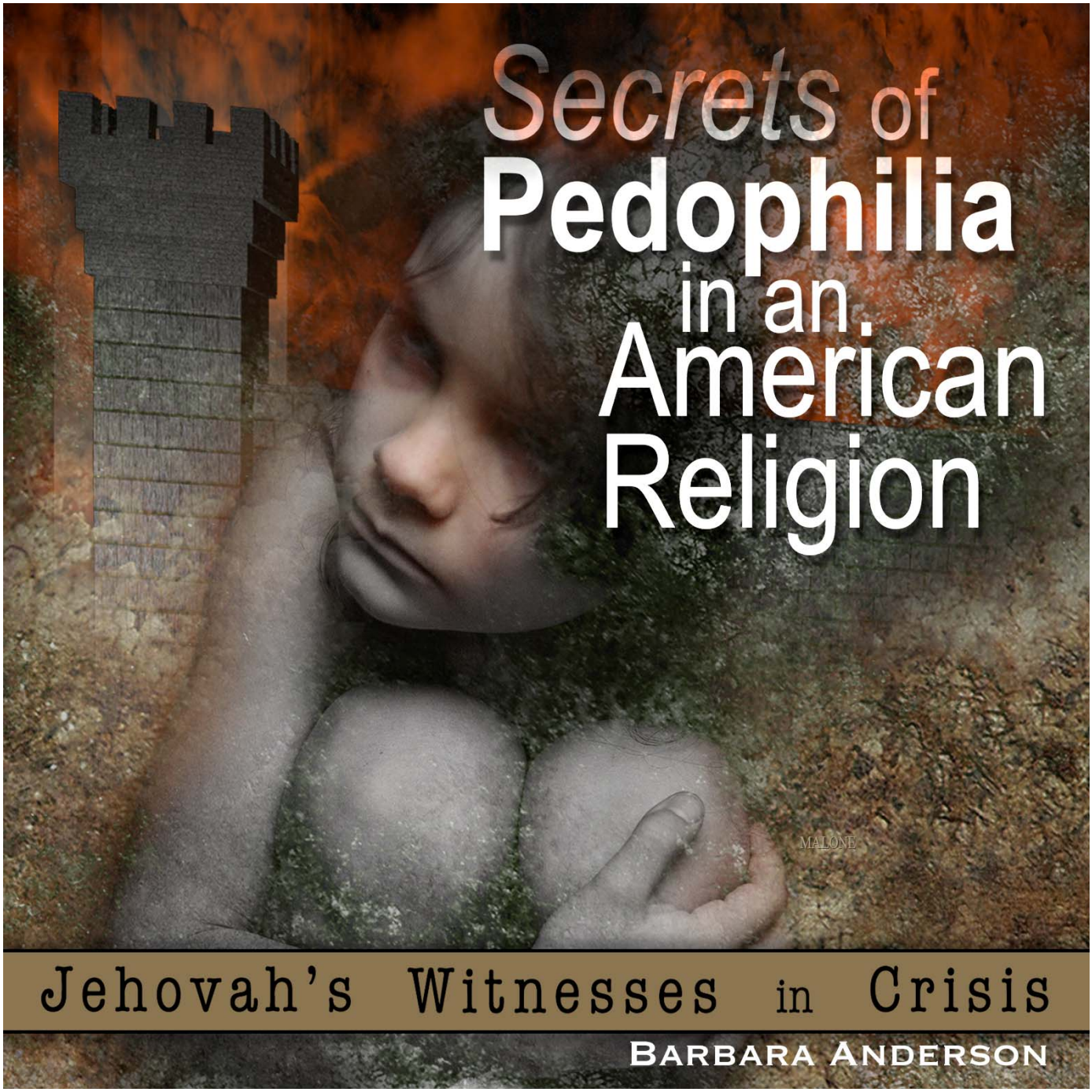


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Amy

vs

Jehovah's Witnesses

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CASE # 91,08-C-1
DISTRICT COURT OF THE STATE OF TEXAS
FOR THE COUNTY OF POTTER
Filed: June 3, 2003

AMY B.
Plaintiff
vs.
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al., DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY.
Defendants.

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No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
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 KELLY Defendants.	§	251st JUDICIAL DISTRICT Jury Trial Requested

FILED
CAROL LEE ROBINSON
DISTRICT CLERK
2003 JUL -3 P 2:38
POTTER COUNTY, TEXAS
BY _____ DEPUTY

PLAINTIFF'S ORIGINAL PETITION

COMES NOW AMY B., Plaintiff in the above-numbered and entitled cause, and files this, her Original Petition, and as grounds therefore would show unto this Honorable Court and Jury as follows:

I.
PARTIES

1. Plaintiff AMY B. is a resident of 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 Texas through its agents and alter egos and may be served with process through its registered agent Mr. Tad Curtis, 702 Orland Blvd, Austin, Texas 78745-2144.

3. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., a corporation organized and existing under the laws of the State of Pennsylvania, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108.

4. Defendant WATCHTOWER ENTERPRISES, INC., a limited liability company organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. R. Civ. S. art. 1528n, art. 2.08(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 25 Columbia Heights, Brooklyn, New York 11201.

5. Defendant WATCHTOWER FOUNDATION, INC., a corporation organized and existing under the laws of the State of New York, has conducted

business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 25 Columbia Heights, Brooklyn, New York 11201.

6. Defendant WATCHTOWER ASSOCIATES, LTD., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Service of process on this Defendant is not requested at this time.

7. Defendant KINGDOM SUPPORT SERVICES, INC., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 98 Montague Street, Brooklyn, New York 11201.

8. Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has

conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 100 Watchtower Drive, Patterson, New York 12563-9204.

9. Defendant RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 25 Columbia Heights, Brooklyn, New York 11201-2483.

10. Defendant DUMAS CONGREGATION OF JEHOVAH'S WITNESSES may be served with process at its offices at 114 Santa Barbara Avenue, Dumas, Texas 79029.

11. Defendant AMARILLO - SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES may be served with process at its offices at 5141 Canyon Drive, Amarillo, Texas 79110.

12. Defendant LARRY KELLEY currently resides and may be served with process at 3113 SW 11th Street, Potter County, Amarillo, Texas.

13. The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" because each is the alter ego of each other and operate as a single business enterprise.

II.
JURISDICTION AND VENUE

14. Plaintiff has been damaged in an amount exceeding the minimum jurisdictional levels of this court.

15. Venue is proper in Potter County, Texas because a substantial part of the events complained of herein took place in Potter County, Texas and Defendant LARRY KELLEY currently resides in Potter County.

III.
SUMMARY OF FACTS

A. WATCHTOWER DEFENDANTS' ORGANIZATION AND CHAIN OF COMMAND

16. The WATCHTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY sits at the top of a strict chain of command that extends over each individual and Defendant entity in the organization. These individuals and entities act as agents, servants and alter egos of each other. Authority for any actions by the organization, it leader and/or its members must derive from the GOVERNING BODY, which has absolute authority over every person and all matters in the organization and its worldwide operations. The GOVERNING BODY is a small group of men who operate out of various entities within the hierarchical structure.

17. All of the Defendants are the agents and servants of each other and are vicariously liable for each other's acts. The WATCHTOWER DEFENDANTS are so organized and controlled and their affairs are so conducted that they are alter egos of each other and operate as a single business enterprise.

B. VICARIOUS LIABILITY OF THE WATCHTOWER DEFENDANTS

18. Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume complete responsibility for the development, protection and discipline of its membership, especially the children of members. All male members, whether Elders, Ministerial Servants, Pioneers and/or Publishers, are appointed and empowered by the GOVERNING BODY to carry out this responsibility.

19. To further their goals, the WATCHTOWER DEFENDANTS authorize male members to develop relationships of trust with women, children and families and to assume the role of counselor and advocate for any problems that might arise, including claims of child abuse. All male leaders have the responsibility through the Elders and those higher up in the chain of command, all the way up to the GOVERNING BODY, to decide if abuse has occurred and how it should be handled.

20. At all material times, the WATCHTOWER DEFENDANTS have prohibited the victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers are not permitted to report suspected abuse to outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual abuse. Violation of

this policy can lead to severe sanctions.

C. LARRY KELLEY

21. At sometime prior to 1988, the Watchtower Defendants appointed LARRY KELLEY to the position of Elder of Defendant DUMAS CONGREGATION of Jehovah's Witnesses in Dumas, Texas. As an Elder, LARRY KELLEY was given the specific assignment of instructing and supervising children in the Congregation. LARRY KELLEY had a children's show and used his puppetry skills to instruct and attract Jehovah's Witness children in furtherance of his responsibilities as an Elder for the Watchtower Defendants. Families in the Congregation were encouraged by the Watchtower Defendants to send their children to LARRY KELLEY's home for instruction and supervision. LARRY KELLEY then used his position as an Elder with supervisory responsibility over children to sexually abuse them.

22. While LARRY KELLEY was an appointed Elder in the Defendant DUMAS CONGREGATION, the WATCHTOWER DEFENDANTS learned that Defendant LARRY KELLEY was using his position of authority to sexually abuse children in the Congregation. Despite this admission, the WATCHTOWER DEFENDANTS did not report the abuse to authorities or warn other members of the organization of Defendant LARRY KELLEY'S propensities to use his position of authority to abuse children. Instead, they continued to place him in positions of supervisory authority and control over children.

23. In approximately 1988, the WATCHTOWER DEFENDANTS transferred Defendant LARRY KELLEY from Defendant DUMAS CONGREGATION to Defendant AMARILLO - SOUTHWEST CONGREGATION and appointed him to the position of Ministerial Servant. In appointing Defendant LARRY KEELY to the leadership position of Ministerial Servant, the WATCHTOWER DEFENDANTS affirmatively placed this known child molester in a position of trust and confidence with fiduciary responsibility for children in the congregation.

Despite notice of Defendant LARRY KELLEY'S propensities to use his position with the WATCHTOWER DEFENDANTS to gain access to and abuse young children, the WATCHTOWER DEFENDANTS presented him to their membership as a Ministerial Servant in good standing where he was placed in leadership roles with supervisory authority and control over children in the organization. Once again members of the Congregation were instructed and encouraged to entrust their children to Defendant LARRY KELLEY'S care both at the Kingdom Hall and off premises. Forseeably, this sexual predator used his leadership position with the WATCHTOWER DEFENDANTS to abuse other children. One of these children was Plaintiff, AMY B. AMY B. was born on June 5, 1980 and was eight years old when the abuse began.

24. In 1992, LARRY KELLEY was convicted of indecency with a child/sexual contact.

25. Beginning prior to 1988 and continuing through at least 1992, Defendant LARRY KELLEY used his appointed leadership positions of trust and authority in the

WATCHTOWER DEFENDANTS' organization to sexually abuse Plaintiff AMY B.

26. For at least five years, the WATCHTOWER DEFENDANTS knew or should have known that Defendant LARRY KELLEY was sexually molesting and physically abusing young girls within the WATCHTOWER DEFENDANTS' organization. Nevertheless, the WATCHTOWER DEFENDANTS continued to appoint him to leadership positions with supervisory authority and control over children, entrusting him with the welfare of numerous young girls in the WATCHTOWER DEFENDANTS' local congregations, whom he sexually molested. The WATCHTOWER DEFENDANTS failed to notify anyone that Defendant LARRY KELLEY was molesting or had sexually molested young girls. They further failed to take appropriate steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiff and others. By their conduct, the WATCHTOWER DEFENDANTS aided, abetted and ratified the abuse.

27. Defendant LARRY KELLEY used the authority of his leadership position as an agent of the WATCHTOWER DEFENDANTS' organization to sexually abuse Plaintiff AMY B. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiff AMY B. by, among other things:

a. aiding, abetting and ratifying the abuse of children by Elders, Ministerial Servants, Pioneers and other leaders in their congregation;

b. blaming, humiliating, sanctioning and/or disciplining victims/accusers of sexual abuse instead of the perpetrators;

c. negligently failing to report such sexual abuse, including the abuse by Defendant LARRY KELLEY, to law enforcement and governmental child welfare agencies and requiring that Publishers not make such reports.

d. negligently failing to warn Plaintiff, her family, and others of the risk of Defendant LARRY KELLEY'S abuse after they knew or should have known of Defendant LARRY KELLEY'S propensities to use his position of leadership to engage in acts of sexual abuse;

e. negligently failing to train its Elders, Ministerial Servants, Pioneers, appointed overseers and other associated leaders in their local churches to prevent, identify, investigate, respond to or report child abuse;

f. negligently failing to adopt adequate policies and procedures for the protection of children and other publishers and/or to implement and comply with such procedures that did exist;

g. failing to properly investigate matters brought to the WATCHTOWER DEFENDANTS' attention involving child sexual abuse and/or suspicions of child sexual abuse;

h. negligently allowing Defendant LARRY KELLEY to move between congregations as an appointed agent and leader in good standing after the WATCHTOWER DEFENDANTS knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse of children;

i. negligently failing to provide child abuse victims and their families with any assistance in coping with the trauma of abuse and preventing Plaintiff and her family from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse.

j. concealing from Plaintiff and her family that the WATCHTOWER DEFENDANTS had information that Defendant LARRY KELLEY was abusing young children;

k. negligently failing to undertake a sexual offender evaluation, provide sexual offender treatment and/or obtain psychiatric evaluation and treatment of Defendant LARRY KELLEY after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse;

l. negligently failing to properly supervise Defendant LARRY KELLEY as a leader in the organization or to monitor his activities after they knew or should have known of his propensities to use his agency position of leadership to engage in acts of sexual abuse.

IV.
CAUSES OF ACTION

COUNT I
SEXUAL BATTERY AND *RESPONDEAT SUPERIOR*

28. For a number of years, beginning in about 1988 or before, as an agent and alter ego of the WATCHTOWER DEFENDANTS, Defendant LARRY KELLEY repeatedly committed sexual battery upon the person of the Plaintiff, AMY B. in the State of Texas. Each of the WATCHTOWER DEFENDANTS was in the chain of command and acted pursuant to the authority granted to them as agents and the alter ego of the GOVERNING BODY and each other, utilizing such leadership and authority to carry out and/or aid, abet and ratify the sexual abuse of Plaintiff. The WATCHTOWER DEFENDANTS are therefore liable for the sexual battery of Plaintiff under the legal theory of *respondeat superior*.

COUNT II
COMMON-LAW NEGLIGENCE

29. At all material times, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiff from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiff was at risk of foreseeable harm by Defendant LARRY KELLEY, but failed to act to protect her from said harm. The WATCHTOWER DEFENDANTS

breached their duty to the great harm of Plaintiff.

30. As a direct result of the negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiff has suffered the injuries and damages described herein.

COUNT III
NEGLIGENT HIRING, RETENTION AND SUPERVISION

31. At all material times, the WATCHTOWER DEFENDANTS knew or should have known of Defendant LARRY KELLEY'S propensities to use his position as a leader in the Watchtower organization to engage in acts of sexual abuse. The WATCHTOWER DEFENDANTS failed to adequately investigate, discipline, evaluate, treat, supervise and otherwise monitor the conduct of Defendant LARRY KELLEY who was their agent and under their control. They therefore negligently hired, retained and supervised Defendant LARRY KELLEY in the organization at a time when they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse against Plaintiff and other young children. The WATCHTOWER DEFENDANTS also negligently hired, retained and supervised the Elders of the local congregations with respect to the investigation, reporting and care of victims of child abuse within their organization. As a result, Plaintiff has suffered grave harm.

COUNT IV
GROSS NEGLIGENCE

32. The behavior of the WATCHTOWER DEFENDANTS set forth above demonstrated a conscious indifference to the safety and welfare of Plaintiff entitling Plaintiff to punitive damages, including attorneys' fees.

33. As a direct result of the grossly negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiff has suffered the injuries and damages described herein.

COUNT V
BREACH OF FIDUCIARY DUTY

34. The WATCHTOWER DEFENDANTS placed themselves in a position of trust and confidence with Plaintiff. The relationship between Plaintiff and the WATCHTOWER DEFENDANTS' organization was fiduciary in nature and imposed on the WATCHTOWER DEFENDANTS a duty to act in Plaintiff's best interest.

35. Because of this special relationship between the Plaintiff and the WATCHTOWER DEFENDANTS, Plaintiff and her family placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would not harm Plaintiff or fail to warn Plaintiff of potential harm. Further, Plaintiff and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would protect Plaintiff from harm.

36. The above acts and/or omissions by the WATCHTOWER DEFENDANTS, either independently or in conjunction with each other constitutes a breach of the fiduciary duty owed to Plaintiff by WATCHTOWER DEFENDANTS.

37. As a direct result of the conduct of the WATCHTOWER DEFENDANTS, Plaintiff has suffered the injuries and damages described herein.

COUNT VI
FRAUD AND FRAUDULENT CONCEALMENT

38. After receiving reports that Defendant LARRY KELLEY was abusing

young girls, the WATCHTOWER DEFENDANTS, with the intent to keep the information from Plaintiff, other victims similarly situated, and the community-at-large, willfully concealed that information. The WATCHTOWER DEFENDANTS materially misrepresented to Plaintiff and her family that Defendant LARRY KELLEY was a leader in good standing with authority to supervise, control and instruct Plaintiff in spiritual, ethical and moral matters and that he was to be obeyed. The WATCHTOWER DEFENDANTS further materially misrepresented that they would act in Plaintiff's best interest. The WATCHTOWER DEFENDANTS failed to disclose that they knew of Defendant LARRY KELLEY'S propensities to use his leadership position to sexually abuse Plaintiff and others and that they were doing nothing to protect them. Plaintiff did not know the falsity of the WATCHTOWER DEFENDANTS' representations, were entitled to rely upon them, and did in fact rely upon them, to their serious injury and harm.

COUNT VII
RATIFICATION

39. Upon learning that its agent, Defendant LARRY KELLEY had sexually abused young children in the organization, the WATCHTOWER DEFENDANTS failed to take sufficient steps to discipline or hold Defendant LARRY KELLEY accountable for his actions. The WATCHTOWER DEFENDANTS transferred Defendant LARRY KELLEY to the AMARILLO - SOUTHWEST JEHOVAH'S WITNESSES CONGREGATION as a leader in good standing with the organization, providing no warning to its members that they were entrusting them to the care of a sexual predator.

The WATCHTOWER DEFENDANTS thereby ratified Defendant LARRY KELLEY'S conduct in sexually abusing Plaintiff and others. The WATCHTOWER DEFENDANTS are thus liable in damages to Plaintiff.

COUNT VIII
ALTER EGO AND SINGLE BUSINESS ENTERPRISE

40. The WATCHTOWER DEFENDANTS are organized and controlled, and their affairs are so conducted, that they are in fact mere instrumentalities and alter egos for each other and liable for each other's acts. Alternatively, the WATCHTOWER DEFENDANTS were all engaged, at all material times, in a single business enterprise and are liable for each other's acts.

V.
DAMAGES

41. As a result of the WATCHTOWER DEFENDANTS' acts, Plaintiff has incurred and will continue to incur costs for medical expenses, counseling and psychological treatment, have lost earning capacity and have suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with accompanying physical manifestations, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, and economic and non-economic damages in excess of the jurisdictional limits of this Court.

VI.
JURY DEMAND

Plaintiff requests a trial by jury and has submitted herewith the appropriate jury fee.

VII.
PRAYER

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally in an amount for economic, non-economic, and punitive damages, including attorneys' fees, plus costs, disbursements, and any and all other relief the court deems just and equitable.

Respectfully submitted,

FIBICH, HAMPTON,
LEEBRON & GARTH, L.L.P.

By: _____

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ATTORNEYS FOR PLAINTIFF

Oct 20, 2003

NO. 91,048-C

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
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,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

OBJECTIONS AND RESPONSES OF THE DUMAS CONGREGATION OF JEHOVAH'S WITNESSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION

TO: Plaintiff, AMY B., by and through her attorney of record, Hartley Hampton, Fibich, Hampton, Leebron & Garth, L.L.P., Five Houston Center, 1401 McKinney, Suite 1800, Houston, Texas 77010

COMES NOW, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, (hereinafter "Dumas Congregation" or "Defendant"), one of the Defendants in the above entitled and numbered cause, and hereby submits its Objections and Responses of the Dumas Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production.

Respectfully submitted,

SPROUSE SHRADER SMITH P.C.
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Phone: (806) 468-3335
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Marvin W. Jones
State Bar No. 10929100
Christopher L. Jensen
State Bar No. 00796825
Attorneys for Defendant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was sent to the following as signified below on this 20 day of October 2003:

Hartley Hampton, Esq. Fibich, Hampton, Leebron & Garth, L.L.P. 1401 McKinney, Suite 1800 Five Houston Center Houston, TX 77010	Certified Mail, Return Receipt Requested	☒
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Gregory S. Love Kimberlee D. Norris Love & Norris 314 Main Street, Suite 300 Fort Worth, TX 76102-7423	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☒
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Larry Kelley 3113 SW 11th, #B Amarillo, TX 79106	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☒
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Christopher L. Jensen

Marvin W. Jones
Christopher L. Jensen

GENERAL OBJECTIONS

Defendant objects to the Definitions and Instructions contained in Plaintiff's requested discovery because they are overly broad, unduly burdensome and constitute undue annoyance and harassment. Defendant further objects to these Definitions and Instructions for the reason that they impose an undue burden upon Defendant to attempt to decipher the language of each request in accordance with the language of the purported Definitions and for the reason that they tend to impose upon Defendant burdens which are not imposed by law or by the Rules of Civil Procedure governing this action. Therefore, Defendant will wholly reject Plaintiff's attempt to redefine commonly used words and will interpret the requests with common understanding of the language used without any regard or thought to definitions as stated by Plaintiff.

As an initial matter, Defendant objects to the directions regarding the method, manner and location of production to the extent that such directions would place upon Defendant burdens not imposed by the Texas Rules of Civil Procedure. Further, Defendant states that Defendant is not required to produce copies of the documents at the offices of FIBICH, HAMPTON, LEEBRON & GARTH. Instead, Defendant will produce documents for Plaintiff's review at the offices of SPROUSE SHRADER SMITH P.C. Pursuant to Rule 196.6, TEX. R. CIV. P., if Plaintiff wants to receive copies of the documents produced for review at SPROUSE SHRADER SMITH P.C., the Plaintiff can make arrangements to pay for the costs of reproduction.

Without waiver of the generality of the foregoing, Defendant specifically objects to the initial paragraph under the heading "Definitions" because Plaintiff impermissibly imposes a burden upon Defendant to interpret definitions in different ways depending upon the "context" which makes these requests vague and ambiguous.

Defendant objects to paragraph 1 of the Definitions because Plaintiff imposes the burden to identify the full name of the Plaintiff as well as Plaintiff's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, family, parent or any other person acting in concert with the Plaintiff but have not provided any such information to the Defendant. Therefore, it is impossible for the Defendant to apply a definition of "Plaintiffs" when the Plaintiff has failed to provide the information. In addition, the definition of "Plaintiffs" is vague because Plaintiff is an individual and therefore references to officers, directors, employees, corporate agents, subsidiaries, and affiliates are nonsensical. Finally, the purported definition of "Plaintiffs" imposes an undue burden upon Defendant to attempt to decipher the definition in conjunction with the requests.

Defendant further objects to paragraph 2 of Plaintiff's Definitions because the paragraph purports to define "The Watchtower Organization" as a unified whole when each entity is separate and apart from the other entities. As such, the purported definition is improper.

Defendant further objects to paragraph 3 of the Definitions for the reason that such paragraph purports to define the word "document" in a manner that is overly broad. Defendant further objects to such definition for the reason that the definition includes items which are not commonly understood to be documents. In addition, the breadth of the definition would require disclosure of information which is neither relevant nor reasonably calculated to lead to discovery of admissible evidence.

Defendant further objects to paragraph 6 for the reason that such paragraph purports to define the word "person" as including a variety of entities or associations which construed in conjunction with the requests in question causes them to be overly broad and calls for information regarding persons, associations or entities, the affairs of which have no relevance to

any issue involved in this case. Therefore, the requests would require disclosure of information which is neither relevant nor reasonably calculated to lead to discovery of admissible evidence.

Defendant further objects to paragraph 9 for the reason that such paragraph purports to define the term "communication" in an overly-broad manner and in a manner that would impose an unreasonable burden upon Defendant. In addition, the definition in conjunction with the requests could require the creation of documents that are not in existence.

Defendant further objects to paragraph 11 for the reason that such paragraph purports to define the words "identify" and "describe" as including a broad array of information that does not necessarily include the "identity" of an individual, partnership or document and as such the purported Definitions attempt to escape the limitations placed upon Plaintiff under the Texas Rules of Civil Procedure. In addition, the definition of "identity" when construed in conjunction with the requests causes the requested discovery to be overly broad and calls for information which has no relevance to any issue involved in this case. Therefore, the requested discovery would require disclosure of information which is neither relevant nor reasonably calculated to lead to discovery of admissible evidence.

Subject to these objections and without waiver of the foregoing, Defendant will apply the ordinary definition of the words used and will respond to the requests as required by the Texas Rules of Civil Procedure.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:
Please produce all documents that concern, reference, or in any way relate to Larry Keith Kelley's sexual abuse, or alleged sexual abuse, of Amy Betzen.

RESPONSE:

Dumas Congregation objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy). Dumas Congregation further asserts that this request calls for information protected from discovery by the lawyer-client and work product privileges, as protected by the Texas Rules of Civil Procedure and the Texas Rules of Evidence, Rule 503.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has none.

REQUEST FOR PRODUCTION NO. 2:
Please produce all documents that concern, reference, or in any way relate to Larry Keith Kelley's sexual abuse, or alleged sexual abuse, of Tamara Jordan.

RESPONSE:

Dumas Congregation objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy). Dumas Congregation further asserts that this request calls for information protected from discovery by the lawyer-client and work product privileges, as protected by Texas Rules of Evidence, Rule 503. Dumas Congregation also objects to this request as an unnecessary and impermissible invasion of privacy of individuals who are not parties to this lawsuit.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has none.

REQUEST FOR PRODUCTION NO. 3:
Please produce all reports of any kind made to a Jehovah's Witness or Watchtower Organization circuit office or branch office regarding charges or allegations of sexual abuse made by anyone against Larry Keith Kelley.

RESPONSE:

Dumas Congregation objects to the use of the term "Jehovah's Witness or Watchtower Organization circuit office or branch office" as vague and ambiguous. Dumas Congregation further objects to this request as overbroad as it is unlimited

in time and geographic scope and not limited to issues related to this case. Dumas Congregation also objects to this request because it seeks documents, which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Dumas Congregation objects to this request as it fails to describe with reasonable particularity the documents requested.

Dumas Congregation objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy). Dumas Congregation further asserts that this request calls for information protected from discovery by the lawyer-client and work product privileges, as protected by the Texas Rules of Civil Procedure and the Texas Rules of Evidence, Rule 503. Dumas Congregation also objects to this request as an unnecessary and impermissible invasion of privacy of individuals who are not parties to this lawsuit.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See the Privilege Log in response to this Request.

REQUEST FOR PRODUCTION NO. 4:
Please produce any and all reports made to Bethel, the Service Department, the Writing Department, and/or the Governing Body, or any individual member thereof, regarding or in any way relating to charges or allegations of sexual abuse made by anyone against Larry Keith Kelley.

RESPONSE:

Dumas Congregation objects to the use of the terms "Bethel, the Service Department, the Writing Department, and/or the Governing Body, or any individual member thereof" as vague, ambiguous, and overbroad. Dumas Congregation further objects to this request as overbroad as it is unlimited in time and geographic scope and not limited to work related to this case. Dumas Congregation also objects to this request because it seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Dumas Congregation objects to this request as it fails to describe with reasonable particularity the documents requested.

Dumas Congregation objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy). Dumas Congregation further asserts that this request calls for information protected from discovery by the attorney-client and work product privileges.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See Privilege Log in response to this Request.

REQUEST FOR PRODUCTION NO. 5:
Please produce a true and correct copy of the 1991 Our Kingdom Ministry.

