy outside the Portland Archdiocese (unless the clergy remained  
8 priests of the Archdiocese of Portland when working outside the  
9 Archdiocese) is not relevant, nor is it likely to lead to relevant  
10 evidence, of patterns and practice with regard to allegations of abuse by  
11 Archdiocesan priests or other priests working with an Archdiocesan  
12 ministry.

13 2. Evidence of debtor's patterns, practices, and policies after the  
14 last alleged date of abuse

15 Debtor seeks a time limitation on questions, arguing that debtor's  
16 patterns, practices, and policies after the last date of alleged abuse  
17 are irrelevant to its liability for the alleged abuse. The tort  
18 claimants respond that evidence of continued concealment after the  
19 alleged abuse shows that the concealment was not an accident.

20 The tort claimants rely on Rader v. Gibbons & Reed Co., 261 Or. 354,  
21 359 (1972), which holds that "[e]vidence of prior similar occurrences is  
22 admissible under some circumstances in a negligence action." The Oregon  
23 Supreme Court held that, although evidence of prior acts of negligence  
24 are generally not admissible to prove a specific act of negligence,  
25 "[s]uch evidence is, however, admissible to prove the existence of . . .  
26 a continuing course of negligent conduct, and that the . . . course of

1 conduct is in fact dangerous, or that the defendant had notice of its  
2 dangerous character." Id.

3 They further argue that conduct that occurs after the alleged  
4 misconduct can also be relevant to show state of mind, because  
5 concealment of misconduct can indicate knowledge that the conduct was  
6 negligent. They cite two Oregon cases that upheld the admission of  
7 evidence of the defendant's conduct after the alleged negligent conduct.  
8 In Joachim v. Crater Lake Lodge, Inc., 48 Or. App. 379 (1980), the Oregon  
9 Court of Appeals concluded that evidence that, after the plaintiff became  
10 sick from drinking the water at Crater Lake Lodge, the manager of the  
11 lodge removed notices that water at the lodge was contaminated provided  
12 some evidence that the manager's conduct in failing to warn the public  
13 about the contamination was in deliberate disregard of the rights of  
14 others. The Court of Appeals held in Stephens v. Bohlman, 138 Or. App.  
15 381 (1996), that evidence that a tortfeasor participated in covering up  
16 the true cause of the injury was circumstantial evidence that he believed  
17 he had acted negligently.

18 I will not limit the time frame for questions about debtor's  
19 patterns, practices, and policies with regard to dealing with allegations  
20 of clergy sexual misconduct with minors. This is discovery. The test is  
21 whether the information obtained would be admissible at trial; it is  
22 whether the information sought "appears reasonably calculated to lead to  
23 the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).  
24 Although the relevant time frame for these claims is the time of the  
25 alleged misconduct, evidence of debtor's later policies could possibly  
26 lead to evidence that would be relevant to the claims of negligence or to

1 establishing debtor's knowledge for purposes of extending the statute of  
2 limitations under ORS 12.117(1). If, for example, evidence shows that  
3 debtor continued to reassign known pedophile priests to new parishes even  
4 after it knew that child molesters are likely to re-offend, that fact  
5 would provide some evidence that debtor's earlier reassignment was not  
6 merely a mistake or accident. Further, changes in policies after alleged  
7 abuse occurred could shed light on what the policies were at the time of  
8 the abuse.

9 Debtor argues that evidence of subsequent actions is relevant only  
10 to the issue of punitive damages, which is not currently at issue. I  
11 disagree that the relevance is only to punitive damages. As I explained  
12 above, evidence that debtor continued a particular practice in light of  
13 information about the harmful effects of sexual abuse on children, or  
14 changed its policies may lead to relevant evidence about the practices it  
15 followed when the abuse occurred.<sup>3</sup>

16 \_\_\_\_\_  
17 <sup>3</sup> Debtor points out that, at the August 4, 2005 hearing, I denied  
18 Mr. Barton's request to inquire into what had happened between 1986 and  
19 1995, saying that it was relevant to punitive damages, which was not yet  
20 at issue. From that, debtor argues that I have already ruled that  
21 information about what happened during Archbishop Levada's tenure in  
22 Portland is relevant only to punitive damages. That is not what I said  
23 at the August 4 hearing. According to the portion of the transcript  
24 provided by debtor, Mr. Barton argued only that the information was  
25 relevant to his punitive damages claim. I denied his request to depose  
26 Levada based on his argument that the information would relate only to  
the punitive damages claim. I did not rule that it could not be relevant  
to liability; Mr. Barton did not argue that to the court. Transcript of  
August 4, 2005 deposition of Archbishop Levada at 18-19 (Exhibit A to  
Declaration of Thomas Dulcich in Support of Debtor's Responses and  
Objections to Topic Listing of Pattern and Practice Witnesses (Non-  
Levada)).

(continued...)



1 3. Mental reservation

2 At the hearing on the objections to the topics for these  
3 depositions, the tort claimants argued that they should not be precluded  
4 from asking questions about the role of mental reservation in a witness's  
5 answer to questions posed. In simple terms, a person asserting mental  
6 reservation may, for moral or ethical reasons, give less than a true  
7 answer to a question.

8 Counsel for Archbishop Levada argued at the hearing that the tort  
9 claimants waived any right to ask about mental reservation by not  
10 including that topic in their topic lists. In my view, the question of  
11 mental reservation is more of a follow-up question than a particular  
12 topic. The tort claimants may not explore the concept of mental  
13 reservation generally or the circumstances under which it may be used,  
14 but they may ask whether a particular witness's answer to a question is  
15 affected by the exercise of mental reservation. This is appropriate in  
16 order to determine a witness's compliance with the civil oath to tell the  
17 truth.

18 Counsel for Archbishop Levada argues that the tort claimants need  
19 not ask about mental reservation, but may simply ask whether the witness  
20 has given truthful answers. Because it would seem that the answer to  
21 that question could itself be affected by the exercise of mental

22  
23 \_\_\_\_\_  
24 <sup>3</sup>(...continued)

25 I note that the tort claimants have a limited amount of time to  
26 question these witnesses. It seems unlikely that they will spend much  
time exploring matters relating to debtor's conduct that post-dates the  
last alleged date of abuse, because of the minimal use that type of  
evidence might be to them.

1 reservation, I conclude that limiting the tort claimants to that type of  
2 general truthfulness question is not sufficient under the circumstances  
3 of this case.

4 4. Internal church governance

5 Debtor argues that I should limit deposition questions "that seek to  
6 delve into internal church decision-making." Debtor's Objections to  
7 Proposed Topics for the Deposition of Archbishop Levada at 12. It  
8 asserts that questions inquiring into matters of church governance are  
9 protected by the First Amendment's Establishment and Free Exercise  
10 clauses, and so should be avoided. The tort claimants argue that there  
11 is no such thing as an internal church governance privilege.

12 In state law claims litigated in federal court, the federal court  
13 applies state privilege law. Fed. R. Evid. 501. Debtor does not point  
14 to any Oregon privilege for internal church governance, and there is  
15 none.

16 However, state privilege law applies "[e]xcept as otherwise required  
17 by the Constitution of the United States . . . ." Fed. R. Evid. 501.  
18 Debtor argues that questions about church internal governance are  
19 prohibited by the First Amendment.

20 The First Amendment Establishment and Free Exercise clauses  
21 "[prevent] courts from resolving internal church disputes that would  
22 require adjudication of questions of religious doctrine." Malicki v.  
23 Doe, 814 So.2d 347, 355 (Fla. 2002). See also Serbian E. Orthodox  
24 Diocese v. Milivojevich, 426 U.S. 696 (1976); Kedroff v. St. Nicholas  
25 Cathedral, 344 U.S. 94 (1952). Justice Rehnquist explained, in a one-  
26 judge order granting a temporary stay:

1 There are constitutional limitations on the extent to which a civil  
2 court may inquire into and determine matters of ecclesiastical  
3 cognizance and polity in adjudicating intrachurch disputes. But  
4 this Court never has suggested that those constraints similarly  
5 apply outside the context of such intraorganization disputes. Thus,  
6 Serbian Eastern Orthodox Diocese and the other cases cited . . . are  
7 premised on a perceived danger that in resolving intrachurch  
8 disputes the State will become entangled in essentially religious  
9 controversies or intervene on behalf of groups espousing particular  
10 doctrinal beliefs. Such considerations are not applicable to purely  
11 secular disputes between third parties and a particular defendant,  
12 albeit a religious affiliated organization, in which fraud, breach  
13 of contract, and statutory violations are alleged.

8 Gen. Council on Fin. and Admin., United Methodist Church v. California

9 Superior Court, 439 U.S. 1369, 1372-73 (1978) (citations omitted). Thus,  
10 while "[t]he church autonomy doctrine might insulate the church from the  
11 dictates of a secular court regarding liturgy and leadership, . . . it  
12 does not permit a church, as a general matter, to cloak its decisions and  
13 actions in secrecy when the law requires compliance with the requirements  
14 of civil law." Newport Church of the Nazarene v. Hensley, 335 Or. 1, 15  
15 (2002).

16 The Oregon District Court explained:

17 Courts may not, without justification, force religious bodies  
18 to abandon their religious beliefs or doctrines in favor of purely  
19 secular rules or rule on the appropriateness or correctness of those  
20 beliefs or doctrines. However, the mere consideration of religious  
21 authorities in an action involving the church and third parties does  
22 not necessarily amount to an infringement of the [churches']  
23 religious freedom. A court may look to such evidence to establish  
24 the basic purposes or policies of the religion as merely a guide to  
25 determining whether a plaintiff has a viable action against the  
26 church.

23 M.K. v. Archdiocese of Portland in Oregon, 228 F.Supp.2d 1168, 1170-71  
24 (D. Or. 2002) (discussing vicarious liability claims against church for  
25 sexual abuse by priest).  
26

1 In these tort claims, the dispute is not over church doctrine or  
2 beliefs, but over liability for misconduct by those in the church's  
3 employ. The court is not called upon to resolve any matters of  
4 ecclesiastical or theological doctrine. Instead, evidence of internal  
5 church policy may be relevant to the question of what the church did at  
6 what time in dealing with allegations of sexual abuse of minors by its  
7 priests. Thus, the internal church governance doctrine, even if it gave  
8 rise to some sort of discovery privilege under some circumstances, is not  
9 implicated in these tort claims.

10 The cases debtor cites do not demonstrate that the First Amendment  
11 protects the witness from questions about internal church governance, to  
12 the extent the internal workings of the church are pertinent to debtor's  
13 patterns, practices, and policies in addressing sexual misconduct with  
14 minors by priests. As the court acknowledged in United Methodist Church  
15 v. White, 571 A.2d 790 (D.C. App. 1990), cited by debtor, any immunity  
16 from discovery or trial exists only under certain circumstances "in order  
17 to avoid subjecting religious institutions to defending their religious  
18 beliefs and practices in a court of law." 571 A.2d at 792. That case,  
19 which involved a minister suing the church for wrongful discharge, does  
20 not suggest that internal governance immunity exists in the context of a  
21 tort claim for sexual abuse against a church.

22 Similarly, the court in Word of Faith World Outreach Center Church,  
23 Inc. v. Morales, 787 F. Supp. 689, 699 (W.D. Tex. 1992), rev'd on other  
24 grounds, 986 F.2d 962 (5th Cir. 1993), recognized that there are limits  
25 to the First Amendment's protection of information about the internal  
26 operations of a church. The court said that the state's authority to

1 inquire into internal church operations is not "without limitation or  
2 compelling purpose." Id. It recognized that "[f]ull and complete  
3 documentation of the Church's internal affairs" may be permissible, if  
4 narrowly drawn to accomplish the purpose of the investigation, which was  
5 to determine if the church was obtaining donations fraudulently. Id. at  
6 700. The case does not say that tort claimants may not inquire into  
7 internal church practices and policies in furtherance of their claims for  
8 sexual abuse.

9 To the extent the First Amendment protects internal church  
10 governance information, that protection does not apply in these claims  
11 for sexual misconduct with minors by priests working in debtor's ministry  
12 assignments. The tort claimants will not be precluded from questioning  
13 deponents about internal church organization and practices that could  
14 bear on debtor's patterns, practices, and policies with regard to  
15 allegations of sexual misconduct with minors by Archdiocesan clergy.

16 **SPECIFIC OBJECTIONS TO NON-LEVADA DEPOSITION TOPICS**

17 The scope of each of the topics for the depositions is limited by my  
18 ruling, set out above, regarding the general objections to the topics.  
19 The term "sexual misconduct" will mean sexual misconduct with minors.  
20 "Clergy" means Archdiocesan clergy, including those working outside the  
21 Archdiocese, or non-Archdiocesan clergy in an Archdiocesan ministry. I  
22 will address below only those objections that are specific to the  
23 individual topics.

24 1. The sources, scope, and form of Debtor's policies, practices, and  
25 procedures regarding the manner of responding to allegations of, or  
26 to any information suggesting, that a member of the clergy has or  
may have engaged in sexual misconduct.

1 Subject to the limitations discussed above in the general objections  
2 to the topics, the tort claimants may inquire about this topic.

3 2. Knowledge of accusations involving sexual misconduct against the  
4 clergy listed in the unredacted letter containing the subjects for  
5 William J. Levada's deposition, together with knowledge of Debtor's  
6 responses to those allegations, knowledge of decisions concerning  
7 the assignment or reassignment of the clergy, and knowledge of  
8 additions or modifications to their personnel file as a result  
9 thereof.

7 Debtor does not raise additional objections, except that some of the  
8 names on the list were not in a ministry assignment of the Archdiocese of  
9 Portland. The tort claimants may inquire; the answer may be that the  
10 witness does not know anything about that individual or allegations  
11 relating to that individual because the individual did not serve in an  
12 Archdiocesan ministry.

13 3. Knowledge of the storage and disposition of records concerning those  
14 referenced in No. 2.

15 No objection.

16 4. Whether personal practices of the listed witnesses in responding to  
17 reports of sexual misconduct by clergy have been consistent with the  
18 stated policy of the Roman Catholic Church, U.S. Conference of  
19 Catholic Bishops, and/or the Archdiocese.

18 Debtor originally objected to the term "personal practices," but has  
19 since been satisfied as to the meaning of the term.

20 Subject to the general limitations set out above, the questions  
21 should be limited to personal practices of the witnesses in responding to  
22 reports of sexual misconduct by Archdiocesan clergy or clergy serving in  
23 an Archdiocesan ministry. This is not seeking an expert opinion.

24 Debtor objects to the topic as an inquiry into the religious rules  
25 of the Roman Catholic Church or other religious entities. This is an  
26 internal church governance objection, which I have overruled.



1 5. Discussions with other officials in the Archdiocese (other than  
2 attorneys representing you or the Archdiocese), the USCCE, other  
3 dioceses or archdioceses, concerning the destruction of records  
concerning allegations of sexual misconduct by members of the  
clergy.

4 To the extent the objection is that the topic requires inquiry into  
5 internal church governance, it is overruled. As to debtor's objection to  
6 the assumption that records have been destroyed, the tort claimants may  
7 inquire as to whether there were discussions about destruction of records  
8 of debtor, or involving records of an Archdiocesan priest or other priest  
9 in an Archdiocesan ministry and who was the subject of a complaint that  
10 the priest had engaged in sexual misconduct with minors, whether or not  
11 records were actually destroyed.

12 6. Information passed along to the listed witnesses by other clergy or  
13 other Archdiocesan officials concerning Archdiocesan clergy accused  
of sexual misconduct.

14 Debtor seeks to limit this topic to exclude discussions covered by  
15 the attorney-client privilege and information received from in-house or  
16 outside counsel. The tort claimants respond that information is not  
17 protected by the attorney-client privilege simply because counsel is the  
18 conduit for the information.

19 State privilege law applies to the tort claims, because they are  
20 civil proceedings in which state law provides the rule of decision. Fed.  
21 R. Evid. 501. Oregon's attorney-client privilege is set out in Oregon  
22 Rule of Evidence 503. It protects "confidential communications made for  
23 the purpose of facilitating the rendition of professional legal services  
24 to the client[.]" OEC 503(2). "Confidential communication" is defined  
25 as "a communication not intended to be disclosed to third persons other  
26 than those to whom disclosure is in furtherance of the rendition of

1 professional legal services to the client or those reasonably necessary  
2 for the transmission of the communication." OEC 503(1)(b). To the  
3 extent the tort claimants seek information about reports made by a victim  
4 of sexual abuse of minors by Archdiocesan clergy or communications  
5 between debtor's representatives and the victims, there is no  
6 confidential communication made for the purpose of facilitating the  
7 giving of legal advice. If that information was routed through counsel,  
8 the fact that counsel received the information does not make it  
9 privileged. Thus, the tort claimants are entitled to inquire into that  
10 topic area.

11 To the extent the tort claimants seek information relating to legal  
12 advice with regard to reports of such sexual abuse, that information is  
13 privileged, unless the tort claimants can make some showing that the  
14 crime-fraud exception applies. Until they make such a showing, they may  
15 not inquire into inquiries to counsel seeking advice or any advice given  
16 by counsel.

17 7. Discussions of the Clergy Personnel Board, Cabinet, or other  
18 official Archdiocesan groups about or concerning clergy accused of  
19 misconduct, policies concerning the handling of complaints of sexual  
20 misconduct by clergy, and reassignment of clergy accused of sexual  
21 misconduct.

22 The scope of this topic, as for all topics, is subject to the  
23 general limitations set out above in my discussion of the general  
24 objections. Subject to those limitations, the parties agree that  
25 information obtained in answer to questions about this topic will be  
26 confidential in accordance with the court's protective order entered  
January 11, 2005 although the information may, in accordance with that  
order, be shared among counsel for the tort claimants.

1 8. Responsibilities of Archdiocesan personnel to investigate reports of  
2 sexual misconduct by clergy.

3 There are no additional objections to this topic.

4 9. Communication with, and training of, Archdiocesan clergy concerning  
5 responses to reports or observations of sexual misconduct by clergy.

6 There are no additional objections to this topic.

7 10. Former general counsel Robert McMenamin's advice concerning #9,  
8 supra. (Attorney-client privilege has been waived - see In re  
9 McMenamin, 319 Or 609, 615 (1994) (Graber, J., dissenting)).

10 Debtor objects to this topic, arguing that it seeks information  
11 covered by the attorney-client privilege. There is no doubt that  
12 questions about advice given to debtor by its former counsel seek  
13 information that ordinarily would be covered by the attorney-client  
14 privilege. The tort claimants argue that the privilege does not apply  
15 when, as in this case, the client brings a disciplinary complaint against  
16 the lawyer, and that the privilege was waived by its disclosure in the  
17 Supreme Court's opinion on the complaint and the dissemination of the bar  
18 disciplinary file to members of the public.

19 OEC 503(4)(c) provides that the privilege does not apply to "a  
20 communication relevant to an issue of breach of duty by the lawyer to the  
21 client or by the client to the lawyer[.]" "This exception should be  
22 construed narrowly to avoid disclosing any more of the client's  
23 confidences than are necessary for the lawyer to defend against the  
24 client's claim or obtain redress for breach of duty by the client."

25 Laird C. Kirkpatrick, OREGON EVIDENCE § 503.12[3] (4th ed. 2002).

26 There are no Oregon cases addressing whether the exception to the  
attorney-client privilege for communications that are relevant to the  
breach of a duty by the lawyer to the client extends to matters other

1 than the dispute between the attorney and the client. The language of  
2 OEC 503(4)(c) is quite plain, however, and appears to remove the  
3 privilege for those communications within its scope. There is no rule or  
4 principle that would re-impose the privilege for such communications,  
5 once they are excepted from the privilege because of a breach of duty  
6 claim.

7 The Oregon rule, which excepts such communications from the  
8 privilege, is different from the implied waiver of privilege that the  
9 Ninth Circuit has discussed under the federal common law privilege. In  
10 Bittaker v. Woodford, 331 F.3d 715 (9th Cir. 2003), a defendant in a  
11 federal habeas corpus case raised the issue of ineffective assistance of  
12 counsel. The district court entered a protective order that precluded  
13 use of privileged attorney-client communications for any purpose other  
14 than the habeas corpus petition. The state appealed, asserting that,  
15 once the client waived the attorney-client privilege by claiming  
16 ineffective assistance of counsel, the privilege was waived for all  
17 purposes, including use in a subsequent re-trial of the murder charges.  
18 The circuit held that a client's waiver of the privilege by putting the  
19 attorney's performance at issue was an implied, not an express, waiver.  
20 Although a privilege no longer exists when it is expressly waived,  
21 implied waiver is different, and must be limited to its purpose.  
22 Therefore, the court held that the district court did not err in imposing  
23 the protective order.

24 Under Oregon law, there is no waiver; the privilege simply does not  
25 apply to communications that are "relevant to an issue of breach of duty  
26 by the lawyer to the client . . . ." OEC 503(4)(c). That language is

1 unambiguous, and says that there is no privilege that applies to the  
2 communications that relate to debtor's complaint about McMenamin to the  
3 Oregon State Bar.

4 The attorney-client privilege continues to apply to advice McMenamin  
5 gave debtor on matters other than those relating to the bar complaint.  
6 The topic as the tort claimants set it out adequately limits the subject  
7 matters about which they may inquire.

8 11. Knowledge of communications in any form between representatives of  
9 the Debtor and the Holy See (including the Congregation of the  
10 Doctrine of the Faith and the Congregation for the Clergy), the  
11 Papal Nuncio, the USCCB and predecessor entities, and other dioceses  
12 or archdioceses concerning allegations of sexual misconduct against  
13 individual clergy, as well as concerning the policies, practices,  
14 and procedures regarding the manner of responding to allegations of,  
15 or to any information suggesting, that a member of the clergy has or  
16 may have engaged in sexual misconduct.

17 Debtor raises three objections to this topic. First, it argues that  
18 the topic would violate the privilege for confidential communications to  
19 clergy under OEC 506. OEC 506(2) provides:

20 (2) A member of the clergy may not be examined as to any  
21 confidential communication made to the member of the clergy in the  
22 member's professional character unless consent to the disclosure of  
23 the confidential communication is given by the person who made the  
24 communication.

25 A confidential communication is "a communication made privately and not  
26 intended for further disclosure except to other persons present in  
furtherance of the purpose of the communication." OEC 506(1)(a). A  
member of the clergy for purposes of the privilege is "a minister of any  
church, religious denomination or organization . . . who in the course of  
the discipline or practice of that church, denomination or organization  
is authorized or accustomed to hearing confidential communications and,  
under the discipline or tenets of that church, denomination or

1 organization, has a duty to keep such communications secret." OEC  
2 506(1)(b).

3 Thus, the privilege extends to communications with clergy, not with  
4 other employees, agents, or officials of the church who are not clergy.

5 Even with regard to clergy, not all communications, even those made  
6 privately and in confidence, are subject to the privilege; only those  
7 confidential communications that are made to a clergy member "in the  
8 member's professional character" are protected. The language is  
9 ambiguous; the question is what "in the member's professional character"  
10 means.

11 OEC 506 was enacted in 1981, and was "intended to restate existing  
12 Oregon law." Legislative Commentary to Rule 506, reprinted in Laird C.  
13 Kirkpatrick, OREGON EVIDENCE § 506.02 (4th ed. 2002). "The privilege  
14 allows and encourages individuals to fulfill their religious, emotional  
15 or other needs by protecting confidential disclosures to religious  
16 practitioners." Id.

17 Before 1981, the privilege was set out in ORS 44.040(1)(c), and  
18 applied only to confessions made to a clergyman "in his professional  
19 character." Former ORS 44.040(1)(c), set out in State v. Forsyth, 20 Or.  
20 App. 624, 636 (1975).

21 In light of the purpose of the privilege, and the fact that it was  
22 originally directed at confession, I conclude that it should be applied  
23 only to communications that are made to a clergy person acting in the  
24 capacity of a spiritual advisor.

25 This is consistent with cases from other states that have similar  
26 privilege statutes. Although the language of those privilege statutes



1 may vary, on this point they seem to be interpreted relatively  
2 consistently. See, e.g., Masquat v. Maquire, 638 P.2d 1105 (Okla.  
3 1981) (communication with Catholic nun in her capacity as hospital  
4 administrator not within the privilege); Bonds v. State of Arkansas, 837  
5 S.W.2d 881 (Ark. 1992) (communication with minister who was also  
6 defendant's employer not privileged, because the communication was in  
7 minister's capacity as employer, not spiritual advisor); State of New  
8 Jersey v. Cary, 751 A.2d 620 (N.J. App. 2000) (communication with church  
9 deacon who was also police officer not privileged, as the deacon was  
10 performing at least partially secular function as law enforcement officer  
11 at time of communication). See also State of Washington v. Martin, 975  
12 P.2d 1020, 1026 n.65 (Wash. 1999) (listing cases where communication with  
13 clergy was in other than professional capacity as clergy).

14 In Commonwealth of Pennsylvania v. Stewart, 690 A.2d 195, 198 (Pa.  
15 1997), the court noted that "the mere fact that a communication is made  
16 to a member of the clergy, or that documentation is transmitted to a  
17 member of the clergy, is not sufficient alone to invoke the privilege."  
18 The court pointed out that nearly every jurisdiction in the United States  
19 has a clergy-penitent privilege, "which requires the communication to  
20 have been motivated by penitential or spiritual considerations." Id.  
21 Because the statutes require that the communication be made to clergy  
22 members in the course of the discipline enjoined by the clergy's  
23 denomination, the privilege has been applied only to clergy when they are  
24 "acting in a spiritual capacity." Id. at 198-99. The court said: "Our  
25 review of the relevant case law reveals no jurisdiction extending the  
26 privilege to communications that are not penitential or spiritual in

1 nature." Id. at 200.

2 Oregon's statute includes the restriction regarding the discipline  
3 of the denomination; "member of the clergy" is defined as "a minister of  
4 any church . . . who in the course of the discipline or practice of that  
5 church . . . is authorized or accustomed to hearing confidential  
6 communications and, under the discipline or tenets of that church, . . .  
7 has a duty to keep such communications secret." OEC 506(1)(b). Thus,  
8 the requirement that the communication relate to the seeking of spiritual  
9 advice should apply equally under the Oregon privilege statute.

10 Thus, communications, even those the person intends to be  
11 confidential, are not protected by the privilege unless they are made to  
12 the clergy person in the furtherance of obtaining spiritual advice.  
13 Under this view, communications to persons, even members of the clergy,  
14 who at the time of the communication were acting as employers or  
15 administrators or in other, non-spiritual capacities, are not privileged.

16 The tort claimant should be able to inquire into the witnesses'  
17 knowledge of communications between representatives of the debtor and  
18 other religious organizations or personnel on the subject matter set out  
19 in the topic (as limited by my ruling on the general objections), unless  
20 that communication was made to a clergy person in furtherance of  
21 spiritual advice.

22 Debtor also objects on the basis of internal church governance. I  
23 have already rejected that objection.

24 Finally, debtor objects on the basis of attorney-client privilege.  
25 Debtor does not explain how answering questions related to this topic  
26 would invade the attorney-client privilege. The tort claimants may

1 inquire into the topic.

2 12. Understanding of what Canons and religious doctrine governed  
3 Debtor's responses to allegations of sexual misconduct by clergy.

4 Debtor objects to this topic, arguing that it impermissibly inquires  
5 into the reasonableness of religious rules and what is adequate  
6 compliance with those rules. I agree with the tort claimants that there  
7 is no basis for precluding them from asking questions about the subject.  
8 The questions could lead to evidence shedding light on the reasons why  
9 debtor responded to allegations of clergy sexual abuse of minors in the  
10 way it did. That is clearly relevant to the issues in these claims.  
11 Further, simply asking the questions cannot infringe on any First  
12 Amendment rights. There is no privilege to keep religious doctrine  
13 secret.

14 13. The hierarchy of the Archdiocese, including officials and other  
15 persons responsible for assigning and reassigning clergy,  
16 disciplining clergy, transferring clergy, and responding to reports  
17 of sexual misconduct by clergy. Also, those officials and other  
18 persons responsible for recommending same to the Archbishop.

19 Debtor does not object to this topic of inquiry, assuming that the  
20 tort claimants mean to ask about debtor's internal structure with respect  
21 to dealing with complaints of sexual misconduct with minors. By the tort  
22 claimants' failure to respond to debtor's assumption, it appears they  
23 agree that the questions will relate to debtor's internal structure with  
24 respect to dealing with complaints of sexual misconduct with minors.

25 14. The Archdiocese's policies and practices regarding reporting child  
26 abuse to civil authorities.

Debtor has no objections to this topic, other than limiting it to  
knowledge of the witnesses while within the Archdiocese of Portland. The  
tort claimants may inquire about any information the witnesses have

1 regarding Archdiocesan policies and practices, regardless of the time  
2 frame to which that information relates.

3 15. Knowledge of the 1962 "Instruction About the Manner of Proceeding in  
4 Cases of the Crime of Solicitation."

5 Debtor objects to this topic, arguing that it raises constitutional  
6 concerns. I disagree. First, as I have already explained, the tort  
7 claimants are not precluded from asking questions about internal church  
8 governance or laws. Second, the document about which the tort claimants  
9 seek to inquire could lead to discovery of relevant evidence, if it was a  
10 document that was transmitted to the Archdiocese or provided some basis  
11 for the Archdiocese's practices or policies with regard to the types of  
12 sexual abuse claims at issue here.

13 Debtor also argues that Archbishop Levada testified that he had not  
14 seen the document and, therefore, the other witnesses would also not have  
15 seen the document. There is no reason to believe that, simply because  
16 one witness has not seen a document, other witnesses also have not seen  
17 it. The tort claimants can ask about this topic.

18 16. Assistance provided, and responses in general, to persons who  
19 reported sexual misconduct by clergy.

20 Debtor has no additional objections to this topic.

21 17. Policies, practices, and procedures regarding the maintenance,  
22 control, and purging of priest personnel and *sub secreto* files and  
23 whether those policies, practices, and procedures were consistent  
24 with those of the Roman Catholic Church and/or the USCCB (or its  
25 predecessor entities); and adherence to such policies and  
26 procedures.

27 Debtor objects to this topic to the extent it could relate to  
28 policies, practices, and procedures of religious organizations other than  
29 the Archdiocese of Portland. I agree that inquiry into organizations

3  
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1 other than the Archdiocese of Portland would not likely lead to  
2 discoverable evidence. The topic should be so limited.

3 Debtor also claims that the topic involves church law or church  
4 rules and so is outside the scope of discovery. I have already rejected  
5 that argument.

6 Finally, debtor objects to the "pejorative assumption" arising from  
7 the use of the word "purging." This is discovery; I will not prohibit  
8 inquiry into this topic simply because debtor does not like the tone set  
9 by the language used in the topic listed.

10 18. The nature and scope of any oath of secrecy taken in investigating  
11 or prosecuting accusations of sexual misconduct by clergy, and the  
12 role of "mental reservation" in adhering to that oath.

13 Debtor objects to this topic on the basis that it relates to an  
14 attempt to impose civil liability for damages measured by a religious  
15 organization's compliance with its religious rules. This is simply  
16 another iteration of the internal church governance argument, which I  
17 have rejected.

18 The tort claimants may inquire whether the witnesses have taken any  
19 oath of secrecy relating to investigating or prosecuting accusations of  
20 sexual misconduct by clergy, because that could bear on the quality of  
21 the answers they give to questions about what they did or knew at a  
22 particular time with regard to sexual abuse allegations. The tort  
23 claimants may also ask about whether answers given in the deposition are  
24 affected by the exercise of mental reservation. As I explained above,  
25 however, they may not inquire into mental reservation generally, but only  
26 as relates to questions posed in these depositions.

19. Communications, or knowledge of communications, with parish priests

1 and/or other parish employees or representatives of parishes or  
2 schools when returning a priest who had been previously accused of  
sexual misconduct to a parish or school ministry or position.

3 Debtor does not have any additional objections to this topic, so  
4 long as it is limited to communications involving priests in an  
5 Archdiocesan ministry. The tort claimants argue that there should be no  
6 geographical limitation, because the tort claimants are entitled to know  
7 whether the witness responded differently under these circumstances  
8 depending on whether the witness was in the Portland Archdiocese or  
9 elsewhere. I fail to see how information about how witnesses responded  
10 when they were outside the Portland Archdiocese is likely to lead to  
11 relevant information. The topic will be limited to the witnesses'  
12 communications or knowledge of communications while the witness was at  
13 the Portland Archdiocese.