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous and overbroad. Dumas Congregation also objects to this request as it fails to describe with reasonable particularity the documents requested. Dumas Congregation further objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See the portion of the October 1991, issue of *Our Kingdom Ministry* that does reference child abuse, identified as DUMC0001.

REQUEST FOR PRODUCTION NO. 6:
Please produce a true and correct copy of the August 1, letter to all Bodies of Elders.

RESPONSE:

Dumas Congregation further objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). **Dumas Congregation also objects to this request as it seeks information protected by the Texas Rules of Evidence, Rule 505 (communications to members of the clergy).**

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See documents identified as DUMC0002-DUMC0003.

REQUEST FOR PRODUCTION NO. 7:
Please produce true and correct copies of all Congregation's Publisher Record cards and membership files for Larry Keith Kelley.

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous, overbroad, and unlimited in time. Dumas Congregation further objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See documents identified as DUMC0004-DUMC0007.

REQUEST FOR PRODUCTION NO. 8:
Please produce true and correct copies of all Congregation's Publisher Record cards and membership files for Amy Betzen.

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous, overbroad, and unlimited in time. Dumas Congregation further objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has none.

REQUEST FOR PRODUCTION NO. 9:
Please produce true and correct copies of all Congregation's Publisher Record cards and membership files for Tamara Jordan.

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous, overbroad, and unlimited in time. Dumas Congregation further objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has none.

REQUEST FOR PRODUCTION NO. 10:
Please produce true and correct copies of any letters of introduction written for Larry Keith Kelley when he transferred from one Jehovah's Witness or Watchtower Organization congregation to another.

RESPONSE:

Dumas Congregation objects to term "Watchtower Organization" as overbroad, vague, and ambiguous. Dumas Congregation further objects to this request as it is vague, ambiguous, overbroad, and unlimited in time. Dumas Congregation also objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has none.

REQUEST FOR PRODUCTION NO. 11:
Please produce a true and correct copy of the Kingdom Ministry School Supplementary Course for Congregation Elders that includes "Use Discernment in Handling Serious Matters."

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). **Dumas Congregation further objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).**

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has no such document.

REQUEST FOR PRODUCTION NO. 12:
Please produce a true and correct copy of every edition of the Kingdom Ministry School textbook published between 1970 and the present date.

RESPONSE:

Dumas Congregation objects to this request because the burden and expense of the proposed discovery outweighs its likely benefit and seeks documents which are not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation further objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). **Dumas Congregation further objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).**

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See the redacted document identified as DUMC0008-DUMC0014, which includes all references to child abuse.

REQUEST FOR PRODUCTION NO. 13:
Please produce a true and correct copy of the letter to all Bodies of Elders dated July 20, 1998.

RESPONSE:

As an initial matter, Dumas Congregation objects because the requested documents are neither relevant not reasonably calculated to lead to the discovery of admissible

evidence because the item requested was not produced until many years following the events made the basis of Plaintiff's suit. Dumas Congregation further objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Dumas Congregation also objects to this request as it seeks information protected by the Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See the Privilege Log in response to this Request.

REQUEST FOR PRODUCTION NO. 14:
Please produce a true and correct copy of the May 9, 2002 letter written by J.R. Brown, Director of the Watchtower Society Office of Public Information, to Betsan Powys, "Panorama" Program, British Broadcasting Corporation.

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation does not have this document.

REQUEST FOR PRODUCTION NO. 15:
Please produce true and correct copies of all written communications addressed or sent to "All Bodies of Elders" between 1970 and the present regarding or in any way relating to child abuse or sexual abuse.

RESPONSE:

Dumas Congregation objects to this request as it is overly broad and seeks documents which are not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation also objects to this request as it fails to describe with reasonable particularity the documents requested. Dumas Congregation further objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Dumas

Congregation further objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See documents previously identified which includes letters to Bodies of Elders that reference child abuse through the present and documents DUMC0018-DUMC0031. See also response to Request Nos. 6 and 13. See also the Privilege Log in response to this Request.

REQUEST FOR PRODUCTION NO. 16:
Please produce any and all documents concerning, regarding or in any way relating to any disciplinary hearing conducted regarding allegations of child abuse or sexual abuse against Larry Keith Kelley, including, but not limited to:

a. all S-77 forms;
b. any notes taken by judicial counsel members; and
c. the case summary.

RESPONSE:

Dumas Congregation objects to this request as overbroad as it is unlimited in time and geographic scope and not limited to work related to this case. Dumas Congregation further objects to this request because it seeks documents, which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Dumas Congregation additionally objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy). Finally, Dumas Congregation asserts that this request calls for information protected from discovery by the attorney-client and work product privileges, privileges as protected by Texas Rules of Civil Procedure and Texas Rules of Evidence, Rule 503.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has no documents that comply with subparts "a" and "c" of this Request. See Privilege Log in response to subpart "b" of this Request.

REQUEST FOR PRODUCTION NO. 17:
Please produce all documents reflecting or in any way relating to instructions by the Jehovah Witnesses', the Watchtower Organization's, Bethel's, the Governing Body's, the Writing Department's, the Service Department's, or any member or agent thereof's instructions to judicial committee members for conducting a disciplinary hearing regarding allegations of child abuse or sexual abuse.

RESPONSE:

Dumas Congregation objects to the use of the term "Jehovah Witnesses', the Watchtower Organization's, Bethel's, the Governing Body's, the Writing Department's, the Service Department's, or any member or agent thereof's" as overbroad, vague, and ambiguous. Dumas Congregation further objects to this request as it is vague, ambiguous and overbroad, and seeks documents which are not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation also objects to this request as it fails to describe with reasonable particularity the documents requested. Dumas Congregation additionally objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Finally, Dumas Congregation objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See Response to Request Nos. 6 and 13 above.

REQUEST FOR PRODUCTION NO. 18:
Please produce a true and correct copy of the September, 1977 Our Kingdom Service.

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: None of these documents have any reference to child abuse. If Plaintiff can specify any such reference, Defendant will provide a copy.

REQUEST FOR PRODUCTION NO. 19:
Please produce any and all video or audio recordings of any nature supplied to this Defendant in which any person discusses being sexually abused by Larry Keith Kelley.

RESPONSE:

Dumas Congregation objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy). Dumas Congregation further asserts that this request calls for information

protected from discovery by the attorney-client and work product privileges. Dumas Congregation also objects to this request as an unnecessary and impermissible invasion of privacy of individuals who are not parties to this lawsuit.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has none.

REQUEST FOR PRODUCTION NO. 20:
Please produce a true and correct copy of "Pay Attention to Yourselves and to All the Flock", as well as all supplements including changes and additions required to be made verbally.

RESPONSE:

Dumas Congregation objects to this request as it is seeks documents which are not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation also objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Dumas Congregation additionally objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See Response to Request Nos. 6 and 13 above.

REQUEST FOR PRODUCTION NO. 21:
Please produce a true and correct copy of "The Addendum presented at the Kingdom Ministry School," as described on page 3 of the March 23, 1992 letter from the Watchtower Bible and Tract Society of New York, Inc. addressed "To All Bodies of Elders."

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous and overbroad. Dumas Congregation further objects to this request as it fails to describe with reasonable particularity the documents requested. Dumas Congregation also objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Dumas Congregation additionally objects to this request as it seeks information protected by Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Dumas Congregation has no such document.

REQUEST FOR PRODUCTION NO. 22:
Please produce true and correct copies of all written communications addressed or sent to "All Bodies of Elders" between 1970 and the present pertaining in any way to "Theocratic War", "Theocratic Warfare" or the "Theocratic War Strategy."

RESPONSE:

Dumas Congregation objects to this request as vague and ambiguous as to the use of the terms "theocratic war," "theocratic warfare" or "theocratic war strategy" and further objects to this request as harassing and requesting information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation further objects because this request appears to seek information concerning church doctrine and teachings which is protected by the ecclesiastical abstention doctrine and the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Dumas Congregation also objects to this request as it seeks information protected from disclosure by Texas Rules of Evidence, Rule 505.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Unable to respond to this request as worded.

REQUEST FOR PRODUCTION NO. 23:
Please produce a true and correct copy of the May 1, 1957 issue of The Watchtower.

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: This document has no reference to child abuse. If Plaintiff can specify any such reference, we will provide a copy of the relevant portion.

REQUEST FOR PRODUCTION NO. 24:
A true and correct copy of the May 15, 1957 issue of The Watchtower.

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have

nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: This document has no reference to child abuse. If Plaintiff can specify any such reference, we will provide a copy of the relevant portion.

REQUEST FOR PRODUCTION NO. 25:
A true and correct copy of the May 15, 1988 issue of The Watchtower.

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: This document has no reference to child abuse. If Plaintiff can specify any such reference, we will provide a copy of the relevant portion.

REQUEST FOR PRODUCTION NO. 26:
A true and correct copy of the February 8, 2000 issue of Awake.

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: This document has no reference to child abuse. If Plaintiff can specify any such reference, we will provide a copy of the relevant portion.

REQUEST FOR PRODUCTION NO. 27:
A true and correct copy of the Branch Office Procedure.

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous and overbroad. Dumas Congregation also objects to this request because it appears to seek religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from discovery by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Dumas Congregation additionally objects to this request as it seeks information protected from disclosure by Texas Rules of Evidence, Rule 505.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: This defendant has no such document.

REQUEST FOR PRODUCTION NO. 28:
A true and correct copy of Preparing for Child Custody Cases.

RESPONSE:

Dumas Congregation objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Dumas Congregation further objects to this request as it seeks information protected from disclosure by Texas Rules of Evidence, Rule 505. Dumas Congregation also asserts that this request seeks information protected from discovery by the attorney-client and work product privileges.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: This defendant has no such document.

REQUEST FOR PRODUCTION NO. 29:
A true and correct copy of Singing Praises to Jehovah.

RESPONSE:

Dumas Congregation objects to this request as it seeks a song book used by Jehovah's Witnesses at meetings for worship to sing praises to God, which is not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation further objects to this request as it seeks a song book used by Jehovah's Witnesses at meetings for worship to sing praises to God, which is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See copy of cover, publisher page, and index identified as DUMC0032-DUMC0036.

REQUEST FOR PRODUCTION NO. 30:
True and correct copies of all training or instructional materials provided to or by this Defendant concerning:

a. Child sexual abuse;
b. How to identify child sexual abuse;
c. How to deal with issues involving child sexual abuse;
d. How to investigate allegations or child sexual abuse;
e. What to do when a report or allegation of child sexual abuse is made.

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous, overbroad unduly burdensome, harassing, and seeks documents which are not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation further objects to this request as it fails to describe with reasonable particularity the documents requested. Dumas Congregation also objects to this request as overbroad as it is unlimited in time and geographic scope and not limited to work related to this case. Dumas Congregation additionally objects to this request because it seeks religious documents concerning the doctrine, teachings and internal workings of the church, which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Finally, Dumas Congregation objects to this request as it seeks information protected by the Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See selected *Watchtower* and *Awake!* articles from 1963 to the present, identified as DUMC0037-DUMC0228. Also see responses to Request Nos. 6, 12, 13, and 15.

REQUEST FOR PRODUCTION NO. 31:
True and correct copies of all documents that describe any policy that this Defendant had in place from 1980 to the present concerning the reporting of child abuse.

RESPONSE:

Dumas Congregation objects to this request as it is vague, ambiguous and overbroad, and seeks documents which are not reasonably calculated to lead to the discovery of admissible evidence. Dumas Congregation also objects to this request as it fails to describe with reasonable particularity the documents requested. Dumas Congregation further objects to this request because it seeks religious documents

concerning the doctrine, teachings and internal workings of the church, which have nothing to do with child abuse and are therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and which are protected from disclosure by the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). The documents requested are also irrelevant because it seeks documents relating to policies in effect years following the incidents in question. Dumas Congregation further objects to this request as it seeks information protected by the Texas Rules of Evidence, Rule 505 (communications to members of the clergy).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: See the attached redacted copy of the December 5, 1985, letter to circuit and district overseers in the United States, a redacted copy of the January 25, 1994, letter to all circuit and district overseers, identified as DUMC0229-DUMC0234. See also responses to Request Nos. 6, 12, 13, 15, 20, 21, and 30.

REQUEST FOR PRODUCTION NO. 32:
Any and all documents, including any electronic recordings of any nature, in the possession of this defendant, concerning Larry Kelley's confession.

RESPONSE:

Dumas Congregation objects to the use of the definition of the term "Larry Kelley's confession" as vague, ambiguous, and overbroad. Dumas Congregation further objects since it seeks information that may have arisen during communications made between the elders and Larry Kelley, which are protected by the clergy-communicant privilege as it seeks information protected from disclosure by Texas Rules of Evidence, Rule 505. Dumas Congregation also objects to Request on the basis that it is an invasion of privacy and seeks confidential information concerning the internal workings of the church, protected by ecclesiastical privilege and the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Unable to respond to this request as worded.

REQUEST FOR PRODUCTION NO. 33:
Any and all documents, including any electronic recordings of any nature, in the possession of this defendant, concerning any action taken by this Defendant in response to Larry Kelley's confession.

RESPONSE:

Dumas Congregation objects to the use of the definition of the term "Larry Kelley's confession" as vague, ambiguous, and overbroad. Dumas Congregation further objects since it seeks information that may have arisen during communications made between the elders and Larry Kelley, which are protected by the clergy-

communicant privilege as it seeks information protected from disclosure by Texas Rules of Evidence, Rule 505. Dumas Congregation also objects to Request on the basis that it is an invasion of privacy and seeks confidential information concerning the internal workings of the church, protected by ecclesiastical privilege and the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Unable to respond to this request as worded.

REQUEST FOR PRODUCTION NO. 34:
Any and all documents, including any electronic recordings of any nature, in the possession of this defendant, concerning any action taken by any other entity within the Jehovah's Witness organization in response to Larry Kelley's confession.

RESPONSE:

Dumas Congregation objects to the use of the definition of the terms "any other entity within the Jehovah's Witness organization" and "Larry Kelley's confession" as vague, ambiguous, and overbroad. Dumas Congregation further objects since it seeks information that may have arisen during communications made between the elders and Larry Kelley, which are protected by the clergy-communicant privilege as it seeks information protected from disclosure by Texas Rules of Evidence, Rule 505. Dumas Congregation also objects to Request on the basis that it is an invasion of privacy and seeks confidential information concerning the internal workings of the church, protected by ecclesiastical privilege and the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).*

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Unable to respond this request as worded.

REQUEST FOR PRODUCTION NO. 35:
Any and all documents, including any electronic recordings of any nature, in the possession of this defendant, concerning Larry Kelley's confession.

RESPONSE:

See Response to Request No. 32 above.

REQUEST FOR PRODUCTION NO. 36
Any and all documents, including any electronic recordings of any nature, in the possession of this defendant, concerning any report or communication of any nature that this Defendant made to any other entity with the Jehovah's Witness organization, concerning Larry Kelley's confession.

RESPONSE:

Dumas Congregation objects to the use of the definition of the terms "entity with the Jehovah's Witness organization" and "Larry Kelley's confession" as vague, ambiguous, and overbroad. Dumas Congregation further objects since it seeks information that may have arisen during communications made between the elders and Larry Kelley, which are protected by the clergy-communicant privilege as it seeks information protected from disclosure by Texas Rules of Evidence, Rule 505. Dumas Congregation also asserts that this request calls for information protected from discovery by the lawyer-client and work product privileges, as protected by the Texas Rules of Civil Procedure and the Texas Rules of Evidence, Rule 503. Dumas Congregation additionally objects to this request as an unnecessary and impermissible invasion of privacy of individuals who are not parties to this lawsuit. Finally, Dumas Congregation objects to request on the basis that it is an invasion of privacy and seeks confidential information concerning the internal workings of the church, protected by ecclesiastical privilege and the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976).

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Unable to respond this request as worded.

REQUEST FOR PRODUCTION NO. 37:
Any and all documents, including any electronic recordings of any nature, in the possession of this defendant, concerning any communication of any nature this Defendant received from any other entity within the Jehovah's Witness organization concerning Larry Kelley's confession.

RESPONSE:

Dumas Congregation objects to the use of the definition of the terms "entity with the Jehovah's Witness organization" and "Larry Kelley's confession" as vague, ambiguous, and overbroad. Dumas Congregation further objects since it seeks information that may have arisen during communications made between the elders and Larry Kelley, which are protected by the clergy-communicant privilege as it seeks information protected from disclosure by the Texas Rules of Evidence, Rule 505. Dumas Congregation also asserts that this request calls for information protected from discovery by the lawyer-client and work product privileges, as protected by the Texas Rules of Civil Procedure and the Texas Rules of Evidence, Rule 503. Dumas Congregation additionally objects to this request as an unnecessary and impermissible invasion of privacy of individuals who are not parties to this lawsuit. Finally, Dumas Congregation objects to this request on the basis that it is an invasion of privacy and seeks confidential information concerning the internal workings of the church, protected by ecclesiastical privilege and the First Amendment to the United States Constitution. *See Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).*

Subject to, and without waiving the above objections, Dumas Congregation responds as follows: Unable to respond to this request as worded.

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DUMAS CONGREGATION'S PRIVILEGE LOG
Request No. 4

1. April 4, 1997, letter to the Watchtower Bible and Tract Society of New York, Inc., from the Dumas Congregation elders, protected by TX Rules of Evidence, Rule 505.

DUMAS CONGREGATION'S PRIVILEGE LOB
Request No. 13 and 15

1. July 20, 1998, letter to all Bodies of Elders from Watchtower Bible and Tract Society of New York, Inc., withheld because the document contains confidential legal communications and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

DUMAS CONGREGATION'S PRIVILEGE LOG
Request No. 16(b)

1. September 22, 1985, notes, including envelope, prepared by an elder of a judicial committee in the Dumas Congregation, Texas regarding Larry Kelley, protected by TX Rules of Evidence, Rule 505.

DUMAS CONGREGATION'S PRIVILEGE LOG
Request No. 3

1. April 4, 1997, letter to the Watchtower Bible and Tract Society of New York, Inc., from the Dumas Congregation elders, protected by TX Rules of Evidence, Rule 505.

2. April 17, 1997, letter to Chuck Regal, the presiding overseer (elder) of the Southwest Congregation, Amarillo, Texas, from Dumas Congregation elders, protected by TX Rules of Evidence, Rule 505.

Jan. 20, 2004

No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
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 Defendants.	§	251ST JUDICIAL DISTRICT

PLAINTIFF'S REPLY TO THE RESPONSE OF DUMAS CONGREGATION OF JEHOVAH'S WITNESSES AND AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES TO PLAINTIFF'S OMNIBUS MOTION TO COMPEL AND DEFENDANTS' MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, AMY B., Plaintiff in the above entitled and numbered cause, and files this Reply to the Response of Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's Omnibus Motion to Compel and Defendants' Motion for Protective Order and in support would show:

I.
INTRODUCTION

Neither Rule 505 of the Texas Rules of Evidence nor the First Amendment to the United States Constitution stand in the way of the discovery sought by Plaintiff.

Rule 505 does not even apply in this case. This proceeding concerns child sexual abuse. The Texas Legislature has expressly excluded the application of Rule 505 from proceedings involving child abuse by enacting Tx. Fam. Code Section 261.202. More importantly, the Watchtower Defendants had an obligation to disclose Kelley's 1985 assault of a little girl in Amarillo and their failure to do so was a crime. Their knowledge of the facts surrounding this sexual assault cannot possibly be privileged.

But, even if Rule 505 did apply to lawsuits concerning child sexual abuse, the Watchtower Defendants cannot meet their burden of proving that the documents and testimony sought fall within the rule's narrow definition of privileged clergy communications. Most, if not all, of the documents the Watchtower Defendants withhold as privileged were generated in the context of an investigative, administrative, and even adversarial process, hardly the confidential communications to clergy in their capacity as spiritual advisors protected by the rule. The balance of the discovery Plaintiff seeks to compel concerns:

- The sexual abuse of Plaintiff;
- Reports made within the Watchtower Defendants' organization of child sexual abuse perpetrated by Larry Kelley before and after the conduct made the basis of this lawsuit;

- The policies and practices of the Watchtower Defendants concerning child sexual abuse, including their investigation when child sexual abuse is alleged, their response if such allegations are true, and the measures they take to track the movement of sexual predators within the organization; and

- The organizational structure and relationship between the various Watchtower entities.

None of this discovery falls within the scope of Rule 505.

And even if Rule 505's privilege were otherwise applicable, it has been waived. Defendant, Larry Kelley has admitted in pleadings filed with this Court that he committed sexual abuse of a child while in a leadership position with the Dumas Congregation and that he discussed that abuse with the Dumas Congregation. If a privilege existed, it would belong to Mr. Kelley, not the Watchtower Defendants, and Mr. Kelley has waived it.

Likewise, the Watchtower Defendants have waived any privilege that might otherwise exist as to their general internal statements about child abuse. They have published and produced numerous statements about child abuse and how it should be handled. They cannot selectively choose which documents regarding the subject they want to produce and simultaneously withhold those that are inconsistent.

Defendants' claim that the First Amendment excuses them from responding to discovery is equally flawed. The First Amendment precludes a court from inquiring into and determining the correctness of religious beliefs. It does not provide a shield from state regulation of conduct, even if such conduct is undertaken in the name of religion.

This case has nothing to do with whether the Watchtower Defendants' beliefs are correct. It is about a young girl who was repeatedly sexually abused by a man Defendants knew, or should have known, was a pedophile and who used his position within the Defendants' organization to gain access to his victims.

This case is also about the Watchtower Defendants' knowledge and concealment of at least one previous act of child sexual abuse by Defendant Kelley. The documents and testimony Plaintiff moves this Court to compel go directly to the issue of Defendants' notice of Kelley's dangerous propensities: what Defendants knew, and when they knew it.

Finally, the Watchtower Defendants' claim that they are motivated by religious beliefs is disingenuous at best. See the letter to the Body of Elders dated July 1, 1989, Defendant Watchtower Bible and Tract Society of New York, Inc., attached hereto as Exhibit A, emphasizing the need to maintain secrecy to prevent "costly lawsuits".

II.
RULE 505

A. Rule 505 Does Not Apply To The Documents And Information Sought By Plaintiff.

1. The 505 Privilege Does Not Apply To An Adversarial Judicial Committee Investigation.

Rule 505 provides that certain confidential communications made to clergy for the purpose of obtaining spiritual guidance, advice or consolation are privileged, but the privilege is not unlimited. It extends only to communications addressed to clergy in his or her professional capacity as a spiritual advisor. Investigatory communications,

such as those sought by Plaintiff, are not protected by Rule 505 of the Texas Rules of Evidence.

Kos v. State of Texas, 15 S.W.3d 633, 638 (Tex.App.—Dallas, 2000) is directly on point. In *Kos*, the perpetrator attempted to protect statements he made to another priest who was investigating allegations of sexual abuse. The court held that communications made under these circumstances were not privileged because they were not made to the priest in his capacity as a spiritual advisor. Instead, he was acting as a church investigator attempting to determine if disciplinary intervention was necessary. The court wrote:

> In our view, the Rule 505 requires more than just that the clergyman be acting in his professional capacity; it also requires that the clergyman be acting as a spiritual advisor. The rule itself sets out this requirement. *See* Tex. R. Evid. 505. Moreover, this distinction is critical since, without this additional requirement, the privilege could be extended to situations, like the one here, where the communications were made to the clergyman in his professional capacity as an administrator of the church, but not in his capacity as a spiritual adviser."

15 S.W.2d at 639.

The opinion describes several factors, also present in this case, that compelled the conclusion that the communications were not privileged:

- The priest whose testimony was at issue had called a meeting with Defendant *Kos* to investigate allegations of sexual abuse and thus the meeting was not initiated by *Kos*;
- The priest was acting as a member of a disciplinary committee investigating the allegations;
- The purpose of the meeting was confrontational;
- The priest questioned *Kos* about the allegations.

15 S.W.2d at 639

The court in *Maldonado v. State of Texas*, 59 S.W.3d 251 (Tex.App.-Corpus Christi, 2001) followed the same analysis when a Bishop received a complaint that a priest had sexually abused three girls in a Harlingen church. The Bishop called a meeting with the alleged assailant to confront him with the complaints and ultimately removed him from congregation leadership and membership. Following *Kos*, the *Maldonado* court held that under the express language of Rule 505, the privilege only extended to communications addressed to a Bishop in his professional capacity as a spiritual advisor, not to every private communication made to a clergy member, and that statements made during a disciplinary or administrative process did not fall within the privilege.

It is obvious from the Watchtower Defendants' privilege logs that, as in *Kos* and *Maldonado*, at least some of the communications in question relate to information obtained during a judicial committee investigation into claims of abuse. (See, Privilege Logs attached as Exhibits to Defendants', Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses, Objections and Responses to Plaintiff's First Request for Production, attached hereto as Exhibit B).

The Watchtower Defendants' instructions for Judicial Committees are contained in a manual called "Pay Attention to Yourselves and to All the Flock", which underscores the adversarial nature of the type of investigation that led to the documents in question: The relevant excerpts from this manual are attached as Exhibit C and include:

- "Do not send an individual any kind of correspondence that directly accuses him of specific wrong doing. It is best for two elders to speak with the individual and invite him to meet with the Judicial Committee." (page 110)

- "If the accused repeatedly fails to come to the hearing, the committee will proceed with the hearing but will not make a decision until evidence and any testimony by witnesses is considered." (page 110)

- What kind of evidence is acceptable?" (page 111)

- "If the accused does not admit guilt, he should be informed as to the sources of the charges against him." (page 119)

- "The accused may also present witnesses whose testimony would have a bearing on the case." (page 119)

- "The committee probes with pertinent questions in an effort to establish facts an ascertain the attitude of the accused." (page 120)

- "Inform the wrongdoer that he may appeal in writing within seven days if he feels a serious error in judgment has occurred." (page 121)

- "Appealing Judicial Decisions: If the accused believes that an error in judgment was committed, he should make known in writing his reasons for requesting an appeal, doing so within seven days from the time he was notified of the decision of the committee." (page 124)

- "The [appeal] hearing is conducted in a manner similar to the first judicial committee hearing. It may be necessary to rehear all the evidence relevant to the case, including that which was presented originally and any new evidence now available." (page 125)

See also Exhibit A, which further describes the judicial committee process.

Plaintiff also refers this Court to the deposition testimony of both Defendant Larry Kelley in this matter and Mr. Curtis Hail, taken in Cause No. CIV20600; *Kaleena S., et al vs. Watchtower Bible and Tract Society of New York, Inc., et al*; In the 241st Judicial District Court of Smith County, Texas, a case involving the abuse of other children in

another Jehovah's Witness congregation. Copies of the depositions are attached as Exhibits D and E, respectively.

The deposition testimony included the following excerpts:

Larry Keith Kelley
December 5, 2003
Page 72, Line 14 - Page 76, Line 15

Q. Okay. Well, one thing for sure is that the function of investigating reports of misconduct within the congregation are handled by what's called judicial committees; is that true?
A. Correct.
Q. And those judicial committees are acting in the administrative -- in the administrative capacity of the elders; is that correct?
MR. JONES: Object to form.
MR. SPRIGGS: Object to form.
A. Yes.
Q. And if the admin -- if a judicial committee investigates misconduct and imposes discipline, again, that function is in the administrative capacity of the elders, correct?
MR. JONES: Object to form.
MR. SPRIGGS: Object to form.
A. Yes.
Q. Did you ever serve on a judicial committee?
A. Yes.
Q. On how many times?
A. I don't remember.
Q. More than once?
A. Yes.
Q. Starting with the first time you remember being on a judicial committee, what were the allegations that you were investigating?
MR. SPRIGGS: I'm going to object, instruct my client not to answer that based on Rule 505, Texas Rules of Evidence.
MR. JONES: I join in that objection.
Q. Now, I'm not asking you for the name of the individual. I'm not asking you for the name of the victim. I'm not asking you for any specific names or dates, Mr. Kelley. I'm asking you just to tell me what the nature of the allegations that you were investigating were the first time you remember serving on a judicial committee.
MR. SPRIGGS: I'm still going to raise that same objection and instruct my client not to answer that.

Q. Are you refusing to answer the question that I've asked at your counsel's -- based on your counsel's advice and instruction?
A. Yes, I am.
Q. When you served on this judicial committee, did you meet with the accused?
A. Yes.
Q. Did you meet with the accuser?
A. Sometimes.
Q. When you served on judicial committees and you met with the accused, it was the judicial committee that initiated the meeting, was it not?
A. Yes --
MR. SPRIGGS: Object to form. You still can answer.
A. Yes.
Q. In other words, the committee had told the accused to come meet with them?
MR. SPRIGGS: Object to form.
A. Yes.
Q. And that was in the context of investigating the allegations, true?
MR. SPRIGGS: Object to form.
A. Yes.
Q. And these judicial committees are comprised of how many elders typically?
MR. SPRIGGS: Object to form.
A. I can't remember the minimum required, but --
Q. Was it usually three?
A. Yes, it was usually three.
Q. And when you met with the accused, the meeting was a confrontational meeting, wasn't it?
MR. SPRIGGS: Object to form.
A. Sometimes.
MR. HAMPTON: What's the basis of your objection?
MR. SPRIGGS: What was the question again?
MR. HAMPTON: What was the basis of your objection.
MR. SPRIGGS: What was the question and I'll tell you my objection -- the basis.
MR. HAMPTON: Why don't you read the question back.
(The requested information was read.)
MR. SPRIGGS: It calls for speculation.
MR. HAMPTON: Okay.
MR. SPRIGGS: It's arbitrary.
MR. HAMPTON: It's what?
MR. SPRIGGS: Arbitrary.
MR. HAMPTON: Arbitrary?
MR. SPRIGGS: Uh-huh.
MR. JONES: My objection is that it tends to infringe upon the First Amendment rights of my clients.
MR. HAMPTON: Okay.

Q. (BY MR. HAMPTON) And when you met with - when you and other members of the judicial committees that you served on met with the accused, the purpose was for the accused to respond to the allegations that had been made, correct?
MR. JONES: Object to form.
MR. SPRIGGS: Object to form.
A. Yes.

Curtis Hail
November 18, 2003
Page 97, Line 6
Q. Mr. Hail, you were telling me about the procedure for the disciplinary system within the Jehovah's Witnesses. You've gone - as an elder for 30 years, you've been involved in this many times, I'm sure.
A. Yes.
Q. You're well familiar with the procedure?
A. Right.
Q. Now I think the first thing you said - let me go back through it and make sure I understand it. If there's an allegation of wrongdoing made to - brought to the elder's attention, do - is the first step that two elders will be assigned to investigate?
A. Yes.
Q. The body of elders discusses the allegation of wrongdoing and chooses two elders to investigate?
A. they choose two elders.
Q. Okay. And then what do those elders do to investigate?
A. They go talk to the individual who the allegation is brought against and see if it's true -
Q. Okay.
A. -- and talk to him. A serious sin like that, of course, would be something that could be - it would have to be a sin that would cause disfellowship for a judicial committee to be set up.
Q. Okay. Well, let's assume that's what we're talking about. We're -
A. All right.
Q. -- talking about a serious sin. Okay. So the two - the two elders chosen to investigate would go talk to the person who was accused.
A. Right.
Q. And that person would either admit or deny the accusation?
A. Right.

Page 99, Line 9
Q. And you've been on a judicial committee?
A. Right.

Page 126, Line 10

Q. Okay. They initiate the contact with the accused person?
A. Correct.
Q. Their - they have a conversation with him that is part of the investigation process?
A. Correct.
Q. The conversation is in their role as investigating this accusation?
A. Correct.
Q. When he appears before a judicial committee, again, it's the judicial committee that calls him to appear before it?
A. Correct
Q. His appearance is as an accused in a judicial setting?
A. Correct. Uh-huh. Yes.
Q. The dialogue that takes place is just like - it's a lot like what we're doing here today.
A. Right.
Q. It's adversarial. Right?
A. Correct.
Q. With the judicial committee on one side and him defending himself. True?
A. The accusation is brought and made clear to him.
Q. Right.
A. Then depending on his attitude -
Q. Right.
A. -- what takes place.
Q. And he's in a defensive posture?
A. Yes.

Although the Watchtower Defendants have the burden of proving that the privilege applies, Plaintiff has brought this Court evidence that should put to rest any suggestion that the communications fall within the narrow parameters of Rule 505. Defendants' own documents, as well as the deposition testimony of Defendant Larry Kelley and Elder Hail establish beyond dispute that a Jehovah's Witness judicial committee is confrontational, investigatory, administrative, and that its meetings with the accused are initiated, not by the accused, but by the committee itself.

Under the authority of *Kos* and *Maldonado*, as well as the express terms of Rule 505, the Watchtower Defendants' claim that a clergyman privilege applies to any of the documents Plaintiff seeks must be overruled.

B. <u>The Texas Legislature Has Determined That No Privilege, Other Than The Attorney-Client Privilege, Applies In Proceedings Involving Child Abuse</u>

For decades, this state has required all persons, including clergy, to report child abuse to law enforcement. Tex. Fam. Code Sec. 261.101, Acts 1976, 64th Leg., ch. 476, Sec. 4, at 1272. Also, see historical analysis in [Op. Tex. Atty. Gen. No. JM-342 (1985)].

Therefore, when the Dumas elders learned in 1985 that Larry Kelley had sexually abused a little girl in the congregation, they had a *duty* to report it to authorities and committed a *crime*, a Class B misdemeanor, when they failed to do so. Tex. Fam. Code Sec. 261.109, Acts 1975, 64th Leg., ch. 476, Sec. 54, at 1272. Their silence allowed Kelley to abuse at least two other children, including Plaintiff.

Since 1971, the clergyman privilege has not applied in "proceedings regarding the abuse or neglect of a child." Tex. Fam. Code Sec. 261.202, Acts 1971, 62nd Leg., ch. 902, Sec. 1, at 2790.[1]

This is a "<u>proceeding</u> regarding the abuse ... of a child." Plaintiff, was a minor child when the Watchtower Defendants' agent, Defendant, Larry Kelley sexually abused her, and all claims in this case relate to that sexual abuse of a child. Therefore, as a matter of law, the clergy-communication privilege as set forth in Rule 505 of the Texas Rules of Evidence does not apply.

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[1] Section 261.202 states: "In any proceeding regarding the abuse or neglect of a child, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client."

Without citing any authority, the Watchtower Defendants argue that the Texas Legislature's use of the term "proceedings" is designed to exclude civil lawsuits. To the contrary, the use of the term "proceeding" indicates the Legislature's determination to give Section 261.202 a broad scope. Black's Law Dictionary defines a "proceeding" as:

> "an act which is done by the authority or direction of the court, express or implied; a prescribed mode of action for carrying into effect a legal right ... The word may be used synonymously with "action" or "suit" to describe any act done by authority of a court of law and every step required to be taken in any cause by either party ... In a more particular sense, any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages or for any remedial object".

There is nothing under Chapter 261 of the Family Code that remotely suggests that a "proceeding" is limited to some specific kind of action under the Family Code, nor is there any such suggestion in the Attorney General's opinion cited by the Watchtower Defendants and attached as Exhibit F.

Presumably, "proceeding" would also exclude criminal cases, if Defendants position was correct, but, *Bordman v. State*, 56 S.W.3d 1 (Tex.App.Houston [14th Dist.] 2001 writ ref'd), rejected that argument. In *Bordman*, the defendant urged that Section 261.202 was not intended to apply in criminal cases, and that it superceded Rule 505 only in "proceedings involving CPS investigations, conservatorships, and terminations of parental rights." Like the Watchtower Defendants, he also cited no authority for this claim.

Rejecting the Defendants' argument, the court wrote:

> The exceptions to the privilege in the Family Code are clear and unambiguous. We hold that Section 261.202 clearly makes an exception to

Rule 505 in this case. *See also* 1 STEVEN GOODE ET. AL., TEXAS PRACTICE: GUIDE TO THE TEXAS RULES OF EVIDENCE: CIVIL AND CRIMINAL ' 505.1(2d ed. 1993 & Supp. 2000).

See also, *Rodriguez v. State*, 1997 Tex. App.—Dallas, LEXIS 4577 (not designated for publication), in which the court concluded that the Legislature intended to give this statute broad application with the word "proceeding".

C. **Alternatively, Any Applicable Rule 505 Privilege Has Been Waived**

Any Rule 505 privilege belongs to the penitent, not the clergy. *Simpson v. Tennant*, 871 S.W.2d 301, 303 (Tex.App.-Houston [14th Dist.] 1994). Defendant Larry Kelley has waived any applicable Rule 505 privilege. In his Original Answer to this Court, Defendant Larry Kelley admitted that he abused a child while an elder in the Dumas Congregation and reported it to the Watchtower Defendants. Defendant Larry Kelley's Original Answer is attached hereto as Exhibit G. Having publically admitted his conduct, there can be no claim that there is an expectation of confidentiality. Alternatively, even if there were such an expectation, it has been waived.

III.
THE FIRST AMENDMENT

A. **This Lawsuit Does Not Infringe First Amendment Freedoms.**

Implicit in the Watchtower Defendants' First Amendment argument is the theme that they are constitutionally immune from the laws of the secular world. While the Watchtower Defendants correctly assert that under the First Amendment they are entitled to *believe* anything they chose, that does not mean that their conduct is exempt from regulation. *Employment Division, Department of Human Resources of Oregon v. Smith,*

494 U.S. 872, 879, 110 S.Ct. 1595, 1600, 108 L.Ed. 2d 876 (1990). *Cantwell v. Connecticut*, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940).

> "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition." *Id.* "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices....Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."

Reynolds v. United States, 98 U.S. 145, 166-167, 25 L.Ed. 244 (1879).

The First Amendment's guarantee of free religious exercise does not relieve an entity or individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *United States v. Lee*, 455 U.S. 25 (1982). There is nothing in the First Amendment that precludes a court from enforcing neutral laws against a religious organization that are also equally imposed against other non-religious organizations. *Employment Division, Dept. of Human Resources of Oregon*, 494 U.S. 872, 879 (1990).

Plaintiff's claims seek the enforcement of neutral laws regarding tort liability, discovery and child sexual abuse. There is no First Amendment prohibition to the enforcement of such laws.

The United States Supreme Court has consistently upheld neutrally-applied secular laws that advance a compelling state interest. In *Lee, supra.*, the Supreme Court

accepted the Amish community's argument that the payment of taxes violated its religious beliefs. However, the Court stated:

> The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, *e.g., Prince v. Massachusetts,* 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); *Reynolds v. United States,* 98 U.S. 145, 25 L.Ed. 244(1879). The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. *Thomas v. Review Bd. Of Indiana Employment Security Div.* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *Wisconsin v. Yoder,* 406 U.S. 205, 92 S.Ct. 828, 28 L.Ed.2d 168(1971); *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

Id. at 257-258. [2] Defendants cannot argue seriously that this state does not have a compelling interest in insuring that the courts are open and judicial processes available to victims of child sexual abuse.

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[2] Other U.S. Supreme Court opinions and those of numerous other jurisdictions have found no bar to neutrally applied secular laws that burden First Amendment freedoms where the law is supported by a compelling state interest. See e.g. *Reynolds v. United States,* 98 U.S. 145 (1879); *Jones v. Wolf,* 443 U.S. 595, 604 (1979)(Secular laws may interfere with religious practices where required by compelling societal interest. To hold otherwise would make every citizen a law unto himself.); *General Council of Finance and Administration of the United Methodist Church v. Superior Court of California,* 439 U.S. 1369 (1978)(The First and the Fourteenth Amendments do not prevent a court from independently examining decisions of a church in a secular dispute between a church and a third party.); *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.* 396 U.S. 367 (1970)(Courts may resolve disputes that do not require examination of tenets of faith); *Davis v. Beason,* 133 U.S. 333 (1890) (First Amendment was never intended to be invoked in the name of religion as a protection against legislation inimical to the peace, good order, and morals of society.); *Cantwell v. Connecticut,* 310 U.S. 296 (1940)("Nothing we have said is intended to even remotely imply that, under the cloak of religion, persons may, with impunity, commit frauds on the public."); *Bob Jones University v. United States,* 461 U.S. 574(1983)(State may enforce tax-exemption laws against religious school that racially discriminates for religious reasons.) *See e.g., Prince v. Massachusetts,* 321 U.S. 158 (1944)(prohibiting a child from distributing literature on the streets despite the religious motivation because the law precluded any child from doing so); *Braunfeld v. Brown,* 366 U.S. 599 (1961)(upholding Sunday-closing laws as neutral despite the claim that such laws burdened the religious practice of those whose religion compelled them to refrain from work on other days); *Gillette v. United States,* 401 U.S. 437 (1971)(upholding the military Selective Service System as neutral despite the claim that it violated free exercise by conscripting persons who opposed a particular war on religious grounds); *United States v.. Lee,* 455 U.S. 252 (1982)(requiring an Amish employer to withhold and pay social security taxes just as all other employers were required to do, despite the Amish faiths prohibition against doing so) *McBride v McCorkle,* 130 A.2d 881 (N.J. App. 1957)(Prisoner could be denied the First

In cases that involve the specific religion organization in this lawsuit, courts have uniformly held that considerations of child safety and welfare prevailed over claimed infringement of religious freedom.

In *Prince v. Commonwealth of Massachusetts,* 64 S.Ct. 438 (1944), the United States Supreme Court ruled that the First Amendment did not preclude the state from enforcing neutrally-applied secular laws designed to protect the safety and welfare of a child, even though the laws were inconsistent with the family's religious beliefs as members of the Jehovah's Witnesses. *See also, Jehovah's Witnesses v. King County Hospital Unit No.1,* 278 F. Supp 488 (W.D. Washington 1967) *judgment affirmed,* 88 S.Ct. 1260 (1961). Similarly, the New Jersey Court of Appeals found no First Amendment impediment to the government's ability to limit religious conduct to protect the health

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Amendment right to attend Mass on Sundays as required by his religious beliefs due to the compelling state interest in preserving order and discipline in the prison); *Christenson v. Erickson,* 99 Or. App. 104, 781 P.2d 383 (Or. Ct. App 1989)(Claims by victim of child sexual abuse against a church for negligent supervision, breach of fiduciary duty, intentional infliction of emotional distress and respondeat superior are not barred by First Amendment.); *Martinelli v. Bridgeport Roman Catholic Church,* 196 F.2d 409 (2nd Cir. 1999)(First Amendment does not prohibit a court from finding a fiduciary relationship between diocese and child parishioner who was sexually abused by priest.); *Moses v. Defendants of Colorado,* 863 P.2d 310 (Colo. 1993)(The First Amendment does not bar an adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on the sexual relationship between parishioner and priest); *Smith v. O'Connell,* 986 F.Supp. 73 (D.R.I 1997)(The First Amendment does not bar a minor's claims for negligent supervision against a church for sexual molestation by a priest); *Byrd v. Faber,* 565 N.E.2d 584 (Oh. 1991)(Negligent hiring and supervision claims brought by a sexually abused child are not barred by the First Amendment); *Bivin v. Wright* , 656 N.E. 2d 1121 (Ill. Ct. App. 1995)(Negligence action against church for failure to protect plaintiffs from sexual misconduct of its clergy would not violate First Amendment.); *F.G. v. MacDonell,* 696 A.2d 697 (N.J. 1997))("When sexual conduct is involved, the fear of treading on doctrinal matters is minimal, and to establish a standard of care involves 'no impenetrable barrier.'"); *Sanders v. Casa View Baptist Church,* 898 F.Supp. 1169 (N.D. Tex. 1995))(The First Amendment does not bar claims of professional negligence and breach of fiduciary duty brought by a church member against a minister); *Malicki v. Jane Doe,* 814 So.2d 347, 365 (Fla. 2002)(The First Amendment does not provide a shield behind which the church may avoid liability for harm caused to a child parishioner arising from the alleged sexual assault or battery by one of it clergy);*Bollard v. California Province of the Society of Jesus,* 196 F.3d 940, 947-48 (9th Cir. 1999)(Court does not violate the First Amendment when it examines the nature and severity of sexual harassment of a novice by a religious order and what measures, if any, were taken to prevent or correct it.).

of a child whose Jehovah's Witness parents refused a blood transfusion for their child because of their religious tenets. The court noted that "while freedom to believe is absolute, freedom to exercise one's beliefs is not and must be considered in light of the general public welfare."

Ironically, the central theme of Defendants' arguments -- that they enjoy rights because they are an religious organization that non-religious organizations do not have -- is inconsistent with the entire purpose of the First Amendment's Establishment Clause. If such an argument were embraced by this Court, it would elevate the Defendants to a position superior to any secular entity, "a concept both foreign and hostile to the First Amendment." *Malicki v. Jane Doe*, 814 S.2d 347 (Fla. 2002).

B. <u>This Is Not A Lawsuit About An Intrachurch Dispute Or Theological Controversy</u>.

The case that forms the core of Defendants' argument dealt with a controversy required interpretation of church rules and doctrine. *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976), involved the issue of whether a bishop was properly de-frocked, a matter that was entirely within the jurisdiction of the religious organization, to be decided by the rules of that organization. Courts properly abstain from resolving such controversies.

Watson v. Jones, 80 U.S. 679 (1871), also cited by Defendants for the proposition that civil courts cannot decide theological controversies, also held that secular courts are not precluded from deciding secular matters that involve the decisions of a religious entity.

This lawsuit does not involve construction of church doctrine or application of ecclesiastical principles; instead it concerns issues of duty, breach, proximate cause and the sexual abuse of a child.

C. **Discovery Of Evidence Regarding The Internal Communications And Workings Of A Religious Organization Does Not Violate The First Amendment.**

The Watchtower Defendants cite no authority to support their argument that the First Amendment forbids discovery regarding the internal communications and workings of a religious organization. In fact, all authority of which Plaintiff is aware is to the contrary.

For example, in *Donovan v. Central Baptist Church, Victoria*, 96 F.R.D. 4 (S.D. Texas, Victoria Division 1982), the court held that even if there were issues of constitutional import in a case, requiring a response to discovery propounded did not "cause an excessive entanglement with the Church or interfere with anyone's free exercise of religion." *Id.* at pg. 6.

In *Ambassador College v. Geotzke*, 675 F.2d 662, 665 (5th Cir. 1980), the court dealt explicitly with whether the discovery of internal church documents was precluded by the First Amendment. Specifically, the court held:

> In the instant case, certain church members may have been over-zealous in their efforts to finance a seminary. Their actions may have been overreaching and they may have committed a fraud. Thus, the church must respond to discovery requests, as any other similarly situated litigant would be required. As the Supreme Court stated in *Cantwell v. Connecticut,*, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940, "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." In the instant case, the appellants are accused of taking

> questionable actions, bordering upon *665 fraud. The raising of a first amendment right does not require a balancing test of the interests involved in discovery.

Nothing in the First Amendment precludes discovery of internal church communications to establish violations of secular law, even if such communications disclose religious beliefs.

In *Martinelli v. Bridgeport Roman Catholic Diocesan*, 196 F.2d 409, 431 (2nd Cir. 1999), the court permitted examination of religious principles to permit factual context. The court explained that evidence of religious teachings and tenets, submitted not to determine their validity, but to establish the factual predicates of a civil cause of action is properly allowed and does not violate the First Amendment. For example, the tenets of a particular religion may be examined to determine whether a fidicuary relationship exists between the bishop and a child parishioner, but not to assess their truth. As the court stated:

> The obvious distinction between the proper use of religious principles as facts and an improper decision that religious principles are true or false bears a certain family resemblance to the more mundane rules of hearsay. Evidence of a statement made out of court may be inadmissible as hearsay to prove the truth of the facts asserted in it, but may be admissible for the non-hearsay purposes of proving that the statement was made or that other facts can be inferred from the making of the statement. *See* Fed.R.Evid. 801(c). Similarly, the proposition advanced by a particular religion that "a bishop is like a 'shepherd' to the 'flock' of parishioners" cannot be considered by a jury to assess its truth or validity or the extent of its divine approval or authority, but may be considered by the same jury to determine the character of the relationship between a parishioner and his or her bishop.

Martinelli at 431.

Consistent with the above authority, Plaintiff is merely asking this court to permit her to discover the factual evidence relevant to her claims, not determine the validity of religious beliefs. Nothing in the First Amendment precludes such discovery.[3]

1. Neither *Harley* Nor *Simon & Schuster* Do Not Permit The Watchtower Defendants to Commit A Fraud On The Public By Claiming First Amendment Protection.

The Watchtower Defendants cite *Harley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 US 557 (1995) for the proposition that, as a religious entity, they are constitutionally guaranteed the right to disseminate selected portions of their religious beliefs to the public, but withhold other statements regarding the same subject matter from discovery. *Harley* says nothing of the kind; it deals with the right of a minority group to not be compelled to adopt a political statement with which it does not agree. *Id.* at 573. Specifically, the United States Supreme court in *Harley* held:

> Although the State may at times "prescribe what shall be orthodox in commercial advertising" by requiring the dissemination of "purely factual and uncontroversial information" (citation omitted), outside that context it may not compel affirmance of a belief with which the speaker disagrees".

---

[3] See also, *Moses*, 863 P.2d 310 (Colo.1993)(Extensive inquiry into the internal workings and controls of the Episcopal Church did not implicate the First Amendment as the court was not required to interpret or judge the religious doctrine behind such practices. Instead, the evidence established the factual context out of which the dispute arose.); *Rashedi v. General Board of the Church of the Nazarene*, 54 P.3d 349 (Az. 2002)(Inquiry into church structure and religious documents on purely secular terms did not violate the First Amendment as such was necessary to establish the factual context of the dispute.); *JC2 v. Grammond*, 232 F.Supp. 1166 (D.Or. 2002)(Examination of a number of the church's cannons did not violate the First Amendment as the court was not called upon the evaluate the correctness of these cannons.); *General Council on Finance and Administration of the United Methodist Church v. Superior Court of California*, 439 U.S. 1369 (1978). (The First Amendment does not bar secular disputes involving the conduct of a religious organization that results in external, secular harm, such as the physical and sexual abuse and exploitation that occurred in this case).

Plaintiff is not asking this Court to force the Watchtower Defendants to adopt any statement. Plaintiff is simply asking this Court to compel discovery of the statements they have previously made regarding the issues in this lawsuit - not just those that they choose to disclose. To allow the Watchtower Defendants to publically disseminate and produce statements that present a favorable impression of how the organization handles claims of child abuse and then hide contradicting internal statements that would confer protections upon a religious organization that are not available to a secular one. Such favoritism would violate the Establishment Clause. See *Reynolds v. United* States, 98 U.S. 145, 166-167 (1879); *Cantwell v.* Connecticut, 310 U.S. 296, 306 (1940).

The Watchtower Defendants also cite *Simon & Schuster, Inc. v. Members of the New York State Crimes Victims Bd.*, 502 U.S. 105 (1991) for the proposition that a church has a "constitutional right to choose which religious, doctrines, practices and beliefs will be disclosed to the general public." They argue that compelling the production of documents and testimony would "deprive the church of its constitutional right to determine the content of its spiritual message to the public."

However, *Simon & Schuster* is a freedom of speech case that had nothing to do with a religious organization's right to selectively respond to discovery in a lawsuit. The case involved a statue that required any entity publishing a book by a criminal, in which he described his crime, to give the money to his victims. The court found that this statute was unconstitutional because it unfairly burdened "storytelling" over other

means of obtaining proceeds from criminals. The case had nothing to do with the issues before this Court.

IV.
ADDITIONAL ARGUMENTS ASSERTED BY THE WATCHTOWER DEFENDANTS

In addition to the global objections under Rule 505 and the First Amendment, the Watchtower Defendants have asserted a number of more limited objections to the discovery sought by Plaintiff.

A. Remoteness In Time.

The Watchtower Defendants object to the production of documents relating to Defendant Larry Kelley's conduct while at the Dumas Congregation because they refer to events that occurred some five years prior to the abuse of Plaintiff and are therefore too remote in time.

The documents relate to Defendant Larry Kelley's sexual abuse of another child while Kelley was an Elder in the Dumas Congregation. They prove notice, and are obviously highly material to the elements of Plaintiff's case.

The Watchtower Defendants also object to the production of communications addressed or sent to "All Bodies of Elders" from 1970 to the present regarding or in any way relating to child abuse or sexual abuse as too remote in time and therefore irrelevant. These letters bear directly on allegations in Plaintiff's First Amended Petition that the Watchtower Defendants: "Maintained and enforced an organization – wide policy preventing the reporting of child abuse to law enforcement." and "Assumed the responsibility and duty of investigating all reports of child sexual abuse

within the Watchtower organization, disciplining offenders and protecting other potential victims, while negligently performing these duties." They are relevant and discoverable.

1. The Word "Confession".

The Watchtower Defendants object to all discovery requests using the term "Larry Kelley's confession" as vague, ambiguous and overbroad, and claim that they have no idea what "confession" is being referenced.

However, when Plaintiff propounded the discovery requests, she included a definition of "Larry Kelley's confession":

> "Larry Kelley's confession" means the confession Larry Kelley made to Elders of the Dumas Congregation concerning sexual contact with a girl from Amarillo, which is described in the document attached as Exhibit 1.

"Exhibit 1" referred to in the definition, and attached to the discovery requests for Defendants' convenience, was the first responsive pleading Kelley filed in this case, which is attached to this brief as Exhibit G. The Watchtower Defendants play games with this process when they claim not to know what "Larry Kelley's confession" means. They must be ordered to respond fully to the discovery in question.

2. Database and/or Collected Records of Sexual Abuse.

Interrogatory No. 10, directed to the Watchtower Bible and Tract Society of Pennsylvania, Inc., asked a series of specific questions about that Defendant's database of reports of sexual abuse and other misconduct. The basis of that interrogatory was Exhibit H, a May 9, 2002 letter from Watchtower Pennsylvania's director of public

information, J. R. Brown. That letter referenced records that he described on pages 2 and 3.

Plaintiff has not sought discovery of copies of any documents contained in the database, anything that would disclose the identities of any victims or perpetrators or anything voluminous. She has only asked questions about the operation and structure of the database itself.

10. With respect to the Watchtower's computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please answer the following for the time period 1978 to the present:

    a. How, when and why the database was first created;
    b. What type of information is collected and stored in the database;
    c. How is the information received before it is entered in the database;
    d. Identify who receives the information that is entered into the database;
    e. Identify who inputs the data into the database;
    f. Describe in detail what happens to the hard copy of the information once it is entered into the database;
    g. Identify who uses the database at present;
    h. How is the information in the database accessed;
    i. Identify the software that is used to access and/or operate the database;
    j. Describe the purpose for maintaining such information; and
    k. Identify who is authorized to obtain information from the database.

Watchtower Pennsylvania has stated that it "does not have such a database or control records or information sought to be compelled." Plaintiff would submit that this assertion is refuted by the detailed description contained in Brown's letter and would ask that Watchtower Pennsylvania be ordered to provide full and complete answers to the interrogatory at once. Alternative, Plaintiff would ask that they be ordered to produce J. R. Brown for deposition before this Court rules on this issue.

Watchtower Pennsylvania asks this Court to enter a protective order preventing Plaintiff from directing any discovery to any other Defendants about this database on the basis of attorney-client privilege. This Court should deny that request for at least two reasons.

First, without knowing what questions Plaintiff would ask, this Court cannot determine whether they would invade any privileged territory. Certainly none of the questions asked in Interrogatory No. 10 inquire about anything that is privileged.

Secondly, Brown's letter (Exhibit H) describes a compilation of data that almost certainly includes both privileged and unprivileged documents. The burden of segregating and proving which documents are privileged has not been satisfied. T.R.C.P. 193.4.

WHEREFORE, PREMISES CONSIDERED, Plaintiff hereby requests that this Court that the Watchtower Defendants be ordered to produce in their entirety any and all documents responsive to plaintiff's requests for production and answer all Interrogatories and Request for Admissions in Plaintiff's described Motion to Compel.

Respectfully submitted,

FIBICH, HAMPTON,
LEEBRON & GARTH, L.L.P.