14 20. The witnesses' personal philosophies regarding clergy sexual  
15 misconduct, i.e. whether it is a spiritual or a criminal problem,  
and how it is best addressed.

16 Debtor objects to this topic on the basis that this line of inquiry  
17 has no relevance to the pending claims. I agree. The question in these  
18 tort claims is what debtor knew and did with regard to sexual misconduct  
19 with minors by priests in an Archdiocesan ministry. The witnesses'  
20 personal beliefs are not relevant, nor are they likely to lead to  
21 relevant evidence of what they, as representatives of debtor, knew or  
22 did. The tort claimants may inquire about what the witnesses knew or  
23 did. They may ask why the witnesses did what they did. They may not,  
24 however, inquire generally into the witnesses' personal philosophies  
25 about clergy sexual misconduct. What is relevant is what the witnesses  
26 knew or did, not what their personal philosophies are.



1 ARCHBISHOP LEVADA

2 Debtor, joined by Archbishop Levada, raises many of the same  
3 objections to the proposed topics for deposition of Archbishop Levada as  
4 to the proposed topics for the other pattern and practice deposition  
5 witnesses.<sup>4</sup> My ruling on those issues is the same for Archbishop  
6 Levada's deposition as it is for the other witnesses.

7 Archbishop Levada raises several general objections, which I will  
8 address before I address each of the topics individually.

9 1. Evidence relating to Archbishop Levada's knowledge or practices  
10 other than during his tenure as Archbishop of Portland

11 Archbishop Levada was Archbishop of Portland from 1986 through 1995.  
12 Debtor seeks to limit deposition questions to the extent that they seek  
13 to inquire into Archbishop Levada's knowledge or activities before or  
14 after his tenure as Archbishop of Portland, arguing that information  
15 about his knowledge or activities other than when he was Archbishop of  
16 Portland is irrelevant to the claims at issue in these adversary  
17 proceedings. For the moment, I will not discuss questions about his work  
18 at the Congregation for the Doctrine of the Faith. My discussion in this  
19 section relates only to Archbishop Levada's knowledge or activities other  
20 than those that were obtained or occurred at the Congregation for the  
21 Doctrine of the Faith.

22 \_\_\_\_\_  
23 <sup>4</sup> Debtor recognizes that it has no standing to object to  
24 questions directed to Archbishop Levada. Debtor's Objections to Proposed  
25 Topics for the Deposition of Archbishop Levada at 12:5-6. However,  
26 Archbishop Levada has joined in debtor's memoranda filed on July 25,  
2005, August 1, 2005, and October 21, 2005 and adopts those arguments as  
his own. Archbishop Levada's Joinder in Holy See's Motion to Modify  
Subpoena and Archdiocese Response, filed October 24, 2005. Therefore, I  
will consider the arguments made by debtor as being made by the witness.

1 As Archbishop of Portland, Archbishop Levada effectively controlled  
2 the corporation that is the defendant in these tort claims. Thus, his  
3 knowledge and activities while in Portland are relevant to proof of  
4 debtor's knowledge, patterns, practices, and policies with regard to  
5 child sexual abuse by clergy.

6 After Archbishop Levada left Portland, he may have communicated with  
7 the new archbishop or other representatives of the Archdiocese of  
8 Portland on matters pertaining to what had occurred during his tenure in  
9 Portland or what was occurring in Portland after he left. The tort  
10 claimants may seek information from Archbishop Levada that relates to the  
11 time post-dating his tenure in Portland, provided it is related to the  
12 Portland Archdiocese. They may not inquire about his activities or  
13 obtain other information that is unrelated to what was happening in  
14 Portland after he left.

15 As for Archbishop Levada's activities that pre-date his tenure in  
16 Portland, the question is more difficult. Because Archbishop Levada  
17 controlled the debtor once he came to Portland, whether he knew that  
18 child sexual abuse was damaging and the practices or policies that he  
19 followed or implemented while in Portland are certainly relevant.  
20 However, Archbishop Levada engaged in activities before he came to  
21 Portland that may have affected his knowledge of the issue of sexual  
22 abuse by clergy in general, and his actions with regard to such issues,  
23 when he arrived here. Because debtor's knowledge of the existence of  
24 claims of sexual abuse among clergy and the reasonableness of its  
25 response to such claims is relevant to the extension of the statute of  
26 limitations for child abuse claims in Oregon and the negligence claims,

1 questioning Archbishop Levada about his knowledge of the subject could  
2 lead to admissible evidence in this litigation.

3 Subject to the limitations imposed in my discussion in the next  
4 section, the tort claimants may ask Archbishop Levada what he knew at the  
5 time he arrived at his Portland post of the problem of sexual abuse of  
6 minors by clergy, and whether he had policies or practices that he  
7 planned to or did implement when he got here. The tort claimants are  
8 entitled to inquire about how he obtained any such information, and  
9 whether his pre-Portland activities influenced his views during his  
10 tenure in Portland on how to handle claims of sexual abuse of minors by  
11 clergy.<sup>5</sup>

12 2. Questions relating to Archbishop Levada's tenure at the Congregation  
13 for the Doctrine of the Faith

14 Archbishop Levada raises numerous objections to any questions that  
15 seek to elicit information about his activities and communications while  
16 serving at the Congregation for the Doctrine of the Faith at the Holy  
17 See. He is currently serving as Prefect of that body. My understanding  
18 is that he also served in some capacity with that body in the late 1970s  
19 and early 1980s. The tort claimants have stipulated that they will not  
20 ask questions about Archbishop Levada's current work, or decisions made  
21 during his current tenure at the Congregation for the Doctrine of the  
22 Faith. Therefore, it is unnecessary for me to decide whether certain

23  
24 <sup>5</sup> The time frame that is appropriate for questioning Archbishop  
25 Levada is broader than it is for the other witnesses, because Archbishop  
26 Levada effectively controlled the debtor while he was Archbishop of  
Portland, so what he knew and did before he came to Portland could bear  
on what he knew and did when he arrived here.

1 immunities would apply to protect him from being compelled to answer such  
2 questions.

3       The tort claimants do seek to ask questions about Archbishop  
4 Levada's work and information he obtained during his earlier tenure at  
5 the Congregation for the Doctrine of the Faith, which occurred before he  
6 became the Archbishop of Portland. They argue that his work there is  
7 relevant to these tort claims against the Archdiocese of Portland,  
8 because he later became the Archbishop of Portland, whose knowledge and  
9 attitudes are relevant.

10       Archbishop Levada argues that he should be protected from questions  
11 about this information for numerous reasons, including application of the  
12 Federal Sovereign Immunity Act, comity with the law of the Holy See, and  
13 various governmental privileges.

14       I conclude that he is entitled to protection from questions  
15 regarding his internal communications and acts at the Congregation for  
16 the Doctrine of the Faith, because it would cause an undue burden on him  
17 to compel him to answer such questions.

18       There does not seem to be any dispute that the Holy See's rules  
19 require persons serving at the Congregation for the Doctrine of the Faith  
20 to observe confidentiality and not disclose any information about what  
21 the person has done during or learned through that service. This  
22 includes protecting from disclosure any information about acts and  
23 proceedings related to matters treated by the Congregation. The  
24 consequence of disclosure in violation of this rule can be  
25 excommunication, house arrest for up to five years, and deprivation of  
26 any ecclesiastical office.

1           The Federal Rules of Civil Procedure allow a court to issue a  
2 protective order or modify a subpoena if the discovery sought in an  
3 action would be an undue burden on the person from whom discovery is  
4 sought. Fed. R. Civ. P. 26(c)(4); 45(c)(3)(A)(iv) (made applicable to  
5 adversary proceedings by Fed. R. Bankr. P. 7026 and 9016). Whether or  
6 not the information sought might be relevant or lead to discovery of  
7 admissible evidence, and whether or not it is protected by some immunity  
8 or privilege, I will not require Archbishop Levada to answer questions  
9 that could potentially cause him to be excommunicated, arrested, or  
10 stripped of his authority in the church. That is an undue burden.

11           Archbishop Levada is not a party to this action. His tenure as  
12 Archbishop of Portland began after the last alleged abuse in the pending  
13 claims occurred. There is no indication that his internal communications  
14 and acts at the Congregation for the Doctrine of the Faith had any direct  
15 relationship to the patterns, practices, and policies of the Archdiocese  
16 of Portland during the time the alleged abuse was occurring.

17           The tort claimants will be precluded from asking any questions  
18 relating to internal communications and acts at the Congregation for the  
19 Doctrine of the Faith during Archbishop Levada's tenure, whenever that  
20 tenure occurred. This restriction applies only to what he learned and  
21 did at the Congregation for the Doctrine of the Faith. It does not mean  
22 that the tort claimants are precluded from asking questions about a  
23 particular subject merely because it was discussed while Archbishop  
24 Levada was at the Congregation for the Doctrine of the Faith, if the  
25 subject later arose in a different context, such as while he was  
26 Archbishop of Portland. He also may be asked why he did what he did

3  
30 43

1 while he was in Portland. He need not disclose in his answers any  
2 reasons based on what he learned at the Congregation for the Doctrine of  
3 the Faith.

4 The tort claimants may ask questions about any actions Archbishop  
5 Levada may have taken while he was working at the Congregation for the  
6 Doctrine of the Faith with regard to issuance of any general policies or  
7 directives from that Congregation to the church in the United States that  
8 related to sexual abuse of minors by priests. There is no indication  
9 that the oath of secrecy for work at the Congregation for the Doctrine of  
10 the Faith includes work in communicating general directives to the wider  
11 church body. If Archbishop Levada was involved in disseminating general  
12 directives that were issued from the Congregation for the Doctrine of the  
13 Faith to the Catholic Church in the United States, not related to  
14 specific allegations or instances of misconduct, the tort claimants are  
15 entitled to learn about it.

16 Archbishop Levada argues that the tort claimants should also be  
17 precluded from asking questions about the pattern and practice of the  
18 Roman Catholic Church. Because the argument is included with the  
19 arguments about questions relating to work at the Congregation for the  
20 Doctrine of the Faith, it is not clear what precisely the objection is.  
21 It apparently relates to topics #4 and 20, which refer to whether the  
22 personal practices of Archbishop Levada in responding to reports of  
23 sexual misconduct with clergy were consistent with the stated policy of  
24 the Roman Catholic Church (Topic #4), and whether the policies,  
25 practices, and procedures of debtor with regard to priest personnel and  
26 *sub secreto* files were consistent with those of the Roman Catholic Church



1 (Topic #20).

2 I assume that Archbishop Levada's argument against these questions  
3 rests in his concern that he will be questioned about policies of the  
4 Roman Catholic Church that he learned while working at the Congregation  
5 for the Doctrine of the Faith. Except for general policies of the church  
6 regarding sexual abuse of minors by priests that were communicated to the  
7 wider church body, those questions are precluded under my ruling that  
8 such questions would cause undue burden to the witness. I will not  
9 preclude the questions to the extent they simply ask about whether his or  
10 debtor's practices or policies were consistent with those of the Roman  
11 Catholic Church. The questions about consistency of debtor's practices  
12 or policies with practices or policies of the Roman Catholic Church are  
13 limited to debtor's practices or policies during his tenure as Archbishop  
14 of Portland. His opinion about whether debtor's practices or policies  
15 were consistent with the policies of the Roman Catholic Church at other  
16 times is seeking an expert opinion. He has not been retained as an  
17 expert.

18 3. Privileges

19 Archbishop Levada also seeks a ruling that he is entitled to raise  
20 numerous privilege objections, including objections based on Oregon's  
21 clerical privilege, as well as the deliberative process privilege, the  
22 confidential report privilege, the judicial privilege, the self-critical  
23 analysis privilege, and the attorney-client privilege and work product  
24 doctrine.

25 A. Clergy privilege

26 As I explained above in ruling on the objections to the topics for

1 the other witnesses, Oregon privilege law applies in this matter. See  
2 Fed. R. Evid. 501.<sup>6</sup> I have rejected the argument that Oregon's privilege  
3 for communications with clergy, set forth in OEC 506(2), applies to all  
4 confidential communications with clergy. The rule requires that the  
5 communications with clergy be "in the [clergy] member's professional  
6 character," which I interpret to mean in his role as spiritual advisor.  
7 Therefore, the tort claimants will not be precluded from seeking  
8 information set out in Topic # 11 (which is the topic to which I assume  
9 this objection relates) about communications Archbishop Levada had on the  
10 subject, so long as those communications were not made for the purpose of  
11 obtaining or providing spiritual advice, including confession.

12 B. Deliberative process privilege, confidential report privilege,  
13 judicial privilege

14 I understand these objections to relate solely to Archbishop  
15 Levada's work at the Holy See and the Congregation for the Doctrine of  
16 the Faith.<sup>7</sup> They relate to the exercise of governmental functions, and  
17 do not exist under Oregon law. Because the tort claimants will be  
18 precluded from asking questions about Archbishop Levada's communications

19 \_\_\_\_\_  
20 <sup>6</sup> Archbishop Levada argues that other privilege law applies with  
21 regard to questions about his work at the Congregation for the Doctrine  
22 of the Faith. Because he will not be asked any questions about that  
work, I need not consider whether other privilege law might protect  
against such inquiries.

23 <sup>7</sup> The topic heading in Archbishop Levada's memorandum is  
24 "Questions Regarding the Inner Workings of the Holy See are Barred by the  
25 Deliberative Process Privilege and the Confidential Report Privilege."  
26 The Holy See's Memorandum of Points and Authorities in Support of Motion  
to Modify Subpoena at 30. He argues that the judicial privilege applies  
because the Congregation for the Doctrine of the Faith "has a judicial  
function." Id. at 34.

1 and activities at the Congregation for the Doctrine of the Faith, there  
2 will be no basis for him to assert these privileges.

3 C. Self-critical analysis privilege

4 Archbishop Levada argues that, "[t]o the extent that Tort Claimants'  
5 questions attempt to elicit [information covered by the self-critical  
6 analysis privilege], Archbishop Levada is entitled to invoke the  
7 privilege." The Holy See's Memorandum of Points and Authorities in  
8 Support of Motion to Modify Subpoena at 36. However, he does not point  
9 to any Oregon privilege for questions about self-critical analysis. Nor  
10 does he point to any topics that would raise the self-critical analysis  
11 issue. The tort claimants are limited to asking questions relating to  
12 the topics that they have submitted and any reasonable follow-up  
13 questions. Because Archbishop Levada does not point to any questions  
14 that would seek to elicit information covered by the privilege, and  
15 because he has not shown that the privilege exists in Oregon, he is not  
16 entitled to object based on the self-critical analysis privilege.

17 D. Attorney-client privilege and work product doctrine

18 I have discussed the attorney-client privilege issue above in  
19 relation to the other pattern and practice witnesses. The same analysis  
20 and ruling applies to questions posed to Archbishop Levada. The only  
21 topic that would cover questions relating to matters that might be  
22 privileged is Topic # 10, which involves advice given to Archbishop  
23 Levada by Robert McMenamin concerning communication with and training of  
24 Archdiocesan clergy concerning responses to reports or observations of  
25 sexual misconduct by clergy.

26 As for work product, Archbishop Levada does not point to any topic

1 that arguably raises the work product issue. Because the tort claimants  
2 are limited to the topics included in the list and any reasonable follow-  
3 up questions, there should be no work product issue.

4 **SPECIFIC OBJECTIONS TO TOPICS FOR ARCHBISHOP LEVADA**

5 As with the topics for the other pattern and practice witnesses, the  
6 scope of the topics for Archbishop Levada is limited by my ruling, set  
7 out above, that any reference to "sexual misconduct" shall mean sexual  
8 misconduct with minors. References to "clergy" means Archdiocesan  
9 clergy, including those working outside the Archdiocese, or other clergy  
10 working in a ministry of the Archdiocese of Portland, and not to conduct  
11 or practices in other dioceses or geographic locations. The time and  
12 geographic limits are as set out above in my discussion of the general  
13 objections to topics for Archbishop Levada's deposition.

14 These rulings address most of the specific objections raised to the  
15 particular topics. I will discuss below only those additional objections  
16 to particular topics.

17 1. The sources, scope, and form of Debtor's policies, practices, and  
18 procedures regarding the manner of responding to allegations of, or  
19 to any information suggesting, that a member of the clergy has or  
20 may have engaged in sexual misconduct.

21 No additional objections.

22 2. Knowledge of accusations involving sexual misconduct against [a  
23 redacted list of] clergy working in the Archdiocese, together with  
24 knowledge of Debtor's responses to these allegations, knowledge of  
25 decisions concerning the assignment or reassignment of the clergy,  
26 and knowledge of additions or modifications to their personnel file  
as a result thereof.

Debtor objects to questions about names on the list that he says  
were not part of an Archdiocesan ministry. If the witness is not  
familiar with the name on the list, he may so testify. The fact that he

1 may not know who the person is does not preclude the tort claimants from  
2 asking the question.

3 3. Knowledge of the storage and disposition of records concerning those  
4 listed in No. 2.

5 No additional objections.

6 4. Whether personal practices in responding to reports of sexual  
7 misconduct by clergy have been consistent with the stated policy of  
8 the Roman Catholic Church, U.S. Conference of Catholic Bishops,  
9 and/or the assigned dioceses or Archdioceses.

10 Debtor is apparently satisfied with the tort claimant's explanation  
11 of what is meant by "personal practices."

12 The tort claimants may ask whether Archbishop Levada's personal  
13 practices in responding to reports of sexual misconduct by clergy,  
14 whether before or during his tenure as Archbishop of Portland, was  
15 consistent with the policies stated in the topic. They may not ask about  
16 Archbishop Levada's personal practices after he left the Archdiocese of  
17 Portland.

18 5. Discussions with other officials in the Archdiocese (other than  
19 attorneys representing you or the Archdiocese), the USCCE, other  
20 dioceses or archdioceses, the Congregation of the Doctrine of Faith,  
21 and/or the Congregation for the Clergy concerning the destruction of  
22 records concerning allegations of sexual misconduct by members of  
23 the clergy.

24 The tort claimants are precluded from asking Archbishop Levada about  
25 internal discussions he had while serving at the Congregation for the  
26 Doctrine of the Faith. They are not precluded from asking Archbishop  
Levada about discussions he may have had with representatives of the  
Congregation for the Doctrine of the Faith before or after his tenure  
with that Congregation that relate to the subject matter set out in the  
topic, as limited by my ruling on the general objections.

1 6. Information passed along to you by Archbishop Power or other  
2 officials of the Archdiocese upon your appointment as Archbishop of  
Portland concerning clergy accused of sexual misconduct.

3 Archbishop Levada objects to this topic of inquiry, arguing that the  
4 question was already asked and answered at his earlier deposition. That  
5 a question has been asked and answered in a separate deposition is not a  
6 basis for limiting the scope of this deposition.

7 7. Discussions of the Clergy Personnel Board, Cabinet, and other  
8 official Archdiocesan groups about or concerning clergy accused of  
9 misconduct, policies concerning the handling of complaints of sexual  
misconduct by clergy, and reassignment of clergy accused of sexual  
misconduct.

10 No additional objections.

11 8. Responsibilities of Archdiocesan personnel to investigate reports of  
12 sexual misconduct by clergy.

13 No additional objections.

14 9. Communication with, and training of, Archdiocesan clergy concerning  
15 responses to reports or observations of sexual misconduct by clergy.

16 No additional objections.

17 10. Former general counsel Robert McMenamin's advice concerning #9,  
18 *supra*. (Attorney-client privilege has been waived -- see In re  
19 McMenamin, 319 Or 609, 615 (1994) (Graber, J., dissenting)).

20 This topic was discussed above with regard to the topics for the  
21 other witnesses. The tort claimants may inquire about McMenamin's legal  
22 advice with regard to communication with, and training of, Archdiocesan  
23 clergy concerning responses to reports or observations of sexual  
24 misconduct by clergy, because there is no privilege for matters pertinent  
25 to the bar complaint.

26 11. Knowledge of communications in any form between representatives of  
the Debtor and the Holy See (including the Congregation of the  
Doctrine of the Faith and the Congregation for the Clergy), the  
Papal Nuncio, the USCCB and predecessor entities, and other dioceses  
or archdioceses concerning allegations of sexual misconduct against



1 individual clergy, as well as concerning the policies, practices,  
2 and procedures regarding the manner of responding to allegations of,  
3 or to any information suggesting, that a member of the clergy has or  
4 may have engaged in sexual misconduct.

5 This topic is not limited by the clergy privilege in Oregon. It is,  
6 however, limited to knowledge obtained or communications made during  
7 times other than when Archbishop Levada was at the Congregation for the  
8 Doctrine of the Faith, unless those communications related to general  
9 policies communicated to the wider church body, or relate to subjects  
10 that came up in contexts outside the Congregation for the Doctrine of the  
11 Faith.

12 12. Understanding of what Canons and religious doctrine governed  
13 Debtor's response to allegations of sexual misconduct by clergy.

14 Archbishop Levada argues that this topic seeks his expert opinion  
15 about canon law and religious doctrine. I agree, to the extent the topic  
16 relates to any time period other than when Archbishop Levada was  
17 Archbishop of Portland. His understanding of what canons and religious  
18 doctrine governed debtor's response when he was not the Archbishop of  
19 Portland would require him to give an expert opinion. He has not been  
20 retained as an expert, and need not answer questions seeking his expert  
21 opinion.

22 Questions about what canons and doctrine governed debtor's response  
23 to allegations of sexual misconduct by clergy while Archbishop Levada was  
24 Archbishop of Portland do not seek expert opinion. They are not seeking  
25 to determine what canon law or religious doctrine is, other than as it  
26 formed a basis for debtor's responses. The tort claimants may inquire  
27 into this topic, but limited to Archbishop Levada's tenure in Portland.

28 13. The hierarchy of the Archdiocese, including officials and other

1 persons responsible for assigning and reassigning clergy,  
2 disciplining clergy, transferring clergy, and responding to reports  
3 of sexual misconduct by clergy. Also, those officials and other  
4 persons responsible for recommending same to the Archbishop.

5 No additional objections.

6 14. Role in the presentation of the 1985 report prepared by Fr. Thomas  
7 Doyle, Fr. Michael Peterson, and attorney Ray Mouton to the  
8 Conference of Catholic Bishops, and the responses received by  
9 officials of that organization.

10 15. The discussions, preparations, and approval that went into the  
11 "Restoring Trust" publication of 1994 and the canonical procedures  
12 set forth therein.

13 16. The discussions, preparations, and approval that went into the  
14 "Essential Norms for Diocesan/Eparchial Policies Dealing with  
15 Allegations of Sexual Abuse of Minors by Priests or Deacons" in 2002  
16 and the canonical procedures set forth therein.

17 Archbishop Levada objects to Topics # 14, 15, and 16 on the grounds  
18 that they raise constitutional questions. I have rejected that argument  
19 in my discussion above.

20 He also objects because the topics are unrelated to the claims at  
21 issue in this case, which occurred at the latest in 1985. I have also  
22 rejected that argument, because information about debtor's policies and  
23 actions after the last alleged abuse could lead to discoverable evidence  
24 of what debtor's policies and knowledge were during the time the abuse  
25 was alleged to have occurred.

26 However, the topics do not simply relate to the existence of the  
referenced documents; they seek information about Archbishop Levada's  
involvement in creating or approving them. Because Archbishop Levada's  
pre-Portland conduct is relevant, I will allow the tort claimants to ask  
about the 1985 report. Because the 1994 "Restoring Trust" publication  
appears to have been produced while Archbishop Levada was in Portland,

1 they may also ask about that topic.

2 For the 2002 document, however, I have already said that Archbishop  
3 Levada's activities that post-dated his Portland tenure are not  
4 discoverable, unless they relate specifically to practices or policies  
5 that were communicated to or from the Archdiocese of Portland. The  
6 process that went into the approval of the 2002 document is unlikely to  
7 lead to admissible evidence on these tort claims. The tort claimants may  
8 not ask about the 2002 document, other than to ask if Archbishop Levada  
9 had any communications with the Portland Archdiocese about it and, if so,  
10 what that communication was.

11 17. The Archdiocese's policies and practices regarding reporting child  
12 abuse to civil authorities.

13 No additional objections.

14 18. The 1962 "Instruction About the Manner of Proceeding in Cases of the  
15 Crime of Solicitation," marked as Exhibit 2 (Latin) and Exhibit 3  
16 (English translation) during the April 7, 2004 deposition.

17 Archbishop Levada objects to this topic, because he testified at his  
18 earlier deposition that he had never seen the document. That is not the  
19 basis for precluding the topic. If he has not seen the document and has  
20 no information about or knowledge of it, he can so testify.

21 He also objects because the document has no connection to these  
22 claims or to Archbishop Levada's tenure in Portland. I have already held  
23 that Archbishop Levada may be asked about information or knowledge that  
24 pre-dated his tenure in Portland. According to debtor, the claims at  
25 issue in this litigation are based on conduct that occurred in the 1950s  
26 through the 1980s. Thus, a 1962 document relates to the time frame of  
the claims at issue here.

1 19. Assistance provided, and responses in general, to persons who  
2 reported sexual misconduct by clergy during your tenure as  
3 Archbishop of Portland.

3 No additional objections.

4 20. Policies, practices, and procedures regarding the maintenance,  
5 control, and purging of priest personnel and *sub secreto* files;  
6 whether those policies, practices, and procedures were consistent  
7 with those of the Roman Catholic Church, the USCCB (or its  
8 predecessor entities), and/or other dioceses and archdioceses; and  
9 adherence to such policies and procedures.

8 This topic is limited to information about Archbishop Levada's  
9 policies, practices, and procedures other than when he was at the  
10 Congregation for the Doctrine of the Faith. The tort claimants may ask  
11 whether the policies, practices, and procedures of debtor during the time  
12 Archbishop Levada was Archbishop of Portland were consistent with those  
13 of the Roman Catholic Church. They may not inquire about consistency for  
14 periods when he was not in Portland, as that would constitute an expert  
15 opinion.

16 21. The nature and scope of the oath of secrecy you took while working  
17 at the Congregation of the Doctrine of the Faith, and the role of  
18 "mental reservation" in adhering to that oath.

18 Because I have concluded that the tort claimants may not question  
19 Archbishop Levada about his activities at the Congregation for the  
20 Doctrine of the Faith, the nature and scope of any oath of secrecy he  
21 took for his work at the Congregation for the Doctrine of the Faith is  
22 not relevant to this litigation, and is not likely to lead to  
23 discoverable evidence.

24 As I held with regard to the other deposition witnesses, this does  
25 not preclude the tort claimants from asking whether answers to particular  
26 questions are influenced by Archbishop Levada's exercise of mental

1 reservation.

2 22. Your communication, or communication at your direction, with parish  
3 priests and/or other parish employees or representatives of parishes  
4 or schools when returning a priest who had been previously accused  
5 of sexual misconduct to a parish or school ministry or position.

6 No additional objections.

7 23. Your personal philosophy regarding clergy sexual misconduct, i.e.  
8 whether it is a spiritual or a criminal problem, and how it is best  
9 addressed.

10 Archbishop Levada argues that inquiry into his personal philosophy  
11 has no relevance to the pending claims. I agree. As I explained in  
12 ruling on the topics for the other witnesses, the question in these tort  
13 claims is what debtor knew and did with regard to sexual misconduct with  
14 minors by priests in an Archdiocesan ministry. Archbishop Levada's  
15 personal beliefs are not relevant, nor are they likely to lead to  
16 relevant evidence of what he, when he controlled debtor, knew or did.  
17 The tort claimants may ask what he did and why; they may not ask about  
18 his personal philosophy generally.

19 CONCLUSION

20 These depositions are for discovery purposes. The scope of  
21 discovery is much broader than the admissibility of evidence; a party is  
22 entitled to seek any information that might lead to admissible evidence.  
23 These particular depositions are for a limited purpose, however, which is  
24 to determine liability for the claims of sexual abuse of minors by  
25 Archdiocesan priests or other priests in the ministry of the Archdiocese  
26 of Portland. They are not for the purpose of gathering evidence for  
possible punitive damages for these claims, or for the purpose of  
gathering information unrelated to these claims that might be useful in

1 later claims against other church entities. The tort claimants have only  
2 a limited amount of time in which to question these pattern and practices  
3 witnesses. They should focus on the questions that would be most likely  
4 to lead to admissible evidence on the liability of the Archdiocese of  
5 Portland for these claims. The witnesses should provide answers to those  
6 questions, so long as the questions are limited as set out in this  
7 ruling.

8 ###

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10 cc: Erin Olson  
11 Kelly Clark  
12 Jeffrey Lena  
13 Tom Dulcich  
14 Jim Westwood  
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**FILED**

SEP 29 2005

Clerk of the Napa Superior Court

By: *Juan E. Pihl*  
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,  
COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, et al.

Defendants.

Case No.: 26-22191  
JCCP No. 4374

**RULING ON SUBMITTED MOTION TO  
COMPEL PRODUCTION OF DOCUMENTS**

Plaintiffs' Motion To Compel Production Of Documents came on for hearing on August 31, 2005. The court, having read and considered the papers and heard oral argument, took the matter under submission and now rules as follows:

Plaintiff's motion to compel production of documents is GRANTED in part and continued in part to allow for the production of an attorney-client privilege log.

Although defendants raised a number of objections when responding to plaintiffs' request for production of documents, they address only two of those objections in opposing plaintiffs' motion to compel: the penitential communication privilege and the attorney-client privilege, which the court will discuss in more detail below. As to the other objections not discussed by defendants, the court finds the objections are not well taken. The requested discovery requests

26-22191

1

EXHIBIT 4  
Page 1 of 5

are not overbroad, are relevant, and are not barred by *Serbian East Orthodox Diocese v. Milivojevic* (1976) 426 U.S. 696.

### 1. Penitential Privilege

Evidence Code section 1032 provides:

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

Defendants object to the production of a number of documents requested by plaintiffs on the ground that they are protected by the penitential communication privilege contained in Evidence Code section 1032. This court finds that the privilege does not apply to communications between the alleged abusers and the Judicial Committee. The evidence presented by both sides establishes that communications with the Judicial Committee do not fall within the scope of the privilege. First, it is clear that the Judicial Committee's purpose is to investigate sins for which disfellowship is a potential penalty. This is established not only by the deposition excerpts provided by plaintiffs, but by the Watchtower publication provided by defendants in connection with the objections to plaintiffs' evidence ("Judicial action is necessary only if a gross sin has been committed that could lead to disfellowshipping" p. 18.) Second, the privilege does not apply because the Judicial Committee was under no duty to keep the communications private. In fact, the evidence establishes that the Judicial Committee was required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters.

Because the penitential communication privilege does not apply, within 20 days defendants shall produce all documents for which it previously asserted this privilege.

### 2. Attorney-client privilege

Defendants have not produced a privilege log for those few documents they apparently claim are protected by the attorney client privilege. Neither the plaintiffs nor the court can adequately address the objection without a privilege log. Defendants shall serve a privilege log

on plaintiffs within 10 days. Plaintiffs may thereafter file and a supplemental brief addressing the log within 10 days. The court will then issue a written ruling on the matter.

Dated: 9/27/05

Raymond A. Guadagni  
Raymond A. Guadagni, Judge

EXHIBIT 4  
3 5

# WATCHTOWER

BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-3403, U.S.A. PHONE (718) 625-7922

March 14, 1997

CONFIDENTIAL

TO ALL BODIES OF ELDERS

Dear Brothers:

A matter of serious concern was addressed in the article "Let Us Abhor What Is Wicked," published in the January 1, 1997, issue of *The Watchtower*. This concern involves the purity of Jehovah's organization in these last days. It is our responsibility to protect the flock of God from these threatening influences.—Isa. 32:1, 2.

We wish to take necessary steps that will help protect the congregation, especially our children, from the unwholesome practices that are constantly worsening in the world. We are grateful that the truth has limited the spread of child sexual abuse in Jehovah's organization.

## WHO IS A 'KNOWN CHILD MOLESTER'?

What is child molestation? *Webster's Ninth New Collegiate Dictionary* defines "pedophilia" as "sexual perversion in which children are the preferred sexual object." (See "Questions From Readers" in *The Watchtower* of February 1, 1997, page 29.) Deuteronomy 23:17, 18 condemns such practices as "detestable." (See the footnotes to verses 17 and 18 in the *Reference Bible*. Also, it would be helpful to see the footnote on page 10 of the October 8, 1993, issue of *Awake!*) In harmony with these references, we are herein discussing sexual perversion in which children are the object of sexual abuse, including fondling by an adult. We are not discussing a situation wherein a consenting minor, who is approaching adulthood, has sexual relations with an adult who is a few years older than the minor. Rather, we are referring, for example, to situations in which it is established by a congregation judicial committee that an adult brother or sister has been guilty of sexually abusing a young child or has been sexually involved with a nonconsenting minor who is approaching adulthood.