By:_____

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the above and foregoing has been furnished to all counsel of record via certified mail, return receipt requested, regular mail, hand delivery and/or facsimile, on this 20th day of January 2004.

Hartley Hampton

C

Office of the Attorney General
State of Texas

*1 Opinion No. JM-342
August 5, 1985

Re: Whether a minister is required to file a report of child abuse under section 34.07 of the Family Code

Honorable Luther Jones
County Attorney
Room 201, City-County Building
El Paso, Texas 79901

Dear Mr. Jones:

You have asked whether section 34.07 of the Family Code requires a clergyman of an established church to report information of suspected child abuse which is confidentially disclosed to him by a parishioner. This section, enacted in 1975, provides:

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 34.02 of this code.

(b) An offense under this section is a Class B misdemeanor. (Emphasis added). Acts 1976, 64th Leg., ch. 476, § 4, at 1272.

Attorney General Opinion H-986 (1977) construed section 34.01 of the Family Code, which contains the phrase "any person having cause to believe," as embracing not only parents or guardians but all persons having the information described therein. Because sections 34.01 and 34.07 are within chapter 34 of the Family Code, they should be read in pari materia. See District Trustees v. Trustees of Freestone County, 186 S.W.2d 378 (Tex.Civ.App.--Waco 1945, no writ). This interpretation of "person" should therefore be used in applying section 34.07. Consequently, clergymen are covered by this section.

You also ask whether a clergyman must testify in a child abuse proceeding. Both article 3715a, V.T.C.S., and section 34.04 of the Family Code address this subject. If there is an irreconcilable conflict between statutes dealing with the same subject, the most recent controls as the latest expression of legislative intent. See City of Dallas v. Brown, 475 S.W.2d 833 (Tex.Civ.App.--Dallas 1971, writ ref'd n.r.e.); see also Sutherland Statutory Construction, Singer, V. 2A, § 51.02 (4th ed. 1984).

Prior to 1967, Texas courts did not recognize the clergyman-penitent privilege. See Biggers v. State, 358 S.W.2d 188 (Tex.Civ.App.--Dallas 1962), writ ref'd n.r.e. per curiam, 360 S.W.2d 516 (Tex.1962). In that year the legislature enacted article 3715a, which provides:

No ordained minister, priest, rabbi or duly accredited Christian Science practitioner of an established church or religious organization shall be required

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to testify in any action, suit, or proceeding, concerning any information which may have been confidentially communicated to him in his professional capacity under such circumstances that to disclose the information would violate a sacred or moral trust, when the giving of such testimony is objected to by the communicant; provided, however, that the presiding judge in any trial may compel such disclosure if in his opinion the same is necessary to a proper administration of justice. (Emphasis added).

*2 Almost immediately thereafter, however, the legislature required the testimony of clergymen in child abuse proceedings. See Acts 1971, 62nd Leg., ch. 902, § 1, at 2790 (amending V.T.C.S. art. 695c-2), repealed by Acts 1973, 63rd Leg., ch. 543, § 53, at 1458. Section 34.04, former article 695c-2, V.T.C.S., of the Family Code now provides:

> In any proceeding regarding the abuse or neglect of a child or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

Since section 34.04 is more recent, it prevails over article 3715a. Accordingly, a clergyman must testify in a child abuse proceeding. Only communications between an attorney and his client are privileged under section 34.04. See Pollock Recent Amendments to the Texas Child Abuse Statutes: An Analysis and Recommendation, 11 St. Mary's L.J. 914, 932 n. 133 (1980).

Although you have not referred to the Free Exercise Clauses of the First Amendment to the United States Constitution, it has been suggested that that clause is implicated by your question. The Free Exercise Clause involves both freedom to believe and freedom to act. See Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). The freedom to believe is absolute, but the freedom to act is conduct subject to regulation for the protection of society. See United States v. Grayson County State Bank, 656 F.2d 1070 (5th Cir.1981). Section 34.07 was enacted to ensure that persons having knowledge of abuse or neglect would report that information to the appropriate official. In our opinion, it clearly regulates conduct.

Government regulation of religious conduct is valid if it does not unduly burden the practice of religion, if the state's interest in enacting the regulation is compelling, and if there are no alternative means available which are less intrusive upon the practice. See Wisconsin v. Yoder, 406 U.S. 205 (1972); see also Sherbert v. Verner, 374 U.S. 398 (1963). Each of these requirements is satisfied here. In Prince v. Massachusetts, 34 U.S. 158 (1944), the United States Supreme Court said "[t]he right to practice religion freely does not include liberty to expose the ... child ... to ill health or death...." 321 U.S. at 166-67. See also Jehovah's Witnesses v. King County Hospital Unit No. 1, 278 F.Supp. 488 (N.D.Wash.1967) aff'd 390 U.S. 598 (1968). To conclude that the application of section 34.07 to clergymen would violate the Free Exercise Clause would be to ignore this admonition. We therefore conclude that to require a clergyman to report evidence of child abuse or neglect when confidentially disclosed to him by a parishioner does not violate the Free Exercise Clause.

SUMMARY

Article 3715a, V.T.C.S., which provides for clergyman-penitent privilege in judicial proceedings, does not conflict with section 34.07 of the Family Code, a reporting statute. Section 34.07 does not violate the Free Exercise Clause of the First Amendment to the United States Constitution. It requires a minister of an established church to report evidence of child abuse when confidentially disclosed to him by a parishioner.

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Very truly yours,

*3 Jim Mattox

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Tex. Atty. Gen. Op. JM-342, 1985 WL 189783 (Tex.A.G.)

END OF DOCUMENT

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No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
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 Defendants.	§	251ST JUDICIAL DISTRICT

SUPPLEMENT TO PLAINTIFF'S REPLY TO THE RESPONSE OF DUMAS CONGREGATION OF JEHOVAH'S WITNESSES AND AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES TO PLAINTIFF'S OMNIBUS MOTION TO COMPEL AND DEFENDANTS' MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, AMY B., Plaintiff in the above entitled and numbered cause, and files this Supplement to Plaintiff's Reply to the Response of Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's Omnibus Motion to Compel and Defendants' Motion for Protective Order and in support would show:

FILED
CAROLINE WOODBURY
DISTRICT CLERK
2004 JAN 29 A 9:17
02
POTTER COUNTY, TEXAS
BY _____ DEPUTY

I.

Plaintiff makes this supplement for the sole purpose of providing a copy of the May 9, 2002 letter from J.R. Brown, Watchtower Pennsylvania's director of public information, which is referred to as Exhibit H in Plaintiff's Reply to the Response of Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's Omnibus Motion to Compel and Defendants' Motion for Protective Order, but was inadvertently omitted from the documents filed with the Court and forwarded to Defendants.

Respectfully submitted,

FIBICH, HAMPTON,
LEEBRON & GARTH, L.L.P.

By:_____

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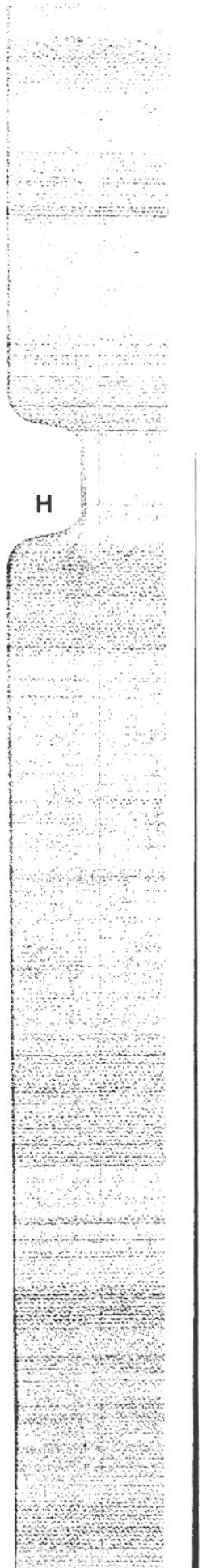
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the above and foregoing has been furnished to all counsel of record via certified mail, return receipt requested, regular mail, hand delivery and/or facsimile, on this 28th day of January 2004.

Hartley Hampton


H

WATCH TOWER
Bible and Tract Society of Pennsylvania
Office of Public Information
25 Columbia Heights, Brooklyn, NY 11201-2483, U.S.A.
Phone: (718) 560-5600 Fax: (718) 560-5619

Original via fax

May 9, 2002

Betsan Powys
BBC Panorama

Dear Ms. Powys:

This is in response to your fax of April 30, 2002, in which you advise us that BBC-TV is preparing a program on the way Jehovah's Witnesses handle child abuse matters. You have kindly offered us the opportunity to be interviewed on-camera; however, we must respectfully decline.

We are not opposed to giving interviews in general; however, it is likely that among those whose views will be expressed on your broadcast will be some persons who are Jehovah's Witnesses. In our view, it would be neither proper nor Scriptural for us to place ourselves in what might turn out to be an adversarial position with our Christian brothers and sisters in a public setting. (1 Corinthians 6:1-8; Ephesians 4:2) We trust that you will understand our position in this regard.

Although unable to participate in an interview, we are certainly willing to comment on the questions that you raised in your fax. We note that these center almost exclusively on the nature of the records that we keep on alleged child abusers. You tell us that it is vital that we answer your questions on our record-keeping procedures because of the "very serious nature of the allegations made to the programme," although you do not specify what the allegations are. First of all, however, please allow us to comment on the way that child abuse accusations are handled by Jehovah's Witnesses. We realize that you did not ask us to touch on this aspect; nevertheless, it is essential that we comment on it to provide an appropriate, frank answer.

In the United States, when any one of Jehovah's Witnesses is accused of an act of child abuse, the local elders are expected to investigate. The procedure is as follows. Two elders meet separately with the accused and the accuser to see what each says on the matter. If the accused denies the charge, the two elders may arrange for him to have the opportunity to confront the accuser in their presence. If during that meeting the accused still denies the charges and there are no others who can substantiate them, the elders cannot take action within the congregation at that time. Why not? As a Bible-based organization, we must adhere to what the Scriptures say, namely, "No single witness should rise up against a man respecting any error or any sin . . . at the mouth of two witnesses or at the mouth of three witnesses the matter should stand good." (Deuteronomy 19:15) Jesus reaffirmed this principle as recorded at Matthew 18:15-17.

When the branch office receives an allegation of child abuse, a check of the records might reveal that similar, uncorroborated allegations were lodged against the same person in the past, perhaps when he was living in another part of the country. When a second credible allegation by a different person is lodged against the same individual, the elders are authorized by the Scriptures to handle the case.

However, even if the elders cannot take congregational action, they are expected to report the allegation to the branch office of Jehovah's Witnesses in their country, if local privacy laws permit. Again, privacy laws permitting, a record is made at the branch office that the individual has been accused of child abuse. Each branch office of Jehovah's Witnesses keeps its own records, if that is allowed by local jurisdiction. In the United States we do not have records of child abusers who live in other lands. If privacy laws do not allow such records to be kept, the elders do whatever is permitted within the law to see to it that children are protected. The aim is to balance the right to privacy of the individual with the overriding need to protect the safety of children.—1 Timothy 5:19.

In addition to making a report to the branch office of Jehovah's Witnesses, the elders may be required by law to report even uncorroborated or unsubstantiated allegations to the authorities. If so, we expect the elders to comply. Additionally, the victim may wish to report the matter to the authorities, and it is his or her absolute right to do so. In the United States, reporting requirements vary from state to state. It can be quite a challenge to keep abreast of the reporting requirements, but our Legal Department makes every effort to do so.

If, when confronted, the accused confesses that he is guilty of child abuse, the elders take appropriate action. If he is not repentant, he will not be permitted to remain a member of the congregation. Even if he is repentant--is cut to the heart, and is thus resolutely determined to avoid such conduct in the future--what was stated in the January 1, 1997, issue of *The Watchtower* applies. The article said: "For the protection of our children, a man known to have been a child molester does not qualify for a responsible position in the congregation. Moreover, he cannot be a pioneer [full-time missionary of Jehovah's Witnesses] or serve in any other special, full-time service." (1 Timothy 3:2, 7-10) We take such action because we are concerned with maintaining Bible standards and protecting our children. Everyone in our organization is expected to meet the same requirements, namely, to be clean physically, mentally, morally, and spiritually.—1 Corinthians 7:1; Ephesians 4:17-19; 1 Thessalonians 2:4.

In a few instances, individuals guilty of an act of child abuse have been appointed to positions within the congregation if their conduct has been otherwise exemplary for decades. All of the circumstances would need to be considered carefully. Suppose, for example, that a long time ago a 16-year-old boy had sexual relations with a consenting 15-year-old girl. Depending upon the U.S. jurisdictions where he lived when this happened, elders are required to report this as an incident of child abuse. Let us say that twenty years have passed. The child abuse reporting law may have changed; he may even have married the girl! Both have been living exemplary lives and they are respected. In such a rare case, the man could possibly be appointed to a responsible position within the congregation.

Our procedures have been refined over time. Our policy over the past several years has been that at least twenty years must have passed before an individual who committed an act of child abuse could even be considered for appointment to a responsible position in the congregation, if ever. The Bible teaches that individuals can repent of their sins and "turn to God by doing works that befit repentance," and we accept what the Bible says. (Acts 26:20) Still, the safety of our children is of the utmost importance, so we realize that the local elders must be very careful when recommending individuals who may have been guilty of an act of child abuse in the distant past.

You have been told that here in the United States we have compiled a list of 23,720 names of child abusers. That is false. First of all, the total number of names in our records is considerably lower

than that. In addition, it is not meaningful to focus on the number of names we have in our records. This is because our figures include the names of many persons who have only been accused of child abuse whereas the charges have not been substantiated. We keep these records to document our compliance with what the law requires in many U.S. jurisdictions. Also included on our list are allegations made on the basis of so-called "repressed memories," the validity of which many authorities challenge. Then there are the names of persons who have been accused of abusing children before becoming Jehovah's Witnesses as well as individuals who have never been baptized Witnesses but whose names we are obliged to keep because of their association with the Witnesses. (An example of this would be a non-Witness father or step-father who is accused by his Witness children or step-children of abusing them.) To be safe, we also list the names of persons who may or may not be considered as child abusers, depending upon the jurisdiction where they live (for example, that 16-year-old boy who had sexual relations with the consenting 15-year-old girl). The name of an individual who was guilty of voyeurism or involved with child pornography, as further examples, would also be included on the list. And, to be sure, the list also includes names of persons who are actually guilty of child abuse. We do not apologize for keeping such records here in the United States. Apart from being legally needed, they have been very helpful to us in our efforts to protect the flock from harm. (Isaiah 32:2) Christian parents can rightly feel secure in the knowledge that such efforts are made to screen out possible child abusers from appointment to responsible positions within the congregation.

Ms. Powys, please do not conclude that we believe that our system is perfect. No human organization is perfect. But we do believe that we have a strong, Bible-based policy on child abuse. Anyone in a responsible position who is guilty of child abuse would be removed from his responsibilities without hesitation. We certainly would not knowingly transfer him to serve elsewhere.

Child abuse is abhorrent to us. Even one abused child is one too many. At least since 1981, our journals, *The Watchtower* and *Awake!*, have featured articles to educate both Witnesses and the public regarding the importance and need to protect children from child abuse. Among others, there was the article "Let Us Abhor What Is Wicked!" published in the January 1, 1997, issue of *The Watchtower*; "Help For the Victims of Incest" in the October 1, 1983, *Watchtower*; "Your Child Is in Danger!", "How Can We Protect Our Children?", and "Prevention in the Home," all in the October 8, 1993, *Awake!*, as well as "Child Molesting—Every Mother's Nightmare" in the January 22, 1985, *Awake!* Over the years, as we have noted areas where our policies could be strengthened, we have followed through. We are continuing to refine them.

We trust that you will find the information in this letter to be helpful. As you will note, we have responded to the broad issues you raise rather than providing specific answers to your detailed list of questions. We note that you sent a similar list of questions to our offices in London. We understand they are answering your questions in accordance with their procedures and adherence to British law.
With every good wish, I am,

Very truly yours,

J. R. Brown
Director
Office of Public Information

JRB:at

FILED
CAROLINE WOODBURN
DISTRICT CLERK
2004 JAN 29 A 9:17
POTTER COUNTY, TEXAS
BY BN DEPUTY

NO. 91,048-C-1

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

DEFENDANTS' WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, and AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES' MOTION FOR SUMMARY JUDGMENT

Defendants, Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses (collectively referred to as the "Church Defendants" and individually referred to by name) move for summary judgment against all of Plaintiff, Amy B.'s ("Plaintiff") claims against the Church Defendants because Plaintiff's claims against them are barred by the applicable statute of limitations, the Church Defendants are not vicariously liable for the unlawful conduct of Larry Kelley, the Church Defendants did not owe Plaintiff a legal duty to protect her from Larry Kelley and the Church Defendants are not liable to Plaintiff based upon a fiduciary duty.

DISTRICT CLERK
2004 JAN 30 A 9:42
POTTER COUNTY, TEXAS
BY HK

I. GROUNDS FOR SUMMARY JUDGMENT

1. Pursuant to Tex. R. Civ. P. 166a, the Church Defendants move conclusively for summary judgment on their affirmative defense that the applicable statute of limitations bars all of Plaintiff's claims against the Church Defendants. More specifically, the Church Defendants are entitled to summary judgment on their affirmative defense of statute of limitations against Plaintiff's claims of fraud, fraudulent concealment, breach of fiduciary duty, negligence, negligent hiring, retention and supervision and gross negligence against the Church Defendants because there exists no genuine issue of material fact as to the following elements of the Church Defendants' affirmative defense of limitations:

a. Plaintiff's claims of fraud, fraudulent concealment, breach of fiduciary duty, negligence, negligent hiring, retention and supervision and gross negligence against the Church Defendants accrued, at the very latest, on June 5, 1998, *i.e.*, the date on which Plaintiff reached the age of majority under Texas law.

b. Plaintiff's claims of negligence, negligent hiring, retention and supervision and gross negligence against the Church Defendants are barred by Tex. Civ. Prac. & Rem Code §16.003 because this lawsuit was not filed on or before June 5, 2000.

c. Plaintiff's claims of fraud, fraudulent concealment and breach of fiduciary duty against the Church Defendants are barred by Tex. Civ. Prac. & Rem. Code §16.004 because this lawsuit was not filed on or before June 5, 2002.

2. Alternatively and pursuant to Tex. R. Civ. P. 166a, the Church Defendants move conclusively for summary judgment on Plaintiff's allegation that the Church Defendants are vicariously liable for the unlawful conduct of Larry Kelley. More specifically, the Church Defendants are entitled to summary judgment in their favor regarding Plaintiff's allegation that they

are vicariously liable for the unlawful conduct of Larry Kelley because the summary judgment evidence conclusively establishes:

a. Larry Kelley, at all relevant times, was not an agent of Church Defendants.

b. Even if Larry Kelley was an agent, Larry Kelley was not authorized by the Church Defendants to sexually assault the Plaintiff .

c. The Church Defendants did not ratify Larry Kelley's sexual assault and battery of the Plaintiff.

d. The Church Defendants did not believe the sexual assault and battery was justified and did not approve such conduct.

e. The assault and battery of the Plaintiff was not done in the interest of the Church Defendants and did not further any purpose of the Church Defendants.

3. Alternatively and pursuant to Tex. R. Civ. P. 166a, the Church Defendants move conclusively for summary judgment on Plaintiff's claims of fraud, fraudulent concealment, breach of fiduciary duty, negligence, negligent hiring, retention and supervision and gross negligence against the Church Defendants because there exists no genuine issue of material fact as to whether the Church Defendants, at the relevant time, owed Plaintiff a legal duty under Texas law.

4. Further, and pursuant to Tex. R. Civ. P. 166a, the Church Defendants move for summary judgment on Plaintiff's claims for breach of fiduciary duty because the Church Defendants do not have a legal duty to the Plaintiff, the law does not recognize a general fiduciary duty between churches and parishioners, and the Establishment Clause prevents the Plaintiff from establishing a fiduciary duty in this particular case.

II. Summary Judgment Evidence

5. The Church Defendants hereby attach and incorporate by reference their Brief Support of Their Motion For Summary Judgment.

6. The Church Defendants hereby attach and incorporate by reference the following summary judgment evidence:

a. Affidavit of Larry Kelley;

b. Affidavit of Chuck Regal;

c. Affidavit of Christopher Jensen, including true and correct copies of:

i. Plaintiff's Original Petition;

ii. Documents, identified as Kell171- Kell175; Kell181- Kell189; and

iii. Excerpts from the Deposition of Amy. B.

III. Conclusion & Prayer

WHEREFORE, the Church Defendants move this Court to grant summary judgment in their favor as to all of Plaintiff's claims against the Church Defendants. Alternatively, should this Court find that the Church Defendants are not entitled to summary judgment on all of Plaintiff's claims against them, the Church Defendants move this Court to grant partial summary judgment in their favor, so that the issues and questions before this Court may be concisely presented and efficiently resolved at trial. Further, the Church Defendants pray for such other and further relief, in law or in equity, to which they may be justly entitled.

Respectfully submitted,

Marvin W. Jones
State Bar No. 10929100
Christopher L. Jensen
State Bar No. 00796825
Mitchell Murphy
Texas State Bar No. 24037157
SPROUSE SHRADER SMITH P.C.
801 S. Fillmore, Suite 600, 79101
P.O. Box 15008
Amarillo, Texas 79105-5008
806/468-3300
806/373-3454 (Fax)

MARVIN W. JONES

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was sent to the following as signified below on this 30th day of January 2004:

Hartley Hampton, Esq. Fibich, Hampton, Leebron & Garth, L.L.P. 1401 McKinney, Suite 1800 Five Houston Center Houston, TX 77010	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☑

Gregory S. Love Kimberlee D. Norris Love & Norris 314 Main Street, Suite 300 Fort Worth, TX 76102-7423	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☑

Ronald T. Spriggs Law Offices of Ronald T. Spriggs 112 W. 8th, Suite 400 Amarillo, TX 79101	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☑

Marvin W. Jones

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NO. 91,048-C-1

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

AFFIDAVIT OF LARRY KELLEY

STATE OF TEXAS

COUNTY OF POTTER

Before me, the undersigned authority, on this day personally appeared Larry Kelley, who, after being duly sworn, did testify as follows:

1. My name is Larry Kelley, I am over the age of 21, am competent to make this affidavit and have personal knowledge that the statements contained herein are true and correct.
2. I have never been an employee of any the Church Defendants. No Church Defendant agreed to pay me for any service and I never expected or requested compensation from any Church Defendant.
3. During the time period that Plaintiff alleges I abused her:
    a. I did not act at the request of or on behalf of any Church Defendant;

b. No Church Defendant authorized me to act for or in place of any Church Defendant;

c. I did not manage or transact business on behalf of any Church Defendant;

d. Therefore, I was not an agent of any Church Defendant.

4. I was not authorized as an employee of any Church Defendant to conduct business in any manner for any Church Defendant. After I left the Dumas Congregation, I was not authorized in any manner to conduct business on behalf of any Church Defendant.

5. While I attended Amarillo-Southwest Congregation I did not act as an elder, ministerial servant or serve in any appointed position. I did not consider myself or suggest to others that I was a leader of the congregation or a member of the clergy. I was simply a member of the Amarillo Southwest Congregation of Jehovah's Witnesses.

6. Any of my actions taken with regard to Plaintiff were not done in furtherance of any Church Defendant's business or purpose.

7. No Church Defendant granted me authority to contact, interact, or otherwise assault the Plaintiff. No Church Defendant instructed or directed me to communicate or attempt to communicate with the Plaintiff. I was not told, instructed or directed by any Church Defendant to meet or attempt to meet the Plaintiff. I did not ask, nor did I receive permission from Church Defendants to meet or attempt to meet the Plaintiff. I was not told, instructed or directed by Church Defendants to instruct, mentor or teach the Plaintiff. I did not ask, nor did I receive permission from any Church Defendant to instruct, mentor, or teach the Plaintiff. I was never told, instructed or directed by any Church Defendants to assault or batter the Plaintiff. I was never asked nor received permission from any Church Defendant to assault or batter Plaintiff.

8. No Church Defendant ever ratified or approved any of my conduct involving the Plaintiff. No Church Defendant ever indicated that my actions regarding Plaintiff were justified.

9. No Church Defendant ever authorized me to assault the Plaintiff.

10. Any action I took with the Plaintiff was not done in furtherance of the interest of any Church Defendant and did not further any purpose of any Church Defendant.

11. Any action I took with or toward the Plaintiff was taken due to my own desires and was done on my own volition. Further, any action I took with or toward the Plaintiff occurred away from any property or activity of any Church Defendant.

Larry Kelley

Larry Kelley

STATE OF TEXAS §
§
COUNTY OF POTTER §

Before me, a notary public, on this day personally appeared Larry Kelley, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct.

Sworn to and subscribed before me on this the 29 day of January 2004.

Myra C. Tenorio

NOTARY PUBLIC



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NO. 91,048-C-1

AMY B.,	§	**IN THE 251ST DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	**IN AND FOR**
	§	
Defendants.	§	**POTTER COUNTY, TEXAS**

AFFIDAVIT OF CHARLES REGAL

STATE OF TEXAS

COUNTY OF POTTER

Before me, the undersigned authority, on this day personally appeared Charles Regal, who, after being duly sworn, did testify as follows:

1. My name is Charles Regal, I am over the age of 21, am competent to make this affidavit and have personal knowledge that the statements contained herein are true and correct. I have been one of a Jehovah's Witness for 47 years. I am an Elder serving at the Amarillo-Southwest Congregation of Jehovah's Witnesses and have served in that capacity over 20 years. I have known the Plaintiff and Plaintiff's family since they began attending meetings at Amarillo-Southwest Congregation. I have known Larry Kelley over thirty years.

2. Larry Kelley was never an employee of the Amarillo-Southwest Congregation or any Church Defendant. While Larry Kelley served in congregations in various capacities, Larry Kelley never received remuneration for his services. While attending the Amarillo-Southwest Congregation and during the time the Plaintiff alleges abuse by Larry Kelley, Larry Kelley was not an employee of, did not receive any compensation from, and did not hold any office or appointed position for the Amarillo-Southwest Congregation or any Church Defendant.

3. During the time period that Plaintiff alleges she was abused by Larry Kelley:

    a. Larry Kelley did not act at the request of or on behalf of the Amarillo-Southwest Congregation or any Church Defendant with regard to the Plaintiff;

    b. Larry Kelley was not authorized to act for or in place of the Amarillo-Southwest Congregation or any Church Defendant with regard to the Plaintiff;

    c. Larry Kelley did not represent or act for the Amarillo-Southwest Congregation or any Church Defendant;

    d. Larry Kelley did not manage or transact business on behalf of the Amarillo-Southwest Congregation or any Church Defendant;

    e. therefore, Larry Kelley was not an agent of Amarillo-Southwest or any Church Defendant.

4. Larry Kelley was not authorized as an employee of Amarillo-Southwest or any Church Defendant to conduct business in any manner for Amarillo-Southwest or any Church Defendant during the time periods Plaintiff alleges she was abused. After Larry Kelley left the Dumas Congregation, he was not authorized to conduct business on behalf of any Church Defendant. In addition, Larry Kelley was not acting in any appointed position

within any congregation of Jehovah's Witnesses or any corporate entity used by Church Defendants during the time period Plaintiff alleges she was abused. Larry Kelley was simply a member of Amarillo-Southwest Congregation as were Plaintiff's mother and father.

5. While a member at the Amarillo-Southwest Congregation, Larry Kelley was not an elder, ministerial servant, or serving in any appointed position at the time he sexually assaulted her. Therefore, in accordance with the teachings and Scriptural beliefs of Jehovah's Witnesses, Larry Kelley would not have been be considered to be a leader of the congregation, a member of the clergy, or a person held out to be in a position of power or authority.

6. The Amarillo-Southwest Congregation never authorized Larry Kelley to take any actions with respect to the Plaintiff. Any action taken by Larry Kelley with regard to Plaintiff was not done in furtherance of Amarillo-Southwest's or any Church Defendant's business or purpose.