Who is a known child molester? The January 1, 1997, *Watchtower* article "Let Us Abhor What Is Wicked" mentions on page 29 that a man "known to have been a child molester" would not qualify for privileges in the congregation. An individual "known" to be a former child molester has reference to the perception of that one in the community and in the Christian congregation. In the eyes of the congregation, a man known to have been a child molester is not "free from accusation" and "irreprehensible," nor does he have "a fine testimony from those on the outside." (1 Tim. 3:1-7, 10; 5:22; Titus 1:7) In view of his past, people in the community would not respect him, and the brothers might even stumble over his appointment.

EXHIBIT 5  
page 1 of 2

TO ALL BODIES OF ELDERS

March 14, 1997

Page 3

In your report please answer the following questions: How long ago did he commit the sin? What was his age at the time? What was the age of his victim(s)? Was it a one-time occurrence or a practice? If it was a practice, to what extent? How is he viewed in the community and by the authorities? Has he lived down any notoriety in the community? Are members of the congregation aware of what took place? How do they and/or his victim(s) view him? Has he ever been disfellowshipped, reprovved, counseled, or otherwise dealt with? If he has moved to another congregation, please identify the congregation to which he has moved. Was that congregation advised of his past conduct of child molestation, and, if so, when? [If you have not advised them, this should be done now, and you should send a copy of your letter to the Society in a "Special Blue" envelope.] This information should be sent to the Society along with any other observations that the body of elders has. Please send this to the Society in the "Special Blue" envelope so that the factors involved may be given due consideration; this information is not to be made available to those not involved.

Jehovah has been blessing the efforts of his people to get the vital Kingdom-preaching and disciple-making work done. Isaiah 52:11 states: "Keep yourselves clean, you who are carrying the utensils of Jehovah." We must be ever vigilant to demonstrate to Jehovah that we want to keep the organization he uses in these last days fit for this all-essential trust. May Jehovah bless your efforts to that end.

Your brothers,

*Watchtower B. V. Society*  
OF NEW YORK, INC.

P.S. to Body of Elders: A meeting of the body of elders should be arranged to read and discuss this letter together. This letter is confidential and should not be copied but should be kept in the congregation's confidential file. Elders should not discuss this information with others. It is provided so that you can appropriately apply the spirit of the Scriptural information in the January 1, 1997, *Watchtower* article "Let Us Abhor What Is Wicked."

CHIB... 5  
300... 303

To: Paul.J.LIPSCOMB@ojd.state.or.us; Kaempf, John  
Cc: Hartley Hampton; plaw@proaxis.com  
Subject: Mtn to Compel Hrg

Judge Lipscomb:

I look forward to visiting with the Court and Mr. Kaempf later this morning; all of the e-mail communication began after my office closed yesterday evening, and I have not had a chance to respond until now.

1. In our 9/25 conference call, the application of the Oregon Clergy Privilege was identified as the 'bottleneck' matter that needed to be addressed before any further meaningful discovery for Plaintiff could move forward. Your Honor expressed surprise that this was still an issue in light of the recent ruling in the Catholic abuse litigation. Nevertheless, the Court declined to provide an advisory opinion and instead set the matter for hearing (today). I indicated that I would come to Oregon, but Court suggested this matter be handled by phone.

2. Mr. Kaempf agreed in that conference call to provide his opposition and production on the following Monday (10/2), but on that Monday, Mr. Kaempf requested an extension to accommodate the schedule of his client's New York general counsel; I did not oppose his late filing which I received on 10/6.

3. Plaintiff's brief is barely 14 pages long; the first 5 pages provide background for the Court - only 2 pages of Plaintiff's brief refer to the Clergy Privilege. The length of the filing is due to the fact that I have attached the entire Catholic opinion though only a couple of references are cited. The other lengthy attachment is an excerpt out of their own book (the Flock Book) which is easy to read and attached for reference purposes.

4. The matter to be decided by this Court is simple: does OEC 506(2) protect the information. Plaintiff's brief says no; Defendants' brief says yes. Both of us rely on OFC 506(2) and the Catholic ruling.

It is Plaintiff's view that the matter is ripe

Gregory S. Love, Esq.

"Bullivant.com" made the following annotations on 10/12/06,  
08:39:28

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Please be advised that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended to be used by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

\*\*\*\*\*  
This e-mail is for the sole use of the intended recipient(s) and contains information belonging to Bullivant Houser Bailey, which is confidential and/or legally privileged. If you are not the intended recipient, you are hereby notified that any disclosure,





"Kaempf, John"  
 <John.Kaempf@bullivant.com>

10/12/2006 08:30 AM

To: kimberly.kauffman@ojd.state.or.us  
 cc:  
 bcc:  
 Subject: FW: Mtn to Compel Hrg (Grafmyer v. Jehovah's Witnesses - Case #06C15281)

-----Original Message-----

**From:** Kaempf, John  
**Sent:** Thursday, October 12, 2006 8:03 AM  
**To:** 'gslove@lovenorris.com'; Paul.J.LIPSCOMB@ojd.state.or.us  
**Cc:** Hartley Hampton; pilaw@proaxis.com  
**Subject:** RE: Mtn to Compel Hrg (Grafmyer v. Jehovah's Witnesses - Case #06C15281)

Judge Lipscomb: I respectfully disagree with Mr. Love. This is a significant issue of Oregon constitutional and evidentiary law, and it's not fair to my clients to have to respond to a 101-page reply memo in essentially one day. I am not familiar with the California appellate and trial court cases Mr. Love cites in his reply, including the lengthy California deposition transcript he attaches.

Also, Mr. Love concedes that the case is young, we have no trial date, and depositions are not set.

Moreover, I have a very involved General Counsel for the Church based in New York (Mario Moreno). He needs to review the 101-page reply and confer with me. He is currently unavailable, but we are set to meet later this week.

This is a big issue and I think my clients should have the chance to fully respond to the new arguments and authorities cited in the massive reply memo before the court rules. I don't see the need to rush this matter, as Mr. Love requests. A two-week extension seems fair.

Thank you.

John Kaempf  
 Bullivant Houser Bailey P.C.

-----Original Message-----

**From:** gregory love [mailto:gslove@airmail.net]  
**Sent:** Thursday, October 12, 2006 7:48 AM

OCT 25 2006

**FILED**

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER,

Plaintiff,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, and  
LANCASTER CONGREGATION OF  
JEHOVAH'S WITNESSES,

Defendants.

No. 06C15281

**DEFENDANTS' SUPPLEMENTAL  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS**

**INTRODUCTION**

In their Reply Memorandum, plaintiff's Texas lawyers now cite a California trial court decision to support their argument that the clergy privilege does not apply to the Church judicial committee and related records plaintiff seeks concerning the Church's investigation of sex abuse charges against one of its then-members, Jerry Crabb, who allegedly sexually abused plaintiff.

However, plaintiff ignores the fact that OEC 506, Oregon's clergy privilege, is broader than California's rule. Moreover, plaintiff seeks to obscure the key holding from Judge Perris in Oregon's federal bankruptcy court concerning the scope of OEC 506. Judge Perris, in the context of a childhood sex abuse action against a church, held that statements

1 made to a clergy member "in the furtherance of obtaining spiritual advice," or for the  
2 purpose of "providing spiritual advice," are privileged and exempt from discovery pursuant  
3 to OEC 506. In re Roman Catholic Archbishop of Portland in Oregon, 335 BR 815, 830, 836  
4 (Bankruptcy D Or 2005). This Court stated that this decision by Judge Perris regarding the  
5 scope of Oregon's clergy privilege, not a California trial court's interpretation of California's  
6 clergy privilege, would control.

7 Moreover, plaintiff ignores the fact that the Elders in the Jehovah's Witnesses Church  
8 acted in the capacity of spiritual advisers when investigating Jerry Crabb, as shown through  
9 the attached Declarations.

10 Plaintiff also ignores the fact that work product and attorney-client privileges apply to  
11 some of the documents at issue because they were prepared in anticipation of litigation after  
12 plaintiff's charges were made public and the defendant congregation's Elders sought legal  
13 advice from their legal department.

14 Plaintiff further concedes that defendants timely preserved their privilege objections,  
15 and that defendants produced dozens of discoverable documents requested by plaintiff.

16 Therefore, plaintiff's motion to compel production should be denied.

17 **COMMUNICATIONS MADE TO JEHOVAH'S WITNESSES' ELDERS ARE**  
18 **SUBJECT TO THE CLERGY PRIVILEGE.**

19 OEC 506(2) provides as follows:

20 A member of the clergy may not be examined as to any  
21 confidential communication made to the member of the clergy  
22 in the member's professional character unless consent to the  
23 disclosure of the confidential communication is given by the  
24 person who made the communication.

25 A "member of the clergy" is a minister of any church or religious denomination who  
26 is (1) authorized by the church to hear confidential communications, and (2) has the duty  
27 under church law to keep such confidential communications secret. (OEC 506(1)(b).) A  
28 "confidential communication" is a "communication made privately and not intended for

1 further disclosure except to other persons present in furtherance of the purpose of the  
2 communication.” (OEC 506(1)(a).)

3 **A. Elders are “Members of the Clergy” and Are Authorized to Listen to and**  
4 **to Initiate Spiritual Communications.**

5 Plaintiff does not dispute that Elders who are appointed to serve in congregations of  
6 Jehovah’s Witnesses are “members of the clergy” within the meaning of OEC 506. Thus, the  
7 issue is whether Elders are authorized to hear such spiritual communications.

8 As stated by Merton Campbell, who serves as an Elder in the Service Department at  
9 the U.S. Branch Office of Jehovah’s Witnesses, congregation Elders are “responsible for  
10 providing spiritual supervision to the congregations, which includes hearing confessions and  
11 other confidential communications made to them by members of the congregation who are  
12 seeking religious or spiritual advice or comfort.” (Declaration of Merton V. Campbell, ¶ 8;  
13 see also Declaration of Murray Morris, ¶ 5.)<sup>1</sup> The Elders are authorized to do so “by virtue  
14 of the Holy Scriptures and the Governing Body of Jehovah’s Witnesses.” (Declaration of  
15 Merton V. Campbell, ¶ 9; Declaration of Murray Morris, ¶ 5.)

16 Thus, as a matter of law and undisputed fact, Church Elders are “members of the  
17 clergy” who are “authorized by the church to hear confidential communications” within the  
18 meaning of OEC 506.

19 **B. Elders Have the Duty Under Church Law to Keep Confidential**  
20 **Communications Secret.**

21 Under the discipline, tenets, and religious beliefs of Jehovah’s Witnesses, an Elder  
22 who has heard a confidential communication “has a duty to keep such communications  
23 secret” within the meaning of OEC 506, and the failure to do so may be considered grounds  
24 for his removal as an Elder. (Declaration of Merton V. Campbell, ¶¶ 10, 21; Declaration of

25 \_\_\_\_\_  
26 <sup>1</sup> The Service Department Elders provide spiritual advice and guidance to congregation  
Elders in the United States.

1 Murray Morris, ¶ 6, 7, 8, 9.) This mandate of confidentiality encompasses any conversation  
2 an Elder has with a congregation member in which spiritual assistance or direction is sought  
3 or given. (Declaration of Merton V. Campbell, ¶ 19; Declaration of Murray Morris, ¶ 6, 7, 8,  
4 9.) This policy of confidentiality has been discussed numerous times in issues of *The*  
5 *Watchtower* (a magazine published by Jehovah's Witnesses), and is thus well-known both to  
6 Jehovah's Witnesses and to others who read this magazine. (Declaration of Merton V.  
7 Campbell, ¶ 21; Declaration of Murray Morris, ¶ 9; "Pay Attention to Yourselves and All the  
8 Flock", page 105.)

9 Also, Jehovah's Witnesses do not believe that confidential communications are  
10 limited solely to confessions. Rather, they "are encouraged to seek the spiritual assistance of  
11 the elders in a variety of life situations, [and they] view such discussions as confidential  
12 communications." (Declaration of Merton V. Campbell, ¶ 19.)

13 Thus, as a matter of law and undisputed fact, every confidential communication made  
14 to an Elder for spiritual purposes is protected by OEC 506. Plaintiff does not dispute this  
15 fact.

16 Rather, plaintiff attempts to mislead the Court into ruling that all communications at  
17 issue in this case were made to a "judicial committee," and that the privileges provided by  
18 OEC 506 do not apply to communications made to the Elders who comprise a "judicial  
19 committee." Plaintiff further misleads the Court by stating that the "California Supreme  
20 Court has Rejected Watchtower Defendants' Position," and that defendants' claim of  
21 privilege was "rejected when considered by the Oregon District Court." (Plaintiff's Reply at  
22 pp. 7, 10.) As shown below, plaintiff is wrong.

23 As for the court decision in California that plaintiff refers to, there is no such  
24 California Supreme Court or other California appellate court decision. There is a trial court  
25 ruling from Napa County, California, and the California Supreme Court and a California  
26 Appellate Court refused to hear the Church's interlocutory appeal. The Napa County trial

1 court ruling is based exclusively on the different evidentiary law of California. This  
2 California trial court ruling has no bearing on how an Oregon court should rule concerning  
3 the scope of OEC 506.

4 **COMMUNICATIONS MADE TO A JUDICIAL COMMITTEE ARE**  
5 **PRIVILEGED UNDER OEC 506.**

6 Plaintiff paints an incomplete and inaccurate picture of the Church's judicial  
7 committees. Plaintiff provides excerpts of deposition testimony given by James Whitney in  
8 Illinois in March 2004 to describe the judicial committee process. Notwithstanding the fact  
9 that the majority of citations to Mr. Whitney's testimony do not support plaintiff's assertions,  
10 Mr. Whitney is not qualified to provide testimony on such matters.

11 By his own statements, Mr. Whitney served as an Elder in the early 1980s for only 15  
12 to 18 months, at which point he was forced to resign when he "came forward and confessed"  
13 to being in a hotel room with a prostitute. (Exhibit 1 to Plaintiff's Reply at pp. 126: 6-14;  
14 123:2-124:18.) Mr. Whitney's limited experience as an Elder thus occurred a number of  
15 years (1) prior to the formation of a judicial committee in this case, (2) prior to plaintiff's  
16 alleged abuse by Jerry Crabb in 1991; and (3) prior to the publication of the book "Pay  
17 Attention to Yourselves and to All the Flock," pages of which plaintiff selectively provides  
18 in his Reply.

19 As explained below, spiritually motivated communications made to judicial  
20 committees are encompassed by OEC 506.

21 **A. Judicial Committees**

22 A judicial committee is comprised of at least three Elders who have been assigned by  
23 the congregation's Body of Elders to handle allegations of serious wrongdoing in the  
24 congregation. (Campbell Declaration ¶ 20.) The goal of judicial committees is to provide  
25 vital spiritual assistance "to those who have erred, with the hope of assisting them to regain  
26 their spirituality and relationship with God." (Campbell Declaration ¶ 15.) "Though the



1 elders hearing the case establish guilt or convince someone of wrongdoing, their *primary*  
2 interest is in *helping their Christian brother who has gone astray.*” The Watchtower,  
3 September 1, 1981, page 23, ¶ 9 (emphasis added); see also “Pay Attention to Yourselves  
4 and All the Flock”, p. 96 (“Your Aim Should Be to Help the Person. We want to help  
5 individuals to stay within Jehovah’s Spiritual Paradise”), page 105 (“Jehovah is a God of  
6 justice; he is merciful, kind, loving, and patient. (Ex. 34:6, 7; Ps. 37:28) As you deal with  
7 your brothers, imitate Jehovah in displaying these qualities.”), page 107 (The Elders serving  
8 on a judicial committee “must treat every person with impartiality at all times and *desire that*  
9 *the spiritually ill become well again*, since a failure in this regard is unjust and violates the  
10 law of love.”) (emphasis added), pages 108-109 (“The Judicial Committee. Other cases of  
11 serious wrongdoing require special attention by the elders *in order to determine what is*  
12 *needed to help the repentant wrongdoer and to preserve the spiritual health of the*  
13 *congregation.*”) (emphasis added).

14 Elders serving on a judicial committee may ask to meet with an individual concerning  
15 allegations of serious wrongdoing that have been made or, as is often the case, those who  
16 have erred approach the Elders on their own accord “to get help in becoming ‘healed,’  
17 regaining spiritual health and strength.” The Watchtower, July 15, 1972, page 437, ¶ 4.  
18 “Elders do not allow extraneous third parties to be a party to a confidential communication.”  
19 (Campbell Declaration ¶ 20.)

20 This is how matters were handled in the case at hand when Jerry Crabb met with the  
21 judicial committee. *No other person was present other than the three Elders who*  
22 *comprised the judicial committee.* (Declaration of Murray Morris, ¶ 13.)

23 **B. The Presence of More than One Elder Does Not Negate the Clergy**  
24 **Privilege.**

25 Plaintiff argues that confidential communications made to a judicial committee are  
26 not privileged because the “communications arising from the hearings of the accused do not

1 contemplate privacy with one person, but instead, by their very nature, require at least two to  
2 five people to be present and preside over the hearing.” (Plaintiff’s Reply, page 6, ¶ 3.) A  
3 plain reading of OEC 506, however, shows that plaintiff is wrong.

4       According to OEC 506(1)(a), a “confidential communication” means “a  
5 communication made privately and not intended for further disclosure *except to other*  
6 *persons present in furtherance of the purpose of the communication.*” (Emphasis added.)  
7 It is thus apparent that the Oregon Legislature contemplated that according to the beliefs and  
8 practices of some religions, such as those of Jehovah’s Witnesses, more than one minister  
9 may be called upon to act in the capacity of a spiritual advisor, and that there would be  
10 occasions where the presence of others would be necessary to further “the purpose of the  
11 communication.” Id.

12       There are no reported Oregon state or federal court decisions that have addressed this  
13 specific issue. Plaintiff cites the Roman Catholic Archbishop of Portland case to support his  
14 position that a judicial committee, by its “very nature,” cannot enjoy the privilege provided  
15 by OEC 506. However, the court’s focus in that case was on the role of the clergyman  
16 hearing a communication. It did not address the issue of OEC 506(1)(a)’s provision that  
17 “other persons” may be allowed to be present if their presence is in furtherance of the  
18 purpose of the communication.

19       Also, when this same issue has been specifically addressed, courts with a similar  
20 evidence code hold that the presence of more than one clergy member does not destroy the  
21 privilege. See State v. Martin, 975 P2d 1020, 1028 (Wash 1999) (“The privilege may be  
22 vitiated by the presence of a third person during communication between a penitent and a  
23 clergy member intended to be a confession *unless the third person is necessary for the*  
24 *communication or the third person is another member of the clergy.*”) (emphasis added);  
25 Grand Jury Investigation, 918 F2d 374, 386 (3<sup>rd</sup> Cir 1990) (recognition of the clergy privilege

26 ///

1 “depends upon whether the third party’s presence is essential to and in furtherance of a  
2 communication to a member of the clergy”).

3 **C. Judicial Committees are bound to keep communications confidential.**

4 Plaintiff next asserts that the clergy privilege does not apply to judicial committees  
5 because they “advocate evidentiary procedures with witnesses providing testimony and an  
6 appeals process, which hardly promotes the clergy’s duty to keep such communications  
7 secret.” (Plaintiff’s Reply, page 6, ¶ 3.)

8 The premise of plaintiff’s assertion, however, is flawed. Jerry Crabb did not appeal  
9 the decision of the judicial committee who handled the matter in question. (Declaration of  
10 Murray Morris, ¶ 14.) However, even if that were not the case, the question is not whether  
11 there was an appeal, but rather whether the elements of OEC 506 were complied with, and  
12 the answer is “yes.”

13 Contrary to plaintiff’s assertion, Elders who serve on judicial committees are charged  
14 with keeping the matter confidential. “Pay Attention to Yourselves and All the Flock” page  
15 105 (“Do not discuss private or judicial matters with members of your family, including your  
16 wife, or with others who are not involved. \*\*\* Be careful to *maintain confidentiality*.  
17 (emphasis in original)). An Elder “who reveals the contents of a confidential communication  
18 may be subject to removal.” (Declaration of Campbell, ¶ 21; Declaration of Murray Morris,  
19 ¶ 6, 7, 8, 9.)

20 On rare occasions, Elders may communicate *with other Elders* serving in the Branch  
21 Office’s Service Department *in order to receive spiritual guidance and advice as to how to*  
22 *apply the religious doctrine and procedures of Jehovah’s Witnesses* to issues of concern to  
23 the local congregation or individual members that they are unable to answer themselves.

24 ///

25 ///

26 ///

1 (Declaration of Merton V. Campbell, ¶ 13.)<sup>2</sup> Such communications between ministers is  
2 acceptable and privileged under OEC 506. See Roman Catholic Archbishop of Portland, 335  
3 BR at 830, 836 (clergymen cannot testify about communications that were made for “the  
4 purpose of obtaining or providing spiritual advice”).

5 The religious beliefs of both the congregation Elders and the Service Department  
6 Elders require that any such confidential communications that they may have with  
7 congregation Elders seeking spiritual advice be kept strictly confidential. (Declaration of  
8 Merton V. Campbell, ¶ 13.) Furthermore, the judicial committee member would provide  
9 these Elders with only the necessary details needed to receive this spiritual assistance and  
10 spiritual direction, and not the contents of the confidential communications they received.  
11 See OEC 511 (a privilege is waived only if one discloses “any significant part of the matter  
12 or communication. This section does not apply if the disclosure is itself a privileged  
13 communication.”); Declaration of Campbell, ¶¶ 8, 10, 12, 13, 19, 20, 21.

14 **D. The Clergy Privilege is Based on the Parties’ Expectation That the**  
15 **Communication Was “Made Privately and Not Intended for Further**  
16 **Disclosure,” Not on Who Initiated the Conversation.**

17 Plaintiff claims that the clergy privilege would not apply to members of a judicial  
18 committee because it is “an adversarial process,” and the Elders “are acting as investigators  
19 and judiciary, not as spiritual advisors providing spiritual comfort.” (Plaintiff’s Reply, page  
20 6, ¶ 3.)

21 As described more fully above, however, the role of a judicial committee *is* to provide  
22 spiritual comfort and support, with the aim of helping an erring Church member bring his life

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23 <sup>2</sup> Since a penitent would not know that an Elder would need to seek further spiritual advice  
24 from a Service Department Elder at the time of his communication, it cannot be said that he  
25 did not intend for the communication to remain confidential and not for further disclosure.  
26 This would be similar to a client calling his attorney for legal advice with the expectation that  
his attorney would be able to provide him with an answer to his question at the time of his  
call, only to later learn that his attorney needed to consult with another attorney in order to  
provide him with the proper advice. The communication is still privileged.

1 back into harmony with God's requirements. However, even if what plaintiff said is true,  
2 these confidential communications made to Elders serving on a judicial committee would  
3 still be privileged.

4 As explained in Roman Catholic Archbishop of Portland, whether the clergy privilege  
5 applies hinges on whether the "communications are made to a clergy person acting in the  
6 capacity of a spiritual advisor," or whether the communications were made "for the purpose  
7 of obtaining or providing spiritual advice, including confession," and not whether the  
8 penitent felt good or obtained "spiritual comfort" after the communications were made. As  
9 the Oregon Legislature recognized, the clergy privilege "allows and encourages individuals  
10 to fulfill their religious, emotional or other needs by protecting confidential disclosures to  
11 religious practitioners." (Conference Committee Commentary to OEC 506.) Sometimes, in  
12 order to fulfill a "religious need," Scriptural discipline must be rendered and accepted.

13 Plaintiff's narrow interpretation of OEC 506 would limit the clergy privilege to  
14 communications that are made to a priest waiting in his confessional box, or a minister or  
15 rabbi sitting alone in his church or synagogue office for a member to approach and make a  
16 confession. Even then, the clergyman's strong spiritual counsel or spiritual reproof that may  
17 be due under church law would not be privileged, according to plaintiff.

18 This is not what the Oregon Legislature intended, as can be seen from the express  
19 terms of OEC 506. That rule is silent regarding the additional factors or "requirements" that  
20 plaintiff asserts, such as the purpose of the confidential communication, the possible church  
21 discipline that may result from the communication, or even whether the penitent himself  
22 must initiate the communication.

23 Rather, OEC 506 requires only that the communication is (1) "made privately and not  
24 intended for further disclosure," and (2) to a member of the clergy who is "authorized or  
25 accustomed to hearing confidential communications" and who "has a duty to keep such  
26 communications secret." Defendants meet all of these requirements.

1 Thus, all confidential communications made to the judicial committee are protected  
2 from disclosure by OEC 506 because (1) the religious practices and beliefs of Jehovah's  
3 Witnesses require at least three Elders to be present during this spiritual process, and (2) the  
4 Elders on the judicial committee were acting as spiritual advisors, dispensing spiritual advice  
5 and direction.

6 Also, to arbitrarily limit the number of Elders allowed to hear a confidential  
7 communication simply because the religious doctrine is different than that of other religions  
8 would run afoul of the First Amendment to the U.S. Constitution and the related provisions  
9 of the Oregon Constitution. "Civil courts can no longer inquire into questions of church  
10 doctrine." Decker v. Berean Baptist Church, 51 Or App 191, 197 (1981).

11 **ELDERS CANNOT BE FORCED TO REVEAL THE CONTENTS OF A**  
12 **PRIVILEGED COMMUNICATION EVEN IF THE PENITENT WAIVES HIS**  
13 **PRIVILEGE .**

14 OEC 506 also provides that both parties to a penitential communication—the penitent  
15 and the clergy member—each have discrete privileges with respect to confidential  
16 communications. OEC 506(3) provides as follows: "Even though the person who made the  
17 communication has given consent to the disclosure, a member of the clergy may not be  
18 examined as to any confidential communication made to the member in the member's  
19 professional character if, under the discipline or tenets of the member's church \*\*\* the  
20 member has an absolute duty to keep the communication confidential."

21 As a result, a member of the clergy claiming the privilege may refuse to disclose a  
22 penitential communication as long as the clergyman has an absolute duty under the beliefs of  
23 his church to keep it confidential. Elders, therefore, cannot be required to reveal confidential  
24 communications that were made to them in their capacity as spiritual advisors—even if the  
25 penitent waives his privilege—since Elders in the Jehovah's Witnesses' Church are

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///



1 mandated to keep such communications secret, as discussed above. Also, there is no  
2 evidence that Jerry Crabb or anyone else has waived the privilege.<sup>3</sup>

### 3 PRIVACY RIGHTS OF THIRD PARTIES INVOLVED

4 Plaintiff misinterprets defendants' objections based on privacy rights. Defendants  
5 agree that Oregon statutory law does not provide for a "privacy privilege," and they do not  
6 assert that one exists. However, a right to privacy does exist *under the U.S. Constitution*.

7 Defendants have not asserted any privacy rights with regard to Jerry Crabb, the  
8 alleged abuser. Rather, defendants are concerned about the privacy rights of third parties  
9 who may have engaged in confidential communications with Church Elders, but have no  
10 connection to this lawsuit. Producing documents or revealing confidential communications  
11 that involve parties other than Jerry Crabb or plaintiff would violate their constitutional right  
12 to privacy. See Doe 2 v. Superior Court, 132 Cal App 4th 1504, 1520-1521 (Cal App 2005)  
13 (privacy rights of third parties may be asserted by a party to an action, and those third parties  
14 have an absolute right to be heard and to present their views on the matter).

### 15 COMMUNICATIONS PROTECTED BY THE CLERGY PRIVILEGE

16 Plaintiff further misleads the Court by implying that the only confidential  
17 communications at issue in this matter were made to a judicial committee. First, as shown  
18 above, OEC 506 protects confidential conversations that one has with a judicial committee.

19 Second, plaintiff is incorrect. The Church's Elders, acting as spiritual advisors, had  
20 the following *additional* types of communication:

- 21 1. An Elder serving as a spiritual advisor spoke with a congregation member;
- 22 2. Two Elders serving as spiritual advisors spoke with a congregation member;

23 ///

24 \_\_\_\_\_  
25 <sup>3</sup> Regarding plaintiff's reference on page 3 of his Reply to the Church's policy to mark child  
26 abuse records "do not destroy," that policy did not go into effect with the Watchtower  
defendants until 1997, and did not go into effect with Church congregations until 1998. This  
was several years after the alleged abuse of plaintiff by Jerry Crabb in 1991.

1 3. The Elders sought spiritual advice from fellow Elders working at the U.S.  
2 Branch Office of Jehovah's Witnesses; and

3 4. Three Elders acting as a judicial committee spoke with a congregation  
4 member.

5 Each of these communications was for the purpose of either (1) providing spiritual  
6 assistance, or (2) for the purpose of seeking spiritual advice. Therefore, they are privileged.

7 See Roman Catholic Archbishop of Portland, 335 BR at 830, 836.

8 **COMMUNICATIONS PROTECTED BY THE ATTORNEY-CLIENT AND**  
9 **WORK PRODUCT PRIVILEGES**

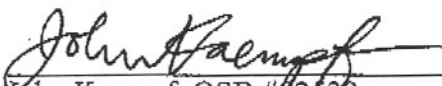
10 In addition, communications were made by Church Elders to the Legal Department at  
11 the U.S. Branch Office of Jehovah's Witnesses, in which the Elders were seeking legal  
12 advice. As such, these communications, and notes documenting such communications, are  
13 protected from discovery by Oregon's attorney-client privilege as codified in OEC 503.

14 They are also covered by the work product privilege contained in ORCP 36B(3).

15 Finally, if the Court is not inclined to rule that the above-described communications  
16 and documents are privileged under OEC 506 and OEC 503, the Court should perform an *in*  
17 *camera* inspection of the subject documents.

18 DATED: October 24, 2006.

19 BULLIVANT HOUSER BAILEY PC

20  
21 By   
22 John Kaempf, OSB #02639  
E-mail: john.kaempf@bullivant.com

23 Attorneys for Defendants  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER,  
  
Plaintiff,  
  
v.  
  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, and  
LANCASTER CONGREGATION OF  
JEHOVAH'S WITNESSES,  
  
Defendants.

No. 06C15281  
  
**DECLARATION OF MERTON V.  
CAMPBELL**

I, Merton V. Campbell, testify as follows:

1. I am over 18 years of age, of sound mind, and am competent to make this Declaration. I have personal knowledge of the matters contained herein, and they are all true and correct.
2. I have served as an Elder in the Jehovah's Witnesses Church since 1972.
3. Since 1952, I have served in the Service Department at the U.S. Branch Office of Jehovah's Witnesses in New York. I provide spiritual assistance to congregation Elders who call or write the Service Department for help. Prior to March 2001, the spiritual assistance provided by the Service Department, along with the appointment of Elders, was

1 communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and  
2 Tract Society of New York, Inc. Since March 2001, this has been communicated through the  
3 Christian Congregation of Jehovah's Witnesses.

4 4. My duties in the Service Department also include monitoring the functioning,  
5 organization, and staffing of congregations of Jehovah's Witnesses, including reviewing the  
6 qualifications for the appointment of Elders to congregations of Jehovah's Witnesses in the  
7 United States.

8 5. Jehovah's Witnesses are not automatically appointed to serve as congregation  
9 Elders. Rather, they must first meet certain qualifications that are outlined in the Bible as  
10 follows: Before a male member of the congregation can be considered for appointment as a  
11 congregation Elder, he must first be baptized as one of Jehovah's Witnesses. Next, the  
12 individual must gain further knowledge of the Holy Scriptures and show a willingness to be  
13 used in a further way to assist others in the congregation. If he shows such a willingness, he  
14 must then meet Scriptural qualifications set out in 1 Timothy 3:8-13. Thereafter, he may  
15 qualify and be appointed as a ministerial servant. Although a ministerial servant would not  
16 provide spiritual supervision in the congregation, he could be assigned certain tasks to assist  
17 the congregation Elders as they carry out their duties. After a period of time—perhaps many  
18 years—a ministerial servant who has faithfully carried out his assignments and has gained  
19 more experience may meet the qualifications of a congregation Elder as outlined in 1  
20 Timothy 3:1-7 and Titus 1:6-9. When this occurs, the congregation Elders will make this  
21 recommendation to the circuit overseer (a representative of the Branch Office). If the circuit  
22 overseer agrees with the recommendation, it will then be forwarded to the Branch Office's  
23 Service Department. Approved Elders in the Service Department will then review the  
24 recommendation in accord with the guidelines outlined in the Holy Scriptures adopted by the  
25 Governing Body of Jehovah's Witnesses. The Branch office will then inform the local  
26 congregation's body of Elders, in writing, of their determination with regards to the

1 recommendation.