7. During the time period that Plaintiff alleges she was abused by Larry Kelley:

    a. neither Amarillo-Southwest nor any other Church Defendant granted Larry Kelley authority to contact, interact, or otherwise assault the Plaintiff;

    b. neither Amarillo-Southwest nor any other Church Defendant instructed or directed Larry Kelley to communicate or attempt to communicate with the Plaintiff;

    c. Larry Kelley was not told, instructed or directed by Amarillo-Southwest or any Church Defendant to meet or attempt to meet the Plaintiff;

    d. Larry Kelley did not ask, nor did he receive permission from Amarillo-Southwest or any Church Defendant to meet or attempt to meet the Plaintiff;

e. Larry Kelley was not told, instructed or directed by Church Defendants to instruct, mentor or teach the Plaintiff;

f. Larry Kelley did not ask, nor did he receive permission from any Amarillo-Southwest or any Church Defendant to instruct, mentor, or teach the Plaintiff;

g. Larry Kelley was never told, instructed or directed by Amarillo-Southwest or any Church Defendant to assault or batter the Plaintiff;

h. Larry Kelley was never asked nor received permission from Amarillo-Southwest or any Church Defendant to assault or batter Plaintiff.

8. Neither Amarillo-Southwest nor any other Church Defendant ever ratified or approved any of the alleged misconduct of Larry Kelley involving the Plaintiff. Neither Amarillo-Southwest nor any other Church Defendant ever indicated that Larry Kelley's actions regarding Plaintiff were justified.

9. Neither Amarillo-Southwest nor any other Church Defendant ever authorized Larry Kelley to assault the Plaintiff.

10. Sexual assault contradicts the Church Defendant's Scriptural beliefs, teachings and practices as understood by Jehovah's Witnesses, including Church Defendants. Further, any sexual contact with a minor or with someone not your spouse contradicts the Scriptural beliefs, teachings and practices as understood by Jehovah's Witnesses, including Church Defendant's beliefs, teachings and practices.

Charles Regal

Charles Regal

Before me, a notary public, on this day personally appeared Charles Regal, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct.

Sworn to and subscribed before me on this the 8 day of January 2004.

Janice M.C. McCreary
NOTARY PUBLIC

Janice M.C. McCreary
NOTARY PUBLIC,
STATE OF TEXAS
My Commission Expires 06-21-2007

G:\8000\8845\00001\Pleadings\Affidavit of Chuck Regal.doc

NO. 91,048-C-1

AMY B.,	§	**IN THE 251ST DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	**IN AND FOR**
	§	
Defendants.	§	**POTTER COUNTY, TEXAS**

AFFIDAVIT OF CHRISTOPHER L. JENSEN

STATE OF TEXAS)
)
COUNTY OF POTTER)

BEFORE ME, the undersigned authority, on this day personally appeared CHRISTOPHER L. JENSEN, who, being first duly sworn according to law, upon his oath, deposed and stated as follows:

1. My name is CHRISTOPHER L. JENSEN. I am over the age of 18 years, am competent to testify to the matters herein, and so testify based upon my own personal knowledge. I have never been convicted of a felony or misdemeanor. All statements herein are true and correct.

2. I am one of the attorneys of record for Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses ("Church

Defendants") in the above-referenced case. I am generally familiar with the pleadings that have been filed and the discovery that has been conducted in the above-referenced lawsuit.

3. A true and correct, file-marked copy of Plaintiff's Original Petition, filed in the above-referenced lawsuit is attached and hereby incorporated by reference as Exhibit 1.

4. True and correct copies of documents identified as Kell171-Kell175 and Kell181-Kell189 are attached and hereby incorporated by reference as Exhibit 2. These documents were produced by the Plaintiff in response to written discovery during the course of the above-referenced lawsuit.

5. I was present at the oral deposition of Amy B. taken on November 13, 2003. The excerpts of the deposition transcript attached hereto as Exhibit 3 are true and correct transcripts of the testimony of Amy B.

Christopher L. Jensen
CHRISTOPHER L. JENSEN

SUBSCRIBED AND SWORN TO BEFORE ME by the said CHRISTOPHER L. JENSEN on the 7 day of January, 2004, to certify which witness my hand and seal of office.

Janice M.C. McCreary
Notary Public in and for the State of Texas

Janice M.C. McCreary
NOTARY PUBLIC,
STATE OF TEXAS
My Commission Expires 06-21-2007

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No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
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 KELLY Defendants.	§	25th JUDICIAL DISTRICT Jury Trial Requested

FILED
CAROLE LAWRENCE
DISTRICT CLERK
2003 JAN -3 PM 2:33
POTTER COUNTY, TEXAS
BY _____ DEPUTY

PLAINTIFF'S ORIGINAL PETITION

COMES NOW AMY B., Plaintiff in the above-numbered and entitled cause, and files this, her Original Petition, and as grounds therefore would show unto this Honorable Court and Jury as follows:

I.
PARTIES

1. Plaintiff AMY B. is a resident of 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 Texas through its agents and alter egos and may be served with process through its registered agent Mr. Tad Curtis, 702 Orland Blvd, Austin, Texas 78745-2144.

3. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., a corporation organized and existing under the laws of the State of Pennsylvania, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108.

4. Defendant WATCHTOWER ENTERPRISES, INC., a limited liability company organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. R. Civ. S. art. 1528n, art. 2.08(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 25 Columbia Heights, Brooklyn, New York 11201.

5. Defendant WATCHTOWER FOUNDATION, INC., a corporation organized and existing under the laws of the State of New York, has conducted

business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 25 Columbia Heights, Brooklyn, New York 11201.

6. Defendant WATCHTOWER ASSOCIATES, LTD., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Service of process on this Defendant is not requested at this time.

7. Defendant KINGDOM SUPPORT SERVICES, INC., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 98 Montague Street, Brooklyn, New York 11201.

8. Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has

conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 100 Watchtower Drive, Patterson, New York 12563-9204.

9. Defendant RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has conducted business within the State of Texas through its agents and alter egos. Said Defendant has not designated or maintained a registered agent for service of process in Texas. Pursuant to Tex. Bus. Corp. Act § 8.10(B), this Defendant may be served with process by serving the Texas Secretary of State who should mail a copy of the process by registered or certified mail to the Defendant's offices located at 25 Columbia Heights, Brooklyn, New York 11201-2483.

10. Defendant DUMAS CONGREGATION OF JEHOVAH'S WITNESSES may be served with process at its offices at 114 Santa Barbara Avenue, Dumas, Texas 79029.

11. Defendant AMARILLO - SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES may be served with process at its offices at 5141 Canyon Drive, Amarillo, Texas 79110.

12. Defendant LARRY KELLEY currently resides and may be served with process at 3113 SW 11th Street, Potter County, Amarillo, Texas.

13. The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" because each is the alter ego of each other and operate as a single business enterprise.

II.
JURISDICTION AND VENUE

14. Plaintiff has been damaged in an amount exceeding the minimum jurisdictional levels of this court.

15. Venue is proper in Potter County, Texas because a substantial part of the events complained of herein took place in Potter County, Texas and Defendant LARRY KELLEY currently resides in Potter County.

III.
SUMMARY OF FACTS

A. WATCHTOWER DEFENDANTS' ORGANIZATION AND CHAIN OF COMMAND

16. The WATCHTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY sits at the top of a strict chain of command that extends over each individual and Defendant entity in the organization. These individuals and entities act as agents, servants and alter egos of each other. Authority for any actions by the organization, it leader and/or its members must derive from the GOVERNING BODY, which has absolute authority over every person and all matters in the organization and its worldwide operations. The GOVERNING BODY is a small group of men who operate out of various entities within the hierarchical structure.

17. All of the Defendants are the agents and servants of each other and are vicariously liable for each other's acts. The WATCHTOWER DEFENDANTS are so organized and controlled and their affairs are so conducted that they are alter egos of each other and operate as a single business enterprise.

B. VICARIOUS LIABILITY OF THE WATCHTOWER DEFENDANTS

18. Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume complete responsibility for the development, protection and discipline of its membership, especially the children of members. All male members, whether Elders, Ministerial Servants, Pioneers and/or Publishers, are appointed and empowered by the GOVERNING BODY to carry out this responsibility.

19. To further their goals, the WATCHTOWER DEFENDANTS authorize male members to develop relationships of trust with women, children and families and to assume the role of counselor and advocate for any problems that might arise, including claims of child abuse. All male leaders have the responsibility through the Elders and those higher up in the chain of command, all the way up to the GOVERNING BODY, to decide if abuse has occurred and how it should be handled.

20. At all material times, the WATCHTOWER DEFENDANTS have prohibited the victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers are not permitted to report suspected abuse to outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual abuse. Violation of

this policy can lead to severe sanctions.

C. LARRY KELLEY

21. At sometime prior to 1988, the Watchtower Defendants appointed LARRY KELLEY to the position of Elder of Defendant DUMAS CONGREGATION of Jehovah's Witnesses in Dumas, Texas. As an Elder, LARRY KELLEY was given the specific assignment of instructing and supervising children in the Congregation. LARRY KELLEY had a children's show and used his puppetry skills to instruct and attract Jehovah's Witness children in furtherance of his responsibilities as an Elder for the Watchtower Defendants. Families in the Congregation were encouraged by the Watchtower Defendants to send their children to LARRY KELLEY's home for instruction and supervision. LARRY KELLEY then used his position as an Elder with supervisory responsibility over children to sexually abuse them.

22. While LARRY KELLEY was an appointed Elder in the Defendant DUMAS CONGREGATION, the WATCHTOWER DEFENDANTS learned that Defendant LARRY KELLEY was using his position of authority to sexually abuse children in the Congregation. Despite this admission, the WATCHTOWER DEFENDANTS did not report the abuse to authorities or warn other members of the organization of Defendant LARRY KELLEY'S propensities to use his position of authority to abuse children. Instead, they continued to place him in positions of supervisory authority and control over children.

23. In approximately 1988, the WATCHTOWER DEFENDANTS transferred Defendant LARRY KELLEY from Defendant DUMAS CONGREGATION to Defendant AMARILLO - SOUTHWEST CONGREGATION and appointed him to the position of Ministerial Servant. In appointing Defendant LARRY KEELY to the leadership position of Ministerial Servant, the WATCHTOWER DEFENDANTS affirmatively placed this known child molester in a position of trust and confidence with fiduciary responsibility for children in the congregation.

Despite notice of Defendant LARRY KELLEY'S propensities to use his position with the WATCHTOWER DEFENDANTS to gain access to and abuse young children, the WATCHTOWER DEFENDANTS presented him to their membership as a Ministerial Servant in good standing where he was placed in leadership roles with supervisory authority and control over children in the organization. Once again members of the Congregation were instructed and encouraged to entrust their children to Defendant LARRY KELLEY'S care both at the Kingdom Hall and off premises. Forseeably, this sexual predator used his leadership position with the WATCHTOWER DEFENDANTS to abuse other children. One of these children was Plaintiff, AMY B. AMY B. was born on June 5, 1980 and was eight years old when the abuse began.

24. In 1992, LARRY KELLEY was convicted of indecency with a child/sexual contact.

25. Beginning prior to 1988 and continuing through at least 1992, Defendant LARRY KELLEY used his appointed leadership positions of trust and authority in the

WATCHTOWER DEFENDANTS' organization to sexually abuse Plaintiff AMY B.

26. For at least five years, the WATCHTOWER DEFENDANTS knew or should have known that Defendant LARRY KELLEY was sexually molesting and physically abusing young girls within the WATCHTOWER DEFENDANTS' organization. Nevertheless, the WATCHTOWER DEFENDANTS continued to appoint him to leadership positions with supervisory authority and control over children, entrusting him with the welfare of numerous young girls in the WATCHTOWER DEFENDANTS' local congregations, whom he sexually molested. The WATCHTOWER DEFENDANTS failed to notify anyone that Defendant LARRY KELLEY was molesting or had sexually molested young girls. They further failed to take appropriate steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiff and others. By their conduct, the WATCHTOWER DEFENDANTS aided, abetted and ratified the abuse.

27. Defendant LARRY KELLEY used the authority of his leadership position as an agent of the WATCHTOWER DEFENDANTS' organization to sexually abuse Plaintiff AMY B. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiff AMY B. by, among other things:

a. aiding, abetting and ratifying the abuse of children by Elders, Ministerial Servants, Pioneers and other leaders in their congregation;

b. blaming, humiliating, sanctioning and/or disciplining victims/accusers of sexual abuse instead of the perpetrators;

c. negligently failing to report such sexual abuse, including the abuse by Defendant LARRY KELLEY, to law enforcement and governmental child welfare agencies and requiring that Publishers not make such reports.

d. negligently failing to warn Plaintiff, her family, and others of the risk of Defendant LARRY KELLEY'S abuse after they knew or should have known of Defendant LARRY KELLEY'S propensities to use his position of leadership to engage in acts of sexual abuse;

e. negligently failing to train its Elders, Ministerial Servants, Pioneers, appointed overseers and other associated leaders in their local churches to prevent, identify, investigate, respond to or report child abuse;

f. negligently failing to adopt adequate policies and procedures for the protection of children and other publishers and/or to implement and comply with such procedures that did exist;

g. failing to properly investigate matters brought to the WATCHTOWER DEFENDANTS' attention involving child sexual abuse and/or suspicions of child sexual abuse;

h. negligently allowing Defendant LARRY KELLEY to move between congregations as an appointed agent and leader in good standing after the WATCHTOWER DEFENDANTS knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse of children;

i. negligently failing to provide child abuse victims and their families with any assistance in coping with the trauma of abuse and preventing Plaintiff and her family from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse.

j. concealing from Plaintiff and her family that the WATCHTOWER DEFENDANTS had information that Defendant LARRY KELLEY was abusing young children;

k. negligently failing to undertake a sexual offender evaluation, provide sexual offender treatment and/or obtain psychiatric evaluation and treatment of Defendant LARRY KELLEY after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse;

l. negligently failing to properly supervise Defendant LARRY KELLEY as a leader in the organization or to monitor his activities after they knew or should have known of his propensities to use his agency position of leadership to engage in acts of sexual abuse.

IV.
CAUSES OF ACTION

COUNT I
SEXUAL BATTERY AND *RESPONDEAT SUPERIOR*

28. For a number of years, beginning in about 1988 or before, as an agent and alter ego of the WATCHTOWER DEFENDANTS, Defendant LARRY KELLEY repeatedly committed sexual battery upon the person of the Plaintiff, AMY B. in the State of Texas. Each of the WATCHTOWER DEFENDANTS was in the chain of command and acted pursuant to the authority granted to them as agents and the alter ego of the GOVERNING BODY and each other, utilizing such leadership and authority to carry out and/or aid, abet and ratify the sexual abuse of Plaintiff. The WATCHTOWER DEFENDANTS are therefore liable for the sexual battery of Plaintiff under the legal theory of *respondeat superior*.

COUNT II
COMMON-LAW NEGLIGENCE

29. At all material times, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiff from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiff was at risk of foreseeable harm by Defendant LARRY KELLEY, but failed to act to protect her from said harm. The WATCHTOWER DEFENDANTS

breached their duty to the great harm of Plaintiff.

30. As a direct result of the negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiff has suffered the injuries and damages described herein.

COUNT III
NEGLIGENT HIRING, RETENTION AND SUPERVISION

31. At all material times, the WATCHTOWER DEFENDANTS knew or should have known of Defendant LARRY KELLEY'S propensities to use his position as a leader in the Watchtower organization to engage in acts of sexual abuse. The WATCHTOWER DEFENDANTS failed to adequately investigate, discipline, evaluate, treat, supervise and otherwise monitor the conduct of Defendant LARRY KELLEY who was their agent and under their control. They therefore negligently hired, retained and supervised Defendant LARRY KELLEY in the organization at a time when they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse against Plaintiff and other young children. The WATCHTOWER DEFENDANTS also negligently hired, retained and supervised the Elders of the local congregations with respect to the investigation, reporting and care of victims of child abuse within their organization. As a result, Plaintiff has suffered grave harm.

COUNT IV
GROSS NEGLIGENCE

32. The behavior of the WATCHTOWER DEFENDANTS set forth above demonstrated a conscious indifference to the safety and welfare of Plaintiff entitling Plaintiff to punitive damages, including attorneys' fees.

33. As a direct result of the grossly negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiff has suffered the injuries and damages described herein.

COUNT V
BREACH OF FIDUCIARY DUTY

34. The WATCHTOWER DEFENDANTS placed themselves in a position of trust and confidence with Plaintiff. The relationship between Plaintiff and the WATCHTOWER DEFENDANTS' organization was fiduciary in nature and imposed on the WATCHTOWER DEFENDANTS a duty to act in Plaintiff's best interest.

35. Because of this special relationship between the Plaintiff and the WATCHTOWER DEFENDANTS, Plaintiff and her family placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would not harm Plaintiff or fail to warn Plaintiff of potential harm. Further, Plaintiff and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would protect Plaintiff from harm.

36. The above acts and/or omissions by the WATCHTOWER DEFENDANTS, either independently or in conjunction with each other constitutes a breach of the fiduciary duty owed to Plaintiff by WATCHTOWER DEFENDANTS.

37. As a direct result of the conduct of the WATCHTOWER DEFENDANTS, Plaintiff has suffered the injuries and damages described herein.

COUNT VI
FRAUD AND FRAUDULENT CONCEALMENT

38. After receiving reports that Defendant LARRY KELLEY was abusing

young girls, the WATCHTOWER DEFENDANTS, with the intent to keep the information from Plaintiff, other victims similarly situated, and the community-at-large, willfully concealed that information. The WATCHTOWER DEFENDANTS materially misrepresented to Plaintiff and her family that Defendant LARRY KELLEY was a leader in good standing with authority to supervise, control and instruct Plaintiff in spiritual, ethical and moral matters and that he was to be obeyed. The WATCHTOWER DEFENDANTS further materially misrepresented that they would act in Plaintiff's best interest. The WATCHTOWER DEFENDANTS failed to disclose that they knew of Defendant LARRY KELLEY'S propensities to use his leadership position to sexually abuse Plaintiff and others and that they were doing nothing to protect them. Plaintiff did not know the falsity of the WATCHTOWER DEFENDANTS' representations, were entitled to rely upon them, and did in fact rely upon them, to their serious injury and harm.

COUNT VII
RATIFICATION

39. Upon learning that its agent, Defendant LARRY KELLEY had sexually abused young children in the organization, the WATCHTOWER DEFENDANTS failed to take sufficient steps to discipline or hold Defendant LARRY KELLEY accountable for his actions. The WATCHTOWER DEFENDANTS transferred Defendant LARRY KELLEY to the AMARILLO - SOUTHWEST JEHOVAH'S WITNESSES CONGREGATION as a leader in good standing with the organization, providing no warning to its members that they were entrusting them to the care of a sexual predator.

The WATCHTOWER DEFENDANTS thereby ratified Defendant LARRY KELLEY'S conduct in sexually abusing Plaintiff and others. The WATCHTOWER DEFENDANTS are thus liable in damages to Plaintiff.

COUNT VIII
ALTER EGO AND SINGLE BUSINESS ENTERPRISE

40. The WATCHTOWER DEFENDANTS are organized and controlled, and their affairs are so conducted, that they are in fact mere instrumentalities and alter egos for each other and liable for each other's acts. Alternatively, the WATCHTOWER DEFENDANTS were all engaged, at all material times, in a single business enterprise and are liable for each other's acts.

V.
DAMAGES

41. As a result of the WATCHTOWER DEFENDANTS' acts, Plaintiff has incurred and will continue to incur costs for medical expenses, counseling and psychological treatment, have lost earning capacity and have suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with accompanying physical manifestations, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, and economic and non-economic damages in excess of the jurisdictional limits of this Court.

VI.
JURY DEMAND

Plaintiff requests a trial by jury and has submitted herewith the appropriate jury fee.

VII.
PRAYER

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally in an amount for economic, non-economic, and punitive damages, including attorneys' fees, plus costs, disbursements, and any and all other relief the court deems just and equitable.

Respectfully submitted,

FIBICH, HAMPTON,
LEEBRON & GARTH, L.L.P.

By: _____

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ATTORNEYS FOR PLAINTIFF

FILED
CAROLINE WOODBURN
DISTRICT CLERK

2003 JUN -3 P 2:38

POTTER COUNTY, TEXAS

BY _____ DEPUTY

THE PAVILION OF NORTHWEST TEXAS HEALTHCARE SYSTEM
DISCHARGE SUMMARY

DATE OF ADMISSION: 8/06/95 BETZEN, AMY
DATE OF DISCHARGE: 8/14/95

HISTORY OF PRESENT ILLNESS: Patient was admitted to Crossroads of the psychiatric Pavilion on 8/6/95 and was dismissed 8/14/95.

The patient was admitted to the hospital with symptoms of depression, stress and suicidal ideas. Patient lives in a family where the mother has a bipolar illness and is frequently upset or not functioning well. The patient also has a diabetic brother who has considerable physical difficulties. The patient had an early history of having been sexually abused by a family friend. The patient is on home schooling and also has a job with the mother cleaning houses. There is no history of prior psychiatric treatment or alcohol or drugs. The patient had become acutely upset after a family argument and other stressors occurred and she was admitted to the hospital because of that.

On admission the patient was disheveled but was alert, oriented and clear. She was depressed and been crying and said that she had suicidal ideas off and on for the past six months. She said that she was under a great deal of stress, didn't feel like she could handle things at home anymore and felt that she was not getting support but rather was expected to take care of other people. She was organized in her thinking. Did not show thought disorder and showed nothing in the way of delusional ideas. There was some history of isolative, auditory hallucinations but nothing at the time she came in the hospital.

PHYSICAL EXAMINATION: Was essentially within normal limits.

Patient had a history of a fainting spell which had occurred about two weeks prior to admission.

LABORATORY STUDIES: Showed essentially normal chemistry panel, normal thyroid studies, normal CBC, and urinalysis which had blood in it which was initially taken at the end of menses. Drug screen was within normal limits.

In the hospital, patient was treated with supportive care and involvement in individual, group psychotherapy as well as other aspects of the hospital program. Patient had some mood swings

CONTINUED



and was started on a small dose of Depakote because of the clear cut mood swings as well as a family history of bipolar disorder. The patient was active in the program, seemed to benefit from therapies and was doing well with the family. She was not suicidal and wished to leave the hospital and was dismissed to home on Depakote 125 mg twice a day.

FINAL DIAGNOSIS: Major Depression.

W.M. JONES, M.D.

WMJ/vgn
08/17/95 0839 HOURS
08/19/95 2039 HOURS

BETZEN, AMY
227504 W. JONES, M.D.
CROSSROADS

DISCHARGE SUMMARY
THE PAVILION OF NORTHWEST TEXAS HEALTHCARE SYSTEM

THE PAVILION OF NORTHWEST TEXAS HEALTHCARE SYSTEM
HISTORY AND PHYSICAL

ADMISSION DATE: 8/6/95 BETZEN, AMY M.

This is a 15-year old girl admitted to Crossroads on emergency basis 8/6/95.

CHIEF COMPLAINT: Depression, stress, suicidal ideas.

PRESENT ILLNESS: The patient lives in a family where the mother has bipolar illness and is frequently upset or otherwise not functioning well. The patient has a diabetic brother who has a great deal of physical problems and the patient has a good deal of difficulty getting along with the father. The patient has early history of having been sexually abused by a family friend from age 9 to 11. The patient has been on home schooling but apparently does a good deal around the house, although history is somewhat vague about this. The family had been involved in a fuss and considerable stress the day of admission to the hospital and the patient had been feeling stressed and depressed before that. The father and the mother got into an extended argument and the patient became increasingly upset, stressed, and was talking about suicide and was brought to the emergency room where both she and the mother seemed quite upset. The patient has made suicide attempts in the past and about six months ago took an overdose of medication and was treated in the emergency room for that. The patient does not use any alcohol or drugs and has never been in a psychiatric hospital. She has had some counseling relative to the sexual abuse earlier in life. The patient was admitted from the emergency room to Crossroads for further evaluation and treatment.

PAST MEDICAL HISTORY: The patient states that she may have had a seizure about two weeks ago and says that seizures run in the family. She has had a tonsillectomy but otherwise has been in good physical health and takes no medication and has no diagnosed physical illnesses.

FAMILY HISTORY: The patient is the third oldest in the family where she has three brothers. She is currently at the ninth-grade level in home schooling and said she hasn't been in regular school since the sixth grade. She states this is because public schools are "awful," and that she can't stand the stress of being around other students. The patient has a job cleaning houses for other people and also is in barber college to learn to do nails and cut hair.



The patient's brother is diabetic and as a matter of fact was hospitalized on the same evening the patient came into Crossroads.

PSYCHIATRIC INTERVIEW: The patient was somewhat disheveled but was alert, oriented, and clear in sensorium on admission. She appeared depressed, cried, and said that she had had suicidal ideas off and on for the past six months. She stated that she was under a great deal of stress, didn't feel that she could handle things at home anymore, and felt that she was not getting support but rather expected to take care of others at home. She has ideas of being a cosmetologist or an EMT when she gets older. The patient is organized in her thinking, shows nothing in the way of thought disorder, and shows no delusional ideas. She had isolated auditory hallucinations one or two times in the past but is not currently hallucinating.

REVIEW OF SYSTEMS: Head and Neck: The patient has occasional congestion and headaches. Respiratory negative. Cardiovascular negative. GI negative. GU negative. Neuromusculoskeletal: The patient had a fainting spell about two weeks ago.

PHYSICAL EXAMINATION

VITAL SIGNS: B.P. 120/80, pulse 72.
HEAD AND NECK: Pupils equal in reaction to light. Ears clear. Throat clear. Neck supple.
CHEST: Clear to auscultation.
CARDIOVASCULAR: Heart is regular in rhythm and rate. No murmurs are noted.
ABDOMEN: Soft, no tenderness or masses.
EXTREMITIES: Negative.
NEUROLOGICAL: Gait and station normal. Deep tendon reflexes normal and equal bilaterally in all extremities. Muscle strength and range of motion normal and equal bilaterally in all extremities. Cranial nerves 2-12 grossly intact. No pathological reflexes.

DIAGNOSTIC IMPRESSION:
Axis I Major Depression.
Axis II Dependent Personality Traits.
Axis III No diagnosis.
Axis IV Moderate to severe stress due to family stresses, unpredictability of parents, early sexual abuse, and lack of support.

CONTINUED



Axis V Good function at times during the past year. Global assessment of functioning 80. Poor function currently. Global assessment of functioning 40.

TREATMENT RECOMMENDATIONS: The patient will be involved in the hospital treatment program and given supportive care. The possibility of starting anti-depressive medication will be considered.

ASSETS: Good intelligence. Good physical health.

LIABILITIES: Uneven family support. Lack of self-confidence and self-esteem.

Mitchell Jones, M.D.

BETZEN,AMY MARIE 08/06/95
0020711647
912 JONES,W M
0000227504 15Y 06/05/80

WMJ/bf
D: 08/07/95 1354 HOURS
T: 08/08/95 0838 HOURS

BETZEN, AMY M.
227504 W. M. JONES, M.D.
CROSSROADS

HISTORY AND PHYSICAL
THE PAVILION OF NORTHWEST TEXAS HEALTHCARE SYSTEM

THE PAVILION OF NORTHWEST TEXAS HEALTHCARE SYSTEM
COMPREHENSIVE PSYCHOSOCIAL ASSESSMENT

PATIENT:	AMY MARIE BETZEN
DATE:	8/7/95
UNIT:	CROSSROADS
INFORMANT/SOURCE:	Amy Betzen

Amy Betzen was admitted to the Crossroads Unit on 8/7/95. This assessment interview was conducted on 8/7/95 and dictated on 8/7/95. Information was provided by the patient, Amy Betzen and mother, Jane Betzen.

Amy Betzen is a 15-year-old single Caucasian female living in Amarillo with her mother and father and an 11-year-old brother. Patient's family lives in a house.

PRESENTING PROBLEMS: Patient was admitted to the Pavilion for family conflicts, PTSD from a sexual abuse between the ages of 8 and 13 years and feelings of hopelessness and sleeplessness. Patient reported that she was suicidal when she came in at 3:00 yesterday but it is not suicidal at the time of interview. Patient reported that she did not have a plan but wanted to end things because she did not want to deal with family problems and sexual abuse issues any more. Patient's mother reported that she has tried to overdose two other times due to the sexual abuse and problems at school with girls teasing her about the sexual abuse. Patient's mother reported that one time they took her to the ER and the other time they did not. Patient admitted to suicidal thoughts and one suicide attempt due to the sexual abuse.

The following problems are also validated by the patient from a problem check list. Patient is described as erratic and unpredictable, fearful of life, anxious, hyperactive. Patient and patient's mother stated that she had never been checked for ADHD, never given a diagnosis of hyperactivity or given any medication for hyperactivity. She also is described as experiencing blackouts of going away for a second and seeing spots. Poor short term memory, panic attacks with a frequency of one time a week and seizures, nightmares a loss in appetite and insomnia and flashbacks. Patient reported that she has had three flashbacks of the sexual abuse and has nightmares three times a week. Patient reports her nightmares are about people dying. Patient cannot remember any specifics.



PRECIPITATING ISSUES AND EVENTS: Patient reported that her Mom was "losing it" and she was becoming really sick. Patient also stated that the only way to get her mother medication was to call the police. The patient reported that her mother was yelling, becoming really upset, having anxiety attacks and crying. Patient reported that both her mother and her came in to the ER for evaluation. Patient's mother reports her father stayed home to watch her younger brother. Patient's mother reports that she was admitted to the Pavilion due to a parental argument. Patient's mother reports that Amy got between them. Patient's mother also stated that Amy is her caretaker. Patient's mother reports that they were having a yard sale and patient's father came out and began bickering with mother. Patient's mother reported that she lost it and began screaming and crying and chasing away Amy's father. At that time, Amy called the police and they were brought into the Pavilion for an evaluation.

Amy attests to having been physically abused by her father. Patient reports that her father used to throw things at her, throw her around the room and hit her. Patient reported that he almost broke her neck when he threw her across the room at one time. Patient states that when her mother will not let her father hit her then he takes it out on her. Patient reports that her Dad has not hit her in six months. Patient reported that the cops were called and a report was filed. Patient also reports that she is emotionally abused every day by the sexual abuser, the father, the uncle and the grandmother. Patient reported that her father puts her down, tells her that she does not work and that she is worthless. Patient's mother states that her father never praises her. Patient was also sexually abused by a 56-year-old male who was a friend of the family between the ages of 8 and 13. The patient reported that she remembers finger penetration, digital penetration but does not remember penis penetration. Patient and patient's mother report that the abuse was reported and that he was imprisoned. Patient reported that he was in prison for seven years due to molesting his own children and three months for her abuse. Patient reported that he was sentenced to six months but got out on probation early and at this time he is still on probation. Patient reports that she sees him at the Civic Center and that he looks her up and down and bumps into her. Patient's mother states that this man was well known in the community and highly respected. Patient states that she did not tell about the abuse until he started abusing a three-year-old girl. Patient then felt sorry for the

CONTINUED

girl and told so that she would not have to go through the same thing. Patient stated that he would groom her with alcohol and cigarettes. Patient reported that she has been drunk three times.

LEGAL PROBLEMS: Patient reports that she is not in any legal trouble and has never been in legal trouble.

BEHAVIORAL HEALTH TREATMENT HISTORY: Patient saw a counselor named Sheila from the Bridge. Patient's mother reports that this was free counseling due to her sexual abuse. Patient reports that she went there two days a week for six months and considered it not helpful. Patient's mother stated that she would refuse to go and would sit in the car and cry, wanting to go home. Patient's mother said after consulting with the therapist they found it better not to force her at this time and discontinued therapy. Patient also reports seeing a school counselor for various things during the year.

Patient has a family history of emotional problems and treatment. Patient's mother was diagnosed bipolar 10 years ago. Patient has two aunts and two uncles who have manic depressive diagnosis and one is schizophrenic. Patient's grandmother also died in a mental institution. Patient's older stepbrother was in Cedar Creek for alcohol abuse. Patient's mother has also been in Cedar Creek for manic depressive. Patient's mother also stated that her oldest and youngest son has been diagnosed ADHD.

PHYSICAL AND MEDICAL HISTORY: Patient reported that she had had mono and impetigo six years ago. Patient's mother does not remember her daughter having mono. Patient's mother did state that she had her tonsils out and that she now has one shoulder lower than the other due to horsing around with girls at the Fitness Club and hurting her shoulder. Patient and patient's mother also states that she has whiplash from a car wreck one month ago when her mother was driving. Patient reported that it was a four car pile up and it was the fault of the car in front of them. Patient's mother reported that Amy has passed out a few times. Patient's mother believes it is due to heat but does admit a history of grand mal seizures and states that she herself has nocturnal seizures. Patient's mother also reports to have a history of diabetes in the family. Patient's mother also stated that Amy has been basically "pretty healthy."

PRESCRIPTION AND OTC MEDICATIONS: The patient and patient's mother deny any medications prior to admission.

FAMILY OF ORIGIN HISTORY: The patient's mother's name is Jane Betzen, age 40. Amy stated that her Mom was age 39 at the time of the interview. Patient states that her mother owns a flower shop and is a housekeeper. Patient states that the relationship with her mother is good. Patient's father's name is Jim. He is age 39 and is a master electrician. Patient reports their relationship is fair. There are two children born of this marriage, Amy and her little brother Aaron. Patient reports that her mother and father have been married for 17 years. Patient's mother states that it has been 18 years. Patient's mother stated that she tried to leave him several times but her children talk her out of it. Apparently there is some abuse towards Jane, her mother and herself by the father.

The patient has a full brother Aaron who is age 11 and lives with them in the home. The patient also has two older half brothers, one named Michael, age 23, who lives in Amarillo and one named Ronnie, age 25 who lives in Lubbock. Patient states that she sees them often and has a good relationship with them.

CHILDHOOD HISTORY: Patient's mother reports that it was a hard pregnancy and that she was two months past due. Patient's mother reported that she had to have her tubes reconstructed in order to conceive. Patient's mother states that Amy almost did not make it at birth and weighed 11 lbs. Patient's mother stated that she had to be induced for labor and that she was caught in the birth canal and her mother's uterus gave out. Patient's mother reported that they had to use a lot of "forceps." Patient's mother also states that Amy went through her developmental milestones extremely early and reports Amy as super hyperactive and a very emotional child. Patient also had milk teeth at birth and walked at six months.

Patient's mother describes the environment that Amy grew up in as full of fighting. Patient's mother reports there was trouble with Amy's father accepting her two sons from a previous marriage. Patient's mother reports there was violence towards them. Patient's mother reports Amy would get caught in between these arguments. Patient's mother also reported when Amy was six years old the mother started becoming institutionalized.

CONTINUED

Patient enjoyed playing with Barbies and describes herself as very athletic in childhood and adolescence.

EDUCATIONAL HISTORY: Patient will be going into the tenth grade in American Home School. Patient has been home schooled since junior high. Patient did not want to go to junior high because some of her friends had been raped and she was fearful of the people there. Patient has been home schooled for five years since age ten and achieves A/B grades. The patient also reports that she is also in Barber College. Patient states that she enjoys home school better. That she would like to attend college and is unsure of her major but probably something in health.

MARRIAGE AND FAMILY ISSUES (OF THE MOTHER): Patient's mother's first marriage occurred when she was 14. They were married for five years. There were two children born of this marriage, both males. The patient's mother reported that he would not work and there was some violence. Patient's mother stated basically they were too young and she left to try to start a new life. Patient's mother's second marriage was at age 21 to her current husband Jim. Patient's mother reports that they were married for 18 years and had two children by this marriage. Patient's mother reports that there has been violence in this marriage towards her and her daughter, Amy. Patient's mother reports that since Amy's sexual abuse her father has not been able to give her as much attention as he did before. Patient's mother reports that he has stopped hugging or kissing her and this has devastated Amy. Patient's mother reports that Amy does not feel like her Dad loves her any longer and is jealous of her 11 year old brother, Aaron. Mother denied any sexual abuse between the father and Amy.

PSYCHOSEXUAL ISSUES: Patient denies ever kissing a boy or having other heterosexual experiences. Patient reports her longest relationship was one week and she does not date. Amy stated that she has decided not to date until she is ready to get married. Patient denies any homosexual experience, rape or assaults other than the sexual abuse by the 56-year-old man.

SOCIAL RELATIONSHIPS AND ACTIVITIES: Patient reports that she has close friends, not best friends. Patient reports that they are mostly girls although she has some guy friends. Patient reports that they are usually in their 20s or late teens and that she has met them through church or from her brother. Patient reports that

CONTINUED



they do different activities although she was unable to be specific. Patient reports that a lot of them are married so it is different when they go out. Patient's mother states that she has a hard time holding on to a friend and that her friends state that she is hyper, loud, inappropriate with her laughter, extremely bossy and extremely controlling. Patient's mother also reports that she makes friends well with older people and does not like what people her age are doing. Patient's mother states that she is also very controlling with her same age peers. Patient reported that she had one to two friends her own age.

Patient reports in her leisure time she likes to sleep and sometimes draw.

SIGNIFICANT LOSS EXPERIENCES: Patient lost two friends from separate motor vehicle accidents less than six months ago. Patient reports that both friends were killed on impact and were not involved in drinking or other drugs.

VOCATIONAL HISTORY: Patient reports that she works at the Barber College one to two days a week doing hair and nails. Patient reports she has worked there for four months and does not get paid but it is part of her training. Patient also reports that she cleans houses every week and baby-sits. Patient could not be specific on how many hours she spends baby-sitting and cleaning house. Patient states that she has baby-sat since age 11. Patient also reports that she has done roofing and electrical work with friends but has not gotten paid for them. Patient also reports that at times she works with her father doing these things. Patient denies having an official paid job.

MILITARY HISTORY: Patient has not been involved in the military.

FINANCIAL CIRCUMSTANCES: Patient's main source of income is her parents. Patient reports this income is adequate and there are no problems with debt or danger of losing her home.

SPIRITUAL OR RELIGIOUS ISSUES: Patient reports that she is a Jehovah's Witness and attends church three days a week. Her last church attendance was Sunday. Patient reports that she reads the Bible and prays constantly and that her family goes to church together.

CULTURAL AND ETHNIC ISSUES: Patient denies any cultural or ethnic issues that would affect diagnosis, treatment or discharge planning.

SUBSTANCE USE AND ABUSE: Patient reported that she used tobacco products and alcohol when she was being abused by the 56-year-old male. Patient reported that she used them only when they were together. Patient reported that she drank beer or whatever was available. Patient reported that she has gotten drunk three times but her last drink of alcohol was three to four years ago. Patient reported that she might have smoked a pack a week of cigarettes but has not smoked in the last two to three years. Patient denies any use of marijuana, cocaine or other drugs.

Patient reported that she attended AA and Alanon with her brother to support him. Patient reports that she attended 12 to 13 times. Patient reports that she never thought she had trouble with drugs and alcohol. Patient denies any physical responses to use or withdrawal from substance. Patient reports that her brother is an alcoholic and attends AA off and on. Patient reports that he does not drink and has two years sobriety. Patient also reports that her uncle on her Dad's side is an alcoholic.

SUMMARY OBSERVATIONS: During the assessment interview, the patient's physical appearance was slightly older than her age and slightly overweight. Her mood and affect would best be described as flat, irritable and moderately depressed. However, patient at the time of interview complained of a sinus headache. The content of her responses were negative towards herself at times. Her thought processes were unremarkable. Amy was well oriented to time, place and person. Her vocabulary, abstract thinking and information base reflected an average functional intelligence. Regarding judgment and insight this patient demonstrated clear understanding of her need for help and a tendency to minimize the seriousness of her problems surrounding the family.

PSYCHOSOCIAL DIAGNOSTIC SUMMARY: Physical factors that appear to be related to Amy's present problem is her size. Patient reports that she considers herself fat.

Psychologically, this patient uses at least the following highly adaptive ego defensive styles of humor. More compromising defenses include repression, dissociation and intellectualization.

Additionally, I noted projection which is a disavowal defense. Acting out defenses employed by this patient are apathetic withdrawal and passive aggression.

Socially, this patient seems to have older friends, some who are married. She may be limited on the activity she does with them due to their marital obligations. Patient's mother also reports that she has few friends and when she has friends cannot keep them for very long. Patient was not able to give specific activities that they do together or give a specific amount of time she spends with them. Significant stress factors in the patient's life include a dysfunctional primary support group. Patient's mother and patient's cousin reported that she has taken care of her mother for some time. Patient's father also has an abusive history. Patient's mother is staying in Lubbock with her son due to Amy's fear of her mother staying in the house alone with her father. Patient may also have a dysfunctional social environment. She enjoys socializing with people older than her and does not seem to get along with people her own age. Patient also seems to be experiencing PTSD symptoms from sexual abuse and the stigma of sexual abuse within her circle of friends.

Amy's present global functioning level is judged to be 40 reflecting a major impairment with some danger involved. During the last year or so her global functioning appears to have been 60 reflecting moderate symptoms and moderate problems.

TREATMENT CONSIDERATIONS: The most notable strengths for this patient in her words are her ability to do hair and nails. Patient was unable to give any other strengths. Patient does seem somewhat willing for help but reluctant to address the sexual abuse issues. Patient does seem to have a knowledge of bipolar. Patient's mother is also supportive and highly involved in Amy. The most notable weaknesses for this patient in her words are everything. Patient does seem to have an inability to make friends or keep them for very long. Patient also has a sarcastic edge to her. Patient also seems to have difficulty dealing with her sexual abuse and her dysfunctional family.

Given the information gathered during this assessment, the following treatment recommendations are proposed for consideration. Programming should include psychiatric treatment for the purpose possibly by antidepressants for the purpose of her depression with



exploration of a bipolar disorder. Individual therapy may focus on educating her on her parenting role in the family and coping with her chaotic family, her mother's illness and her father's abuse. Individual therapy may help her process issues regarding sexual abuse and her fear of men. Group therapies may also focus on mental illness awareness, coping skills and socialization skills. Family therapy may also focus on Amy's sense of responsibility towards the family and being pulled both ways. Family therapy may also address the father's reaction to his daughter after her sexual therapy. Expressive therapies may also help Amy increase her self esteem giving her projects that she can completed and master. Patient appears to have low self esteem and the only reason she reported the abuse was due to a 3-year-old being involved.

DISCHARGE CONSIDERATIONS: Following discharge it appears that the patient will be returning back home. At this time, patient's mother is separated from her father and is unsure of their future marital stability. At this time I am recommending follow up care to include at least psychiatric follow up, family and individual therapy. She may also be referred for a sexual survivors group.

Jennifer Elliott MEd SWA
JENNIFER ELLIOTT, M.Ed., SWA

ORVIE NIX, LMSW-ACP
Senior Clinical Social Worker

BETZEN,AMY MARIE 08/06/95
0020711647
912 JONES,W M
0000227504 15Y 06/05/80

JE/vgn
08/07/95 1750 HOURS
08/07/95 2141 HOURS

BETZEN, AMY MARIE
227504 W. JONES, M.D.
CROSSROADS

COMPREHENSIVE PSYCHOSOCIAL ASSESSMENT
THE PAVILION OF NORTHWEST TEXAS HEALTHCARE SYSTEM

NO. 91,048-C

AMY B.	)	THE 251ST DISTRICT COURT
	)	
VS.	)	IN AND FOR
	)	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL	)	POTTER COUNTY, TEXAS

****

ORAL DEPOSITION OF AMY B.

NOVEMBER 13, 2003 - AMARILLO, TEXAS

VOLUME 1 OF 1

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ORAL DEPOSITION of AMY B., produced as a witness at the instance of the DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on the 13th day of November, 2003, from 9:10 a.m. to 1:28 p.m., before Janice A. Hanks, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of Templeton, Smithee, Hays, Heinrich & Russell, Amarillo, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

COPY

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old. I know she wasn't that old.

Q. We know from the records--

A. I wasn't close to her, so I don't know if that helps. But I wasn't--

Q. We know from the records that Larry was-- pled guilty to some crimes against you and against, I think Tamara, in 1991.

A. Yes, sir.

Q. Does that help kind of place in your mind when these things started and such?

A. No, not really. But that was the time that devastated me in my life. And in a lot of ways, I've tried to block it out and not think about it, even though that's impossible to do. I don't think about details if I don't have to.

Q. I understand. You reported what had happened to you to your parents?

A. Yes, sir.

Q. And I take it shortly after that, he was arrested?

A. No, sir.

Q. No?

A. I reported to my parents and the parents called the elders in the congregation to come over that evening.

thing we heard was that they were meeting with Larry Kelley, I believe, up at the Kingdom Hall or maybe at his home. But they had picked up another elder and they were going to go talk to him.

And from that point on, I don't know. I mean, as far as that goes, I mean, I don't know what happened there.

Q. Do you remember-- were you ever advised that the police had brought charges against Mr. Kelley?

A. Yes, sir.

MR. LOVE: Are you talking about Larry Kelley?

MR. JONES: Yes, yes. I'm sorry.

Q. By Mr. Jones) Were you advised that the police had brought charges against Larry Kelley?

A. Yes, sir, later on.

Q. How many days or weeks or months was it after your meeting with these elders, Mr. Regal and Mr. Cartwright?

A. I don't know. I believe it was almost a week, maybe somewhere in there, before the officer came and talked to me and my family. So I don't know how that all happened.

Q. Okay. So an officer, within a week or so, came and talked to you about Larry Kelley?

A. Yes, sir.

Q. Do you remember the officer's name?

A. Detective TenBrink.

Q. All right. And I take it he just asked you to tell him what had happened?

A. No, sir.

Q. No. What was the conversation with Officer TenBrink?

A. Larry Kelley had called Child Protective Services.

Q. CPS?

A. Yes, sir. And I guess admitted to them what he had done. This is what he had told my parents and I wasn't there. And they told him--

MR. LOVE: "He" being TenBrink?

Q. By Mr. Jones) Or Kelley?

A. No. Larry Kelley had called CPS, and told my parents what Larry Kelley had done to me. They told him that he would need to contact the police department, that they more or less protected the victims, not the man that was doing the crime.

And I guess he had called the police department. And by that time, he had kind of closed his mouth. But TenBrink had known what was said and told him that he was being accused of that. So TenBrink came

over with already kind of knowing and told my parents he was going to take me to the Bridge to talk to somebody.

Q. The Bridge?

A. Yes, sir.

Q. Did he take you to the Bridge?

A. Yes, sir.

Q. And can you tell me where that is and what happened there?

A. It's a big church, or it was at that time, kind of downtown. I don't know exactly where it's at, but there's a big, huge church beside it.

And I spoke with a counselor. I believe her name was Sheila. And they talked to me for a little while. And then they left the room and went and talked to my parents and TenBrink.

And then later on, I went back.

Q. Do you remember Sheila's last name?

A. No, sir.

Q. After you were taken to the Bridge and had that conversation with Sheila, when-- what was the next thing you knew about in terms of Mr. Kelley's prosecution?

A. That TenBrink contacted me and said that I had to go be videotaped at the Bridge because they were going to file charges. And so we went and did that.

Q. There was a videotape made?

A. Yes, sir. And then we did that and TenBrink continued to come over to the home, I guess, throughout that time. And I believe he called my dad or something and said that they had reached a plea bargain. And that's as well as-- I was a little kid, so as far as I know, as of that time that's kind of how it all happened.

Q. So in 1991, you would have been eleven?

A. Yes, sir. Close to twelve, somewhere. I was twelve.

Q. And you were told that a plea bargain had been reached?

A. Right. Yes, sir.

Q. And how did you feel about that?

A. Specifically me?

Q. Yes.

A. That I wouldn't have to look at him every time I went to the Kingdom Hall, because continually after this all came about, he continued to go to the Kingdom Hall and was-- continued to be at Southwest Congregation.

They had an assembly and he followed me through it. So to me, at least, maybe he would disappear for awhile, and I wouldn't have to see him every time I went to church and every time there was a gathering.

Q. Sure. You've told me-- you've told me a couple of times that some of the specifics you can't recall today because you've blocked them out, correct?

A. Correct.

Q. And I guess what I'm asking is: Has there ever been a time when-- the fact that he abused you over the course of a couple of years, has there ever been a time that you just haven't been able to remember that at all?

A. No, sir, never.

Q. So it's fair to say that you've always been able to remember that something bad happened with Larry Kelley even though you can't remember the specifics of every time that it happened?

A. Well, it's like you having your leg chopped off. I mean, you may not know exactly how it felt at the time or you may not remember every incident that was walking up to it, but you know your leg is gone.

Q. Okay. Well, let me just ask you this: Apparently you've talked with Dr. Perry on one or more occasions, true?

A. Correct.

Q. Has it been more than one occasion?

A. Not with Dr. Perry himself, no, sir.

Q. Okay. There is an expression called "repressed memory". Are you familiar with that?

incident that I know of, no.

Q. Okay. And you're right, it's signed on April 23rd of 1992. And what I was curious about was the fact that it referred to something that happened in 1991, and I was just wondering if you knew why that was true.

A. That's probably because that's when I told, was in 1991. He didn't go to prison for awhile after that. So that's probably when it came about, I guess. I'm not sure.

Q. All right. You didn't have to testify against Mr. Kelley; is that right?

A. No, sir.

Q. Which was, I take it, a good thing?

A. Probably that's why he got off pretty easy.

Q. Did you ever talk with anyone at the district attorney's office about Larry Kelley? Do you remember?

A. Not that I recall. But that's why they videotaped me, so that I didn't have to go through that.

Q. So about the-- would it be fair to say that the law enforcement person that you talked to was TenBrink?

A. Correct.

Q. And then there was a videotaping session. Did that occur at the Bridge?

A. Yes, sir.

Q. Do you remember who all was present for that?

A. Me and my therapist. Or me and Sheila.
Q. Sheila?
A. Right. That's the only person that was in the room.
Q. Okay. Was someone running the video camera?
A. No. It was set up behind a picture window.
Q. I see. So basically it was just you and Sheila sitting in a room and you're telling--
A. Going through, right. They try to do it, I guess, to where you're not-- know there's not a camera crew in there because you're not used to talking in front of one.
A. Sure. After you had that videotaping session at the Bridge, did those folks offer you any kind of counseling or other help?
A. I believe so. They offered it to my parents at that time.
Q. Did you actually receive any counseling or other type of help at that time?
A. I believe I went maybe two, three times.
Q. Do you remember the counselor's name?
A. Sheila.
Q. So Sheila was acting as the counselor?
A. Yes, sir.
Q. And you went two or three times?

A. Yes, sir.

Q. Why did you quit going?

A. Because the Witnesses and the elders told us not to speak of it, not to gossip about it, not to bring reproach on Jehovah's name by speaking about it, and pretty much that I would end up in a lot of trouble if I did talk about it.

And me, as a child, that meant not to anybody.

Q. Who told you not to talk about it?

A. My family and me were brought before the elders, I guess, with Chuck Regal and Larry Laws at one time. I believe that's when he was in there. And another time at Parkway with a couple of elders, my dad-- took my dad to the side and my mom.

Q. So are you saying that Chuck Regal and Larry Laws told you not to speak about it?

A. Yes, sir.

Q. And then there's some other incident where some folks called your dad aside and told him--

A. They told me not to speak about it and they took my dad aside and told him not to.

Q. And who was that that took him aside?

A. Brother Renteria. I don't know his first name. He's from Parkway.

Q. Parkway is where?

literature off our bookcases in the living room and, you know, told me not to bring up the Witnesses. Pretty much that was the first time.

And then after that, when we were going back to the Kingdom Hall, as I said, there was a lot of people that were unhappy with the fact that Larry Kelley had gotten in trouble and they would approach me about it and/or my parents.

And Chuck Regal and I believe Larry Laws at that time took us into the back room at the Kingdom Hall and told us that it would be better not to gossip about those things and that we let it die and that it's done with and that it's over and we need to just go on about our businesss.

Q. And you took that to mean that you shouldn't talk to the counselor about it?

A. I shouldn't talk to anybody.

Q. During the counseling sessions you had with Sheila, did you find those helpful?

A. No, because I was never able to open up to her. I never was able to tell her what had gone on in all ways, not all aspects.

Q. After these sessions with Sheila, had you ever had any other type of counseling?

A. I went to a marriage counselor, I believe,

twice with Aaron Wilder. And other than that, not until I met Dr. Perry.

Q. You've had one session with Dr. Perry?

A. Oh, and his associates, I've had, I believe, two. And then I've spoken with him over the phone a few times.

Q. Can you tell me what his associates' names are?

A. Chris.

Q. Chris?

A. I don't know her last name.

Q. I have an associate named Chris.

A. Well, she's a lot prettier than him though.

MR. JENSEN: I take offense to that.

MR. JONES: I'll stipulate to it and I've not even met her.

Q. By Mr. Jones) After 1991, after Mr. Kelley pled guilty, did he ever sexually abuse you again?

A. After he was gone?

Q. Right.

A. No, sir, not--

MR. HAMPTON: I just-- I'm not-- I don't want to interrupt, but you said after 1991 after he pled guilty?

MR. JONES: Right.

Q. By Mr. Jones) Was it '92 when he pled guilty?

A. '92.

Q. I'm sorry. After 1992 when he pled guilty, did he ever sexually abuse you again?

A. No, sir.

Q. Or physically?

A. He followed me into a women's bathroom at one of the conventions for Jehovah's Witnesses-- followed me out to the women's bathroom.

Q. When was that?

A. Right after I believe he had gotten out of prison or right before he was going, one of the two, somewhere in there.

And then after that, at Westgate Mall, there was a time that he followed me and I had to take off running. I mean, he's very arrogant as far as-- there's not a whole lot of remorse there.

Q. Other than those two incidents, has he ever talked with you since he got out of prison?

A. Not other than those few incidents where he was at the Kingdom Hall, no.

Q. Okay. In some of the medical records that your lawyers have sent over to us, I notice a hospitalization in 1995. Do you remember that?

A. Yes, sir.

Q. Can you tell me what that was about?

A. Okay. You're going to be-- I mean, I was put into the Pavilion.

Q. All right. Why were you put in the Pavilion? Do you remember?

A. The exact reason at that moment? I had had a nervous breakdown pretty much.

Q. What was that about?

A. I don't guess I could tell you everything. Probably all the stress that I had been through continuously. And my mom and dad had started arguing and I guess it finally just set it off.

Q. I'm going to show you some of the records that we've received. I'll just go over a couple of things mostly because I need some extra information about them. I'm going to hand you what has been marked as Deposition Exhibit 2, which is some of the records from the Pavilion from this August 1995 time.

(Marked Deposition Exhibit No. 2.)

Q. It says that you were admitted-- in that first big paragraph, that you were admitted with symptoms of depression, stress and suicidal ideas?

A. Yes, sir.

Q. Is that pretty much what was going on at the time?

A. Yes, sir.

Q. Okay. You were fifteen?
A. I believe, yeah.
Q. Your birthday is--
A. I had just turned fifteen.
Q. Okay. Your birthday is in June?
A. Yes, sir.
Q. Here's what I was more interested in. It indicates that your mother has a bipolar illness?
A. Yes, sir.
Q. Are you familiar with what that means?
A. My mom has manic depression. She has manic depression.
Q. So that's-- that's a correct description?
A. Yes, sir.
Q. How long have you known that?
A. I believe she was diagnosed when we moved into Southwest, somewhere in there, moved to Amarillo from Canyon. I couldn't tell you exactly. I mean, I was younger. But, you know, I don't recall exactly when.
Q. I've kind of lost track. Sometime after you were six and before you were sixteen, I guess?
A. It may have been five. Maybe it was Canyon. I'm not real sure. You would probably have to ask her that.
Q. And it describes a diabetic brother. We've

talked about-- that's Michael.

A. Correct.

Q. And it says that you had an early history of having been sexually abused by a family friend. I take it that refers to Larry Kelley?