2 6. If an individual is appointed to serve as a congregation Elder, the letter of  
3 appointment from the Branch Office is read to the congregation. It is at this time that he is  
4 officially vested with ministerial authority. In other words, he is appointed as a congregation  
5 Elder.

6 7. Jehovah's Witnesses who serve as appointed Elders are recognized as ordained  
7 ministers and congregation Elders.

8 8. Like Jesus and his apostles, congregation Elders do not receive a salary for  
9 their ministerial work. Nonetheless, as ordained ministers and congregation Elders, they are  
10 responsible for providing spiritual supervision to the congregations, which includes hearing  
11 confessions and other confidential communications made to them by members of the  
12 congregation who are seeking religious or spiritual advice or comfort.

13 9. Congregation Elders are authorized to hear confessions and other private,  
14 confidential communications and to provide confidential spiritual guidance and counsel by  
15 virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses.

16 10. According to the religious beliefs and practices of Jehovah's Witnesses,  
17 congregation Elders are expected to keep confession and other confidential communications  
18 confidential. An Elder who reveals such a confession or communication, without the express  
19 permission of the one making the confession or communication, may be disqualified from  
20 serving as an Elder.

21 11. All Elders of the Lancaster congregation are now, and were at all times  
22 relevant to this case, ordained ministers and the spiritual leaders of those congregations.

23 12. As with all congregations of Jehovah's Witnesses, the Lancaster Elders  
24 frequently provide spiritual counsel and advice to members of the congregation concerning  
25 highly confidential personal and spiritual matters

26 13. In addition, at all times relevant to this case, the Lancaster Elders occasionally

1 communicated with Elders serving in the Branch Office's Service Department in order to  
2 receive spiritual guidance and advice as to how to apply the religious doctrine and  
3 procedures of Jehovah's Witnesses to issues concerning the congregation and its members,  
4 as well as Elders serving as circuit or district overseers. As discussed more fully below, the  
5 religious beliefs of these Elders also require that any confidential communications that they  
6 have with congregation Elders must be kept strictly confidential. The spiritual guidance and  
7 advice given by the Elders serving in the Service Department is based on Jehovah's  
8 Witnesses' understanding of the Bible.

9 14. The elders of congregations of Jehovah's Witnesses are also responsible for  
10 conducting what are referred to as "judicial investigations" when a member of a  
11 congregation is accused of serious Scriptural wrongdoing.

12 15. The goal of a judicial investigation is to make certain that the Christian  
13 congregation remains spiritually and morally clean. (James 1:26) In doing so, the Elders  
14 endeavor to provide vital assistance to those who may have erred, with the hope of assisting  
15 them to regain their spirituality and relationship with God. (Galatians 6:1, 2) At times, a  
16 judicial committee will determine that an accused person should be disciplined internally  
17 based on Jehovah's Witnesses' understanding of the Bible.

18 16. Judicial discipline administered by Elders of Jehovah's Witnesses is based  
19 solely on Jehovah's Witnesses' understanding of the Bible as applied to the facts of the  
20 matter.

21 17. Jehovah's Witnesses recognize the Bible's admonition to confess one's sins to  
22 God. (1 John 1:8, 9 ("If we confess our sins, he is faithful and righteous so as to forgive us  
23 our sins and to cleanse us from all unrighteousness."))

24 18. In addition, Jehovah's Witnesses believe that there can be much benefit from  
25 speaking to the congregation Elders ("older men") regarding such confidential matters.  
26 (James 5:13-16 ("Is there anyone suffering evil among YOU? Let him carry on prayer. Is



1 there anyone in good spirits? Let him sing psalms. Is there anyone sick among YOU? Let  
2 him call the older men of the congregation to [him], and let them pray over him, greasing  
3 [him] with oil in the name of Jehovah. And the prayer of faith will make the indisposed one  
4 well, and Jehovah will raise him up. Also, if he has committed sins, it will be forgiven him.  
5 Therefore openly confess YOUR sins to one another and pray for one another, that YOU  
6 may get healed.”.) Jehovah’s Witnesses view confessions as confidential communications.  
7 (Proverbs 25:9.)

8 19. Jehovah’s Witnesses do not believe that the confidentiality of communications  
9 they may have with the congregation Elders is limited to confessions. Rather, as outlined in  
10 James 5:13-16, Jehovah’s Witnesses are encouraged to seek the spiritual assistance of the  
11 elders in a variety of life situations. Jehovah’s Witnesses view all such discussions as  
12 confidential communications.

13 20. Elders do not allow extraneous third parties to be a party to a confidential  
14 communication. However, at times, more than one Elder may be a party to the conversation.  
15 For instance, it is Jehovah’s Witnesses’ religious belief and practice to have at least three  
16 Elders present during judicial committee hearings. (Deuteronomy 17:6; Deuteronomy 19:15;  
17 Matthew 18:15-17; 2 Corinthians 13:1; 1 Timothy 5:19) Before one becomes one of  
18 Jehovah’s Witnesses, he is made aware of this provision. *Your Word Is a Lamp To My Foot*,  
19 pages 176-79; *Organization for Kingdom-Preaching and Disciple-Making*, pages 159-65;  
20 *Organized to Accomplish Our Ministry*, pages 145-47; *Organized To Do Jehovah’s Will*,  
21 pages 151-2. In addition, there may be instances where a husband and wife, or a parent and  
22 child, may together seek or would be provided with spiritual advice or consolation from the  
23 Elders. All participants to these conversations also view these conversations as confidential.

24 21. In addition, the religious doctrine of Jehovah’s Witnesses requires that all  
25 Elders keep these matters confidential. *The Watchtower*, April 1, 1971, pages 222-224;  
26 *Kingdom Ministry*, July 1975; *The Watchtower*, December 15, 1975, pages 764-66; *The*

1 *Watchtower*, September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages  
2 10-15; *The Watchtower*, September 1, 1991, pages 22-27; *The Watchtower*, November 15,  
3 1991, pages 19-23. Indeed, an Elder who reveals the contents of a confidential  
4 communication may be subject to removal.

5 I hereby declare that the above statement is true to the best of my knowledge and  
6 belief, and that I understand it is made for use as evidence in court and is subject to penalty  
7 for perjury.

8 DATED: October 23, 2006.

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10 By Merton V. Campbell  
Merton V. Campbell

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER,  
Plaintiff,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, and  
LANCASTER CONGREGATION OF  
JEHOVAH'S WITNESSES,  
Defendants.

No. 06C15281

**DECLARATION OF MURRAY  
MORRIS**

I, Murray Morris, testify as follows:

1. I am over 18 years of age and reside in Salem, Oregon. I am of sound mind, and am competent to make this Declaration. I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I am a duly ordained minister and Elder of the Oak Park Congregation in Salem, Oregon, and was a duly ordained minister and Elder of the Lancaster Congregation in Salem, Oregon.

3. I am thoroughly familiar with the religious beliefs, teachings, practices, and organization of Jehovah's Witnesses.

1 4. Duly ordained ministers of Jehovah's Witnesses responsible for teaching and  
2 pastoral care of congregation members are called "Elders."

3 5. It is a religious belief and practice of Jehovah's Witnesses based on God's  
4 Word, the Bible, that an Elder has a responsibility to provide spiritual counseling to those  
5 who seek it, and that any person who needs spiritual help should approach the congregation  
6 Elders and convey to them whatever information may be needed to provide this assistance.  
7 (Isaiah 32:2; James 5:14-16; Hebrews 13:17.)

8 6. It is the religious belief and practice of Jehovah's Witnesses, based upon  
9 Scripture and tradition, that Elders must maintain in strict confidence any communications  
10 connected with spiritual counseling, and congregants expect their communications to Elders  
11 will remain confidential. (Proverbs 15:22; 25:9, 10.)

12 7. Revealing such confidential communications would call into question an  
13 Elder's qualifications and could result in his removal as an Elder in the congregation.

14 8. If I or any other Elder is compelled to disclose such confidential information,  
15 my credibility and effectiveness as an Elder, as well as the credibility and effectiveness of the  
16 other Elders in the congregation, would be adversely affected and compromised since  
17 congregants will no longer be able to trust and rely that problems and confidential  
18 information they disclose to Elders will not be revealed through discovery and used in a  
19 court action.

20 9. The requirement of keeping communications to Elders confidential is  
21 explained in the official publications of Jehovah's Witnesses as follows:

22 In each congregation of Jehovah's witnesses there are  
23 mature ministers appointed to care for various assignments. (1  
24 Tim. 3:2, 12) As they discharge their duties they often are told  
25 about confidential things, and it is essential that they respect this  
26 confidence. For instance, James 5:13-16 shows that a member  
of the congregation who has some spiritual problem, perhaps  
even having committed a sin, should go to the spiritually older  
men for help. Isaiah 32:2 prophetically pictured these men as  
places of comfort and protection. What a fine thing it is to be  
able to explain one's problem and get balanced spiritual help,

1 and at the same time have full confidence that the matter will  
2 not become general knowledge in the congregation or  
community.

3 Those mature ministers will not discuss even with their  
4 wives and close friends what they thus learn in confidence.  
5 They know that if they did so it would undermine respect for  
6 their positions; it would make individuals hesitant to come to  
them; yes, in time it might even make it impossible for them to  
fulfill their role as spiritual shepherds.

7 *The Watchtower*, April 1, 1971, p. 223.

8 10. It is also the religious belief and practice of Jehovah's Witnesses, based upon  
9 Scripture and church tradition, to keep confidential the congregation files, papers, reports,  
10 minutes, and other documents prepared in conjunction with, or as a result of, the above-  
11 described confidential communications.

12 11. If any Elder is compelled to produce any papers, reports, minutes, or other  
13 documents prepared in conjunction with or as a result of the above-described confidential  
14 communications, the credibility and effectiveness of Elders in the congregation will be  
15 adversely affected and compromised, and the confidentiality of the oral and written  
16 communications will be rendered worthless.

17 12. I was one of the three Elders who served on Jerry Crabb's judicial committee  
18 in June 1991.

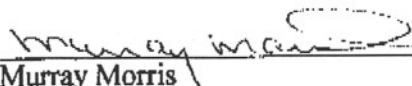
19 13. When Jerry Crabb met with the judicial committee, no other person was  
20 present other than the three Elders who comprised the judicial committee.

21 14. Jerry Crabb did not appeal the decision of the judicial committee in his case.

22 I hereby declare that the above statement is true to the best of my knowledge and  
23 belief, and that I understand it is made for use as evidence in court and is subject to penalty  
24 for perjury.

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DATED: 9/24/06, 2006.

By   
Murray Morris




**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2006, true copies of the foregoing  
**DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS,  
DECLARATION OF MERTON V. CAMPBELL and DECLARATION OF MURRAY  
MORRIS** were served on plaintiff's attorneys by e-mail.

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Nelson & MacNeil  
213 Water Ave NW, Ste 100  
PO Box 946  
Albany, OR 97321

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Attorneys for Plaintiff

  
\_\_\_\_\_  
John Kaempf

Of Attorneys for Defendants

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STATE OF OREGON  
Marion County Circuit Courts  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER	)	CASE NO. 06C15281
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, and LANCASTER CONGREGATION OF JEHOVAH'S WITNESSES,	)	PLAINTIFF'S RESPONSE TO DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS
Defendants.	)	Oral Argument Set: 10-31-06, 9:00 a.m.

INTRODUCTION

Plaintiff's requests seek the production of information including documents related to the Judicial Committee that investigated Plaintiff's sexual abuser, Larry Crabb, and disfellowshipped Crabb from the organization as a result of the abuse. On October 10, 2006 Plaintiff filed his Reply Memorandum that described Judicial Committee communications and compared it to the analysis made by the Honorable Elizabeth L. Perris, United States District Court for the District of Oregon, in *In Re: Roman Catholic Archbishop of Portland in Oregon et al* (Bankruptcy Case No. 04-37154-e1p11).

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1 In their Supplemental Memorandum, however, the Watchtower Defendants  
2 argue that Plaintiff is misleading the Court and misconstruing Judge Perris' analysis  
3 and holdings. Defendants begin by attempting to do in Oregon exactly what failed in  
4 Texas and twice failed in California: characterize communications as privileged  
5 'spiritual advice' that clearly are not.

#### 6 JUDICIAL COMMITTEES

7 With respect to the dispute between the parties as to what Judge Perris  
8 communicated in the above-mentioned opinion, it is Plaintiff's position that  
9 Defendants are simply wrong and are attempting to distort the ruling, while they also  
10 distort the description of the Judicial Committee process. Plaintiff is confident the  
11 Court needs no further discussion about the meaning of Judge Perris' ruling. Plaintiff  
12 will, however, provide the Court with some additional information about Judicial  
13 Committees so the Court will clearly understand how Defendants are attempting to  
14 recast as 'spiritual advice' a procedure which is judicial, investigative, administrative  
15 and adversarial.

#### 16 All Congregations Operate the Same

17 Before providing additional information regarding Judicial Committees,  
18 however, it is important for the Court to note that all Jehovah's Witnesses  
19 congregations in the United States operate the same; every congregation in the  
20 United States relies upon the same instructions, directions, materials and forms.  
21 [Deposition transcript of Leroy Reid, pg. 30, attached hereto as Exhibit H.]

#### 22 Examples of Judicial Committee Documents

23 Defendants continue to make the assertion that the information sought is  
24 'spiritual advice' and is protected. In response to Plaintiff's request for a privilege log,

1 Watchtower Defendants refused and cited Oregon authority that they were not  
2 required to do so. [Defendants Opposition pg. 4].

3 To help the Court better understand the type of information being requested  
4 AND the fact that Judicial Committee communications are not the type of  
5 communications intended to be protected, Plaintiff has attached the Judicial  
6 Committee documents from the California case styled *Tim W. v. Watchtower Bible and*  
7 *Tract Society of New York et al*; Case No. 52594; in the Superior Court of the State of  
8 California for the County of Tehama. These are documents the Watchtower  
9 Defendants claimed were protected 'spiritual advice' under the equivalent California  
10 privilege. It is clear from the documents attached hereto as Exhibit A that Judicial  
11 Committee proceedings are not the types of communication that the Oregon  
12 Evidence Code intended to protect; the purpose is investigative, judicial,  
13 administrative and adversarial.

14 The attached Judicial Committee documents are typical of materials that are  
15 required to be created by the instructions, manuals, forms and directions to every  
16 congregation, including Defendant Lancaster Congregation. The materials describe  
17 investigations and matters relating to the molestation of children and how the  
18 accused needs to be removed from the organization because he was a danger to the  
19 children in the congregation and the community. These are the types of documents  
20 sought in this case. These materials are not the type of confessional notes  
21 contemplated by OEC 506.

22 The assertion that these documents were privileged in California – in a  
23 congregation that operated with identical procedures with identical instructions as the  
24 Lancaster Congregation – was rejected by the Napa Court. Defendants' application

25 Page 3. Plaintiff's Response to Defendant's Supplemental Memorandum...  
Grafmyer v. Watchtower et al.

1 for writ at both the California Court of Appeal and the California Supreme Court  
2 were refused without Plaintiffs even being asked for briefing. (Attached hereto as  
3 Exhibit I and Exhibit J)

4 Additionally, the Napa Court was again asked to rule on the Clergy Privilege  
5 in connection with Judicial Committee documents earlier this month. On October 16,  
6 2006, the Napa Court again rejected the Watchtower Defendants' attempt to couch  
7 the Judicial Committee communications as 'spiritual advice' involving 'spiritual  
8 advisors'. (Attached hereto as Exhibit G)

9 In the case styled *Amy. B. v. Watchtower Bible and Tract Society of New York et al.*,  
10 No. 91,048-C in the District Court of Potter County, Texas, 251<sup>st</sup> Judicial District, on  
11 file in Amarillo, Texas, the trial court also rejected a claim of privilege (Rule 505) in  
12 connection with the judicial investigations and Judicial Committee of a child sexual  
13 abuser. [Letter ruling attached hereto as Exhibit B; see page 2 "Documents Withheld  
14 Under Tex. R. Civ. Evid. 505"]

15 **Judicial Committee matters are NOT privileged – by definition**

16 No one disputes the fact that judicial investigations and Judicial Committees  
17 are made up of more than one elder. The purpose of the privilege was to provide  
18 protection to those spiritually burdened who can confess matters to a clergyman – in  
19 the presence of no third person. As seen in the attached documents and by the  
20 instructional materials discussed below and in Plaintiff's original Memorandum, the  
21 three elders are required to investigate matters and report this information to sister  
22 congregations and the Watchtower headquarters in Brooklyn, New York.  
23 Defendants try to get around this by claiming that the recipients in other  
24 congregations and in Brooklyn are also 'ordained' elders and are simply part of the

25 Page 4. Plaintiff's Response to Defendant's Supplemental Memorandum...  
Grafmyer v. Watchtower et al.

1 confessional/spiritual advice process. This position mocks OEC 506; Defendants  
2 simply attempt to reshape the privilege to accommodate the administrative practices  
3 of the Jehovah's Witnesses organization.

4 **Judicial Committee matters are NOT privileged – by function**

5 Defendants' Response and the affidavit of Merton V. Campbell indicate that  
6 judicial investigations are performed when a "member of the congregation is *accused*  
7 of a serious Scriptural wrongdoing;" this is not a situation where someone is seeking  
8 'spiritual advice'. Little more is offered by Mr. Campbell as to the character of judicial  
9 investigations and Judicial Committee proceedings. These communications occur  
10 when one is *accused*, which is not the type of communication protected by OEC 506  
11 and Oregon case law.

12 Another important issue on which the Court should focus is who *initiates*  
13 judicial investigations and judicial committees. In contrast to a private on-one-one  
14 confessional meeting initiated by one who may be in need of spiritual comfort and  
15 advice, judicial investigations and judicial committees are initiated by the  
16 congregation elders against one accused of wrongdoing. The purpose is to discipline  
17 and protect the organization. (See Whitney deposition excerpts attached as Exhibit 1  
18 to Plaintiff's prior Reply Memorandum.) The issue of who initiates the judicial actions  
19 is not addressed by Defendants.

20 In other forums, elders who have participated in judicial investigations or  
21 judicial committees have described the judicial investigations and judicial committees  
22 as confrontational, accusatory and adversarial; the goal of the judicial committee is to  
23 discipline. Each of the following witnesses were former or present Jehovah's  
24 Witnesses elders who served in Judicial Committees using the identical directions,

25 Page 5. Plaintiff's Response to Defendant's Supplemental Memorandum...  
Grafmyer v. Watchtower et al.



1 forms and instructional materials as the Defendant Lancaster Congregation; each of  
2 the witnesses were presented as hostile to Plaintiffs and were represented by counsel.  
3 The Court should keep in mind that all congregations are set up to operate  
4 identically.

5 **1. Curtis Hail – Tyler, Texas**

6 At the time of his deposition, Curtis Hail had been an elder in east Texas for  
7 over 30 years and had been involved in judicial investigations and judicial committees  
8 many times; Mr. Hail gave testimony in the case styled *Kaleena S. et al v. Watchtower*  
9 *Bible & Tract-Society of New York et al* (Cause No. 03-2368-C/B in the 114<sup>th</sup> Judicial  
10 District Court in and for Smith County, Texas). Mr. Hail testified, in part, as follows:<sup>1</sup>

11 **Q. Mr. Hail, you were telling me about the procedure for the disciplinary**  
12 **system within the Jehovah's Witnesses. You've gone – as an elder for**  
13 **30 years, you've been involved in this many times, I'm sure.**

14 **A. Yes.**

15 **Q. You're well familiar with the procedure?**

16 **A. Right.**

17 **Q. Now, I think the first thing you said – let me go back through it and**  
18 **make sure I understand it. If there's an allegation of wrongdoing**  
19 **made to – brought to the elders's attention, do – is the first step that**  
20 **two elders will be assigned to investigate?**

21 **A. Yes**

22 **Q. The body of elders discusses the allegation of wrongdoing and**  
23 **chooses two elders to investigate?**

24 **A. They choose two elders.**

25 **Q. Okay. And then what do these elders do to investigate?**

---

24 <sup>1</sup> Hail Deposition excerpts attached hereto as Exhibit “    ”; page 97 line 6 through page  
25 98 line 5; page 99 lines 9-10; page 126 line 6 through page 127 line 13.

- 1 A. They go talk to the individual who the allegation is brought against  
and see if it's true -
- 2 Q. Okay.
- 3 A. - and talk to him. A serious sin like that, of course, would be  
4 something that could be - it would have to be a sin that would cause  
disfellowship for a judicial committee to be set up.
- 5 Q. Okay. Well let's assume that's what we're talking about. We're -
- 6 A. All right.
- 7 Q. - talking about a serious sin. Okay. So the two - the two elders  
8 chosen to investigate would go talk to the person who was accused.
- 9 A. Right.
- 10 Q. And you've been on a judicial committee?
- 11 A. Right.
- 12 Q. When a judicial committee - strike that.  
13 When two elders are appointed to investigate a gross sin - is that the  
14 word you used, a gross sin?
- 15 A. Or any - any violation of Bible law.
- 16 Q. Okay. They initiate the contact with the accused person?
- 17 A. Correct.
- 18 Q. Their - they have a conversation with him that is part of the  
investigation process?
- 19 A. Correct.
- 20 Q. The conversation is in their role as investigating this accusation?
- 21 A. Correct.
- 22 Q. His appearance is as an accused in a judicial setting?
- 23 A. Correct. Uh-huh. Yes.
- 24

1 Q. The dialogue that takes place is just like – it’s a lot like what we’re  
2 doing here today.  
3 A. Right.  
4 Q. It’s adversarial. Right?  
5 A. Correct.  
6 Q. With the judicial committee on one side and him defending himself.  
7 True?  
8 A. The accusation is brought and made clear to him.  
9 Q. Right.  
10 A. – Then depending on his attitude –  
11 Q. Right.  
12 A. – what takes place.  
13 Q. And he’s in a defensive posture?  
14 A. Yes.

14 Excerpts of Curtis Hall deposition transcript is attached hereto as Exhibit C.

15 2. Larry Kelley – Amarillo, Texas

16 Before being disfellowshipped twice for child sexual abuse, Larry Kelley was  
17 an elder in the Dumas Congregation in Dumas, Texas. Kelley is presently a  
18 defendant in the case styled *Amy B. v. Watchtower Bible and Tract Society of New York et*  
19 *al* (Cause No. 91,048-C in the 251<sup>st</sup> Judicial District Court of Potter County, Texas). In  
20 his deposition, Mr. Kelley testified, in part, as follows:

21 Q. The administrative or business side of the elders’ job would, from time  
22 to time, include disciplining members of the congregation who  
23 committed misconduct?

24 See Kelley deposition excerpts attached hereto as Exhibit “\_\_”; page 71 lines 16-21;  
25 page 72 line 14 through page 73 line 8; page 74 line 13 through page 1; page 75 lines 9-12; page  
76 lines 8-15.

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Phones: (541) 928-9147

1 Mr. Jones. Object to form.  
Mr. Spriggs: Object to form

2 A. Yes.

3 ...

4 Q. Okay. Well, one thing for sure is that the function of investigating  
5 reports of misconduct within the congregation are handled by what's  
6 called judicial committees; is that true?

6 Mr. Jones. Object to form.  
Mr. Spriggs. Object to form.

7 A. Yes.

8 Q. And if the admin - if a judicial committee investigates misconduct and  
9 imposes discipline, again, that function is in the administrative  
10 capacity of the elders, correct?

10 Mr. Jones. Object to form.  
11 Mr. Spriggs. Object to form.

12 A. Yes.

13 Q. Did you ever serve on a judicial committee?

14 A. Yes.

14 ...

15 Q. When you served on judicial committees and you met with the accused,  
16 it was the judicial committee that initiated the meeting, was it not?

17 A. Yes -

18 Mr. Spriggs: Object to form. You still can answer.

19 A. Yes.

20 Q. And that was in the context of investigating the allegations, true?

21 A. Yes.

21 ...

22 Q. And when you met with the accused, the meeting was a confrontational  
23 meeting, wasn't it?

24 Mr. Spriggs: Object to form.

25 Page 9. Plaintiff's Response to Defendant's Supplemental Memorandum...  
Grafmyer v. Watchtower et al.

1 A. Sometimes.

2 ...

3 Q. And when you met with – when you and other members of the judicial  
4 committees that you served on met with the accused, the purpose was  
5 for the accused to respond to the allegations that had been made,  
6 correct?

7 Mr. Jones. Object to form.  
8 Mr. Spriggs. Object to form.

9 A. Yes.

10 Excerpts of Larry Kelley deposition transcript is attached hereto as Exhibit D.

11 3. Case Duggan – Borger, Texas

12 In the case involving the sexual molestation of Amy B. by Larry Kelley (former  
13 elder), Plaintiff Amy B. sought to compel the production of judicial investigation and  
14 judicial committee documents in connection with Larry Kelley, a former elder. At the  
15 hearing, *Defendants* tendered Case Duggan, an elder for over 25 years and presently  
16 the Presiding Overseer of the Borger Congregation in Borger, Texas. During cross-  
17 examination, Mr. Duggan provided the following testimony:<sup>1</sup>

18 Q. Would you agree with Mr. Hale that judicial committees are fact-  
19 finding?

20 A. That's one of the functions.

21 Q. Would you agree with Mr. Hale that one of the functions of a judicial  
22 committee is to make factual determinations about the accuracy or lack  
23 thereof of allegations?

24 A. Yes.

25 ...

26 Q. Well, I may stand corrected then, is it the judicial committee then that  
27 makes the factual determination and actually takes the action to  
28 discipline the member?

29 \_\_\_\_\_  
30 <sup>1</sup> Plaintiff's Motion to Compel Production of Documents was heard by Judge Patrick  
31 Pirtle on January 30, 2004; an excerpt of the hearing transcript is attached hereto as Exhibit  
32 "\_\_\_\_". Judge Pirtle's letter ruling is attached hereto as Exhibit "\_\_\_\_" and referenced above.  
33 Page 10. Plaintiff's Response to Defendant's Supplemental Memorandum...  
34 Grafmyer v. Watchtower et al.

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A. Yes.

Q. Okay. So, the judicial committee is not only a fact finding body, but it also dispenses discipline?

A. It can. Let me back up a little bit because we select two elders to investigate, first of all, if there's any basis to an allegation. And then we go back to the body of elders. And, I think I'd mentioned this earlier, that we go back to the elders. The body of elders would select in three brothers.

Now, those who are the fact-finding commission or the fact-finding mission there with the allegation, the person who is the alleged wrongdoer, and then they will select this committee. So, they can well be not only investigatory, but they can also be part of the judicial committee. The only thing that is brought back to the body of elders, is the fact - is there a basis - is there a basis for a violation of scriptural law or principle.

Q. Okay. I appreciate that clarification.

Excerpts of Case Duggan deposition transcript is attached hereto as Exhibit D.

Judicial investigations and judicial committees were never meant to be the type of communication made privileged by OEC 506. (See excerpts from the "Flock Book" attached as Exhibit 2 to Plaintiff's prior Reply Memorandum, which outlines the purpose for and process of judicial investigations and judicial committees.)

**Role of the Service Department elders is not for 'Spiritual Advice'**

In his declaration attached to Defendants' Supplemental Memorandum, Merton V. Campbell characterized the Service Department and his position therein as providing "spiritual assistance" to congregation elders. This spiritual assistance is later described as "monitoring the functioning, organization, and staffing of congregations of Jehovah's Witnesses, ..."; hardly spiritual communication of the type envisioned by OEC 506. (See Campbell declaration attached to Defendants' Supplemental Memorandum; paragraphs 3-4.)



1 Communication from the Service Department to congregation elders often  
2 comes in the form of letters "To All Bodies of Elders". These letters provide  
3 instructions that are to be followed by congregation elders.

4 A letter from the Service Department dated July 20, 1998, provides an example  
5 of communication that is far from that described as 'spiritual advice'. Further, it  
6 instructs congregation elders to make certain decisions based on the risk of child  
7 sexual abuse lawsuits:

8 Those who are appointed to privileges of service, such as elders and ministerial  
9 servants, are put in a position of trust. One who is extended privileges in the  
10 congregation is judged by others as being worthy of trust. This includes being  
11 more liberal in leaving children in their care and oversight. The congregation  
12 would be left unprotected if we prematurely appointed someone who was a  
13 child abuser as a ministerial servant or an elder. In addition, court officials and  
14 lawyers will hold responsible any organization that knowingly appoints  
15 former child abusers to positions of trust, if one of these, thereafter, commits a  
16 further act of child abuse. **This could result in costly lawsuits, involving  
17 dedicated funds that should be used to further the Kingdom work. So, legal  
18 considerations must also be weighed along with the degree of notoriety, the  
19 extent of the misconduct, how many years ago the sin occurred, and how the  
20 brother is now viewed by the congregation and people in the community  
21 including those he victimized.** (July 20, 1998 letter from Watchtower New  
22 York to All Bodies of Elders attached hereto as Exhibit C – emphasis added.)

23 The role of the Service Department is much more than giving advice on  
24 spiritual matters. As it relates to issues of child sexual abuse, the Service Department  
25 also gives instruction on the risks of Ministerial Servants (like Crabb) molesting  
26 children (like Plaintiff), and how to weigh legal considerations in their appointment or  
27 removal within the congregations – not protected 'spiritual advice'.

28 **Judicial Committee matters are NOT kept confidential**

29 In Oregon, privileges are to be construed narrowly. The assertion of a  
30 statutory privilege is usually "an inhibiting limitation upon the discovery of truth,  
31 such privileges are in derogation of the common law and should be strictly

32 Page 12. Plaintiff's Response to Defendant's Supplemental Memorandum...  
33 Grafmyer v. Watchtower et al.

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1 construed." *Triplett v. Board of Protection*, 19 Or.App. 408, 413 (1974) citing 8 Wigmore,  
2 Evidence (3d Ed) §2380, 2380a.

3 The favored policy of the law is to require the pretrial discovery of all relevant  
4 evidence, therefore, privileges should be strictly construed. *Nielsen v. Bryson*, 257 Or  
5 179 (1970).

6 Because the claim of privilege is "an inhibiting limitation" upon the discovery of  
7 the truth, "...the courts do not and cannot lightly permit its assertion. The burden is  
8 on him who seeks its invocation to show both the one asserting a privilege and the  
9 nature of the testimony offered are within the ambit of the statute according the  
10 privilege." *Grott v. State Industrial Accident Commission*, 246 Or 557, 565 (1967).

11 The burden of proving that a privilege applies rests not with the party  
12 contesting the privilege but with the party asserting it. *Weil v. Investment/Indicators*,  
13 *Research and Management, Inc.*, 647 F.2d 18 (9th Cir. 1981).

14 Not only does the party asserting a privilege have the burden of establishing  
15 the privilege, but also has the burden of showing the privilege has not been waived.  
16 *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 OR 336 (1992).

17 With respect to communication claimed to be 'spiritual advice', a privilege is  
18 available only if the communication is one described in OEC 506 as "made privately  
19 and not intended for further disclosure". Judicial investigations and Judicial  
20 Committee communications are NOT kept secret. The instructions under which each  
21 congregation in the United States operates *requires* further disclosure. In fact, the  
22 Judicial Committee materials from California attached hereto demonstrate that the  
23 details of judicial investigations and Judicial Committees are immediately  
24 communicated to Watchtower headquarters in Brooklyn, New York.

1       The July 20, 1998, letter discussed above also addressed concerns raised in a  
2 prior letter from the Service Department to All Bodies of Elders on March 14, 1997  
3 (attached as Exhibit 5 to Plaintiff's prior Reply Memorandum). Notwithstanding  
4 Defendants' argument in its Response and the declarations attached suggesting that  
5 the judicial investigations and judicial committee communications are kept secret, the  
6 contrary is true. The March 14, 1997, letter to the elders in Oregon *instruct* those  
7 elders to do the following:

8           It may be possible that some who were guilty of child molestation were or are  
9 now serving as elders, ministerial servants, or regular or special pioneers. ...  
10 However, the body of elders should discuss this matter and give the Society a  
11 report on anyone who is currently serving or who formerly served in a  
12 Society-appointed position in your congregation who is known to have been  
13 guilty of child molestation in the past. In your report, please answer the  
14 following questions: ... Has he ever been disfellowshipped, reprovved,  
15 counseled, or otherwise dealt with? If he has moved to another congregation,  
16 please identify the congregation to which he has moved. Was that  
17 congregation advised of his past conduct of child molestation, and if so, when?  
18 [If you have not advised them, this should be done now, and you should send  
19 a copy of your letter to the Society in a "Special Blue" envelope.] ... .