A. Yes, sir.

Q. And no one else?

A. No one else.

Q. And it says that you had become, it describes, "acutely upset after a family argument and other stressors occurred". That was an argument between your mother and father?

A. As a matter of fact, I don't recall exactly what it was. As far as-- I think it had to do with something like a garage sale and we had all been kind of stressed out. But I know that it-- and then I kind of went into an emotional problem.

I remember, shortly before that, I guess Larry Kelley had moved into the neighborhood or somebody had said that, and it just was all just coming in on top of me. So there was a lot going on in my life at that time.

Q. Were you having to spend a lot of time taking care of your mother at that time?

A. Yes, sir.

Q. Were you having to help with your brother?

A. My younger one, yes, sir.

Q. Okay. You'll see the second paragraph down toward the bottom, it indicates-- and these are kind of words of art, I think-- a history of isolative auditory hallucinations.

Do you know what that refers to?

A. I have no idea.

Q. Did you ever report to the doctors that you might have heard things?

A. No. I believe that had something to do with the flashbacks of Larry Kelley's molestation. I believe that probably was what-- but I remember talking to them about that. But, no, not as far as anybody talking to me, I've never had that problem.

Q. Okay. Well, that's why I want to ask these questions. I would like to know what that means and what you've told these folks that would cause them to write something down like that.

Did you describe some flashbacks to the doctors during this hospitalization?

A. I don't recall everything that went on. It was a long week, long few days.

Q. Okay. I take it you didn't tell them that you had, for example, heard voices or--

it in your lower jaw where your teeth have clenched all night long and you don't really remember. You're kind of disoriented. I've had them-- I guess they're called petit mals when you're asleep.

Q. Always when you're asleep?

A. No, not always.

Q. Some have happened when you were awake?

A. Yes, sir, at times.

Q. Is this something that has gone away in the last three or four years or does it still happen to you?

A. When I'm-- get under a lot of stress, there's times.

Q. We've been going almost an hour again. Do you want-- like to take a break?

A. No. I'm all right.

Q. Okay. Again, anytime you need to, you just tell me and we'll do that.

A. Okay.

Q. We'll even take a break when the court reporter tells us to.

Let me show you what I'm going to mark as Deposition Exhibit 3.

(Marked Deposition Exhibit No. 3.)

A. So are you done with this one?

Q. Yes, I am. Thank you.

And this is another medical record from the Pavilion in August of 1995. By the way, have you ever gone over these medical records yourself?

A. I've read them, yes, sir.

Q. Okay. On the first page of this record, there's a line three or four lines down, or five, that says, "Patient has a good deal of difficulty getting along with the father".

Does that refer to Jim?

A. My father, yes.

Q. Did you have difficulty getting along with him?

A. After the molestation had taken place, my relationship with my father went downhill.

Q. And we'll get back to that in a minute. Amy, it says down here that you had made a suicide attempt about six months before this hospitalization.

A. Yes, sir.

Q. What was that about?

A. I just couldn't take it anymore. I couldn't-- I was still going to the Kingdom Hall at that time. I couldn't handle the-- I was an outcast after my molestation had taken place. I was shunned. Children in the congregation or elders' children weren't allowed to play with me. And I couldn't--

I was overstressed. I was at the point I

couldn't handle going to the Kingdom Hall, I couldn't handle dealing with that on a constant basis, so I had made a bad decision how to fix it.

Q. And it indicates that you had had some counseling relative to the sexual abuse. Is that talking to Sheila, essentially?

A. Oh, yes, sir. I mean, it would have to be. I had no other.

Q. Because there wasn't--

A. No.

Q. -- wasn't any other?

A. Not that I recall, no.

Q. Down at the bottom, it says that you had been home schooled or hadn't been in regular school since the sixth grade because you thought public schools were awful and you couldn't stand the stress of being around other students. Is that true?

A. I left the school because I couldn't deal with-- Larry Kelley used to come to my school. When this all came about, the classmates knew what had gone on. You know, just because it says "Amy B.", or there was a victim, people know around you. We're in a small town. And I couldn't deal with it anymore.

Q. Did any of the children at school make reference to what had happened to you?

A. Yes, sir.

Q. What kind of stress?

A. There was stress about-- my parents were falling apart about what had happened to me. We were shamed by the Witnesses and that was something that-- that was our family, that was our life, being a Jehovah's Witness. And so it was like your family has completely isolated you and alienated you from everything, and it caused a lot of problems.

(Marked Deposition Exhibit No. 5.)

Q. Let me show you what I've marked as Deposition Exhibit 5.

A. Before we go through that, can I go to the restroom?

Q. Absolutely.

(Recess from 10:52 to 11:09.)

Q. Are you ready to continue?

A. Yeah.

Q. Let me hand you what I marked as Exhibit 5. And this is a group of records from Northwest Texas Healthcare System that are called Comprehensive Psychosocial Assessment. And the date is August 7, 1995. Do you see that?

A. Yes, sir.

Q. Where it says "Presenting Problems" there, it

says that you were admitted to the Pavilion and it describes things: Family conflicts, PTSD from a sexual abuse between the ages of eight and thirteen, and feelings of hopelessness and sleeplessness.

Now, a couple of things about that. The first is: Are you familiar with this term "PTSD"?

MR. LOVE: Objection, form. Go ahead.

A. No.

Q. By Mr. Jones) Have you ever heard the term "post-traumatic stress disorder"?

A. I've heard it, yes, sir.

Q. My question is: In 1995, did you know that term?

A. No, sir.

Q. So this was something supplied by the people at the Pavilion, not by you?

A. No.

Q. Okay. "No" meaning that you didn't provide the term to them; they stuck it in the records themselves?

A. Yes, sir.

Q. Okay. At the top of the next page there, Amy, there's an indication that you reported that your mom was losing it and becoming really sick; that the only way to get your mother medication was to call the police. Do you know what this refers to?

everything in here, but what I'm interested in is back on Page 6.

MR. LOVE: The items that are circled on here?

MR. JONES: Yes, those.

MR. LOVE: Is there anything else on here you don't want us to--

MR. JONES: No. I would hand you the highlighted one, but it's in the notebook.

Q. By Mr. Jones) Looking at Item 3-- and this is-- this is, by way of explanation, the things that you're claiming damages for, monetary damages. It says the amount of reasonable medical and custodial expenses necessarily incurred in the treatment of your injuries from the date of the incident to the date of trial.

Do you know what that refers to?

A. As far as-- it's pretty legal. I mean, it's legal terms.

Q. Have you incurred medical expenses as a result of Larry Kelley's conduct?

A. At times. The treatment in the hospital was a medical expense. There was times that I was put into places. But as I said earlier, I mean, that's something that is kind of hard to--

Q. When you say there were times you were put into

places, I know about the August 1995.

A. And when I was taken to the hospital before that for my suicide.

Q. When was that?

A. The one that we spoke about where I had attempted.

Q. Oh, okay. I didn't know that you had been hospitalized then.

A. No. But I was taken to the hospital for that.

Q. All right. That was six months before August of '95, more or less?

A. Somewhere in there.

Q. You were taken to the hospital because you had taken an overdose perhaps?

A. Correct.

Q. All right. Not kept there though?

A. No. I was treated and released.

Q. Was there any CPS investigation stemming from that event to your knowledge?

A. I don't know about that.

Q. All right. So we have that event, we have the August 1995 hospitalization. Have there been any other counseling expenses or hospitalizations since 1995?

A. I don't know. I mean, I-- there's--

Q. Well, have you been in a hospital other than

for childbirth since 1995?

A. Not-- I mean, no, not that I know of. Not other than childbirth, no.

Q. Item 4 is the loss of any earnings sustained by plaintiff from the time of the incident up until time of trial. Do you know what that refers to, "loss of earnings"?

A. To a certain extent.

Q. Tell me what you understand it to mean.

A. Is the wages I lost from what had happened to me.

Q. From?

A. From the time what had happened to me to this time, from my molestation to this time.

Q. From age twelve or eleven?

A. To this time.

Q. All right. Are you saying that you would have had earnings during your teenage years that you didn't have because of this?

A. I would have had an education. I would have had a career.

Q. What you're saying, I think, is that because of what Mr. Kelley did, you were unable to complete your education?

A. As far as what happened through that time

CHANGES AND SIGNATURE

PAGE/LINE	CORRECTION	REASON

I, AMY BETZEN, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

AMY BETZEN

THE STATE OF Texas)

COUNTY OF Armstrong)

Before me, James E. Graves on this day personally appeared **AMY BETZEN**, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 18 day of December, 2003.

NOTARY PUBLIC IN AND FOR THE STATE OF Texas

JAMES E. GRAVES
MY COMMISSION EXPIRES
January 11, 2007

NO. 91,048-C-1

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

FILED
2008 JAN 30 A 9:44
POTTER COUNTY, TX

DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses, and Amarillo-Southwest Congregation of Jehovah's Witnesses (collectively referred to as "Church Defendants" or individually referred to by name) file this Brief In Support of their Motion for Summary Judgment against all of Plaintiff, Amy B.'s ("Plaintiff") claims against these Church Defendants. The Church Defendants are entitled to summary judgment as to all of Plaintiff's claims against them because Plaintiff's claims against the Church Defendants are barred by the applicable statute of limitations, the Church Defendants are not vicariously liable for the unlawful conduct of Larry Kelley, the Church Defendants did not owe Plaintiff a legal duty to protect her from Larry Kelley, and the

Church Defendants are not liable to Plaintiff based upon fiduciary duties, fraud or fraudulent concealment.

I. Applicable Standards

Summary judgment is intended to be a procedural device by which a party can bring a case to completion without the need for a trial "when it clearly appears that only a question of law is invlolved and that there is no genuine issue of fact." *Gaines v. Hamman*, 358 S.W.2d 557, 563 (Tex. 1962). Summary judgment devices allow the Court to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Robinson v. Warner-Lambert and Old Corner Drug*, 998 S.W.2d 407, 410 (Tex. App.—Waco 1999, *no pet.*). Reliance on summary judgment is particularly appropriate in the face of shot-gun pleadings such as Plaintiff's Original Petition.

A defendant is entitled to summary judgment on a claim made by a plaintiff if the defendant can conclusively negate or demonstrate the absence of a genuine issue of material fact as to at least one of the essential elements of the plaintiff's claim. Additionally, a defendant is entitled to summary judgment if the defendant can conclusively establish or demonstrate the absence of a genuine issue of material fact as to each element of an affirmative defense to a plaintiff's claim. *See Randall's Food Markets, Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995); *see also Kimber v. Sideris*, 8 S.W.3d 672, 674-75 (Tex. App.—Amarillo 1999, *no pet.*).

II. Plaintiff's Claims Against The Church Defendants are Barred by the Applicable Statutes of Limitations

In this lawsuit, Plaintiff has asserted the following substantive causes of action against each of the Church Defendants: 1) sexual assault and battery, per application of the doctrine of respondeat superior; 2) sexual assault and battery, per the application of the doctrine of ratification; 3) negligence; 4) negligent hiring, retention and supervision; 5) gross negligence; 6) breach of

fiduciary duty; 7) fraud and fraudulent concealment; and, 8) sexual battery, negligence, negligent hiring, retention and supervision, gross negligence, breach of fiduciary duty and fraud and fradulent concealment, per application of the doctrines of alter ego and single business enterprise.

Each one of Plaintiff's claims against the Church Defendants accrued, at the very latest, on June 5, 1998, *i.e.,* the date on which Plaintiff reached the age of majority under Texas law.[1] *See* Plaintiff's Original Petition, ¶23; *see also* Tex. Civ. Prac. & Rem. Code §129.001. Plaintiff did not file this lawsuit until June 3, 2003. *See* Plaintiff's Original Petition. As a result, all of Plaintiff's claims against the Church Defendants are barred by the applicable statute of limitations. Thus, there exists no genuine issue of material fact as to any essential element of Church Defendants' affirmative defense of limitations, and the Church Defendants are entitled to summary judgment on said claims.

A. Plaintiff's Claims of Fraud, Fraudulent Concealment and Breach of Fiduciary Duty Against Church Defendants are Barred by the Four-Year Statute of Limitations

It is well settled under Texas law that claims of fraud, fraudulent concealment and breach of fiduciary duty must be brought within four years after the date the claims accrue. *See* Tex. Civ. Prac. & Rem. Code §16.004(a)(4) and (5). Plaintiff's fraud, fraudulent concealment and breach of fiduciary duty claims against the Church Defendants accrued, at the very latest, on June 5, 1998, *i.e.,* the date on which Plaintiff reached the age of majority under Texas law. *See* Plaintiff's Original Petition, ¶23; *see also* Tex. Civ. Prac. & Rem. Code §129.001. Plaintiff did not file this lawsuit until

[1] There is substantial and compelling evidence in this case that Plaintiff was not only aware of Larry Kelley's sexual abuse and damages resulting therefrom long before Plaintiff reached the age of majority under Texas law, but also that Plaintiff sought treatment for her injuries before she turned eighteen. See Kell171- Kell175; Kell181- Kell189 and Dep. of Amy. B., p. 36, lines 5-18; p. 39, lines 20-25; pp. 40-41; p. 42, lines 1-13; p. 54, lines 5-17; p. 57, lines 15-25; p. 58; p. 59, line 1; p. 61, lines 18-25; p. 62, lines 1-6; p. 63, lines 21-25; pp. 64-66; p. 67, lines 1-15; p. 69, lines 21-25; p. 70, lines 1-4; p. 71, lines 4-12; p. 75, lines 20-25; p. 76, lines 1-20; p. 101, lines 10-25; p. 102; p. 103, lines 1-3, attached as Exhibits 2 and 3 of Aff. of Christopher Jensen. However, in the interests of judical economy and the Court's efficient resolution of this Motion, Defendants will assume that Plaintiff's cause of action accrued, at the very latest, on June 5, 1998. However, Defendants reserve the right to challenge the date of accrual of Plaintiff's claims against Defendants in the future. Additionally, Defendants specifically reserve the right to present evidence at a future trial, if one is necessary, of Plaintiff's injury, the consequences thereof, damages, effects or treatments sought by Plaintiff before she reached the age of majority under Texas law.

June 3, 2003. *See* Plaintiff's Original Petition. As a result, Plaintiff's fraud, fraudulent concealment and breach of fiduciary duty claims against the Church Defendants are barred by the applicable four year statute of limitations. Therfore, there exists no genuine issue of material fact as to any essential element of the Church Defendants' affirmative defense of limitations as to Plaintiff's fraud, fraudulent concealment and breach of fidicuary duty claims against the Church Defendants, and the Church Defendants are entitled to summary judgment on those claims as a matter of law.

B. Plaintiff's Claims of Negligence, Negligent Hiring, Retention and Supervision and Gross Negligence Against Defendants are Barred by the Two-Year Statute of Limitations

It is well settled under Texas law that claims sounding in negligence, such as negligence, negligent hiring, retention and supervision and gross negligence must be brought within two years after the date those claims accrue. *See* Tex. Civ. Prac. & Rem. Code §16.003;[2] *see also Gillespie v. Fields*, 958 S.W.2d 228, 230-31 (Tex. App.—Tyler 1997, *pet. denied*). Plaintiff's negligence, negligent hiring, retention and supervision and gross negligence claims against the Church Defendants accrued, at the very latest, on June 5, 1998, *i.e.,* the date on which Plaintiff reached the age of majority under Texas law. *See* Plaintiff's Original Petition, ¶23; *see also* Tex. Civ. Prac. & Rem. Code §129.001. Plaintiff did not file this lawsuit until June 3, 2003. *See* Plaintiff's Original Petition. As a result, Plaintiff's negligence, negligent hiring, retention and supervision and gross negligence claims against the Church Defendants are barred by the applicable statute of limitations.

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[2] Section 16.003 provides an exception to the two-year limitations period if the claim falls within the provisions of TEX. CIV. PRAC. & REM. CODE §16.045, which allows for a five-year limitations period "if the injury arises as a result of conduct that violates: (1) Section 22.011, Penal Code (sexual assault); or (2) Section 22.021, Penal Code (aggravated sexual assault)." Section 16.0045 applies only to Plaintiff's sexual assault and battery claims against the perpetrator, Larry Kelley, and not to the alleged negligence and other tort claims Plaintiff brought against the Church Defendants, since the Church Defendants, as corporate entities, could not engage in the criminal activities contemplated by §§22.011 and 22.021 of the Penal Code. However, in the unlikely event that the Court determines that the five-year limitations period applies to Plaintiff's claims against Church Defendants under a theory of vicarious liability, the Church Defendants will conclusively prove, in the second part of this Motion, that there exists no genuine issue of material fact as to Plaintiff's theories of vicarious liability and that the Church Defendants are entitled to judgment on Plaintiff's sexual assault and battery claims, brought directly against Church Defendants, as a matter of law.

Thus, there exists no genuine issue of material fact as to any essential element of Church Defendants' affirmative defense of limitations as to Plaintiff's negligence, negligent hiring, retention and supervision and gross negligence claims against Church Defendants, and the Church Defendants are entitled to summary judgment on those claims as a matter of law.

III. The Summary Judgment Evidence Conclusively Negates One or More of the Requisite Elements to Establish Vicarious Liability

Alternatively, should this Court find that Plaintiff's claims of vicarious liability for Larry Kelley's sexual assault and battery, negligence, negligent hiring, retention and supervision, gross negligence, breach of fiduciary duty, fraud and fraudulent concealment are not barred by the applicable statute of limitations, the Church Defendants move for summary judgment on those same claims because there exists no genuine issue of material fact as to the requisite elements of to establish vicarious liability for Larry Kelley's sexual assault and battery of the Plaintiff.

Plaintiff alleges that the Church Defendants are vicariously liable for Larry Kelley's sexual assault and battery of the Plaintiff through application of the doctrines of respondeat superior and ratification because Larry Kelley was acting as the Church Defendants' agent during the time period in which he sexually abused her. Although this is not true,[3] for the sake of argument, the Church Defendants will prove that as a matter of law the Church Defendants cannot be held vicariously liable for the sexual assault and battery perpetrated by Larry Kelley, even if Larry Kelley acted as their agent.[4]

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[3] *See* Affidavit of Charles Regal.

[4] Larry Kelley was not acting in any appointed position within any congregation of Jehovah's Witnesses or any coporate entity used by Church Defendants during the time period Plaintiff alleges she was abused. *See* Affidavit of Charles Regal. Rather, Larry Kelley was simply a member of Defendant Amarillo-Southwest Congregation as were Plaintiff's mother and father. *See* Affidavits of Charles Regal and Larry Kelley.

A. Respondeat Superior & Agents[5]

Under Texas law, a principle may be held liable for the intentional torts of its agent only if the act is committed within the scope of the authority granted to the agent by the principle. *See E.R. Miller v. Towne Services, Inc.*, 665 S.W.2d 143145 (Tex. App.—Houston [1st Dist.] 1984, *no writ*.) This is particularly applicable in a religious context, since "sexual misconduct by a member of the clergy is, by the weight of the authority, beyond the scope of employment of the cleric." *Sanders v. Casa View Baptist Church*, 898 F.Supp. 1169, 1179 (N.D. Tex. 1995), *aff'd.*, 134 F.3d 331 (5th 1998); *accord, Doe v. South Central Spanish District of the Church of God*, No.05-01-01850-CV, 2002 WL 31296620 at *4 (Tex.App.—Dallas)(not designated for publication). In this case, Larry Kelley was neither a member of the clergy nor an employee. *See* Affidavits of Larry Kelley and Charles Regal.

In order to prevail on Plaintiff's allegation that the Church Defendants are vicariously liable for the sexual assault and battery perpetrated on the Plaintiff by Larry Kelley, the Plaintiff must prove that Larry Kelley was an agent of the Church Defendants and was authorized by the Church Defendants to sexually assault the Plaintiff. The summary judgment evidence conclusively negates those essential elements of Plaintiff's claim.

Larry Kelley was not, at any relevant time, an agent of the Church Defendants. *See* Affidavits of Larry Kelley and Charles Regal. Larry Kelley was not told, instructed or directed by any Church Defendant to communicate or attempt to communicate with Plaintiff. *Id.* Larry Kelley did not ask, nor did he receive permission from any Church Defendant to communicate or attempt to communicate with Plaintiff. *Id.* Larry Kelley was not told, instructed or directed by

[5] Plaintiff has not alleged that Larry Kelley was an employee of the Church Defendants. However, even if she did, the elements are substantially similar. Under Texas law, an employer may be held liable for the conduct of its employees only if the conduct is committed within the scope of the employee's general authority, in furtherance of the employer's business and for the accomplishment of the object for which the employee is employed. *See Robertson Tank Lines, Inc. v. Van Cleave*, 468 S.W.2d 354, 357 (Tex. 1971).

the Church Defendants to meet or attempt to meet the Plaintiff. *Id.* Larry Kelley did not ask, nor did he receive permission from the Church Defendants to meet or attempt to meet the Plaintiff. *Id.* Larry Kelley was not told, instructed or directed by the Church Defendants to instruct, mentor or teach the Plaintiff. *Id.* Larry Kelley did not ask, nor did he receive permission from the Church Defendants to instruct, mentor or teach the Plaintiff. Most importantly, Larry Kelley was never told, instructed or directed by the Church Defendants, specifically or generally, to sexually assault or batter anyone, including the Plaintiff. *Id.* Larry Kelley did not ask, nor did he receive permission from the Church Defendants, specifically or generally, to sexually assault or batter anyone, including the Plaintiff. *Id.*

Further, Larry Kelley's sexual assault and battery of Plaintiff was condemned by the Church Defendants and stands unilaterally inapposite to Scriptural doctrines, teachings and practices espoused by the Church Defendants. *Id.* As such, Larry Kelley's sexual assault and battery of the Plaintiff cannot be said to have furthered the interests or purposes of the Church Defendants.

For these reasons, the Church Defendants are entitled to judgment as a matter of law on Plaintiff's claims that the Church Defendants are vicariously liable for the conduct of their alleged agent, Larry Kelley.

B. Ratification

There are only a few situations in which one can be held vicariously liable for the torts of another through application of the legal theory of ratification where the alleged wrong consists of an assault and battery. *Sheffield v. Central Freight Lines., Inc.*, 435 S.W.2d 954, 956 (Tex. Civ. App.—Dallas 1968, *no writ*). In order for one to be held vicariously liable for the torts of another under a ratification theory, a plaintiff must prove the following: 1) that, after learning of

the assault and battery, the defendant believed it was justified and approved the same; and 2) that the assault and battery was done in the defendant's interest or was intended to further some purpose of the defendant. *Id.* In this case, in order to prevail on its allegation that the Church Defendants ratified and are thus vicariously liable for Larry Kelley's sexual assault and battery of the Plaintiff, Plaintiff must prove that, after learning of the assault and battery, the Church Defendants believed Larry Kelley's assault of the Plaintiff was justified and approved the same and that Larry Kelley's sexual assault and battery of the Plaintiff was done in furtherance of the Church Defendants' interests or was intended to further some purpose of the Church Defendants. The summary judgment evidence conclusively negates these essential elements of Plaintiff's claim.

First, Larry Kelley's conduct contradicts the Church Defendants' beliefs, teachings and practices, so that it cannot be said that Defendants' later approved Larry Kelley's sexual assault of the Plaintiff or believed it was justified. *See* Affidavit of Charles Regal.

Second, Larry Kelley's sexual assault of the Plaintiff was not committed in furtherance of the interest of the Church Defendants, nor for any purpose of the Church Defendants. *See* Affidavits of Larry Kelley and Charles Regal. As indicated, Larry Kelley's sexual assault of the Plaintiff stands in stark contradiction to the teachings, beliefs and practices of Church Defendants. *Id.* Further, Larry Kelley's sexual abuse of the Plaintiff was undoubtedly the product of Larry Kelley's own personal sexual desires and criminal purposes. For these reasons, the Church Defendants are entitled to judgment as a matter of law on Plaintiff's claims that Church Defendants ratified Larry Kelley's sexual assault and battery of the Plaintiff.

IV. The Church Defendants Did Not Owe Plaintiff a Legal Duty Under Texas Law

Alternatively, Church Defendants also move for summary judgment on Plaintiff's alleged negligence, gross negligence and negligent hiring and supervision claims because there exists no genuine issue of material fact as to whether the Church Defendants owed Plaintiff a legal duty to protect her from Larry Kelley.

Essentially, all of Plaintiff's claims against Church Defendants revolve around allegations that Church Defendants failed to take affirmative steps, whether it be reporting Larry Kelley's history of child abuse to secular authorities or various other actions, after Church Defendants knew or should have known that Larry Kelley might sexually abuse the Plaintiff. Each one of Plaintiff's claims, excepting her sexual assault and battery claims brought against Church Defendants, via the application of several vicarious liability doctrines, require Plaintiff to identify and prove the existence of a legal duty that Church Defendants owed to the Plaintiff.

Negligence requires "(1) a legal duty owed by one person to another; (2) a breach of that duty; and (3) damages proximately resulting from the breach." *Firestone Steel Prods. Co. v. Barajas*, 927 S.W.2d 608, 613 (Tex. 1996). "It is fundamental that the existence of a legally cognizable duty is a prerequisite to all tort liability." *Graff v. Beard*, 858 S.W.2d 918, 919 (Tex. 1995). The existence of a legal duty is a question of law that this Court must decide and is a proper subject of a motion for summary judgment. *See Butcher v. Scott*, 906 S.W.2d 14, 15 (Tex. 1995).

A legal duty can either be a duty imposed by statute or exist under common law. In this case, the Texas child abuse reporting statute cannot be used to establish a duty in tort based on the Church Defendants alleged failure to report past instances of Larry Kelley's sexual abuse to secular authorities, the Plaintiff or anyone else. Nor does Texas law impose a common law duty on Church Defendants to take affirmative steps to protect Plaintiff from Larry Kelley.

A. There is no statutory duty.

Plaintiff's claims against the Church Defendants include allegations that the Church Defendants had a duty to report Larry Kelley's history of child abuse to secular authorities, the Plaintiff or the Plaintiff's parents. In support of this proposed legal duty, Plaintiff will most likely refer the Court to Tex. Fam. Code §261.101, which provides:

> (a) A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.
>
> (b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.
>
> (c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, and an employee of a clinic or health care facility that provides reproductive services.
>
> (d) Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only:
>
> (1) as provided by Section 261.101; or

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

While a person may be charged and convicted of a criminal offense if found to have violated the reporting requirement in §261.101, the Supreme Court of Texas, in *Perry v. S.N.*, held unequivocally that a violation of §261.101 does not constitute negligence per se and does not establish a duty and standard of conduct in tort. 973 S.W.2d 301, 309 (Tex. 1998). Accordingly, in order for the Church Defendants to be potentially liable under Plaintiff's claims, the Plaintiff must prove that the Church Defendants had a common law duty to take affirmative steps to protect Plaintiff from Larry Kelley.

B. There is no common law duty.

An analysis of applicable Texas law leads to the conclusion that Church Defendants did not owe the Plaintiff a common law duty to protect her from Larry Kelley. In addition, the implication of religious protections afforded by the First Amendment further supports the lack of a duty to Plaintiff under these circumstances. Generally, under Texas law, a person does not have a legal duty to protect another person from the criminal acts of third parties. *See Butcher*, 906 S.W.2d at 15. More specifically, Texas courts have refused to hold that there is a common law duty to protect a child from abuse. *See Perry*, 973 S.W.2d at 303-04, *citing Golden Spread Council, Inc. v. Akins*, 926 S.W.2d 387, 291-92 (Tex. 1996); *Butcher*, 906 S.W.2d at 15-16. In fact, in *Perry*, the Texas Supreme Court noted that Texas' lack of a common law duty to report child abuse weighed heavily against Tex. Fam. Code §261.101's being used as a basis for a negligence per se claim. 973 S.W.2d at 306-07. As such, even in the context of child abuse, Texas abides by the general rule that a person has no legal duty to protect another from the criminal acts of a third-party. Therefore, under the general rule in Texas, Church Defendants in this case had no legal duty to prevent Plaintiff from being abused by Larry Kelley.