20       Defendants, acting through the Service Department, have instructed the  
21 congregation elders (which includes Defendant Lancaster Congregation elders) to  
22 discuss child sexual abuse matters that have been subject to judicial investigations and  
23 judicial committees (which includes Larry Crabb), communicate that information to  
24 congregation elders where a molester has moved, and communicate that information  
25 to the Jehovah's Witnesses headquarters. Why? To defend itself from "costly  
lawsuits, involving dedicated funds ... ." The attached documents from the California  
judicial proceedings are consistent with the above instructions. It is Plaintiff's  
expectation that similar documents exist with respect to Defendant Lancaster  
Congregation and Larry Crabb.

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1 This information, by definition and function, is not protected 'spiritual advice'  
2 and is responsive to Plaintiff's Requests for Production.

3 **OTHER MATTERS RAISED IN DEFENDANTS' SUPPLEMENTAL**  
4 **MEMORANDUM**

5 Defendants raise three more issues attempting to protect the requested  
6 information: no waiver, rights of privacy and the attorney-client and work product  
7 privileges.

8 **OEC Precludes Waiver**

9 Defendants seem to be arguing that even if Plaintiff waives potential claims of  
10 privilege, the elders still cannot be compelled to disclose communications. To begin  
11 with, the communications must first be privileged for a waiver to apply. It is  
12 Plaintiff's position that he at no time sought 'spiritual advice' from the Lancaster  
13 elders or any other elder in the Jehovah's Witnesses organization. If the Court finds  
14 that the judicial investigations and Judicial Committee proceedings are not protected  
15 by OEC 506, the above defensive position is meaningless.

16 **Third-Party Privacy**

17 Defendants agree that there is no Oregon 'privacy privilege' but instead refer  
18 to the U.S. Constitution without directing the Court to any particular provision or  
19 controlling authority. Again, Defendants seem to be raising *reasons* why they should  
20 not produce discoverable documentation to Plaintiff. This appears to be more of an  
21 exercise of a balance for the Court: the production of clearly discoverable information  
22 versus the possibility that third-party victims may be identified. In California,  
23 documents were produced by the same Watchtower Defendants employing the same  
24 law firm that provided Judicial Committee documents replete with the names of

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1 victims and those alerting elders to the danger of molesters appointed into positions  
2 of authority within the congregation.

3 Plaintiffs are willing to enter into an agreement to keep the names of other  
4 potential victims confidential if they so request. Otherwise, the names of witnesses  
5 and other victims are highly relevant and are discoverable.

### 6 Attorney-Client and Work Product Privileges

7 As mentioned above, Defendants have the burden of proving their assertions  
8 of privilege, and the attorney-client and work product privileges are no exception.  
9 Plaintiff's request for a privilege log has been rejected.

10 In response to requests seeking identical information, the Napa Court rejected  
11 the assertion of the attorney-client privilege and work product privileges in  
12 connection with documents and testimony that relate to the Legal Department's role  
13 in responding to and investigating child sexual abuse allegations within the  
14 organization. (October 16, 2006 ruling attached hereto as Exhibit G pages 2-3].

15 The Amarillo Court also rejected the assertion of the attorney-client and work  
16 product privileges in the *Amy B* case regarding the requests for the same types of  
17 documents. (Exhibit B attached hereto; see "Documents Withheld as Lawyer-Client  
18 Communications")

### 19 SUMMARY

20 In their Supplemental Memorandum, Defendants spend a substantial part of  
21 their briefing and argument discussing protected communications. Plaintiffs are not  
22 arguing that there may be truly protected communications that take place in the  
23 Jehovah's Witnesses congregations; Plaintiff is arguing that the information requested  
24 and sought to be compelled is not within the category of protected communications.

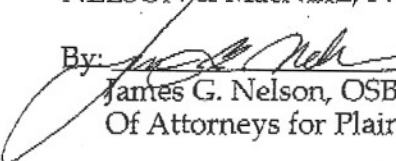
25 Page 16. Plaintiff's Response to Defendant's Supplemental Memorandum...  
Grafmyer v. Watchtower et al.

1 Most, if not all, of the documents sought by Plaintiff, and being withheld by  
2 Defendants as privileged, were generated in the context of an investigative,  
3 administrative, and even adversarial process – hardly the confidential  
4 communications to clergy in their capacity as spiritual advisors.

5 The types of communications that enjoy the protection of OEC 506 were fully  
6 discussed by the Honorable Judge Perris in *In Re: Roman Catholic Archbishop of Portland*  
7 *in Oregon et al.* Defendants attempt to recast otherwise unprivileged communications  
8 into 'spiritual advice' does not carry their burden to prove the existence of a privilege.

9 DATED this 27th day of October, 2006.

10 NELSON & MacNEIL, P.C.

11 By:   
James G. Nelson, OSB #74230  
Of Attorneys for Plaintiff

12 SUBMITTED BY:  
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25 Page 17. Plaintiff's Response to Defendant's Supplemental Memorandum...  
Grafmyer v. Watchtower et al.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER )  
Plaintiff, )  
CASE NO. 06C15281

vs.

WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF NEW YORK, INC., )  
WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF PENNSYLVANIA, )  
and LANCASTER CONGREGATION )  
OF JEHOVAH'S WITNESSES, )  
Defendants. )  
AFFIDAVIT OF JAMES G. NELSON

STATE OF OREGON )  
County of Linn )

I, JAMES G. NELSON, being first duly sworn, do hereby depose and state:  
I am one of the attorneys for Plaintiff.

On information and belief, Exhibit A to Plaintiff's Response to Defendants' Supplemental Memorandum in Opposition to Plaintiff's Motion Compel Production of Documents are true copies of Judicial Committee documents from the California case styled *Tim W. v. Watchtower Bible and Tract Society of New York et al*; Case No. 52594; in the Superior Court of the State of California for the County of Tehama.

On information and belief, Exhibit B is a true copy of a letter ruling by the Honorable Patrick A. Pirtle, Potter County, Texas.

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P.O. Box 946  
Albany, OR 97321  
Phone: (541) 928-9147

1 On information and belief, Exhibits C, D and H are true copies of excerpts of  
2 deposition testimony.

3 On information and belief, Exhibit E is a true copy of excerpts of hearing  
4 testimony from Potter County, Texas.

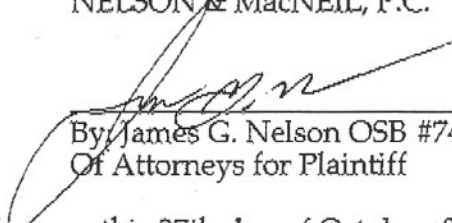
5 On information and belief, Exhibit F is a true copy of correspondence from the  
6 Watchtower Bible and Tract Society of New York, Inc.

7 On information and belief, Exhibit G is a true copy of a ruling by the  
8 Honorable Raymond A. Guadagni, Napa County Superior Court, California.


9 On information and belief, Exhibit I is a true copy of a denial for a writ  
10 mandate by the Honorable P.J. McGuiness, First Appellate District of the Court of  
11 Appeal of the State of California, Division Three.

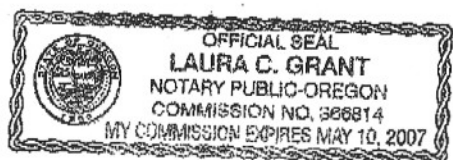
12 DATED this 27th day of October, 2006.

13 NELSON & MacNEIL, P.C.

14   
15 By James G. Nelson OSB #74230  
16 Of Attorneys for Plaintiff

17 Subscribed and sworn to before me this 27th day of October, 2006, by James G.  
18 Nelson.

19   
20 Notary Public for Oregon  
21 My commission expires: 5.10.07



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**CONFIDENTIAL**

Red Bluff Cong. of Jehovah's  
Witnesses  
Rt. # 3 Box 40 Meister Ct/  
Red Bluff, Calif. 96080  
8-31-81

Watchtower Bible & Tract Soc.  
25 Columbia Heights  
Brooklyn, N.Y. 11201

Dear Brothers,

We, as a judicial committee of the Red Bluff Congregation of Jehovah's Witnesses, have disfellowshipped from the congregation Alvin Heard.

This action was taken on August 22, 1981.

The reason for our taking this action was for the flagrant violation of Jehovah's law in respects to fornication. Even though there seemed to be a measure of repentance we ~~has~~ a committee all agreed there was no other choice to make but to remove him ~~from~~ possibly contaminating the congregation. The evidence that lead us to that conclusion is as follows:

1. He has been committing oral copulation with three of the young ones in the congregation. Their ages range from five, nine and eleven years. All such acts were committed by him toward these young ones.
2. As the Sept. 1, 1981 Watchtower stated on page 26 par. 23, "exercise particular care if the wrongdoer has secretly carried on gross sin over a long period". He admitted to these acts to the older girl at least three times, the nine year old girl he has been molesting her every since she was six years old, the last time was on Aug. 8, 1981. The boy he molested four or five times in recent months.

Because of the number of persons involved and their families and the established pattern of sinning we made the above decision.

With you in serving Jehovah,

*Keaton E. Manning*  
Keaton E. Manning

Glenn Hinkle William Miller

*Glenn Hinkle* *William Miller*

YOUNG ONES INVOLVED: Holly ~~██████████~~  
Julie ~~██████████~~  
JAHUO ~~██████████~~

D 0003

EXHIBIT A

PAGE 1 OF 10

RED BLUFF, CA

Congregation Disfellowshipping or Disassociation Record

NAME \_\_\_\_\_ DATE OF DISFELLOWSHIPING OR DISASSOCIATION \_\_\_\_\_

REASON \_\_\_\_\_

CONFIDENTIAL

DATE REINSTATED \_\_\_\_\_

NAME Alvin Heard DATE OF DISFELLOWSHIPING OR DISASSOCIATION SSR OCT 21 1981  
8/22/81

REASON porneia, homosexuality (oral sex with two young girls and one  
young boy in congregation)

DATE REINSTATED 3/22/82 SSR JUN 14 1982

NAME \_\_\_\_\_ DATE OF DISFELLOWSHIPING OR DISASSOCIATION \_\_\_\_\_

REASON \_\_\_\_\_

DATE REINSTATED \_\_\_\_\_

NAME \_\_\_\_\_ DATE OF DISFELLOWSHIPING OR DISASSOCIATION \_\_\_\_\_

REASON \_\_\_\_\_

DATE REINSTATED \_\_\_\_\_

NAME \_\_\_\_\_ DATE OF DISFELLOWSHIPING OR DISASSOCIATION \_\_\_\_\_

REASON \_\_\_\_\_

D 0004

DATE REINSTATED \_\_\_\_\_

**CONFIDENTIAL**

MAR 22 1995

**NOTIFICATION OF DISFELLOWSHIPING OR DISASSOCIATION**  
(Please use typewriter or neatly print all information in ink.)

<u>SOUTH</u>	<u>Red Bluff</u>	<u>CA</u>	<u>20727</u>
Name of congregation	City	State	Congregation Number
<u>JIM HENDERSON</u>		<u>12/1/94</u>	
Name of disfellowshipped or disassociated person		Date disfellowshipped or disassociated	Date reinstated

Check if applicable:  Elder     Ministerial servant     Regular or special pioneer     Listed with the Society as person to receive literature or magazine shipments to congregation (if so, new name and address should be sent to the Society.)

Offense(s) for which disfellowshipped (if disassociated give reason):

child molestation (power) Romans 1:24,26,27,32  
1 cor 6:9,10 Rev 22:15

Please give a brief but complete review of the matter: (1) What led up to the wrongdoing? (2) Was the individual previously counseled or reproved? (3) What factors, including lack of works befitting repentance, convinced you that this action was necessary? (See Point #3 on other side.) (Use additional sheet if more space is needed.)

He molested 2 children in the congregation that we know ABOUT. He has a confessed homosexual lifestyle, he lied, schemed and lived a hypocritical life style for years.

What evidence established the wrongdoing, such as confession, two or more witnesses?

Two witnesses

Elders who served on the committee sign below. (Print or type names below the line. Sign on the line.) (If disassociation, committee selected to handle the matter should sign.) (Indicate who served as chairman.)

<u>Bobie S...</u>	<u>Bill ...</u>
<u>LeRoy M. ...</u>	<u>Ronald ...</u>

Did individual appeal your decision? NO. If so, this form should be sent to the Society by the appeal committee with their letter. If the original committee has further observations they should put them in writing and give them to the appeal committee to send to the Society.

If individual was previously disfellowshipped or disassociated show:

1. Date _____
2. Name at that time _____
3. Date reinstated _____

**NOTE:** Send original copy of this form to the Society along with S-79a and S-79b cards you have filled out. Retain a copy this form for the congregation's confidential files. After the Society receives these forms, the S-79b card will be returned to you. If person is reinstated (or dies) send the S-79b card to the Society, and on your copy of this S-77 form record the date of reinstatement (or death).

D 0007

(SEE OVER)

Printed in U.S.A.  
SDU APR 08 1995  
EXHIBIT A  
Page 3 of 10

CONFIDENTIAL

12/1/95

Judicial Committee  
Red Bluff North Congregation  
Bodie Lyon Chairman

Jim Henderson

On 10/04/94 informed brother Lyon that he was guilty of child abuse in a sexual manner with Nathan Dota.

The body of elders met on 10/04/94 and set up a judicial committee consisting of Bodie Lyon, Bill Mullins, Ron Pitte and LeRoy Reid, Jr.

The judicial committee met with Jim Henderson on 10/06/94 at which time he confessed to having pornea with Nathan [redacted] an un-baptized son of an inactive brother in Palermo California. Jim Henderson advised us that the situation had ceased 3 years before this date and that he had come forward because Nathans father had found out about this matter.

The committee sought advice from the society by telephone because of the child abuse matter. There was some confusion generated from the kingdom ministry article dated Oct.72 about sins older than 3 years. The society was called again and we proceeded as a judicial committee after approximately a weeks discussion by the body.

Hendersons went on vacation for a week and we use the time to investigate the matter. We found out that approximately 5 persons knew of the matter and that there were some irregularities in Jim's story. We met with him again on 11/10/94 and discussed the matter with him further he stuck to his story. We met with Jim and Donna Henderson on 11/12/94 and discussed the matter with them further.

A meeting was requested by Nathan [redacted] so brother Reid and brother Lyon arbitrated as [redacted] and Henderson confronted one another Henderson said he was firm on his story [redacted] said the incidents had happened hundreds of times and that the most recent was one and one half years ago, Henderson agreed the incident was as [redacted] had stated, this meeting was on 11/19/94. (The [redacted] Father Mother and Son were there)

On 11/13/94 brother Reid and Brother Lyon met with several other who were named by [redacted] as victim but they said no.

On 11/17/94 judicial committee met with Jim had heard that he was paying blackmail for a similar offence that had occurred in 1972. the matter was confirmed that Jim was paying what he termed restitution for a similar offence.

On 11/17/94 the judicial committee suggested he is no longer fit to serve and was publicly reproved for the incident with

D 0000

EXHIBIT A  
Page 4 of 10



CONFIDENTIAL

Nathan [redacted], the announcement was made to the congregation at the service meeting.

One week later Brother George from Red Bluff South Congregation came to brother Lyon and told him that 5 years or so ago Tammy Anderson had come to him and told him that a friend of hers told her that her little brother had been molested by Jim at work ( Jim is the Regional Manager for The Sacramento Bee Newspaper) but at the time brother George told here there was no way it could be true so it was forgotten.

On the next morning brother Lyon was called before the authorities and questioned about the matter because Nathan [redacted] father had turned it in to them. During the earlier mentioned questioning brother Lyon ascertained that the authorities had at least 4 other persons who had filed complaints against Henderson but would not press charges.

The committee was re - established. Brother Reid and brother Lyon were able find out that these were not isolated incidents after both being questioned by the authorities.

Brother Lyon asked brother Pier and brother Amy ( Amy District Overseer, , Pier Circuit Overseer ) to sit in on the matter and on 12/01/94 at the meeting we determined that brother Henderson:

1. Molested Nathan [redacted] as previously stated many times.
2. Henderson had raped Nathan [redacted] one Time.
3. Henderson had molested Tim [redacted] a young unbaptized publisher in the north congregation.
4. Henderson was paying blackmail money.
5. Henderson has molested his son Grant.
6. When questioned about the paper boy he couldn't remember who he was but denied it , we are sure he was lying. He also caught at this time in other lies he told the committee. Brother Amy and Pier were excused and the judicial committee made a decision to disfellowship Jim Henderson.

The matter is in the public spotlight and due to an agreement that brother Lyon and brother Reed had made with the authorities all parties have been referred to the police and the name of Jehovah has not as of yet been intertwined in this matter.

Jim Henderson was shown to have schemed, lied, was devious and attempted to minimize the severity of his sin. He was shown to have a life pattern of homosexuality and child molestation . HE is a DANGER to other young boys in the congregation and the community. He came forward only when forced to. He evidenced more worldly sadness rather than godly , therefore, we felt that he was unrepentant.

The following scriptures hold the basis for our decision:  
Romans 1:24,26,27,32..... 1Corinthians 5:9,10. . .  
Revelation 22:15

D-0010

43 1995

CONFIDENTIAL

Your Brothers,

Bodie Lyon Jr. Bodie Lyon  
Leroy Reid Jr. Leroy M. Reid Jr.  
Ron Pitts Harold Pitts  
Bill Mullins Bill Mullins

D 0011

EXHIBIT A  
Page 6 of 10

JEHOVAH'S WITNESSES  
North Congregation  
16 Root Avenue  
Red Bluff, CA  
96080

DEC 12 1994

SSY DEC 13 1994

CONFIDENTIAL

December 3, 1994

*delete*

Watchtower  
25 Columbia Heights  
Brooklyn, NY 11201

Dear Brothers,

This letter is to inform you that James L. Henderson will no longer be serving as Presiding Overseer in the North Congregation. It was necessary to remove him because he confessed to committing adultery.

The Body of Elders has selected Ronald L. Pitts to serve temporarily as Presiding Overseer. Since Brother Pitts has been serving as Secretary, the Body decided to put Grant L. Henderson in as Secretary. Brother Grant L. Henderson has been the Service Overseer, so the Body has chosen Billy J. Mullins to serve in that position.

Both the District Overseer, Brother Amy, and the Circuit Overseer, Brother Pierre are aware of these changes. Please see the enclosed S-29 form for the address changes.

Your Brothers,

*Ronald L. Pitts*  
Ronald L. Pitts

*Grant L. Henderson*  
Grant L. Henderson

*Billy J. Mullins*  
Billy J. Mullins

D 0012

EXHIBIT A  
Page 7 of 10

CONFIDENTIAL

## Jehovah's Witnesses

District #34

Donald D. Amy  
P. O. Box 38,  
Woodburn, OR. 97071

December 26, 1994

SSC AUG 12 2003

Watchtower Bible and Tract Society  
of New York, Inc.  
25 Columbia Heights  
Brooklyn, NY 11201

Dear Brothers:

Brother Paul Pierre and I served the North Congregation of Red Bluff, CA the week of Nov. 29-Dec. 2, 1994. During that week it was brought to our attention that the elders had formed a judicial committee and publicly reproved Brother James Henderson, who served in that congregation as the presiding overseer. He had confessed to sexually abusing a young person that was not a brother but was associated with the Palermo, CA Congregation. His name is Nathan ~~\_\_\_\_\_~~. Nathan had come forward and virtually forced James Henderson to come forward and confess to his past sins.

The local body of elders was informed by James Henderson at first that he had stopped committing these sins 3 years ago. It seemed in view of the Kingdom Ministry of Oct. 1972, "Question Box," that this case may not even be a judicial one and that James Henderson may even be allowed to stay in his position. The judicial committee with Brother Bodie Lyon as the chairman contacted the Society's legal department and spoke to a brother in the Service Department also. During that discussion points were mentioned that there had to be repentance back three years ago. It was mentioned that some evidence of repentance would have been his confessing his sins to his wife. Also, is there evidence of Jehovah's blessing on him since. It was also mentioned that at the 1991 KM School a clarification was made on page 97, par. 7. The judicial committee said that we should have added to our book the statement: "except in cases of pornaia."

We are happy that further evidence came forward and we now know that James Henderson was committing cases of sexual abuse of minors up until this past August. But this has brought up a question that the body of elders and us traveling brothers would like to have answered and that is: "Are we to take the statement in the October Kingdom Ministry, "Question Box," as a definitive answer on this subject? What about cases such as this of sexual abuse of minors and where it might very well become a public scandal? Does that change whether this becomes a judicial matter or not? Also, James Henderson was removed as a servant or an elder in the early '70's in the Marysville, CA area. Now he has admitted to doing it again. Could we simply say that if it was 3 years ago that he last committed the act, that he could stay on as an elder and not be handled by a judicial committee? That Kingdom Ministry doesn't mention anything about something that

D 0013

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Page 8 10

CONFIDENTIAL

may become scandalous and how would the congregation be able to answer questions that may come up in the territory? Also, I find that most of the brothers that attended that KM School in 1991 did not get the point that they were to insert the statement on page 97, par. 7: "except in cases of porneia." Could an update on this information be made so that we can better handle a situation as I have just described? In paragraph 2 of that "Question Box" article in the last sentence it states: "In many cases the wrongs occurred prior to the time when the Watchtower draw attention to what the Scriptures say on such misconduct." We certainly can't say that about many matters today. So, it does appear that an update would be in order, wouldn't it?

We met with the judicial committee that publicly reproved James Henderson on Wednesday evening after field service and discussed the case. More information had come forward by that time and it seemed wise to speak with the body of elders and form a judicial committee again and re-open the case. We met with the body of elders on Thursday evening and the judicial committee that originally handled the case was appointed to re-open the case. This committee invited Brother Paul Pierre and myself in as advisors as we met with James Henderson later that evening. At this meeting James Henderson admitted to sexually masturbating with another young person in the congregation, Tim [redacted]. After extensive questioning, he admitted to playing with his son's sexual organs years before. He admitted that he had lied to the judicial committee when they asked him if he had committed any other sexual acts of misconduct. After this Brother Pierre and I left the Kingdom Hall and we learned later that the judicial committee had disfellowshipped James Henderson.

The district attorney called the chairman of the judicial committee, Brother Lyon, in for questioning and Brother Lyon said that he couldn't say anything that was learned at a judicial meeting as it was privileged information. He agreed but asked for his cooperation in handling this case. The brothers have cooperated very well with the police and the two young persons that are associated with the congregations, Nathan [redacted] and Tim [redacted], have come forward and told the police what James Henderson did to them as minors. James Henderson was arrested last week and in two or three newspapers and on television his picture appeared and the story of his arrest was mentioned. Thus far nothing concerning his being one of Jehovah's Witnesses has been mentioned. The brothers on the judicial committee feel that this was probably because of their cooperation with the police and James Henderson's being disfellowshipped before the case really became public. We hope that this will continue to be the case and that Jehovah's name can be kept out of this very dirty situation. It has been learned that at least 4 other young boys of the world came forward in the past and complained about James Henderson. We don't know to what extent he was being accused but it's apparent that he hasn't stopped his filthy habits of the '70's. He does not deserve to be in this organization.

We hope this information will inform the Society of just what was done in this case. May Jehovah continue to bless you brothers there at Bethel and to give you insight to deal with matters in the field.

Your brother,  
*Donald D. Amy*  
Donald D. Amy--dist. #34

P.S.: Paul Pierre, CA #69 &  
Brother Bodie Lyon, chairman of judicial committee  
North Congregation, Red Bluff, CA

D 0014

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A  
Page 9 : 10

REC'D FEB 10 2003

**NORTH CONGREGATION OF JEHOVAH'S WITNESSES**

Kingdom Hall, 755 Reeds Ave., Red Bluff, CA 96080  
Correspondence: 13735 Lisa Way, Red Bluff, CA 96080  
Phone: 530-527-4923

East Cottonwood Congregation of Jehovah's Witnesses  
c/o Jack Dean  
4053 LaHoma Lane  
Cottonwood, CA 96022

**CONFIDENTIAL**

Oct. 2, 1998

Dear Brothers,

This letter is being written to you concerning James Henderson. He is currently disfellowshipped but is attending meetings in your congregation. Even though we feel you already know what he was disfellowshipped for, we are writing this letter in line with the direction from the letter from the Society dated 3/14/97, as well as the direction we received at our Kingdom Ministry School in 12/97, concerning the informing of the body of elders of a person who is "known to have been a child molester" moving in to your congregation even if he is disfellowshipped.

James Henderson was disfellowshipped from the North Red Bluff congregation in December 1994 for the above offense. He served a jail sentence for his convicted crime and since his release in December 1997 has been attending the meetings in your congregation. We write this letter to you so as to inform you this situation.

Thank you for your consideration in this matter. May Jehovah bless your efforts as you work hard for kingdom interests.

Your brothers,

North Red Bluff Congregation - Service Committee

*Redney Cummins*  
*David East*

D 0017

NINE A  
Page 10 of 10



21st Judicial District of Texas



PATRICK A. PIRTLE  
JUDGE PRESIDING  
POTTER AND RANDALL COUNTIES  
E-Mail: pirtlep@co.potter.tx.us

POTTER COUNTY COURTS BUILDING  
500 S. FILLMORE  
Suite 4-C  
AMARILLO, TEXAS 79101  
(806) 379-2365  
FAX (806) 379-6743

ANGELA JOHNSON - COURT ADMINISTRATOR  
E-Mail: johnsona@co.potter.tx.us  
DEBBY MURPHY - COURT REPORTER  
E-Mail: ddbym@co.potter.tx.us  
CHUCK WIEGER - BAILIFF  
E-Mail: wiegerc@co.potter.tx.us

March 29, 2004

Hartley Hampton  
Fibich, Hampton, Leebron & Garth, L.L.P.  
1401 McKinney, Suite 1800  
Five Houston Center  
Houston, Texas 77010

Marvin W. Jones  
Sprouse Shrader Smith P.C.  
801 S. Fillmore, Suite 600  
P. O. Box 15008  
Amarillo, Texas 79105-5008

Gregory S. Love  
Love & Norris  
314 Main Street, Suite 300  
Ft. Worth, Texas 76102-7423

Ronald T. Spriggs  
Law Office of Ronald T. Spriggs  
112 West Eighth Avenue, Suite 400  
Amarillo, Texas 79101

Re: Cause No. 91,048-C; *Amy B. vs. Watchtower Bible and Tract Society of New York, Inc., et al.*; In the 251<sup>st</sup> District Court, Potter County, Texas

Dear Counselors,

On January 30<sup>th</sup> arguments were presented in the above-entitled and numbered cause on the *Plaintiff's Omnibus Motion to Compel*. At that time this Court took the matter under advisement. Since that time the Court has granted the Motion for Summary Judgment of the Defendants, Watchtower Bible And Tract Society of New York, Inc. and Watchtower Bible and Tract

EXHIBIT

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Society of Pennsylvania, Inc. Therefore, the *Plaintiff's Omnibus Motion to Compel* is denied as to those Defendants.

As to the Defendants, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses, the Court renders the following opinion:

Documents Withheld Under Tex. R. Civ. Evid. 505

The Defendant, Dumas Congregation of Jehovah's Witnesses, has withheld several documents responsive to Plaintiff's Requests for Production 3, 4 & 16(b), and the Defendant, Amarillo-Southwest Congregation of Jehovah's Witnesses, has withheld documents responsive to Plaintiff's Requests for Production, 1, 2, 3, 16, 32, 33 and 34, based upon Rule 505, the clergy-penitent privilege.

It is the opinion of the Court that Section 261.202 of the Texas Family Code creates an exception to Rule 505 that is not limited to proceedings brought under the provisions of the Texas Family Code. *Bordman v. State*, 56 S.W. 3d 63 (Tex. App.-Houston (14<sup>th</sup> District) 2001, writ refused. Furthermore, this Court is of the opinion that the documents listed in the Defendants' Privilege Log responsive to these requests do not fall within the protections of Rule 505. Defendants' objections based upon the "clergy-penitent" privilege are overruled and Plaintiff's Motion to Compel is granted.

Documents Withheld as Lawyer-Client Communications

Both Defendants, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses, have withheld documents responsive to Plaintiff's Request for Production 13 and 15, based upon Rule 503, the lawyer-client privilege.

It is the opinion of the Court that the protections of Rule 503 of the Texas Rules of Evidence do not apply to the facts of this case. Therefore, the Defendant's objections based upon Rule 503 are overruled and Plaintiff's Motion to Compel is granted.

Documents Withheld as "Extraneous Materials"

Both Defendants, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses, have withheld documents responsive to Plaintiff's Request for Production 5, 18, 23, 24, 25 and 26, based upon a claim that the documents are neither relevant nor

EXHIBIT B  
Date 2014

reasonably calculated to lead to the discovery of admissible evidence and that they violate the tenants of Rule 609 of the Texas Rules of Evidence.

Having reviewed the requests, the arguments of counsel and the documents produced by the Defendant for *in camera* inspection by the Court, the Court is of the opinion that Defendants' objections are sustained and Plaintiff's Motion to Compel is denied.

#### Documents Produced but Redacted

Both Defendants, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses, have withheld documents responsive to Plaintiff's Request for Production 5, 12, 29 and 31 based upon a claim that the documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and that these requests are overly broad.

Having reviewed the requests, the arguments of counsel and the documents produced by the Defendant for *in camera* inspection by the Court, the Court is of the opinion that Defendants' objections are sustained and Plaintiff's Motion to Compel is denied.

#### Documents Withheld Because the Requests Could Not be Answered as Worded

Both Defendants, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses, have withheld documents responsive to Plaintiff's Request for Production 32, 33, 34, 35, 36 and 37 based upon a claim that the requests cannot be answered "as worded". Specifically, the Defendants maintain that they cannot respond to requests that reference the "confession" of Larry Kelly because to do so would violate the "clergy-penitent". As stated hereinabove, it is the opinion of the Court that the facts of this case do not fall within the protections of Rule 505.

Notwithstanding the Rule 505 objection, the Defendants further maintain that the phrase "Larry Kelley's confession" is overbroad and subject to multiple interpretations. For the sake of simplicity, the Court agrees. Each request, however, further specifies "or allegations of sexual abuse regarding Larry Kelly". Therefore, having reviewed the requests, the arguments of counsel and the documents produced by the Defendant for *in camera* inspection by the Court, the Court is of the opinion that Defendants' objections are denied and Plaintiff's Motion to Compel is granted as to that portion of Plaintiff's Request for Production 32, 33, 34, 35, 36 and 37 referring to "allegations of sexual abuse regarding Larry Kelly".

EXHIBIT B  
Page 3 of 4

I would request that Mr. Hampton prepare and present an order in accordance with this ruling. Thank you.

Sincerely,



Patrick A. Pirtle

cc: District Clerk

XHIBIT B  
208 4-4

DEPOSITION OF CURTIS DAVIS HAIL

1 CAUSE NO. 03-2368C

2 KALEENA S., INDIVIDUALLY AND ) IN THE DISTRICT COURT OF

3 AS NEXT FRIEND OF AMANDA M., )

4 A MINOR )

5 Plaintiffs )

6 VS. ) SMITH COUNTY, TEXAS

7 WATCHTOWER BIBLE AND TRACT )

8 SOCIETY OF NEW YORK, INC., )

9 JEHOVAH'S WITNESSES South )

10 congregation, JEHOVAH'S )

11 WITNESSES - East )

12 congregation, JEHOVAH'S )

13 WITNESSES - WHITEHOUSE )

14 CONGREGATION, WATCHTOWER )

15 ASSOCIATES, LTD., KINGDOM )

16 SUPPORT SERVICES, INC., )

17 CHRISTIAN CONGREGATION OF )

18 JEHOVAH'S WITNESSES, )

19 RELIGIOUS ORDER OF JEHOVAH'S )

20 WITNESSES, JAMES HARVEY, )

21 Defendants. ) 241ST JUDICIAL DISTRICT

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

CURTIS HAIL

NOVEMBER 18, 2003

\*\*\*\*\*

22 ORAL AND VIDEOTAPED DEPOSITION OF CURTIS HAIL, produced as

23 a witness at the instance of the PLAINTIFFS, and duly sworn,

24 was taken in the above-styled and numbered cause on November

25 18, 2003, from 10:59 a.m. to 4:18 p.m., before Julie C. Brandt,

CSR in and for the State of Texas, reported by machine

shorthand, at the Holiday Inn Select, 5701 S. Broadway, Tyler,

Texas, pursuant to the Texas Rules of Civil Procedure.

XHIBIT C  
200 1 5

DEPOSITION OF CURTIS DAVIS HAIL

Page 2

**1 APPEARANCES**

**2 FOR THE PLAINTIFFS:**

3 HERTLEY HAMPTON

4 FIBICH, HAMPTON, LEEBRON & GARTH, L.L.P.

5 Five Houston Center

6 1401 McKinney, Suite 1800

7 Houston, Texas 77010-9998

8 713.751.0025

9 713.980.8116 (fax)

**10 AND:**

11 Gregory S. Love

12 GREGORY S. LOVE, ATTORNEY AT LAW

13 314 Main Street

14 Suite 300

15 Fort Worth, Texas 76102

16 817.335.2800

17 817.335.2912 (fax)

18 gsllove@airmail.net

**19 FOR THE DEFENDANTS:**

20 Donald Francis Lighty

21 STEVENS, BALDO & FREEMAN

22 Petroleum Tower

23 550 Fannin, Suite 400

24 Beaumont, Texas 77701

25 409.835.5200

409.838.5638 (fax)

dflghty@shf-law.com

**26 ALSO PRESENT:**

27 Robert G. Wood, Jr.

28 Richard L. King

29 C. Dale Marsh

30 VIDEOGRAPHER: Bob Shedd, LegalLink

Page 4

**1 CERTIFIED QUESTIONS**

2 Certified Question No. 1 - Page 70, Line 21

3 Certified Question No. 2 - Page 72, Line 11

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7 Examination by MR. LIGHTY..... 168

8 Further Examination by MR. HAMPTON..... 169

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**11 EXHIBITS**

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15 2 Letter to all elders.....	59
16 3 September 20, 1995 letter to all bodies of elders from the Society.....	81
17 4 September 20, 1984 letter to all body of elders .....	102
18 5 December 5, 1985 letter to all circuit and district overseers in the United States.....	110
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25 12 James Harvey's publisher card.....	135
13 Letter Heather wrote to James Harvey.....	156

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**1 THE VIDEOGRAPHER:** We're on the record,

2 November 18, 2003. The time is approximately 10:59 a.m. I'm

3 the videographer, Bob Shedd, contracted by LegalLink of Dallas.

4 Would you state your appearances -- your name and

5 appearances for the record.

6 MR. HAMPTON: Let's just go for it. Just

7 swear him in and let's go. Is that okay?

8 THE VIDEOGRAPHER: That's fine.

9 MR. LOVE: Let me make a statement on the

10 record first.

11 MR. HAMPTON: Yeah.

12 MR. LOVE: Do you want me to do it right now?

13 MR. HAMPTON: Uh-huh.

14 MR. LOVE: My name is Greg love. I represent

15 the plaintiffs, and I want to represent for the record that we

16 represent Dee Dee Harvey for the sake of being next friend for

17 Amanda Martin and for the sake of this deposition and

18 tomorrow's depositions; that the witness has the permission to

19 testify about anything regarding confidential matters that she

20 may have discussed with him or them.

21 THE WITNESS: Okay.

22 MR. LIGHTY: Thank you.

23

24 CURTIS HAIL,

25 having been first duly sworn, testified as follows:

2 (Pages 2 to 5)

EXHIBIT C  
Pgs. 2 5



DEPOSITION OF CURTIS DAVIS HAIL

Page 94

1 A. That's right.  
 2 Q. And are children taught at an early age to place  
 3 their trust and their confidence in the elders?  
 4 A. That's correct.  
 5 Q. Are there a lot of children in the Witnesses?  
 6 A. Quite a few.  
 7 Q. I have -- I have heard -- I've read about the  
 8 responsibility of the elders to -- I think to use a word -- a  
 9 phrase you used before lunch, to keep the congregation clean.  
 10 A. Right.  
 11 Q. I've heard that -- I've heard it said that elders  
 12 have the responsibility to make sure that nothing brings  
 13 reproach to Jehovah's name. Did I say that right?  
 14 A. Yes. Yes.  
 15 Q. What does that mean? Explain to me what that  
 16 responsibility means.  
 17 A. By violating one of the Bible laws or principles.  
 18 And that shows disrespect for Jehovah, and that brings reproach  
 19 upon his name when one of Jehovah's Witnesses does that, such  
 20 as Harvey.  
 21 Q. Do elders sometimes have to discipline members of  
 22 the congregation for doing something that brings reproach to  
 23 Jehovah's name?  
 24 A. That's correct.  
 25 Q. And is there a system set up for doing that?

Page 95

1 A. There's a judicial system set up to correct anybody  
 2 that violates a Bible law.  
 3 Q. And was that system set up by the Society?  
 4 A. Well, it's based on the Bible. The Bible shows  
 5 us --  
 6 Q. Okay.  
 7 A. -- how to set that up, but the Society gives us  
 8 direction on it.  
 9 Q. The procedure that's in place was established by the  
 10 Society?  
 11 A. That's correct.  
 12 Q. And is it part of the elders's responsibility to the  
 13 governing body and to the Society to follow that procedure?  
 14 A. I lost you on that question. Repeat it, please.  
 15 Q. It was a bad question.  
 16 The elders are expected to follow the procedure as  
 17 handed down from the Society?  
 18 A. Correct.  
 19 Q. They don't have the discretion to change the  
 20 procedure?  
 21 A. No. The procedure's in place.  
 22 Q. You can't decide tomorrow, for example, that you're  
 23 going to change some aspect of that procedure?  
 24 A. No.  
 25 Q. And this discipline -- disciplinary system that

Page 96

1 we're discussing, that's, again, part of the responsibility of  
 2 the elder to shepherd the flock, Right?  
 3 A. That's part of their responsibility as shepherd.  
 4 Q. And it falls into the function of keeping the  
 5 congregation clean?  
 6 A. Correct.  
 7 Q. And protecting it from wickedness?  
 8 A. Correct.  
 9 Q. Tell me about the procedure. How does it work?  
 10 A. Well, when a case of wrongdoing is brought to the  
 11 attention of the elders, the presiding overseer, if it's  
 12 brought to the attention, the body of elders will appoint two  
 13 elders to investigate to see if there is any substance to the  
 14 accusation. And if there is, then they come back and the body  
 15 of elders appoints a judicial committee of three with one as  
 16 being the chairman of it. And then they call the individual  
 17 in.  
 18 Now these two elders have previously -- go back a  
 19 little -- have talked to the individual who the accusation was  
 20 made against, and they find if there's substance to it, then  
 21 they contact the presiding overseer, and he calls a meeting of  
 22 the body of elders. And the body of elders then appoints three  
 23 brothers as a judicial committee to hear it.  
 24 MR. HAMPTON: Okay. Let's change the tape.  
 25 THE WITNESS: Okay.

Page 97

1 THE VIDEOGRAPHER: End of Tape 1, 1:51.  
 2 (A break was taken from 1:51 to 1:57.)  
 3 THE VIDEOGRAPHER: We're back on the record,  
 4 November 18, 2003. The time is 1:57 beginning Tape No. 2,  
 5 continuing with the deposition of Curtis Hail.  
 6 Q. Mr. Hail, you were telling me about the procedure  
 7 for the disciplinary system within the Jehovah's Witnesses.  
 8 You've gone -- as an elder for 30 years, you've been involved  
 9 in this many times, I'm sure.  
 10 A. Yes.  
 11 Q. You're well familiar with the procedure?  
 12 A. Right.  
 13 Q. Now I think the first thing you said -- let me go  
 14 back through it and make sure I understand it. If there's an  
 15 allegation of wrongdoing made to -- brought to the elders's  
 16 attention, do -- is the first step that two elders will be  
 17 assigned to investigate?  
 18 A. Yes.  
 19 Q. The body of elders discusses the allegation of  
 20 wrongdoing and chooses two elders to investigate?  
 21 A. They choose two elders.  
 22 Q. Okay. And then what do those elders do to  
 23 investigate?  
 24 A. They go talk to the individual who the allegation is  
 25 brought against and see if it's true --

25 (Dance ad in 97)

XHIBIT C  
 page 3. 5

DEPOSITION OF CURTIS DAVIS HAIL

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1 Q. Okay.

2 A. -- and talk to him. A serious sin like that, of

3 course, would be something that could be -- it would have to be

4 a sin that would cause disfellowship for a judicial committee

5 to be set up.

6 Q. Okay. Well, let's assume that's what we're talking

7 about. We're --

8 A. All right.

9 Q. -- talking about a serious sin. Okay. So the

10 two -- the two elders chosen to investigate would go talk to

11 the person who was accused.

12 A. Right.

13 Q. And that person would either admit or deny the

14 accusation?

15 A. Right.

16 Q. Now if he denies the accusation, then what happens?

17 A. Well, then the committee could be set up and bring

18 the one that brought in the accuser in to meet him face to

19 face.

20 Q. Okay.

21 A. And then they could determine what evidence they had

22 there, and then they would decide on what course of action they

23 needed to take.

24 Q. Okay. So if he denies -- if the accused denies the

25 accusation, a judicial committee is set up. Right?

Page 99

1 A. Yes, whether he admits to it or not.

2 Q. Okay. So either way, a judicial committee --

3 A. Right.

4 Q. -- is set up?

5 And the judicial committee has three members?

6 A. That's correct.

7 Q. And those are chosen by the body of elders?

8 A. That's correct.

9 Q. And you've been on a judicial committee?

10 A. Right.

11 Q. And if he admits the accusation, they -- what do

12 they do?

13 A. Well, the three of them then judge whether he's

14 repentant or not. And whether he's repentant or not is the

15 reason he's disfellowshipped or not. If they discern that in

16 their opinion that he is repentant, then they won't

17 disfellowship him.

18 Q. Okay. And then is that the end of it?

19 A. No.

20 Q. Then what?

21 A. Well, there's -- you could either have private

22 reproof where nobody knows about it but those few that was

23 involved in it; or if it was of such a nature that the

24 congregation needed to know, then they would make public

25 reproof to the congregation and let them know that that had

Page 100

1 been handled.

2 Q. Okay. In cases of public reproof, is the

3 congregation always told what the person did?

4 A. Never.

5 Q. The congregation's never told what he did?

6 A. Never.

7 Q. Why is that?

8 A: Because it's confidential,

9 Q. Okay. All right. Now let's get back to the

10 situation where the accused denies it. In that case, the

11 judicial committee of three brings the accused and the accuser

12 in?

13 A. Right.

14 Q. And what happens then?

15 A. If both of them -- if they just stay with he

16 says/she says or whatever -- if the accuser denies it and the

17 other one says it, then there's nothing can be done.

18 Q. Okay. And why is that?

19 A. Because of the Bible principles that we have there.

20 Matthew and Deuteronomy says you have to have at least two

21 witnesses.

22 Q. Okay. That's the two witness rule?

23 A. Right.

24 Q. Okay. Now if -- if it's a he said/she said and

25 there's nothing you can do about it, is that the end of the

Page 101

1 matter?

2 A. No. We're conscious -- the elders are conscious of

3 the accusation. And until they can find more evidence to

4 substantiate the accusation, then they, of course, know it was

5 made and there might be a problem there. So they're conscious

6 of that, and they're alert to that fact.

7 Q. If a -- if a person is accused a serious sin -- back

8 up. Strike that.

9 I'm going to ask you about how the two witness rule

10 works. If a person is accused of a serious sin, doesn't matter

11 what it is, just a serious sin --

12 A. Gross sin.

13 Q. Yes, a gross sin. I'm sorry. And you have one

14 witness that says he did it to me and another witness says I

15 don't know whether or not he did it to her, but he did it to

16 me, does that satisfy the two witness rule?

17 A. Yes.

18 Q. So in a child abuse case, if you have -- have you

19 ever had a case of child abuse that was witnessed?

20 A. Never.

21 Q. It's not likely to be witnessed, is it?

22 A. No. They don't do that in front of people.

23 Q. But would it satisfy the two witness rule if you had

24 one accuser that was in a he said/she said situation where he

25 denied it and then another accuser that was in a he said/she

XHIBIT C  
PAGE 45

DEPOSITION OF CURTIS DAVIS HAIL

Page 126

1 Q. Did it involve the woman he eventually married?

2 A. Some. Some, but there was other cases as well.

3 Q. So he was disfellowshipped in part for having sex

4 with the woman he eventually married?

5 A. That's correct.

6 Q. When a judicial committee -- strike that.

7 When two elders are appointed to investigate a gross

8 sin -- is that the word you used, a gross sin?

9 A. Or any -- any violation of Bible law.

10 Q. Okay. They initiate the contact with the accused

11 person?

12 A. Correct.

13 Q. Their -- they have a conversation with him that is

14 part of the investigation process?

15 A. Correct.

16 Q. The conversation is in their role as investigating

17 this accusation?

18 A. Correct.

19 Q. When he appears before a judicial committee, again,

20 it's the judicial committee that calls him to appear before it?

21 A. Correct.

22 Q. His appearance is as an accused in a judicial

23 setting?

24 A. Correct. Uh-huh. Yes.

25 Q. The dialogue that takes place is just like -- It's a

Page 127

1 lot like what we're doing here today.

2 A. Right.

3 Q. It's adversarial. Right?

4 A. Correct.

5 Q. With the judicial committee on one side and him

6 defending himself. True?

7 A. The accusation is brought and made clear to him.

8 Q. Right.

9 A. Then depending on his attitude --

10 Q. Right.

11 A. -- what takes place.

12 Q. And he's in a defensive posture?

13 A. Yes.

14 Q. This judicial committee that investigated Mr. Harvey

15 for fornication, did any of it -- any of the allegations

16 involve young women, I mean, under the age of 18?

17 A. Not to my knowledge.

18 Q. Now the forms that are described in this -- one of

19 these exhibits that we've talked about earlier that's -- that

20 are to be filled out when a judicial committee does its

21 business, those forms would have been filled out in that case,

22 wouldn't they?

23 A. That's correct.

24 Q. And since he was disfellowshipped, a report would

25 have been made to the Society?

Page 128

1 A. That's correct.

2 Q. The exhibit I was referring to is Exhibit 4?

3 A. Yes. Those forms are filled out and sent in to the

4 Society.

5 Q. When did you first meet Dee Dee?

6 A. Well, I guess right after James Harvey moved in.

7 Q. Right after he moved into the -- to your --

8 A. I'm not sure about it, but --

9 Q. Moved in where?

10 A. Moved into our -- into the East congregation from

11 the South.

12 Q. So you think you would have met Dee Dee about the

13 same time you met James Harvey?

14 A. Probably a little afterwards, yes. I'm not clear on

15 that.

16 Q. Did you know when you met her that she was studying

17 to be baptized?

18 A. No, I don't remember that.

19 Q. Okay. Did you subsequently learn that she was --

20 that she was studying to be baptized?

21 A. I don't recall.

22 Q. Did you ever know that she got -- she was baptized?

23 A. Yes.

24 Q. Okay. When did you learn she was baptized?

25 A. Oh, it was while they were in the East congregation.

Page 129

1 Q. Okay. Do you know anything about who she studied

2 with or when?

3 A. I don't know who she studied with in the South, but

4 when they moved over to our congregation, my wife and I studied

5 with James and Dee Dee to try to help them because they were

6 weak spiritually.

7 Q. What year would that have been?

8 A. That would be probably maybe '94, '95, I don't --

9 I'm just guessing there.

10 Q. Well, is there some event that you can tie it to so

11 we can know better when it occurred?

12 A. No.

13 Q. Let me ask you this, Mr. Hail, let me just ask you

14 to assume with me that when you were -- when you and your wife

15 were studying with James and Dee Dee, if you had known at that

16 time that he had been accused of sexually abusing a little

17 girl -- you knew that Dee Dee had two young girls, did you not?

18 A. Oh, yeah. I knew both of them.

19 Q. And if you had known at that time that James Harvey

20 had been accused of molesting a little girl, could you as an

21 elder have told Dee Dee about that accusation?

22 MR. LIGHTY: Object to form.

23 A. I don't think I could have.

24 Q. Okay. Do you think that you would have consulted

25 the other elders, consulted the letters from the Society, maybe

EXHIBIT 5 5

COPY

CAUSE NO. 91,048-C

AMY B., ) IN THE DISTRICT COURT  
 )  
 Plaintiff, )  
 )  
 vs. ) POTTER COUNTY, TEXAS  
 )  
 WATCHTOWER BIBLE AND TRACT )  
 SOCIETY OF NEW YORK, INC., )  
 WATCHTOWER BIBLE AND TRACT )  
 SOCIETY OF PENNSYLVANIA, INC., )  
 INC., WATCHTOWER ENTERPRISES, )  
 L.L.C., WATCHTOWER FOUNDATION, )  
 INC., WATCHTOWER ASSOCIATES, )  
 LTD., KINGDOM SUPPORT SERVICES, )  
 INC., CHRISTIAN CONGREGATION OF )  
 JEHOVAH'S WITNESSES, RELIGIOUS )  
 ORDER OF JEHOVAH'S WITNESSES, )  
 DUMAS CONGREGATION OF JEHOVAH'S )  
 WITNESSES, AMARILLO-SOUTHWEST )  
 CONGREGATION OF JEHOVAH'S )  
 WITNESSES, and LARRY KELLEY, )  
 )  
 Defendants. ) 251ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

LARRY KELLEY

DECEMBER 5, 2003

ORAL AND VIDEOTAPED DEPOSITION OF LARRY KELLEY,  
 produced as a witness at the instance of the Plaintiff and  
 duly sworn, was taken in the above-styled and numbered  
 cause on the 5th day of December, 2003, from 9:00 a.m. to  
 11:58 a.m., before Dana Foster Moreland, Certified  
 Shorthand Reporter in and for the State of Texas, reported

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1 CAUSE NO. 91,048-C

2 AMK 1. ) IN THE DISTRICT COURT

3 Plaintiff. )

4 vs. ) POTTER COUNTY, TEXAS

5 WAT CROWER BIBLE AND TRACT )

6 SOC ILY OF NEW YORK, INC., )

7 WAT CROWER BIBLE AND TRACT )

8 SOC ILY OF PENNSYLVANIA, INC. )

9 INC., WATCHTOWER ENTERPRISES, )

10 I. L. C., WATCHTOWER FOUNDATION, )

11 INC., WATCHTOWER ASSOCIATES, )

12 LTD., KINGDOM SUPPORT SERVICES, )

13 THE CHRISTIAN CONGREGATION OF )

14 JERUSALEM'S WITNESSES, RELIGIOUS )

15 ORDER OF JEHOVAH'S WITNESSES, )

16 DUNBAR CONGREGATION OF JEHOVAH'S )

17 WITNESSES, AMARILLO-SOUTHWEST )

18 CONGREGATION OF JEHOVAH'S )

19 WITNESSES, and LARRY KELLEY, )

20 Defendants. ) 251st JUDICIAL DISTRICT

21

22 ORAL AND VIDEOTAPED DEPOSITION OF

23 LARRY KELLEY

24 DECEMBER 5, 2003

25

ORAL AND VIDEOTAPED DEPOSITION OF LARRY KELLEY,  
 produced as a witness at the instance of the Plaintiff and  
 duly sworn, was taken in the above-styled and numbered cause  
 on the 5th day of December, 2003, from 9:00 a.m. to  
 11:58 a.m., before Dana Foster Moreland, Certified Shorthand  
 Reporter in and for the State of Texas, reported

DANA FOSTER MORELAND, CSR

1 by computerized stenotype machine at the offices of

2 Ronald T. Spriggs, 112 West 6th Avenue, Suite 400, in the

3 City of Amarillo, County of Potter, and State of Texas,

4 pursuant to the Texas Rules of Civil Procedure and the

5 provisions stated on the record or attached hereto.

6

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25

DANA FOSTER MORELAND, CSR

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21 Mr. Christopher Jensen

22 STAGGERS, BRIDGEMAN, SMITH

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25

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XHIBIT 2 D 4

1 MR. JONES: Object to form.  
 2 A. Yes.  
 3 Q. The flock is the congregation?  
 4 A. Yes.  
 5 Q. True?  
 6 A. Yes.  
 7 Q. The elder is the shepherd?  
 8 A. Yes.  
 9 Q. And when the term shepherd the flock is used in  
 10 the Jehovah's Witness Congregation, what that means is  
 11 that the elder is supposed to protect the congregation?  
 12 MR. SPRIGGS: Object to form.  
 13 MR. JONES: Object to form.  
 14 A. Yes.  
 15 Q. Protect the congregation specifically from evil,  
 16 correct?  
 17 MR. SPRIGGS: Object to form.  
 18 A. Yes.  
 19 Q. And you recognized when you were an elder that  
 20 that was your role?  
 21 MR. SPRIGGS: Object to form.  
 22 A. Yes.  
 23 Q. You recognized that that's what the congregation  
 24 expected you to do?  
 25 MR. SPRIGGS: Object to form.

1 A. Yes.  
 2 Q. And you accepted that role willingly?  
 3 MR. SPRIGGS: Object to form.  
 4 A. Yes.  
 5 Q. The elders are regarded as leaders in the  
 6 organization you've told us.  
 7 MR. SPRIGGS: Object to form.  
 8 A. Yes.  
 9 MR. JONES: Object to form.  
 10 Q. Members of congregations are taught to look up  
 11 to the elders?  
 12 MR. SPRIGGS: Object to form.  
 13 A. Yes.  
 14 Q. Members of the congregation are taught to trust  
 15 the elders?  
 16 MR. SPRIGGS: Object to form.  
 17 A. Yes.  
 18 Q. Members of the congregation are taught to rely  
 19 on elders to protect them?  
 20 MR. SPRIGGS: Object to form.  
 21 A. Yes.  
 22 Q. You said that elders are also responsible for  
 23 handling the business of the congregation?  
 24 A. Yes.  
 25 Q. And that would include handling the finances of

1 the congregation?  
 2 A. Yes.  
 3 Q. That would include taking care of the Kingdom  
 4 Hall?  
 5 A. Yes.  
 6 Q. Both in terms of maintenance and in terms of the  
 7 financial structure?  
 8 A. Yes.  
 9 Q. That would in turn -- that would -- excuse me.  
 10 The administrative or the business function  
 11 of the congregation from time to time would include  
 12 investigating reports of misconduct?  
 13 MR. SPRIGGS: Object to form.  
 14 Q. Correct?  
 15 A. Yes.  
 16 Q. The administrative or business side of the  
 17 elders' job would, from time to time, include disciplining  
 18 members of the congregation who committed misconduct?  
 19 MR. JONES: Object to form.  
 20 MR. SPRIGGS: Object to form.  
 21 A. Yes.  
 22 Q. The elders act in committees oftentimes, do they  
 23 not?  
 24 A. Yes.  
 25 Q. And you served on committees while you were an

1 elder, did you not?  
 2 A. Yes.  
 3 Q. And you served on committees that took care of  
 4 the finances of the congregation?  
 5 A. I don't remember.  
 6 Q. Did you serve -- well, let me ask you this:  
 7 Were there committees that took care of the finances of  
 8 the congregation?  
 9 A. I think so.  
 10 Q. Were there committees that took care of the  
 11 Kingdom Hall, the physical plant?  
 12 A. I'm not sure. I don't think they were called  
 13 committees or, you know.  
 14 Q. Okay. Well, one thing for sure is that the  
 15 function of investigating reports of misconduct within the  
 16 congregation are handled by what's called judicial  
 17 committees; is that true?  
 18 A. Correct.  
 19 Q. And those judicial committees are acting in the  
 20 administrative -- in the administrative capacity of the  
 21 elders; is that correct?  
 22 MR. JONES: Object to form.  
 23 MR. SPRIGGS: Object to form.  
 24 A. Yes.  
 25 Q. And if the admin -- if a judicial committee

EXHIBIT D  
Page 3 4



1 investigates misconduct and imposes discipline, again, 73  
 2 the function is in the administrative capacity of the  
 3 elders, correct?  
 MR. JONES: Object to form.  
 MR. SPRIGGS: Object to form.  
 6 A. Yes.  
 7 Q. Did you ever serve on a judicial committee?  
 8 A. Yes.  
 9 Q. On how many times?  
 10 A. I don't remember.  
 11 Q. More than once?  
 12 A. Yes.  
 13 Q. Starting with the first time you remember being  
 14 on a judicial committee, what were the allegations that  
 15 you were investigating?  
 16 MR. SPRIGGS: I'm going to object, instruct  
 17 my client not to answer that based on Rule 505, Texas  
 18 Rules of Evidence.  
 19 MR. JONES: I join in that objection.  
 20 Q. Now, I'm not asking you for the name of the  
 21 individual. I'm not asking you for the name of the  
 22 victim. I'm not asking you for any specific names or  
 23 dates, Mr. Kelley. I'm asking you just to tell me what  
 24 the nature of the allegations that you were investigating  
 25 were the first time you remember serving on a judicial

1 committee. 74  
 2 MR. SPRIGGS: I'm still going to raise that  
 3 same objection and instruct my client not to answer that.  
 4 Q. Are you refusing to answer the question that  
 5 I've asked at your counsel's -- based on your counsel's  
 6 advice and instruction?  
 7 A. Yes, I am.  
 8 Q. When you served on this judicial committee, did  
 9 you meet with the accused?  
 10 A. Yes.  
 11 Q. Did you meet with the accuser?  
 12 A. Sometimes.  
 13 Q. When you served on judicial committees and you  
 14 met with the accused, it was the judicial committee that  
 15 initiated the meeting, was it not?  
 16 A. Yes.  
 17 MR. SPRIGGS: Object to form. You still  
 18 can answer.  
 19 A. Yes.  
 20 Q. In other words, the committee had told the  
 21 accused to come meet with them?  
 22 MR. SPRIGGS: Object to form.  
 23 A. Yes.  
 24 Q. And that was in the context of investigating the  
 25 allegations, true?

1 MR. SPRIGGS: Object to form. 75  
 2 A. Yes.  
 3 Q. And these judicial committees are comprised of  
 4 how many elders typically?  
 5 MR. SPRIGGS: Object to form.  
 6 A. I can't remember the minimum required, but --  
 7 Q. Was it usually three?  
 8 A. Yes, it was usually three.  
 9 Q. And when you met with the accused, the meeting  
 10 was a confrontational meeting, wasn't it?  
 11 MR. SPRIGGS: Object to form.  
 12 A. Sometimes.  
 13 MR. HAMPTON: What's the basis of your  
 14 objection?  
 15 MR. SPRIGGS: What was the question again?  
 16 MR. HAMPTON: What was the basis of your  
 17 objection.  
 18 MR. SPRIGGS: What was the question and  
 19 I'll tell you my objection -- the basis.  
 20 MR. HAMPTON: Why don't you read the  
 21 question back.  
 22 The requested information is as follows.  
 23 MR. SPRIGGS: It calls for speculation.  
 24 MR. HAMPTON: Okay.  
 25 MR. SPRIGGS: It's arbitrary.

1 MR. HAMPTON: It's what? 76  
 2 MR. SPRIGGS: Arbitrary.  
 3 MR. HAMPTON: Arbitrary?  
 4 MR. SPRIGGS: Uh-huh.  
 5 MR. JONES: My objection is that it tends  
 6 to infringe upon the First Amendment rights of my clients.  
 7 MR. HAMPTON: Okay.  
 8 Q. (BY MR. HAMPTON) And when you met with -- when  
 9 you and other members of the judicial committees that you  
 10 served on met with the accused, the purpose was for the  
 11 accused to respond to the allegations that had been made,  
 12 correct?  
 13 MR. JONES: Object to form.  
 14 MR. SPRIGGS: Object to form.  
 15 A. Yes.  
 16 Q. As an elder, were you expected to attend Kingdom  
 17 Ministry Schools?  
 18 A. Yes.  
 19 Q. Did you attend Kingdom Ministry Schools?  
 20 A. Yes.  
 21 Q. When you were an elder in, for example, the  
 22 Dumas Congregation, did you attend Kingdom Ministry  
 23 Schools?  
 24 A. Yes.  
 25 Q. Every three or four years or so?

WHIP 4 4

R E P O R T E R ' S R E C O R D

VOLUME 1 OF 1 VOLUME

Trial Court Cause No. 91,048-C

AMY B. ) IN THE DISTRICT COURT  
VS. )

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, INC.,  
WATCHTOWER ENTERPRISES, L.L.C.,  
WATCHTOWER FOUNDATION, INC.,  
WATCHTOWER ASSOCIATES, LTD.,  
KINGDOM SUPPORT SERVICES, INC.,  
CHRISTIAN CONGREGATION OF  
JEHOVAH'S WITNESSES, RELIGIOUS  
ORDER OF JEHOVAH'S WITNESSES,  
DUMAS CONGREGATION OF JEHOVAH'S  
WITNESSES, AMARILLO-SOUTHWEST  
CONGREGATION OF JEHOVAH'S  
WITNESSES and LARRY KELLEY

POTTER COUNTY, TEXAS

) 251ST JUDICIAL DISTRICT

HEARING HELD ON  
JANUARY 30, 2004

On the 30th day of January, 2004, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Patrick A. Pirtle, Judge presiding, held in Amarillo, Potter County, Texas.

Proceedings reported by stenographic machine shorthand.

COPY

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EXHIBIT E  
2 of 13

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EXHIBIT E  
30 30 B

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EXHIBIT E  
4 13

1 A. Yes.

2 Q. I'm handing you what's been marked as Exhibit No. 2.  
3 Is that a fair and accurate statement of what we're looking at  
4 on the screen?

5 A. Yes, appears to be.

6 Q. And down at the bottom, we see a reference to  
7 Fibish-Hampton. If I click on that, do we get what you see --  
8 hold on. Let me make one more click.

9 If we click on clergy, Jehovah's Witnesses  
10 abuse, do we get what you see on Exhibit No. 3?

11 A. Yes.

12 MR. JENSEN: Your Honor, we would offer  
13 Exhibits 1 through 3 for purposes of the hearing.

14 MR. HAMPTON: We have no objection, Your Honor.

15 THE COURT: Exhibits 1, 2 and 3 will be  
16 received.

17 Q. (By Mr. Jensen) Mr. Duggan, I'll grab these from  
18 you. And if you will take the stand, I'll pass the witness.

19 MR. HAMPTON: May I proceed, Your Honor?

20 THE COURT: Yes, sir, you may.

21 CROSS-EXAMINATION ★

22 BY MR. HAMPTON:

23 Q. Mr. Duggan, we just met earlier today, did we not?

24 A. That's true.

25 Q. Should the elders at the Dumas congregation have



1 reported Mr. Kelley to the law enforcement authorities, in  
2 your opinion?

3 MR. JENSEN: That's a legal question, Your  
4 Honor.

5 THE COURT: Could be. Objection as to the form  
6 of the question will be sustained.

7 Q. (By Mr. Hampton) Mr. Jensen asked you how many  
8 references to scripture you found in that July 1, 1989 letter  
9 to all bodies of elders.

10 A. Yes, sir.

11 Q. I believe you said you found twelve?

12 A. That's correct.

13 Q. Did you see any references to lawsuits or  
14 litigations?

15 A. Well, I didn't look for those.

16 Q. You didn't look for those. So, you can't tell us  
17 whether there are more or less than twelve references to  
18 lawsuits or litigation in that letter?

19 A. No, I can't.

20 Q. These letters to all bodies of elders, that is one  
21 method by which the Watchtower Society gives instructions to  
22 elders; is that correct?

23 A. Yes.

24 MR. JENSEN: Your Honor, I just want to object  
25 to the use of watchtower society because that's not -- it's

1 not sufficiently clear.

2 MR. HAMPTON: Let me clear that up then.

3 THE COURT: Thank you.

4 Q. (By Mr. Hampton) Mr. Duggan, we've had a devil of a  
5 time -- pardon the pun -- trying to figure out what to call  
6 Watchtower headquarters, the top of the Jehovah's Witness  
7 organization.

8 What do you know it by?

9 A. Well, we call it the society, usually, but it's a  
10 very broad term when you use that.

11 Q. Okay. Is the society the entity that sends elders  
12 these letters to all bodies of elders?

13 A. It could be because right now, we're getting our  
14 information from the Christian Congregation of Jehovah's  
15 Witnesses.

16 Q. Okay.

17 A. Now, the legal entity, Watchtower of Pennsylvania,  
18 that deals with insurance that may affect our Kingdom Hall or  
19 other items like that.

20 So, sometimes it depends upon the  
21 correspondence we're receiving as to who it comes from.

22 Q. When you receive instructions in these letters to  
23 all bodies of elders, do you interpret that as instruction  
24 coming from the highest level of the Jehovah's Witness  
25 organization?

1 A. Generally, yes.

2 Q. And that highest level is called the governing body;  
3 is that correct?

4 A. The governing body are the ones who direct the  
5 teaching, scripturally, from -- for Jehovah's Witnesses.

6 Q. Well, actually if you think of the Jehovah's witness  
7 as an organizational chart, the governing body would be at the  
8 very top of that organizational chart, would it not?

9 A. Of that scriptural body, yes, it would.

10 Q. Or of that organization.

11 A. Not necessarily.

12 Q. All right. Although the governing body of the  
13 organization is a branch level; is that correct?

14 A. Yes.

15 Q. And there's a branch for the United States except  
16 for a -- Alaska and Hawaii, true?

17 A. I believe that's correct.

18 Q. And there are branches for other countries around  
19 the world, other hemispheres or whatever, right?

20 A. Yes.

21 Q. And below the branch level, there is a district  
22 level; is that correct?

23 A. Yes.

24 Q. And below the district level is a circuit level that  
25 would include a couple of dozen congregations or so, true?

1 A. That's correct.

2 Q. And then that gets down to the local level which is  
3 the congregation?

4 A. Yes.

5 Q. But all congregations in the United States branch  
6 are connected at the top of this organizational chart by the  
7 branch office, by the United States branch office, true?

8 A. Yes.

9 Q. And in instructions to all of those congregations  
10 flow down through that branch office to all congregations, do  
11 they not?

12 A. Yes.

13 Q. And all of the elders in all of the congregations  
14 are responsible for following those instructions, true?

15 A. Yes, they are.

16 Q. And the instructions that you receive in these  
17 letters to all bodies of elders include many, many different  
18 sorts of things, don't they?

19 A. Yes, they do.

20 Q. You have received over the years letters instructing  
21 you as an elder and as a member of a body of elders in how to  
22 maintain the Kingdom Hall, true?

23 A. Yes.

24 Q. You've received letters that deal with such basic  
25 subject matter as how to maintain the files, how to keep the

1 filing system in the Kingdom Hall, true?

2 A. Yes.

3 Q. And elders don't have the discretion to decide that  
4 they are going to disobey those instructions and use some  
5 other filing system, do they?

6 A. It's a worley (phonetic) system; it works.

7 Q. Okay. They don't have the discretion to come up  
8 with their own system, do they?

9 A. No.

10 Q. Nor do they have the discretion to come up with  
11 their own system of maintaining the Kingdom Hall?

12 A. Well, that's not really true to a degree. I mean,  
13 we have latitude within the boundaries. Now, they have  
14 certain suggestions and guidelines that we go by.

15 Q. And you're expected to follow those guidelines, are  
16 you not?

17 A. Sometimes we use those as a check list as a -- to  
18 make sure it's done properly, yes.

19 Q. You've received instruction on how to handle the  
20 revenues collected by the various congregations, true?

21 A. Yes.

22 Q. Where to send those revenues?

23 A. Yes.

24 Q. How to handle insurance for the Kingdom Hall?

25 A. Yes.

1 Q. Do you know any of the elders or presiding overseers  
2 from any of the Tyler congregations?

3 A. I don't think so.

4 Q. Would you agree with Mr. Hale that judicial  
5 committees are fact-finding committees?

6 A. That's one of the functions.

7 Q. Would you agree with Mr. Hale that one of the  
8 functions of a judicial committee is to make factual  
9 determinations about the accuracy or lack thereof of  
10 allegations?

11 A. Yes.

12 Q. Would you agree with Mr. Hale that one of the  
13 functions of those committees is to make recommendations to  
14 the other elders as to what to do with those -- with their  
15 factual determination about the truth or falsity of the  
16 allegations?

17 A. I think I would have to inject something in that  
18 because the body of elders, as a whole, are not privy to  
19 details about a judicial matter.

20 Q. Okay.

21 A. Now, they may know the outcome or they may know what  
22 the decision is, but they're not privy to specific details of  
23 that committee matter unless they are brought in on that.

24 Q. Well, I may stand corrected then, is it the judicial  
25 committee then that makes the factual determination and

1 actually takes the action to discipline the member?

2 A. Yes.

3 Q. Okay. So, the judicial committee is not only a fact  
4 finding body, but it also dispenses discipline?

5 A. It can. Let me back up a little bit because we  
6 select two elders to investigate, first of all, if there's any  
7 basis to an allegation.

8 And then we go back to the body of elders.  
9 And, I think I'd mentioned this earlier, that we go back to  
10 the elders. The body of elders would select in three  
11 brothers.

12 Now, those who are the fact-finding commission  
13 or the fact-finding mission there with the allegation, the  
14 person who is the alleged wrongdoer, and then they will select  
15 this committee.

16 So, they can well be not only investigatory,  
17 but they can also be part of the judicial committee. The only  
18 thing that is brought back to the body of elders, is the fact  
19 -- is there a basis -- is there a basis for a violation of  
20 scriptural law or principle.

21 Q. Okay. I appreciate that clarification. You said  
22 that you have received training in the importance of  
23 maintaining confidentiality of this type of material within  
24 the Jehovah's Witness organization.

25 A. Yes.



1 Q. Would you agree that that July 1, 1989 letter that  
2 the Court has is part of the training that you've received?

3 A. Yes, this is part of the procedure and training that  
4 we have.

5 Q. Okay. would you also agree that this book, "Take  
6 Care of Yourselves and All of the Flock" -- I can't remember  
7 exactly the name of it, y'all refer to it as the flock book  
8 sometimes, don't you?

9 A. Well, it's a textbook. It's "Paying Attention to  
10 the Flock" is the correct title.

11 Q. All right. would you agree that that book contains  
12 instructions that elders are expected to follow?

13 A. Yes.

14 Q. And some of that instruction pertains to judicial  
15 committees, right?

16 A. Yes, it does.

17 Q. And part of the instruction actually pertains to  
18 what type of evidence is admissible during a judicial  
19 committee proceeding?

20 A. Yes, it does.

21 Q. Now, there is a protocol within the Jehovah's  
22 Witness organization about what to do when an elder is deleted  
23 as an elder, isn't there?

24 A. Yes.

25 Q. Likewise, there is a protocol within the Jehovah's



# WATCHTOWER

BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A. PHONE (718) 626-3800

July 20, 1998

## CONFIDENTIAL

TO ALL BODIES OF ELDERS

Dear Brothers:

We are here providing, for your future reference, information that was presented at the 15-hour supplementary course for congregation elders on certain serious matters.

**Child Molestation:** The Society's letter to all bodies of elders dated March 14, 1997, page 2, paragraph 5, states: "[G]ive the Society a report on anyone who is currently serving or who formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past." Reports indicate that some elders think this direction does not apply if before his baptism the person sexually abused a child. However, even in such a situation, the elders should write the branch office. This is true even if what occurred was many years ago. If any body of elders has not yet reported such a matter, they should immediately do so. Furthermore, any correspondence put in the confidential congregation file about an individual accused of child molestation, proven or otherwise, should be marked "Do Not Destroy" and be kept indefinitely.

In the Kingdom Ministry School Supplementary Course for Congregation Elders there was a panel discussion in Unit 5b, "USE DISCERNMENT IN HANDLING SERIOUS MATTERS." This portion of the course addressed questions related to the problems associated with child abuse. Question 6 to the panel asked: "What factors should be considered in determining what congregation privileges, if any, a former child molester can enjoy?" The answer included the statement: "There are also legal considerations." Some have inquired about how and why legal considerations should affect our recommendations of those who have been guilty of child abuse in the past.

Those who are appointed to privileges of service, such as elders and ministerial servants, are put in a position of trust. One who is extended privileges in the congregation is judged by others as being worthy of trust. This includes being more liberal in leaving children in their care and oversight. The congregation would be left unprotected if we prematurely appointed someone who was a child abuser as a ministerial servant or an elder. In addition, court officials and lawyers will hold responsible any organization that knowingly appoints former child abusers to positions of trust, if one of these, thereafter, commits a further act of child abuse. This could result in costly lawsuits, involving dedicated funds that should be used to further the Kingdom work. So, legal considerations must also be weighed along with the degree of notoriety, the extent of the misconduct, how many years ago the sin occurred, and how the brother is now viewed by the congregation and people in the community including those he victimized.

EXHIBIT F

Page 1 of 3

TO ALL BODIES OF ELDERS

July 20, 1998

Page 2

**Scriptural Freedom to Remarry:** The 1991 Kingdom Ministry School textbook, page 135, paragraph 1, describes a situation where an adulterous mate unilaterally obtains a divorce over the objection of the innocent mate. In such a case, the guilty one is not free to remarry.

What if the innocent mate consents to the divorce by signing the divorce papers? Does this free the guilty mate to remarry? Yes, Jesus' counsel at Matthew 5:37 applies here: "Let your Yes mean Yes, your No, No." If the innocent mate, perhaps in an effort to protect herself financially or to obtain custody of children, agrees to a divorce obtained by her adulterous husband, the adulterous one is then free to remarry. Although the innocent one may claim forgiveness, by signing the divorce papers she indicates her rejection of the adulterous mate. Since she has rejected that one, she holds no further claim on him, and he is Scripturally free to remarry.

Another situation involving the Scriptural freedom to remarry is where an unscriptural divorce is obtained and then, some time later, one of the mates commits fornication. In such a case, does either one have a Scriptural basis to remarry?

If a man takes the initiative and divorces his mate without a Scriptural basis and his divorced wife later commits adultery, both are free to remarry. This is because, by his previous unscriptural action of divorcing his wife, the husband has given evidence of his wanting to reject her. What is stated in the 1991 Kingdom Ministry School textbook, page 135, paragraph 6, applies: "*A person who commits adultery after having been divorced by his or her mate on unscriptural grounds would be Scripturally free to remarry, since he or she had already been rejected by the mate that obtained the divorce.*" However, the converse is not necessarily true. If the one who initiated the unscriptural divorce later commits adultery, that one is still obligated to confess to the mate, although they are legally divorced. The innocent mate must be given the opportunity to determine whether to forgive or not. However, in both cases, the one committing adultery would need to meet with a judicial committee.

While the principles outlined above should prove helpful in handling inquiries from publishers about the Scriptural freedom to remarry, the elders should always exercise extreme caution when providing an answer. They should never inform a publisher that there appears to be a basis for Scriptural freedom to divorce and remarry, *unless conclusive evidence has been established* (1) that adultery was committed, (2) that the innocent mate has rejected the guilty one, and (3) that a legal, final divorce has been obtained. Because of the numerous factors involved in such matters, in many cases it will be best to write the Society. When doing so, always provide as many details as possible, including the names of the individuals involved. The Society will then provide the needed assistance.

When a divorced brother or sister wishes to remarry, the elders should kindly request to see the divorce papers to make sure that that one is legally free to do so. They should also determine that it has been established that both parties involved are Scripturally free to remarry. (Matt. 19:9) This will help servants of Jehovah to preserve the cleanness of the congregation and avoid entering adulterous marriages. Always review the Society's letter to all bodies of elders

EXHIBIT F  
Page 2 3

TO ALL BODIES OF ELDERS

July 20, 1998

Page 3

dated May 15, 1988, regarding guidelines on wedding procedures before agreeing to solemnize any marriage.

Please be assured of our prayers on your behalf as you endeavor to fulfill your weighty responsibilities as shepherds of the flock. We send herewith a warm expression of our Christian love and best wishes.

Your brothers,

*Watchtower B. V. Society*  
OF NEW YORK, INC.

P.S. to Body of Elders: At the next meeting of the entire body of elders, the presiding overseer should have this letter read and should have each elder make the following notations in the margins of his personal copy of the 1991 Kingdom Ministry School textbook:

On page 93, next to paragraphs 10-11: See the Society's letters dated July 20, 1998; March 14, 1997; August 1, 1995; February 3, 1993; March 23, 1992; and July 1, 1989.

On page 135, next to paragraphs 1-6: See the Society's letter dated July 20, 1998.

XHIBIT F  
page 3 3

**ENDORSED**

OCT 16 2006

Clerk of the Napa Superior Court

By: M.M. FIELDS  
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,  
COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, et al.

Defendants.

Case No.: 26-22191  
ICCP No. 4374

**RULING ON SUBMITTED  
DISCOVERY MOTIONS**

Plaintiffs' Motions To Compel Discovery came on for hearing on October 13, 2006. The court, having read and considered the papers in support of and in opposition to the motion and having heard oral argument, took the motions under submission and now rules as follows:

**Plaintiffs' Motion to Compel Depositions and/or for Protective Order re: the Woodland Elders (Motion #1)**

The Watchtower defendants have informed the plaintiffs that, at the depositions of four Church Elders, they will invoke the clergy-penitent privilege and object to "any inquiries concerning judicial investigations and judicial committees." Plaintiffs seek an order compelling the deponents to attend their depositions and to respond to such inquiries.

26-22191

1

EXHIBIT 6  
1 3

This court has previously ruled in the Track I cases that the penitential communication privilege does not apply to communications between the alleged abusers and the Judicial Committee. (See Court's ruling of September 29, 2005.) Although that ruling is not res judicata in non-track I cases, defendants provide no convincing reason why the court should rule differently in this case. For the reasons expressed in the earlier ruling, the court concludes that the witnesses may not assert the penitential communication privilege. To the extent the motion also encompasses the production of documents, defendants shall produce responsive documents, regardless of when they are dated. As plaintiffs note, it is possible that documents dated after the alleged abuse will contain relevant information. For these reasons, plaintiffs' motion #1 is GRANTED.

**Plaintiffs' Motion to Compel PMK Deposition and Documents – General (Motion #2)**

Plaintiffs have noticed the deposition of the Church defendants' Person(s) Most Knowledgeable (PMK) on a number of specified topics. Defendants have objected to six areas of inquiry, again invoking the clergy-penitent privilege. For the reasons discussed above and in the court's earlier ruling, the court finds that the clergy-penitent privilege does not apply to these areas of inquiry. Defendants also object to the scope of the document requests, claiming that documents that post-date the alleged abuse are not relevant or likely to lead to the discovery of admissible evidence. As above, the court finds that the documents are discoverable. For these reasons, plaintiffs' motion #2 is GRANTED.

**Plaintiffs' Motion to Compel PMK Deposition and Documents – Legal (Motion #3)**

Plaintiffs previously issued a PMK deposition notice concerning "any and all policies that the Jehovah's Witnesses organization had for handling accusations and proof of child sexual abuse from 1970 to the present." During that PMK deposition of Mr. Breaux, he identified functions that were handled by the Legal Department rather than by the Service Department, where he worked. As to these, he lacked the information necessary to provide responses.

Plaintiffs subsequently noticed a PMK deposition to inquire into (1) the organization, staffing and operation of the Legal Department; (2) the Legal Department's role in responding to

6  
2

and investigating child sexual abuse allegations within the organization; (3) the development and use of "Child Abuse Telememos" which were forms developed to obtain and record information concerning reports of abuse (blank forms were produced in discovery); (4) records kept by or under the direction of the Legal Department concerning allegations of abuse; and (5) answers given to "survey questions" contained on one of the Telememos.

Defendants have objected that these areas of inquiry are protected by the attorney-client and/or work product privileges. As to the first two categories, plaintiffs contend that they concern only policies and implementation, and do not invade any privileges. As to categories 3 and 5, they assert only that the requested information is related to the blank documents they already received in discovery, and that the information goes to the heart of their case. Finally, as to category 4, they claim again, that no privileges would be invaded, because they seek general information about the types of records kept by the legal department.

The court agrees that items 1, 2 and 4, which seek general structural, policy and organizational information concerning the Legal Department, implicate neither the attorney-client nor the work product privileges. Items 3 and 5, on the other hand, seek protected information. As set forth in the declaration of the Church's associate general counsel, the Telememo forms are completed by attorneys or legal assistants based upon information provided them by congregation elders, and are used to assist in giving legal advice to the elders, as clients of the Legal Department. Similarly, any compilation of information, as from the "survey questions" constitutes attorney work product and is not discoverable.

For these reasons, the court will GRANT the motion as to items 1, 2 and 4 and will DENY the motion as to items 3 and 5.

Dated: 10/16/06

  
Raymond A. Guadagni, Judge

100 3 6 3



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF TEHAMA

---000---

TIN V.,

Plaintiff,

vs.

CASE NO. 52594

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.;  
WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.;  
NORTH CONGREGATION OF JEROMAN'S WITNESSES, RED BLUFF, CA, INC.;  
JAMES HENDERSON, and DOES 1 through 20, inclusive,

Coordinated with  
CASE NO. 26-22191

Defendants.

---000---

WEDNESDAY, AUGUST 16, 2006

9:10 a.m.

VIDEOTAPED DEPOSITION OF LEROY MARTIN REID, JR.

KINSIE ROWEN, C.S.R.

License No. 10225

1

EXHIBIT NUMBER	DESCRIPTION	PAGE
7	A four-page letter dated March 23, 1992 to All Bodies of Elders from Watchtower Bible and Tract Society of New York	48
8	A three-page letter dated March 14, 1997 to All Bodies of Elders from Watchtower Bible and Tract Society of New York	48
9	A three-page letter dated July 28, 1998 to All Bodies of Elders from Watchtower Bible and Tract Society of New York	48
10	A copy of a book entitled "Pay Attention to Yourselves and To All The Flock"	74
11	A two-page form entitled Report On Circuit Overseer's Visit With Congregation, Bates SR553	104
12	A two-page form entitled Report On Circuit Overseer's Visit With Congregation, Bates SR555	104
13	A two-page form entitled Report On Circuit Overseer's Visit With Congregation, Bates SR557	104
14	A two-page form entitled Report On Circuit Overseer's Visit With Congregation, Bates SR559	104
15	A two-page form entitled Report On Circuit Overseer's Visit With Congregation, Bates SR561	104
16	A two-page form entitled Report On Circuit Overseer's Visit With Congregation, Bates SR563	104
17	A two-page form entitled Report On Circuit Overseer's Visit With Congregation, Bates SR587	104

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1	A partial copy of a book Organized to Accomplish Our Ministry	22
2	A partial copy of a magazine The Watchtower, March 15, 1998	22
3	An Affidavit of Don Adams	22
4	A three-page letter dated September 28, 1984 to All Bodies of Elders from Watchtower Bible and Tract Society of New York	48
5	A two-page document dated December 5, 1985 to All District and Circuit Overseers in the United States from Watchtower Bible and Tract Society of New York that is redacted	48
6	A six-page letter dated July 1, 1989 to All Bodies of Elders in the United States from Watchtower Bible and Tract Society of New York	48

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EXHIBIT NUMBER	DESCRIPTION	PAGE
10	Six pages of forms, S-2a, S-2b, and S-2c	117
19	A two-page form entitled Notification of Disfellowshipping or Disassociation	122
20	An eight-page Red Bluff Police Department Crime Report	151

4

1 A. Yes.  
 2 Q. Now, a district overseer, a branch committee  
 3 member, and a circuit overseer in addition to having  
 4 those titles they're also elders; correct?  
 09:33 5 A. Yes.  
 6 Q. And those positions are all positions that  
 7 are appointed by the branch office; correct?  
 8 A. Yes.  
 9 Q. So nobody votes on a circuit overseer, that's  
 09:33 10 an appointment that's being made; correct?  
 11 A. Yes.  
 12 Q. At the very bottom there's a sentence that  
 13 starts like the zone overseer. Do you see that?  
 14 A. Yes.  
 09:33 15 Q. And it reads that he, and I assume it's  
 16 referring to the district overseer, is charged with  
 17 the responsibility to assure that all of the  
 18 activities in the district conform to the directors --  
 19 directives of the Governing Body. Did I read that  
 09:34 20 mostly right?  
 21 A. Yes.  
 22 Q. Is that your understanding of a district  
 23 overseer's charge and responsibility?  
 24 A. Yes.  
 09:34 25 Q. If you would turn the page with me and look  
 29

1 appointed positions within the congregation being  
 2 elders and ministerial servants; right?  
 3 A. Yes.  
 4 Q. Of course, the elders are primarily  
 09:35 5 responsible for the operation of the congregation;  
 6 correct?  
 7 A. Yes.  
 8 Q. Do you see in that paragraph 17 where I have  
 9 highlighted that it reads: It is the responsibility  
 09:35 10 of the body of elders to see that the congregation is  
 11 managed according to the directives of the Governing  
 12 Body?  
 13 A. Yes.  
 14 Q. Is that your understanding as well?  
 09:35 15 A. Yes.  
 16 Q. Then it goes further to describe different  
 17 offices within the body of elders. And you're  
 18 familiar with those offices, are you not?  
 19 A. Yes.  
 09:36 20 Q. You've probably held a few of those; correct?  
 21 A. Yes.  
 22 Q. So you're familiar with the fact that one of  
 23 these appointed elders is also going to be appointed  
 24 to the position of presiding overseer; correct?  
 09:36 25 A. Yes.  
 31

1 at paragraph 14 where it reads: The responsibility of  
 2 all of these positions is to assure the unity and  
 3 oneness of the congregations throughout the world with  
 4 the direction of the Governing Body.  
 09:34 5 Is that your understanding as well?  
 6 A. Yes.  
 7 Q. So essentially all the congregations operate  
 8 the same; right?  
 9 A. Similarly.  
 09:34 10 Q. And they're all using the same instructions  
 11 and directions in their operations; correct?  
 12 A. Yes.  
 13 Q. Now, within each congregation there's a body  
 14 of elders; correct?  
 09:35 15 A. Yes.  
 16 Q. And those elders are appointed by the branch  
 17 office as well, are they not?  
 18 A. Yes.  
 19 Q. And there are in terms of appointed  
 09:35 20 leadership in the congregation there's primarily the  
 21 elders; correct?  
 22 A. Ministerial servants are also there to assist  
 23 the elders.  
 24 Q. That was going to be my follow-up question,  
 09:35 25 that there are two types of positions that are  
 30

1 Q. There may be -- there will be somebody  
 2 appointed as a secretary, a service overseer, a  
 3 Watchtower study conductor, and theocratic ministry  
 4 school overseer; correct?  
 09:36 5 A. Yes.  
 6 Q. And in smaller congregations it's not unheard  
 7 of that one person might fill more than one position;  
 8 correct?  
 9 A. Yes.  
 09:36 10 Q. Finally, in that paragraph 18 it refers to  
 11 the materials being covered in the meetings is being  
 12 prescribed by the Governing Body to assure that all of  
 13 them are receiving the same instruction and  
 14 information. Do you see that?  
 09:36 15 A. Yes.  
 16 Q. And that's true, isn't it?  
 17 A. Yes.  
 18 Q. And that information and direction is being  
 19 provided by the branch office; correct?  
 09:36 20 A. Yes.  
 21 Q. Much like the case of Red Bluff, there would  
 22 up having the need for more than one congregation in a  
 23 city; correct?  
 24 A. Yes.  
 09:37 25 MR. SCHNACK: I'm going to object. I'm not  
 clear what you're asking.  
 32

EXHIBIT H  
Page 2 of 2

**COPY**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

<b>FILED</b>	
<small>Court of Appeal First Appellate District</small>	
<b>JUL 06 2006</b>	
<small>Diane Herbert, Clerk</small>	
<small>By</small>	<small>Deputy Clerk</small>

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK ET AL.,

Petitioners,

v.

THE SUPERIOR COURT OF NAPA  
COUNTY,

Respondents;

TIM W., ET AL.,

Real Parties in Interest.

A114329

(Judicial Council Coordination  
Proceeding No. 4374; Coordinated  
with Napa County Super. Ct. No. 26-  
22191)

BY THE COURT:

The petition for a writ of mandate is denied.

Dated:

JUL - 6 2006

**McGUINNESS,**

P.J.

\* McGuinness, P.J., Parrilli, J., and Siggins, J.

EXHIBIT F

Page 1 of 1

# CALIFORNIA APPELLATE COURTS

Case Information

Supreme Court

**Supreme Court**

Change court

Court data last updated: 10/26/2006 10:55 AM

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[Disposition](#) [Parties and Attorneys](#) [Lower Court](#)

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**Docket (Register of Actions)**

Calendar

**WATCHTOWER BIBLE & TRACT SOCIETY v. S.C. (T.M.W.)**

Help

**Case Number S145113**

Opinions

Date	Description	Notes
07/17/2006	Petition for review filed	Watchtower Bible and Tract Society of New York, petitioners by Robert J. Schnack, counsel
07/18/2006	Record requested	
08/02/2006	Received Court of Appeal record	accordion file
08/23/2006	Petition for review denied	Corrigan, J., was absent and did not participate.

C/C  
home

[Click here to request automatic e-mail notifications about this case.](#)

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EXHIBIT J  
no. 1

NOV 07 2006

**FILED**

ENTERED  
NOV 13 2006  
# 15

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER,

Plaintiff,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, and  
LANCASTER CONGREGATION OF  
JEHOVAH'S WITNESSES,

Defendants.

No. 06-C-15281

**DEFENDANTS' THIRD  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL  
PRODUCTION**

This Memorandum addresses the Court's questions at the recent hearing of plaintiff's motion to compel production of documents from defendants.

*Plaintiff* references and attempts to interpret defendant Watchtower's *religious* publications, such as *Pay Attention to the Flock*, a 158-page handbook issued to Elders of Jehovah's Witnesses, to support his allegation that the judicial committee process is "adversarial" and not intended to provide "spiritual help" to the wrongdoer. Therefore, argues plaintiff, the documents he requests are not subject to the clergy privilege.

However, the Court should first hold that plaintiff's position violates the First Amendment. "Civil courts can no longer inquire into questions of church doctrine." Decker v. Berean Baptist Church, 51 Or App 191, 197 (1981).

1 This is why courts addressing this specific issue hold that civil courts cannot review  
2 and interpret the meaning of church handbooks, including minister's handbooks.

3 In Odenthal v. Minnesota Conference of Seventh-Day Adventists, 632 NW2d 783  
4 (Minn App 2001), the plaintiff alleged that a minister violated the standards of pastoral  
5 counseling as set out in the defendant Seventh-Day Adventist Minister's Handbook. The  
6 trial court allowed the plaintiff to offer this handbook into evidence.

7 On appeal, however, the Minnesota Court of Appeals reversed the lower court's  
8 ruling, holding as follows: "The First and Fourteenth Amendments permit hierarchical  
9 religious organizations to establish their own rules and regulations for internal discipline and  
10 government. [Citing a U.S. Supreme Court case.] The district court here, however,  
11 determined that certain provisions in the minister's handbook set out standards applicable to  
12 appellant and determined he did not meet these standards. In effect, the district court  
13 concluded that a minister who did not follow these ethical codes and counseling guidelines  
14 stepped outside of the role of a minister. *By interpreting and analyzing the language and*  
15 *intent of the minister's handbook, the district court did precisely what the First*  
16 *Amendment forbids, resulting in the excessive entanglement of the district court in*  
17 *'religious doctrine, practice, or church polity.'*" Id. at 788-789 (emphasis added; citation  
18 omitted); rev'd on other grounds, 649 NW2d 426, 436 (Minn 2002) (still holding that  
19 interpreting the Minister's Handbook is impermissible).

20 An examination that goes right to the heart of the beliefs and practices of Jehovah's  
21 Witnesses is thus impermissible under the First Amendment. This Court cannot inquire into  
22 questions of church doctrine. Decker, 51 Or App at 197.

23 For this Court to question the purpose of a church judicial committee as outlined in  
24 the declarations of Elders Campbell and Morris based on the Court's (or plaintiff's)  
25 interpretation of *Pay Attention to the Flock* or other religious publications of Jehovah's  
26 Witnesses runs afoul of the First Amendment and the related provisions of the Oregon

1 Constitution. This is another reason why plaintiff's motion should be denied.<sup>1</sup>

2 Second, and without waiving this constitutional objection, defendants will also  
3 address the Court's concern that Exhibit 2 to Plaintiff's Response to Defendants'  
4 Supplemental Opposition, pages 6-12 ("Plaintiff's Exhibit 2"), which contains selected  
5 excerpts from *Pay Attention to the Flock*, appears to contradict defendants' assertions that the  
6 goal of a judicial committee is to provide spiritual assistance to those who have erred, with  
7 the hope of assisting them to regain their spirituality and relationship with God. (Campbell  
8 Declaration ¶ 15.)

9 Specifically, the Court has been led to believe that Plaintiff's Exhibit 2 suggests that  
10 the judicial committee is "adversarial" and an "inquisition," rather than about spirituality and  
11 helping the erring one. The Court is also of the impression that Plaintiff's Exhibit 2 paints a  
12 very different description of a judicial committee from the description submitted by  
13 defendants' declarants. The Court also wonders whether the procedures outlined on page 7  
14 of Plaintiff's Exhibit 2 were followed in this case, and requested an explanation of how such  
15 documents would be protected by the clergy privilege codified in OEC 506.

16 The Supplemental Declaration of Merton V. Campbell ("Campbell Declaration II")  
17 attached hereto; a review of other portions of *Pay Attention to the Flock*; the 1981 Kingdom  
18 Ministry School talk outline, *Helping Elders With Judicial Matters*; and other publications of  
19 Jehovah's Witnesses published long before the instant litigation, which are referenced in Mr.  
20 Campbell's first Declaration, support Defendants' assertion that *the stated goal of judicial*

21  
22 <sup>1</sup> The First Amendment to the U.S. Constitution provides that "Congress shall make no law  
23 respecting an establishment of religion, or prohibiting the free exercise thereof." The First  
24 Amendment is made applicable to the states through the Due Process Clause of the  
25 Fourteenth Amendment. *State v. Fanus*, 336 Or 63, 88 n. 26 (2003). Article 1, Section 2 of  
26 the Oregon Constitution states that all "men shall be secure in the Natural right, to worship  
Almighty God according to the dictates of their own consciences." Article 1, Section 3 of  
the Oregon Constitution states that no "law shall *in any case whatever control* the free  
exercise, and enjoyment of religeous [sic] opinions, *or interfere* with the rights of  
conscience." (Emphasis added.)



1 *committees is to assist a wrongdoer*, if possible. This is the type of spiritual help that is  
2 privileged and immune from discovery under OEC 506.

3 The following excerpts are found at *Pay Attention to the Flock* Unit 5(a), *Overseers*  
4 *'Ruling for Justice Itself'*:

5 "Your Aim Should Be to Help the Person." (Page 96, par. 6)

6 "*We want to help individuals to stay within Jehovah's spiritual paradise.*" (Page 96,  
7 par. 7 (emphasis added).)

8 "*Try to restore the individual, if this is possible.*" (Gal. 6:1, fn.) (Page 98, par. 5  
9 (emphasis added).))

10 "If efforts to restore bring no response, disfellowshipping is in order." (Page 98, par.  
11 6)

12 "If there is no response to efforts to bring about repentance, the wrongdoer should be  
13 disfellowshipped." (Page 98, par. 11)

14 "*Your goal* in dealing with unbaptized publishers, whether youths or adults, *is to help*  
15 *them.*" (1Thess. 5:14) (Page 99, par. 5 (emphasis added).)

16 "Purposes served by disfellowshipping:" \*\*\*

17 "May correct the unrepentant wrongdoer, bringing him to his senses." (2 Cor. 2:6-8)  
18 (Page 101, par. 3, 6)

19 Also, the following excerpts are found at *Pay Attention to the Flock* Unit 5(b),  
20 *Sharing on a Judicial Committee*"

21 "**The Judicial Committee**"

22 "Other cases of serious wrongdoing require special attention by the elders in order to  
23 *determine what is needed to help the repentant wrongdoer and to preserve the spiritual*  
24 *health of all in the congregation.* (Page 105, par. 12, 13 (emphasis added))

25 "You must ask pertinent, discreet questions to isolate main issues and determine how  
26 or why a problem developed." (Page 112, par. 1)

1 "Elders need to treat the accused kindly and respectfully, never harshly." (w89 9/15 p.  
2 19) (Page 112, par. 3)

3 "You must exercise mercy in matters of judgment, not only by showing compassion  
4 in the judgment rendered but also by expressing kind consideration and pity in *your efforts*  
5 *both to bring wrongdoers to repentance and to heal and restore those who are repentant.*"  
6 (Rom 2:4; Jas 5:14-16; Jude 22, 23) (Page 112, par. 5 (emphasis added))

7 "*Even though the wrongdoer is guilty of a serious offense, elders on the judicial*  
8 *committee realize that their aim is to recover the one who has fallen into a wrong course,*  
9 whenever this is possible." (Jude 23) (Page 113, par. 4 (emphasis added))

10 "If he listens to them, showing true repentance, it may be that he can be retained as a  
11 brother and thus be spared being disfellowshipped." (Prov. 19:20; compare Matthew 18:15-  
12 17) (Page 113, par. 5)

13 "Neither the gravity of the wrong nor bad publicity finally determines whether the  
14 person should be disfellowshipped; rather, the determining factor in the individual's sincere  
15 repentance or the lack of it." (Page 113, par. 6)

16 "Some manifest repentance right after their sin by taking steps immediately to  
17 confess; *others manifest repentance later, even during the meeting with the judicial*  
18 *committee.*" (w83 1/1 pp. 30-1) (Page 113, par. 7 (emphasis added))

19 "It is in the person's favor if he voluntarily confesses, but the determining factor is: Is  
20 he repentant?" (Page 113, par. 8)

21 "If all reasonable efforts have been made to readjust the one who has committed  
22 serious sins and yet he remains unrepentant, he must be disfellowshipped." (1 Cor. 5:1, 9-  
23 13) (Page 115, par. 12)

24 The following excerpt is found in the 1981 Kingdom Ministry School outline for  
25 Elders, *Helping Elders With Judicial Matters*:

26 "In meeting with wrongdoers, *[the] committee's goal is to help the offender.*

1 Always deal with wrongdoer in love

2 Avoid adopting the appearance of prosecuting attorney when interrogating erring  
3 ones.

4 Committee should show same consideration that would be demonstrated by a wise  
5 and loving father in dealing with his son

6 It is well to remember the loving way Jehovah deals with us

7 It is helpful also to keep in mind that the life of an individual is Jehovah's and not  
8 ours. (Ezek. 34:22; John 17:12)

9 Even where disfellowshipping is necessary, *a warmhearted approach coupled with a*  
10 *deep concern motivated by love on the part of the committee may contribute to an early*  
11 *repentance and ultimate reformation of the individual.*" (Emphasis added.)

12 The above excerpts show that, contrary to plaintiff's efforts to characterize the  
13 judicial committee process as an "adversarial" proceeding, *the judicial committee attempts*  
14 *to restore the wrongdoer to spiritual health.* The judicial committee procedures outlined in  
15 *Pay Attention to the Flock*, including those referenced in Plaintiff's Exhibit 2, are not in  
16 conflict with the goal of restoring the wrongdoer to spiritual health.

17 To the contrary, the judicial committee procedures in *Pay Attention to the Flock* are to  
18 assist Elders to conduct the meeting in an impartial, respectful, and kindly manner, not an  
19 adversarial manner, so as to obtain all of the relevant facts regarding the sin, what led to the  
20 sin, and the wrongdoer's feelings about his sin, so that Elders have all of the necessary  
21 information to offer needed *spiritual help* to bring the wrongdoer to *repentance*, if possible.  
22 (Supplemental Campbell Declaration ¶ 7.)

23 Likewise, the disfellowshipping of wrongdoers whom the judicial committee Elders  
24 cannot help to repentance is not in conflict with the goal of restoring the wrongdoer to  
25 spiritual health because even in those cases, the judicial committee hopes that the  
26 unrepentant wrongdoer will eventually realize the error of his ways and repent.

1           Regarding the Court's inquiry about the use of S-77 and S-79 forms in the case at  
2 hand, since Jerry Crabb, who allegedly abused plaintiff, was disfellowshipped, those forms  
3 were completed by the judicial committee and sent to the Service Department of the U.S.  
4 Branch for review by the Service Department Elder assigned to review such forms received  
5 from Oregon congregations. (Supplemental Campbell Declaration ¶ 5.)

6           However, the judicial committee's notes are not sent to the Service Department. The  
7 S-77 and S-79 forms completed by the judicial committee and sent to the Service Department  
8 identify the alleged sin and summarize the facts that support the judicial committee's  
9 decision to disfellowship the wrongdoer. This allows the assigned Service Department Elder  
10 the opportunity to review the decision of the judicial committee to ensure that there was a  
11 Scriptural and factual basis for the decision. Id.

12           OEC 506(1)(a) states that a "confidential communication" subject to the clergy  
13 privileged means "a communication made privately and not intended for further disclosure  
14 *except to other persons present in furtherance of the purpose of the communication.*"  
15 (Emphasis added.) Thus, the judicial committee's communication of the S-77 and S-79  
16 forms are privileged pursuant to OEC 506(1)(a).

17           Also, even if the Court finds that such forms do not fall within the protection of the  
18 clergy privilege, the Court should still rule that other judicial committee notes and documents  
19 that have not been provided by the judicial committee to the Service Department are  
20 protected by the clergy privilege.


21           For the reasons stated herein and in defendants' prior briefs, the Court should hold  
22 that communications made during the course of the judicial committee proceedings, as well  
23 as the related communications between the judicial committee Elders and the Service  
24 Department Elders, were for the purpose of either (1) providing spiritual assistance, or (2) for  
25 the purpose of seeking spiritual advice. Therefore, they are privileged. See OEC 506; In re  
26 Roman Catholic Archbishop of Portland in Oregon, 335 BR 815, 830, 836 (Bankruptcy D Or

1 2005).

2 This is why plaintiff's motion to compel production should be denied.

3 DATED: November 6, 2006.

4 BULLIVANT HOUSER BAILEY PC

5 By   
6 John Kaempf, OSB #92539  
7 E-mail: john.kaempf@bullivant.com

8 Attorneys for Defendants

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**ORIGINAL**

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NOV 14 2006

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STATE OF OREGON  
Marion County Circuit Courts  
NOV 14 2006  
**FILED**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER,

Plaintiff,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, and  
LANCASTER CONGREGATION OF  
JEHOVAH'S WITNESSES,

Defendants.

No. 06C15281

**SUPPLEMENTAL DECLARATION OF  
MERTON V. CAMPBELL**

I, Merton V. Campbell, testify as follows:

1. I am over 18 years of age, of sound mind, and am competent to make this Declaration. I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I have served as an Elder in the Jehovah's Witnesses Church since 1972.

3. Since 1952, I have served in the Service Department at the U.S. Branch Office of Jehovah's Witnesses in New York. I provide spiritual assistance to congregation Elders who call or write the Service Department for help. Prior to March 2001, the spiritual assistance provided by the Service Department, along with the appointment of Elders, was

1 communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and  
2 Tract Society of New York, Inc. Since March 2001, this has been communicated through the  
3 Christian Congregation of Jehovah's Witnesses.

4 4. My duties in the Service Department also include monitoring the functioning,  
5 organization, and staffing of congregations of Jehovah's Witnesses, including reviewing the  
6 decisions of judicial committees to disfellowship (excommunicate) wrongdoers and  
7 reviewing the qualifications for the appointment of Elders to congregations of Jehovah's  
8 Witnesses in the United States.

9 5. When judicial committees send S-77 and S-79 forms related to the  
10 disfellowshipping of a wrongdoer to the Service Department, the assigned Service Desk  
11 Elder reviews the forms to ensure that there was a Scriptural and factual basis for the  
12 decision to disfellowship. The forms identify the alleged sin and briefly summarize the facts  
13 that support the judicial committee's decision to disfellowship the wrongdoer. But the  
14 judicial committee's notes are placed by the judicial committee chairman in a sealed  
15 envelope which is filed in the confidential congregation files. The judicial committee's notes  
16 are only to be reviewed when needed by those Elders who served on the judicial committee.  
17 Furthermore, the judicial committee's notes are not sent to the Service Department.

18 6. As shown on pages 96, 98-99, 101, 105, and 112-113 of *Pay Attention to the*  
19 *Flock*, a handbook provided to congregation Elders of Jehovah's Witnesses, and by the 1981  
20 Kingdom Ministry School outline for Elders, *Helping Elders With Judicial Matters*, true  
21 copies of which are attached hereto, judicial committee Elders are encouraged to conduct  
22 confidential meetings with wrongdoers in a kind and loving manner with the goal of  
23 restoring the wrongdoer to spiritual health, if possible.

24 7. The judicial committee procedures outlined in *Pay Attention to the Flock* are  
25 to assist Elders to conduct the meeting in an impartial, respectful and kindly manner so as to  
26 obtain all of the relevant facts regarding the sin, what led to the sin, and the wrongdoer's



1 feelings about his sin, so that Elders have all of the necessary information to offer needed  
2 spiritual help to bring the wrongdoer to repentance, if possible. Jehovah's Witnesses  
3 consider meetings with judicial committees to be confidential and spiritual in nature.

4 I hereby declare that the above statement is true to the best of my knowledge and  
5 belief, and that I understand it is made for use as evidence in court and is subject to penalty  
6 for perjury.

7 DATED: November 5, 2006.

8 By   
9 Merton V. Campbell

neyer

**Kaempf, John**

**COPY**

**From:** Kaempf, John  
**Sent:** Friday, November 17, 2006 10:05 AM  
**To:** Gregory S. Love (gslove@lovenorms.com)  
**Cc:** Hartley Hampton; Jim Nelson; 'paul.lipscomb@ojd.state.or.us'  
**Subject:** Grafmyer v. Watchtower (Case #06-C-15281) - privilege log & S-77 and S-79 forms attached

Greg: As ordered by Judge Lipscomb, please find attached copies of the S-77 and S-79 forms for Jerry Crabb. Without waiving anything, the defendants will not seek a writ of mandamus.

Also, here's the short privilege log Judge Lipscomb ordered:

- (1) February 6, 2006 letter from the Stayton Congregation to Watchtower New York Legal Department re: Jerry Crabb - Attorney-client privilege and work product privilege.
- (2) August 29, 2005 letter from Service Department at the Branch Office of Jehovah's Witnesses in New York to the Body Of Elders of the Lancaster Congregation re: Jerry Crabb & the Judicial Committee - Clergy privilege and work product privilege.
- (3) February 19, 2002 letter from Jerry Crabb to Lancaster Judicial Committee re: reinstatement request - Clergy privilege.
- (4) May 1991 & June 1991 notes of Judicial Committee Elders re: Jerry Crabb - clergy privilege and work product privilege.

Thanks - John Kaempf  
 Bullivant Houser Bailey P.C.

11/20/2006

# Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347

Attorneys: James G. Nelson • Christopher E. MacNeil  
Legal Assistants: David E. Gould • Laura C. Grant

November 27, 2006

The Honorable Paul Lipscomb  
Marion County Circuit Court  
PO Box 12869  
Salem, OR 97309

Re: Jared Grafmyer v. Watchtower Bible & Tract Society of New York, Inc., et al.  
Case No. 06C15281

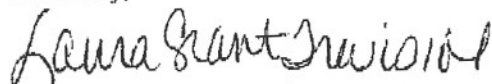
Dear Judge Lipscomb:

We had originally mailed Plaintiff's Order re: Motion to Compel to you on November 16, 2006 but after speaking with your assistant today, it appears you have not yet received it.

Please find enclosed Plaintiff's proposed Order re: Plaintiff's Motion to Compel Production of Documents in regard to the above matter. Defendants' counsel was provided with a draft and changes were made pursuant to his request.

Please have your assistant to return the enclosed postcards, notifying the parties of the date you sign the Order. Thank you for your consideration.

Sincerely,



LAURA GRANT-TREVISIOL  
Legal Assistant

Enclosure(s)  
Enclosure(s)

cc: John Kaempf  
Greg Love  
Hartley Hampton

1  
2 STATE OF OREGON  
Marion County Circuit Courts  
DEC - 1 2006  
4 ENTERED

5 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
6 FOR THE COUNTY OF MARION

7 JARED GRAFMYER ) CASE NO. 06C15281  
8 Plaintiff, )  
9 vs. )  
10 )  
11 WATCHTOWER BIBLE AND TRACT ) ORDER RE: PLAINTIFF'S MOTION  
12 SOCIETY OF NEW YORK, INC., ) TO COMPEL PRODUCTION OF  
13 SOCIETY OF PENNSYLVANIA, ) DOCUMENTS  
14 and LANCASTER CONGREGATION )  
OF JEHOVAH'S WITNESSES, )  
15 Defendants. )

16 This matter, having been heard by the Court on October 31, 2006 and  
17 November 9, 2006, on Plaintiff's Motion to Compel Production of Documents, and  
18 the Court being fully advised in the premises, having reviewed the evidence, and  
19 having heard oral argument from Plaintiff's counsel and Defendants' counsel,

20 NOW, THEREFORE, IT IS HEREBY ORDERED that there is no Clergy Privilege  
21 as defined by OEC 506 that protects S-77 and S-79 reports that relate to Plaintiff's  
22 alleged abuser, Jerry Crabb. Defendants are ORDERED to produce the S-77 and S-79  
23 reports to Plaintiff within 10 days of the signing of this order.

24 IT IS FURTHER ORDERED that Defendants will provide a privilege log to  
25 Plaintiff that briefly describes the documents Defendants claim to be privileged and

1 the respective privilege asserted. Defendants are ORDERED to provide the privilege  
2 log to Plaintiff within 10 days of the signing of this order.

3 The above rulings were based on the reasons stated by the Court on the  
4 record.

5 DATED this 30th day of November, 2006.

6  
7 By: 

8 The Honorable Paul Lipscomb  
9  
10  
11

12 SUBMITTED BY:  
13 James G. Nelson OSB #74230  
14 Nelson & MacNeil, P.C.  
15 PO Box 946  
16 Albany OR 97321  
17 (541) 928-9147-Office  
18 (541) 928-3621-Fax  
19 [pilaw@proaxis.com](mailto:pilaw@proaxis.com)

20 OF ATTORNEYS FOR PLAINTIFF:

21 Gregory S. Love, Esquire  
22 Love & Norris  
23 314 Main Street, Suite 300  
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25 (817) 732-7100-Office  
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Attorneys at Law  
P.O. Box 946  
Albany, OR 97321  
Phone: (541) 928-9147



"Kaempf, John"  
 <John.Kaempf@bullivant.com>  
 m>

12/05/2006 02:06 PM

To paul.lipscomb@ojd.state.or.us

cc laurakgrant@hotmail.com, "Greg Love"  
 <gslove@lovenorris.com>, "Hartley Hampton"  
 <hhampton@FHL-Law.com>, "Jim Nelson"

bcc

Subject RE: Grafmyer v. Watchtower (Case #06-G-15281) - Order  
 Compelling Production

Dear Judge Lipscomb: Please see the e-mail below from plaintiff's counsel's legal assistant, who clarified her error in sending me the wrong Order on November 27, 2006 and confirmed that you signed the correct Order on November 30, 2006, a copy of which is attached. I thus no longer have any objection to the Order you signed.

Please also note that the parties scheduled depositions in Colorado (where plaintiff's parents live) and Texas (where plaintiff lives) for January 13, 15, and 19, 2007. I have produced all documents plaintiff requested, with the exception of a few documents I sent to you for your in camera review on November 8, 2006, along with the privilege log you ordered, which I e-mailed to you on November 17, 2006.

The parties appreciate you ruling on this issue in the near future so plaintiff's counsel have all the documents they are entitled to and we can keep the deposition schedule noted above. This is very important to my clients' General Counsel, who has to travel from New York to attend these depositions and would like to keep the deposition schedule we have.

Thank you.

John Kaempf  
 Bullivant Houser Bailey P.C.

-----Original Message-----

From: Laura Grant [mailto:laurakgrant@hotmail.com]  
 Sent: Tuesday, December 05, 2006 11:24 AM  
 To: Kaempf, John  
 Cc: gregory love; Hartley Hampton; Jim Nelson  
 Subject: Grafmyer v. Watchtower-Order Compelling Production

Mr. Kaempf:

I am at a complete loss as to where the Order you indicated we sent you came from. Regardless, I apologize for the confusion.

I contacted Judge Lipscomb's chambers and asked his judicial assistant to fax us the Order the judge actually signed. The Order re: Plaintiff's Motion to Compel Production of Documents faxed to us directly by the judge's assistant about 5 minutes ago is attached. As you can see, this is the Order we submitted to the Court, with your requested changes.

Please withdraw your objection with Judge Lipscomb, and let's proceed as outlined by the Court.

Laura Grant-Trevisiol  
 Legal Assistant to Jim Nelson



CIRCUIT COURT OF OREGON  
THIRD JUDICIAL DISTRICT  
MARION COUNTY COURTHOUSE  
P.O. BOX 12809  
SALEM, OREGON 97309-0869

PAUL LIPSCOMB, Presiding Judge  
(503) 588-5024  
FAX (503) 588-5113

December 8, 2006

James G. Nelson  
Attorney at Law  
PO Box 946  
Albany, OR 97321

Gregory S. Love  
Attorney at Law  
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Fort Worth, TX 76102

John Kaempf  
Attorney at Law  
300 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204-2089

**RE: GRAFMYER V. WATCHTOWER BIBLE, ET AL  
MARION COUNTY CASE NO. 06C15281**

Dear Counsel:

I have reviewed in detail the materials submitted for *in camera* review with Mr. Kaempf's letter of 11/18/06, and I have considered the applicable authorities with respect to the privilege claimed.

I find insufficient basis for the privilege claimed as to any of the materials submitted. (Although I would also note that a few of them are largely, or completely, illegible.) And, even if a privilege were otherwise sufficiently established as to one or more of the documents submitted, any such privilege would clearly have been waived by the subsequent communication of the documents to the third party addressees in nearly every case.

Sincerely,

Paul T. Lipscomb  
Presiding Judge

PJL:kja



E-mail communication from John Kaempf to the Court on 12-17-06

Dear Judge Lipscomb: Thank you for your December 8, 2006 letter holding that the documents we produced to you for *in camera* review are discoverable.

To confirm that we are all on the same page, I appreciate you sending a copy of the documents we sent you to Greg Love, plaintiff's lead counsel.

Thank you.

John Kaempf  
Bullivant Houser Bailey P.C.



CIRCUIT COURT OF OREGON  
THIRD JUDICIAL DISTRICT  
MARION COUNTY COURTHOUSE  
P.O. BOX 12869  
SALEM, OREGON 97309-0869

PAUL LIPSCOMB, Presiding Judge  
(503) 688-6004  
FAX (503) 549-5113

To: Gregory S. Love  
From: Susan Hurt (Judge Lipscomb's Clerk)  
Date: December 18, 2006  
Re: *Jared Grafmyer v. Watchtower Bible and Tract Society of New York, et al.*  
*Marion County Case No. 06C15281*

---

For your information, I have enclosed copies of the documents John Kaempf sent to our office for *in camera* review dated November 8, 2006.

Enclosures (44 pages)

E-mail communication from John Kaempf to the Greg Love on 12-26-06

Greg: FYI below.

John Kaempf

---

**From:** Kaempf, John  
**Sent:** Tuesday, December 26, 2006 1:53 PM  
**To:** 'paul.lipscomb@ojd.state.or.us'  
**Cc:** 'kimberly.kauffman@ojd.state.or.us'  
**Subject:** Grafmyer w. Watchtower (Case #06-C-15281) - clarification of motion to compel ruling

Dear Judge Lipscomb: Thank you for your December 8, 2006 letter concerning plaintiff's motion to compel production of documents. We are ready to produce the requested documents. We understand that you rejected our clergy privilege objection and we will produce those documents.

However, before doing so, Mario Moreno, my client's General Counsel, asked that I briefly seek clarification from you about 5 pages of documents that are the subject of our separate attorney-client and work product privilege objections. It may have been my error because while we asserted these privileges, I don't believe they were fully addressed because we focused almost solely on the clergy privilege during oral argument.

Attachment #5 hereto is a February 6, 2006 one-page letter from the Stayton Congregation to the Church's Legal Department (care of attorney Mario Moreno) concerning Jerry Crabb, who allegedly abused the plaintiff. We would like a ruling that this letter is subject to the attorney-client privilege.

Attachment #1 hereto is 7 pages of typed notes in May 1991 and June 1991 from the Church's Judicial Committee relating to Jerry Crabb. As you can see, the third page (with an X through it to indicate our privilege objection) is dated June 5, 1991 and concerns contact with the Legal Department and Mr. King, one of the Church's other attorneys, as well as certain Oregon statutes. The fifth page is dated May 29, 1991 (also with an X through it) and addresses contact with the Legal Department, Oregon's child abuse laws, and insurance. We would like a

ruling that the X-marked portions of these two pages are subject to the attorney-client and/or work product privileges.

Finally, Attachment #2 hereto is 11 pages of handwritten notes from the Judicial Committee relating to Jerry Crabb. (These handwritten notes were turned into the typed documents attached hereto as Attachment #1.) The second page of Attachment #2 has an X mark, but my client did NOT make that mark and we WILL produce that document. Page 9 of Attachment #2 addresses contact with the Church's Legal Department and Oregon's child abuse statutes (and my client put an X through this page to indicate its confidentiality). This handwritten note became the typed note that we also claim is privileged above. The X-marked portion of page 11 of Attachment #2 addresses contact with the Church's Legal Department, Oregon's child abuse reporting laws, and insurance. We would like a ruling that the X-marked portions of pages 9 and 11 to Attachment #2 are subject to the attorney-client and/or work product privileges.

The parties have set depositions for mid-January 2007, so we appreciate your attention to this issue in the near future. I am ready to produce all documents as soon as we receive the requested clarification from you.

Please note that I will forward this e-mail to plaintiff's counsel (without the documents) so there will be no *ex parte* contact.

Thank you for attention to and patience with this important matter.

John Kaempf  
Bullivant Houser Bailey P.C.



CIRCUIT COURT OF OREGON  
THIRD JUDICIAL DISTRICT  
MARION COUNTY COURTHOUSE  
P.O. BOX 12868  
SALEM, OREGON 97309 0868

PAUL LIPSCOMB, Presiding Judge  
(503) 588-5024  
FAX (503) 588-5113

January 5, 2007

**SENT VIA FAX**

John Kaempf  
Attorney at Law  
300 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204-2089  
Fax #: 503-295-0915

**RE: *GRAFMYER V. WATCHTOWER BIBLE, ET AL***  
***MARION COUNTY CASE NO. 06C15281***

Dear Counsel:

You are correct that your additional claims of attorney-client privilege do attach to, and protect from disclosure, the specific items addressed in your email letter of December 26, 2006, and as forwarded to me in PDF format on January 5, 2007.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Lipscomb". The signature is stylized and somewhat cursive.

Paul J. Lipscomb  
Presiding Judge

cc: James G. Nelson (Fax #: 541-928-3621)  
Gregory S. Love (Fax #: 1-817-732-7101)

PJL:kja



"Kaempf, John"  
<John.Kaempf@bullivant.co  
m>

01/10/2007 05:18 PM

To paul.j.lipscomb@ujd.state.or.us

cc "Greg Love" <gslove@lovenorris.com>, "Hartley Hampton"  
<hhampton@FHL-Law.com>, "Jim Nelson"  
<pilaw@proaxis.com>, "Laura Grant"

bcc

Subject Grafmyer v. Watchtower (Case #06-C-15281) - deposition  
issue

Dear Judge Lipscomb: To potentially save several thousands of dollars in attorney fees and travel costs related to the three witness depositions in Colorado scheduled for January 13 and 15, I respectfully request that we address one additional issue at our teleconference on Thursday at 11:30 a.m.

Many weeks ago, the deposition of plaintiff's mother was set for Saturday, January 13, and the depositions of plaintiff's father and sister were set for Monday, January 15. These depositions will all occur in Colorado. The plane tickets, hotel rooms, and court reporters are all booked.

Mr. Love, plaintiff's lead attorney, now claims that these depositions cannot go forward unless I bring the ORIGINALS of the documents we already produced to him to the first Colorado deposition on January 13 (this Saturday). I am happy to accommodate his request to review the original documents. However, as I told him, the documents are currently in the U.S. Mail system on their way back to my client's headquarters in New York. I asked my client to overnight them back to me when they receive them, but I don't know for certain if I will get them back before Saturday, as I told Mr. Love.

I also sent Mr. Love darkened and more legible copies of these documents, as he requested. The improved copies are attached hereto as a PDF for your review. These are better than the prior copies we sent you for your *in camera* review. They are also better than the originals, as I told Mr. Love, because some of the originals are on hard to read yellow paper.

The ruling I am forced to request from you is that Mr. Love be

required to go forward with the Colorado depositions as planned based on your finding that (1) the attached copies are legible; and (2) on the condition that I allow Mr. Love to inspect the originals after I receive them.

I am very concerned that without court involvement, Mr. Love will cancel the Colorado depositions at the last minute, or even after we travel there on Friday, based on his alleged need for the original documents. This would cost my client thousands of dollars in attorney fees, travel costs, hotel and deposition conference room fees, and court reporter fees. Please also note that my client's General Counsel is flying from New York to Colorado for these depositions.

Thank you for your attention to this important matter. I apologize for all of your time that we have taken up on discovery issues, but I feel I have no other choice about this issue.

John Kaempf

<<Grafmyer Docs.PDF>>

"Bullivant.com" made the following annotations on 01/10/07, 17:19:15

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**LOVE & NORRIS**

ATTORNEYS AT LAW  
314 Main Street, Suite 300  
Fort Worth, Texas 76102-7423  
Telephone 817.335.2800  
Facsimile 817.335.2912

Gregory S. Love, Esq.  
E-mail [gsllove@aimail.net](mailto:gsllove@aimail.net)

Kimberlee D. Norris, Esq.  
E-mail [kdnorris@aimail.net](mailto:kdnorris@aimail.net)

January 10, 2007

Judge Lipscomb  
Circuit Court of Oregon  
Third Judicial District  
Marion County Courthouse  
P.O. Box 12869  
Salem, Oregon 97309-0869

via electronic mail & regular mail

Re: *Grafmyer v. Watchtower Bible & Tract Society et al*

Judge Lipscomb:

In my e-mail to the Court on January 9, 2007, I asked for guidance on the use of e-mail communication for raising and settling disputes in the course of the Grafmyer v. Watchtower litigation; I appreciate your guidance and look forward to more.

In the meantime, however, we have a dispute that is not resolved and possibly complicated by the fact that I did not respond to John Kaempf's e-mail to the Court on December 26, 2006. Not only was I on vacation (stuck in Colorado with 160 high school kids), I did not expect that Mr. Kaempf's communication was an appropriate form to seek relief from the Court; I expected that it was a resolved matter and that any change would involve briefing and argument. As you know understand, Plaintiff's sharply disagree with the request Defendants made to the Court. I gather from your e-mail on January 9, 2007 that you assumed by my silence that Plaintiff had no opposition to Mr. Kaempf's request. I will explain below why that is not so.

**BACKGROUND**

Plaintiff clearly requested all of the documents that were submitted to the Court in camera. Defendants raised many objections including the attorney/client privilege and the work product doctrine on a few of the requests. In response, Plaintiff cited Oregon authority for the legal principal that when Defendants raise a claim of privilege, it is Defendants' responsibility to carry the burden of establishing that privilege; Plaintiff pointed out that NO effort was made to establish such a privilege, nor was it argued. In Defendants' Opposition to Plaintiff's Motion to Compel, Defendants only claim that Judge Perris held that the attorney/client privilege applied to the Watchtower position. Plaintiff disagrees with Defendants liberal interpretation of that ruling, and would remind the Court that Plaintiff has made allegations that the 'business enterprise' of the Jehovah's Witnesses organization was engaged in the cover-up of criminal behavior and that the advice being received from the Legal Department involved the very information supporting that allegation: failure to report abuse and indications from law enforcement that they had an

January 10, 2007

Page 2

obligation to report and were are responsible for not reporting. Judge Ferris specifically removes such communication from the privilege umbrella as being a crime/fraud.

During the briefing and argument, however, Defendant did not submit any information to the Court that the person to whom communications was being made was an attorney or that the information being communicated from the Watchtower headquarters was 'legal advice'. Defendants reluctantly provided a privilege log (attached); but that document did nothing to support their claim of a privilege. In short, Defendants relied completely on their assertion of a clergy privilege which failed; no effort was made to establish the existence of the attorney/client privilege.

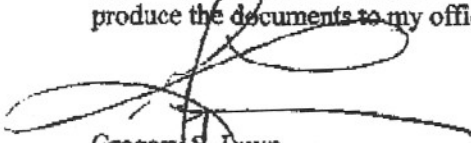
#### WAIVER

By failing to carry their burden to establish Defendants' assertions of privilege, you ruled that the documentation was to be produced (December 8, 2006 letter ruling). Counsel for Defendants instructed the Court to provide the in camera documents to Plaintiff to satisfy Defendants obligation created by your December 8, 2006 letter ruling (Kaempf's e-mail instructions to the Court attached). In response to Mr. Kaempf's request to the Court, your clerk sent the documents to counsel for Plaintiff on December 18, 2006 (Susan Hurt's cover memorandum attached).

On December 26, 2006, - after the documents were received and sent to a prospective expert witness - Mr. Kaempf directed an e-mail to the Court requesting reconsideration (attached). As mentioned above, counsel for Plaintiff received much later and did not respond; presumably, the Court assumed no objection. On December 26<sup>th</sup>, Mr. Kaempf finally makes a request that was not otherwise argued during any hearing and has no support for making such an argument without carrying his burden to establish a privilege which is his alone. Additionally, Plaintiff had no opportunity to bring the above positions to the attention of the Court.

#### SUMMARY

Defendants failed to carry their burden to establish a privilege when it was asserted and challenged; and, Defendants waived any ability to claim privilege after instructing the Court to produce the documents to my office in response to the Court's ruling of December 8, 2006.



Gregory S. Love  
Counsel for Plaintiff

GSL/sp  
Enclosures



"Kaempf, John"  
<John.Kaempf@bullivant.com>  
01/11/2007 10:11 AM

To paul.j.lipscomb@ojd.state.or.us  
cc "Greg Love" <gslove@lovenorris.com>, "Hartley Hampton"  
<hhampton@FHL-Law.com>, "Jim Nelson"  
<pilaw@proaxis.com>, "Laura Grant"  
bcc

Subject FW: Grafmyer v. Watchtower (Case #06-C-15281)

Dear Judge Lipscomb: Please see the short e-mail below from Mr. Hampton, one of plaintiff's attorneys, where he cancelled the Colorado depositions set for January 13 and 15. In light of this development, we do not need to conduct the hearing at 11:30 this morning because there is no longer the same urgency.

I am not waiving any of my clients' rights or arguments, but I think this makes sense for now.

Thank you for your patience with this matter.

John Kaempf

**From:** Hartley Hampton [mailto:hhampton@FHL-Law.com]  
**Sent:** Thursday, January 11, 2007 9:47 AM  
**To:** Kaempf, John  
**Cc:** gslove@airmail.net  
**Subject:**

The depositions in Colorado are cancelled. If you'd like to discuss the reasons, feel free to give me a call. 713-980-8116.

"Bullivant.com" made the following annotations on 01/11/07, 10:11:58

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STATE OF OREGON  
MARION COUNTY COURTS

FEB 14 2007

ENTERED \$:

STATE OF OREGON  
MARION COUNTY COURTS

FEB 08 2007

FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

JARED GRAFMYER,

Plaintiff,

v.

WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC.,  
WATCHTOWER BIBLE AND TRACT  
SOCIETY OF PENNSYLVANIA, and  
LANCASTER CONGREGATION OF  
JEHOVAH'S WITNESSES,

Defendants.

No. 06-C-15281

**STIPULATED GENERAL JUDGMENT  
OF DISMISSAL WITH PREJUDICE  
AND WITHOUT COSTS**


Plaintiff and defendants stipulate that this action is dismissed with prejudice, and  
without an award of costs or attorney fees to any party.

IT IS SO STIPULATED:

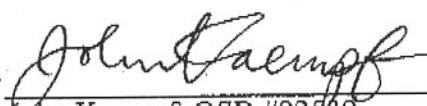
NELSON & MACNEIL

BULLIVANT HOUSER BAILEY PC

By

  
James G. Nelson, OSB #74230  
E-mail: jim@nelsonandmacneil-law.com

By

  
John Kaempf, OSB #92339  
E-mail: john.kaempf@bullivant.com

Attorneys for Plaintiff

Attorneys for Defendants

///

CONFIDENTIAL

CONFIDENTIAL

Marion County Case No.  
06C15281  
Grafmeyer v. Watchtower

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Sealed Documents  
for  
In Camera Review

CONFIDENTIAL

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