Other jurisdictions have reached the same result. The Maine Supreme Court faced this same issue when confronting very similar facts to the case at hand in *Bryan R v. Watchtower Bible and Tract Society of New York, Inc.*, 738 A.2d 839 (Maine 1999), *cert. denied*, 528 U.S. 1189 (2000). In *Bryan R.*, the plaintiff alleged that an adult member of his local congregation, sexually abused him during his adolescent years, and that at some time in the past, the defendant had molested a different minor member of the congregation and that the elders of the congregation were informed of this incident. In response to the prior abuse of the other child, the defendant was formally "demoted" and "privately rebuked" by the Elders of the congregation, but was allowed to remain an "ordinary member of the church." The Elders did not alert the members of the congregation to Baker's misdeeds. The plaintiff further alleged that the defendant was then able to earn his trust and confidence because the church placed the defendant [an adult] in a position of leadership and respect. The court "decline[d] to recognize a general common law duty on the part of an organization such as a church to protect its members from each other." *Id.* at 845. The court further reasoned that "[t]he creation of an amorphous common law duty on the part of a church or other voluntary organization requiring it to protect its members from each other would give rise to 'both unlimited liability and liability out of all proportion to culpability.'" *Id.* at 847 (citations omitted). In granting Watchtower's motion to dismiss, the Maine Supreme Court did not allow a general common law duty to be imposed on voluntary organizations to protect their members from one another.

It naturally follows, therefore, that Plaintiff's negligent hiring, retention and supervision claims fail as a matter of law as well. Since Larry Kelley did not serve as an elder or ministerial servant or in any other appointed position on behalf of any of the Church Defendants, he could not have been "hired, retained or supervised" by Church Defendants. *See* Affidavit of Chuck

Regal. Further, for the reasons stated above, since Larry Kelley was simply a member of Defendant Amarillo-Southwest Congregation, the Church Defendants had no duty to supervise his activities.

For these reasons, the Church Defendants have conclusively negated a requisite element of Plaintiff's negligence causes of action by showing they did not owe Plaintiff a legal duty to take affirmative steps to protect her from fellow church member Larry Kelley. Therefore, the Church Defendants are entitled to summary judgment on Plaintiff's claims of negligence, gross negligence, and negligent hiring, retention and supervision as a matter of law.

C. Creation of a duty would violate the First Amendment.

As previously noted, the application of the general rule, providing that a person does not owe another a legal duty to protect them from the criminal acts of a third party, is further strengthened by the religious protections afforded by First Amendment of the United States' Constitution. In *Serbian Orthodox Diocese for the United States of America and Canada v. Milivolevich*, the United States' Supreme Court was confronted with a case, in which the legal merits of the action necessarily turned on whether a church had lawfully defrocked a bishop in accordance with church law. 426 U.S. 696 (1976). The Court held that the federal and state courts were barred by the religious protections of the First Amendment from adjudicating issues of church governance. The Court wrote:

> The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes. Consistently with the First and Fourteenth Amendments "civil courts do not inquire whether the relevant (hierarchical) church governing body has power under religious law (to decide such disputes). . . . Such a determination . . . frequently necessitates the interpretation of ambiguous religious law and usage. To permit

> civil courts to probe deeply enough into the allocation of power within a (hierarchical) church so as to decide . . . religious law (governing church polity) . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine." Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 369, 90 S.Ct. 499, 500, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring). For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them. *Serbian*, 426 U.S at 708-09.

In other words, the First Amendment prevents a secular court from inquiring as to the reasonableness, adequacy or constitutionality of a church's religious beliefs, doctrines and practices as they relate to internal church governance. *See id.*

In this case, Plaintiff appears to argue that because Church Defendants follow certain internal procedures to investigate claims of misconduct, they assumed some type of duty even in the absence of a statutory or common law duty otherwised imposed against other types of defendants. In essence, Plaintiff argues that the internal church procedure prescribed by Defendants' beliefs is flawed, and that this "flaw" imposes an otherwise non-existent duty on Defendants. However, the First Amendment precludes this type of evaluation of Defendants' internal church governance. The Court is prevented by the First Amendment and *Serbian* from passing upon the reasonableness of the Church Defendants' policies or conduct in this case because the Church Defendants alleged breach of duty would necessarily turn on the adequacy or reasonableness of the Church Defendants' internal governance and practices as they relate to child abuse. Additionally, this Court's evaluation and eventual judgment in regards to a breach of an internally created system of reporting child abuse would undoubtedly result in excessive entanglement with Defendants' religious practices and policies, and, as such, would also violate

the First Amendment's Establishment Clause. *See Turner v. Chuch of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex.App.—Dallas 2000, *pet denied*), *cert. denied* 533 U.S. 951. Therefore, this Court's adoption of a new duty to report and prevent child abuse by a third party should be avoided because such a ruling would undoubtedly jeopardize the Church Defendants' religious rights under the First Amendment.

For these reasons, this case fits squarely within the general rule in Texas that a person has no legal duty to another person to prevent the criminal acts of a third party. The Church Defendants did not owe the Plaintiff a legal duty to take affirmative steps to protect Plaintiff from Larry Kelley and, as such, Church Defendants are entitled to summary jugdment on Plaintiff's claims as a matter of law.

IV. THE ESTABLISHMENT CLAUSE PREVENTS THE FINDING OF A FIDUCIARY RELATIONSHIP.

Absent a legal duty and or a fiduciary relationship already recognized in the State of Texas, the Plaintiff must necessarily establish her claim to a fiduciary relationship based upon the teachings, beliefs and practices of the Church Defendants. Having conclusively negated any legal duty and in the absence of a fiduciary duty imposed by law between churches and parishoners,[6] the Church Defendants move for summary judgment on Plaintiff's claims of breach of fiduciary duty. The Establishment Clause of the U.S. Consitution prohibits an inquiry into the relationship between Plaintiff and the Church Defendants.

A "fiduciary relationship is an extraordinary one and will not be lightly created." *Stephanz v. Laird*, 846 S.W.2d 895, 901 (Tex. App.—Houston 1991). "A fiduciary relationship exists when the parties are under a duty to act for or give advice for the benefit of another upon

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[6] *Doe XV v. Roman Catholic Diocese of Dallas*, 2001 WL 85693 (Tex. App.—Dallas)(not designated for publication)("Doe has cited no authority, and we have found none, for the proposition that a church or religious leader owes a fiduciary duty to church members. In fact, this Court has held that a church owes no fiduciary duty even to a missionary appointed and trained by the church").

matters within the scope of the relationship." *Id.* "To recover for breach of fiduciary duty, the plaintiff must establish the defendant was the plaintiff's fiduciary." *Myer v. Cuevas*, 119 S.W.3d 830, 836 (Tex. App.—San Antonio 2003). This is accomplished by proving the existence of a fiduciary or confidential relationship between the parties.

The Church Defendants are entitled to summary judgment because the Church Defendants do not owe any legal duty to Plaintiff and the law does not recognize a general fiduciary duty between churches and parishioners. Assuming arguendo this was not the case, this Court is still prohibited from determining whether a confidential relationship exists between Church Defendants and the Plaintiff because such a judicial inquiry would require this Court to consider facts that "involve either religious doctrine and practices or the internal policies of the Church. . . . and would require the courts to interpret religious doctrine, practices, and the internal policies of the Church." *See Turner v. Chuch of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex.App.—Dallas 2000, *pet denied*), *cert. denied* 533 U.S. 951. Such an inquiry is prohibited by the Establisment Clause of the First Amendment. *Id.; accord, Hawkins v. Trinity Baptist Church*, 30 S.W.3d 446, 454-53 (Tex. App.—Tyler 2000) (noting that the plaintiff "failed to cite any Texas authority establishing that Texas recognizes a fiduciary relationship between a pastor and member); *Doe XV v. Roman Catholic Diocese of Dallas*, No. 05-99-01774-CV, 2001 WL 856963, at *3 (Tex. App.—Dallas) (not designated for publication) (stating that the court was unable to find any Texas authority for "the proposition that a church or religious leader owes a fiduciary duty to church members").

Therefore, the Church Defendants are entitled to summary judgment on Plaintiff's claims of breach of fiduciary duty because the Plaintiff was not owed a duty by the Church Defendants

and the Plaintiff cannot establish a fiduciary relationship based upon the beliefs and practices of a church.

V. Conclusion

The facts that underlie this lawsuit are deeply troubling. Larry Kelley's criminal actions have energized the emotions of all parties in this lawsuit. As human beings, it is understandable, if not natural, for all parties to attempt to harness feelings of fear, sorrow, remorse, anger and revenge and refocus those emotions in arguments before this Court. However, through the thick morass of human emotion, there remains the steady and constant beacon of the law, which alone must guide this Court in its resolution of this lawsuit. Under Texas law, all of Plaintiff's claims are barred, either by applicable statutes of limitations, the inability of the Plaintiff to establish the Church Defendants' liability through several theories of vicarious liability or, alternatively, the absence of a legal duty. As such, the Church Defendants are entitled to summary judgment.

Respectfully submitted,

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ATTORNEYS FOR CHURCH DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was sent to the following as signified below on this 30th day of January 2004.

Hartley Hampton, Esq. Fibich, Hampton, Leebron & Garth, L.L.P. 1401 McKinney, Suite 1800 Five Houston Center Houston, TX 77010	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☑

Gregory S. Love Kimberlee D. Norris Love & Norris 314 Main Street, Suite 300 Fort Worth, TX 76102-7423	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☑

Ronald T. Spriggs Law Offices of Ronald T. Spriggs 112 W. 8th, Suite 400 Amarillo, TX 79101	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☑

Marvin W. Jones

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NO. 91,048-C

AMY B.	) THE 251ST DISTRICT COURT
	)
VS.	) IN AND FOR
	)
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL	) POTTER COUNTY, TEXAS

REPORTER'S CERTIFICATION
DEPOSITION OF AMY BETZEN
NOVEMBER 13, 2003

I, Janice A. Hanks, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, AMY BETZEN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on **DECEMBER 2, 2003**, to the witness or to the attorney for the witness for examination, signature and return to me by **DECEMBER 22, 2003**;

That the amount of time used by each party at the deposition is as follows:

Mr. Hartley Hampton and Mr. Greg Love - 0
Mr. Marvin Jones - 2 HRS:47 MIN
Mr. Ronald Spriggs - 0

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. Hartley Hampton and Mr. Greg Love, Attorneys for Plaintiff
Mr. Marvin Jones, Attorney for Defendants Watchtower Bible and Tract Society of New York, Inc., et al
Mr. Ronald Spriggs, Attorney for Defendant Larry Kelley

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 2nd day of December, 2003.



Janice A. Hanks

JANICE A. HANKS, Texas CSR 2450
Expiration Date: 12/31/03
Panhandle Court Reporters
P.O. Box 1564
Amarillo, Texas 79105
806-373-0602



FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition (was)/was not returned to the deposition officer by **DECEMBER 22, 2003**;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Marvin Jones, Custodial Attorney;

That **$563.00** is the deposition officer's charges to the **Defendants Watchtower Bible and Tract Society of New York, Inc., et al**, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 7th day of January, ~~2003~~ 2004.

Janice A. Hanks (by KS)

JANICE A. HANKS, Texas CSR 2450
Expiration Date: 12/31/03
Panhandle Court Reporters
P.O. Box 1564
Amarillo, Texas 79105
(806)373-0602

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No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLEY Defendants.	§	251ST JUDICIAL DISTRICT

PLAINTIFF'S RESPONSE TO DEFENDANTS' WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES AND AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, AMY B., Plaintiff in the above entitled and numbered cause, and files this Response to Defendants' Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses[1] Motion for Summary Judgment and in support would show the following:

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[1] These Defendant entities are collectively referred to herein as the "Watchtower Defendants".

I.
INTRODUCTION

The Watchtower Defendants have moved for summary judgment on the following grounds:[2]

- That Plaintiff's claims are barred by limitations;
- That they owed no duty to Plaintiff; and
- That recognition of a duty in this case is barred by the First Amendment.

The standards for granting a motion for summary judgment are well established. As mandated by the Texas Supreme Court, they are:

1. The movant for summary judgment has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.
2. In deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant must be taken as true.
3. Every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor.
4. Evidence that favors the movant's position may not be considered unless it is uncontradicted.

Great Am. Reserve Ins. Co. v. San Antonio Plumbing Supply Co., 391 S.W.2d 41, 47 (Tex. 1965); *Montgomery v. Kennedy*, 669 S.W.2d 309, 310-11 (Tex. 1984); *Wilcox v. St. Mary's University of San Antonio*, 531 S.W.2d 589, 592-93 (Tex. 1975). *See also City of Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671 (Tex. 1979); *Nixon v. Mr. Property Man.*, 690 S.W.2d 546 (Tex. 1985).

[2] The Watchtower Defendants also moved for summary judgment on the issues of respondeat superior, negligence *per se* and ratification. Although Larry Kelley was an agent of the Watchtower Defendants, Plaintiff does not seek to hold the Watchtower Defendants liable under a theory of *respondeat superior* nor is she claiming negligence *per se*. Plaintiff is filing a Second Amended Petition that does not assert a ratification claim. Therefore, the portions of Watchtower Defendants' motions that concern *respondeat superior*, negligence *per se* and ratification are irrelevant.

This Court should deny the Watchtower Defendants' Motion for Summary Judgment in its entirety. The Watchtower Defendants have not established the affirmative defense of limitations and Plaintiff's summary judgment proof establishes that the Watchtower Defendants did owe a duty to Plaintiff. Finally, the Watchtower Defendants have not established that the recognition of a duty in this instance would violate the First Amendment.

II.
ARGUMENTS AND AUTHORITIES

A. Plaintiff's Claims Are Not Barred By Limitations

Despite the fact that all of Plaintiff's claims arise as a result of sexual assault, Defendants urge this Court to ignore the five-year limitations period prescribed for such claims in Sec. 16.0045 of the Civil Practice and Remedies Code. That section provides in relevant part:

> "A person must bring suit for personal injuries not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates:
> (1) Section 22.011, Penal Code (sexual assault)"

Defendants argue, without citing any authority, that Sec. 16.0045 applies only to suits against the assailant and others who may be vicariously liable. However, that argument ignores the wording of the statute and the relationship between the three key terms: injury, cause of action and conduct.

Sec. 16.0045 focuses on *conduct that causes an injury*, rather than *conduct that gives rise to a cause of action*. This distinction is both critical and dispositive.

Multiple causes of action against multiple parties may arise from the same conduct. See Rule 48 and 40, T.R.C.P. By limiting neither the class of defendants nor the cause(s) of action asserted, the Legislature has written Sec. 6.0045 to apply to *any* cause of action against *any* defendant who may be liable for an injury arising from conduct that violates the two Penal Code sections.

If the Legislature had intended the provision to have the effect argued by Defendants, it would have simply said so. It would have specified that the section applied only to a defendant alleged to have violated Sec. 22.011 of the Penal Code. For example, it could have said:

> "A person must bring suit for personal injuries not later than five years after the day the cause of action accrues against a person whose conduct violates:
> (1) Section 22.011, Penal Code (sexual assault)."

Throughout Chapter 16 of the Civil Practices and Remedies Code, the Legislature has focused variously on the injury, the cause of action, the conduct, or even the type of defendant, depending on the intended result.[3] The Legislature must be presumed to have known what it was doing when it tied Sec. 16.0045 to the conduct causing the injury rather than the conduct upon which the cause of action is based.

The elements of sexual assault are set out in Section 22.011 of the Penal Code which provides in relevant part:

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[3] See Sec. 16.003(a), "personal injury," and 16.003(b), "injury resulting in death," which establishes two-year limitations periods without regard to any other factor. Other limitations periods have been tied to the specific cause of action asserted. See Sec. 16.002, which establishes a one-year period for malicious prosecution, libel, slander and breach of promise of marriage. Others have focused on the type of defendant being sued, such as Sec. 16.008 pertaining to architects, engineers, interior designers and landscape architects. Still others have been conduct-specific, such as Secs. 16.012(2) and 74.001(13) and 74.251 which establish two-year limitations periods in product liability and health care liability claims respectively, regardless of the cause of action.

(a) A person commits an offense if the person:
(2) intentionally or knowingly:
(A) causes the penetration of the anus or sexual organ of a child by any means;
(b) (1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.

The testimony of Plaintiff, Amy B. establishes elements of sexual assault.

> p. 26 ..."He crawled into bed with me and started fingering me and penetrating me and rubbing my breasts."
>
> p. 27 ...And it happened the next night kind of exactly the same way.

(Exhibit 7 - Deposition of Plaintiff, Amy B. pp. 26-27)

> "I was encouraged by the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses to help out with Larry Kelly's wife, Judy Kelly, by cooking and cleaning in their home. I was also assigned by the Elders of the Amarillo Southwest congregation of Jehovah's Witnesses to work with Judy Kelly to prepare for presentations in the weekly Theocratic Ministry School which involved my going to the Kelly home. Larry Kelly also often took me from the congregational meetings to his home to complete the "Watchtower" studies required by the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses. While at the Kelly home for these purposes, I was sexually molested by Larry Kelly. The sexual molestation included Larry Kelly penetrating my vagina with his fingers. This penetration occurred on numerous occasions. Larry Kelly also sexually molested me, including penetrating my vagina, when he would take me out in Service. I was 8-9 years old when the abuse began."

(Exhibit 8, Affidavit of Amy Marie Betzen).

The deposition testimony of Plaintiff Amy B. and her affidavit also establish that these sexual assaults began when Plaintiff Amy B. was under the age of 17. (*Exhibit 7 - Deposition of Plaintiff, Amy B. pp. 20, 64-67; Exhibit 8 – Affidavit of Amy Marie Betzen).*

Therefore, limitations began to run on her eighteenth birthday, which was June 5, 1998. Sec. 16.022 Tex. Civ. Prac. & Rem. Code.

The injuries for which Plaintiff Amy B. has sued the Watchtower Defendants *arise as a result of conduct* that violates Section 22.001 of the Penal Code. Therefore, as a matter of law, the five year statute of limitation set forth in Section 16.0045 applies. This lawsuit was filed on June 3, 2003, two days before the expiration of five years following Amy B's eighteenth birthday.

Because the Watchtower Defendants have not conclusively established their affirmative defense of limitations, their Motion for Summary Judgment on limitations must be denied.

B. The Watchtower Defendants Owed A Duty to Amy B.

The existence of a duty is a question of law for the court to decide from the facts surrounding the occurrence in question. *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d at 525 (Tex. 1990); *Gray v. Baker & Taylor Drilling Co.*, 602 S.W.2d 64, 65 (Tex.Civ.App.—Amarillo 1980, writ ref'd n.r.e.). The Watchtower Defendants had a duty not to allow Kelley to be alone with Plaintiff during church-sponsored activities, not to put her in a position in which she was vulnerable to him and not to facilitate his access to her. The Watchtower Defendants also failed to exercise ordinary care when they had notice that Kelley was alone with Amy B. Finally, they were negligent in actively encouraging Amy B. to view Kelley as Amy B's mentor, and in encouraging Amy B's father to entrust her to Kelley's oversight.

1. **Larry Kelley was no ordinary member of the Amarillo Congregation**

Movants' "no duty" argument hinges on their assertion that Kelley was "just a member" of the Jehovah's Witness church. But, as Plaintiff's summary judgment evidence demonstrates, Kelley was far more than an ordinary member.

When the operative facts of this case began, and when Plaintiff's family first met Kelley, he was an Elder of the Dumas congregation, a leader in the congregation and a vice principal or managing agent under any analysis. (*Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 7 – Deposition of Amy Betzen; Exhibit 8 – Affidavit of Amy Marie Betzen; Exhibit 1 – Answer of Larry Kelley); Mobil Oil Corp. v. Ellender,* 968 S.W2d 917, 922 (Tex. 1998); *Hammerly Oaks, Inc. v. Edwards,* 958 S.W2d 387 (Tex. 1997); *Fort Worth Elevator Co. v. Russell, 70 S.W.2d 397, 406 (Tex. 1934).*

He was also a pedophile. It is undisputed that he committed an act of indecency with a child in Dumas and that the Dumas Elders knew it. (*Exhibit 1 - Answer of Larry Kelley; Exhibit 12 – Objections and Responses of the Dumas Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 3, Privilege Log to Request No. 4, Privilege Log to Request No. 16(b); Exhibit 13 – Objections and Responses to The Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 32 and Privilege Log to Request No. 34; Exhibit 14 - Deposition of Larry Kelley, pages 93-95; Exhibit 3 – Affidavit of James Whitney and Form S2-b attached as exhibit 1 thereto).* Kelley's pedophilia was kept secret by the Watchtower Defendants. Pursuant to the Watchtower Defendants' policy, they neither reported his crime to secular authorities, nor warned other members of the

congregation of the danger that he posed. *(Exhibit 4 - Affidavit of William Bowen; Exhibit 3 - Affidavit of James Whitney; Exhibit 5 Dumas Congregation of Jehovah's Witnesses Answer Nos. 3, 4 and 5 to Plaintiff's Request for Admissions; Exhibit 6 - Amarillo-Southwest Congregation of Jehovah's Witnesses Answer Nos. 3, 4 and 5 to Plaintiff's Request for Admissions).*

Instead, the Watchtower Defendants took matters into their own hands. Pursuant to organization policy, the Dumas Congregation convened a judicial committee, demoted Kelley from the position of Elder, and imposed restrictions on him that prevented him from occupying any positions of authority. *(Exhibit 1 - Answer of Larry Kelley; Exhibit 12 – Objections and Responses of the Dumas Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 3, Privilege Log to Request No. 4, Privilege Log to Request No. 16(b); Exhibit 13 – Objections and Responses to The Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 32 and Privilege Log to Request No. 34).* The reason for his demotion would have been reported to the Watchtower Society and to the Circuit Overseer, but it was kept secret from the membership of the organization. *(Exhibit 3 - Affidavit of James Whitney; Exhibit 5 - Dumas Congregation of Jehovah's Witnesses Answer No. 5 to Plaintiff's Request for Admissions; Exhibit 6 - Amarillo-Southwest Congregation of Jehovah's Witnesses Answer No. 5 to Plaintiff's Request for Admissions).* Likewise, pursuant to organization policy, the Dumas Elders would have instructed Kelley's victim and her family not to tell anyone about the incident. *(Exhibit 3 - Affidavit of James Whitney; Exhibit 4 - Affidavit of William Bowen).* Therefore, only a handful of

"leaders" in the Watchtower Defendants' organization knew the danger Kelley posed to the children of the congregation. (*Exhibit 4 – Affidavit of William Bowen and attached May 1, 1989 letter; Exhibit 3 – James Whitney Affidavit; Exhibit 4 – Affidavit of William Bowen and attached July 1, 1989 letter).*

When Kelley moved from Dumas to Amarillo, a letter of recommendation should have accompanied him that would have included the fact that he had been deleted as an Elder and specified any restrictions imposed on Kelley so that the Elders of the Amarillo Southwest Congregation would know that he should not be viewed as an ordinary member. *(Exhibit 3 - Affidavit of James Whitney; the testimony of Elder Dugan given and recorded at the hearing on Plaintiff's Omnibus Motion to Compel on January 30, 2004 which is specifically incorporated herein by reference; Exhibit 14 – Deposition of Larry Kelley, pages 93-95).* The Watchtower Defendants were unquestionably on notice that Kelley was a sexual predator, yet they allowed him to remain in their midst while concealing the dangers that he posed from both law enforcement and from the other congregants. They not only deprived law enforcement of the opportunity to prosecute Kelley, they deprived the other church members from taking precautions to protect their own children.

Kelley was hardly the typical member. The secret that Larry Kelley and the Watchtower Defendants shared made him quite unique. It also imposed a duty on the Watchtower Defendants to exercise at least reasonable care to prevent Larry Kelley from obtaining unsupervised access to other little girls. The Watchtower Defendants, through the Elders at Amarillo Southwest, breached that duty by:

- Appointing Kelley to the position of "leading out for service," which allowed him to exercise the authority to assign a young girl like Amy B. to himself and thus obtain unsupervised access to her; *(Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 9 - Affidavit of Mary Melinda Taylor; Exhibit 7 - Deposition of Amy B. at pages 28-29, 34-35; Exhibit 8 – Affidavit of Amy Marie Betzen)*
- Assuring Amy B's father that it was a good thing for Amy B. to be completing her service requirement with Kelley, who was leading out in Service and assigning Amy to himself; *(Exhibit 2 - Affidavit of James Anthony Betzen)*
- Encouraging Amy B. to go to Kelley's house to help with cooking and cleaning; *(Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 7 - Deposition of Amy B at page 25; Exhibit 8 – Affidavit of Amy Marie Betzen)*
- Assigning Amy B. to work with Kelley's wife, during Theocratic Ministry School, which involved Amy going to the Kelley residence; *(Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 8 – Affidavit of Amy Marie Betzen)*
- Holding Kelley out as a role model to members of the Amarillo Southwest Congregation, as well as other congregations; *(Exhibit 2, Affidavit of James Anthony Betzen)*
- Actively encouraging Amy B. to have a relationship with Kelley in which she viewed him as her surrogate grandfather and mentor, while assuring her father that trusting Amy B. to Kelley's oversight was a good thing for her; *(Exhibit 2, Affidavit of James Anthony Betzen; Exhibit 7 – Deposition of Amy B. at page 25)*
- Allowing Kelley to perform his Mr. Mimickin routine for children of the congregation, including Amy B., which involved the children often sitting on Kelley's lap. *(Exhibit 2 - Affidavit of James Anthony Betzen)*
- Failing to take action when Kelley and Amy B. were seen alone together in Pampa, Texas; *(Exhibit 2 - Affidavit of James Anthony Betzen).*

2. **The Watchtower Defendants Had A Duty Under Section 302B**

The Texas Supreme Court has adopted Section 302B, *comment e,* of the Restatement (Second) of Torts which states that a duty arises "where the actor has brought into contact or association with the other, a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct, under circumstances which afford a peculiar opportunity or temptation for such misconduct." *Restatement (Second) of Torts 302B, comment e; Golden Spread Council, Inc. v. Akins,* 926 S.W.2d 287, 294 (Tex. 1996).

In *Golden Spread Council*, the court held that a regional boy scout council had a duty to the young members of a church boy scout group not to recommend a potential scoutmaster that the council knew or should have known was particularly likely to molest boys. *Id.*, 926 S.W.2d at 292. In imposing that duty, the court took special note of the strong policy of Texas to protect children from abuse. *Id.* at 291.

Just as the boy scouts had a duty not to recommend that a pedophile be appointed troop leader, the Watchtower Defendants had a similar duty not to place a pedophile in a position where he could be alone with Amy B.

Consistent with Section 302B, it has long been the law of Texas that if a party creates a situation, then it "becomes his duty to do something about it to prevent injury to others if it reasonably appears or should appear to him that others in the exercise of their lawful rights may be injured thereby." *Buchanan v. Rose*, 159 S.W.2d 109, 110 (Tex. 1942); *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987).

Plaintiff has offered summary judgment proof that the Watchtower Defendants knew that Larry Kelley was a pedophile. *(Exhibit 1 - Answer of Larry Kelley; Exhibit 12 – Objections and Responses of the Dumas Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 3, Privilege Log to Request No. 4, Privilege Log to Request No. 16(b); Exhibit 13 – Objections and Responses to The Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 32 and Privilege Log to Request No. 34).* Yet, they did not report him to law enforcement, probably counseled his victim and her family to keep quiet about the matter, and did nothing to warn other members of the Congregation. (*Exhibit*

5 - Dumas Congregation of Jehovah's Witnesses Answer Nos. 3 and 4 to Plaintiff's Request for Admissions; Exhibit 6 - Amarillo-Southwest Congregation of Jehovah's Witnesses Answer Nos. 3 and 4 to Plaintiff's Request for Admissions; Exhibit 3 - Affidavit of James Whitney; Exhibit 4 - Affidavit of William Bowen; Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 9 - Affidavit of Mary Melinda Taylor).

Plaintiff has also offered summary judgment proof that the Watchtower Defendants encouraged Plaintiff's father to entrust her to Kelley's oversight, that they encouraged her to go to Kelley's house, where the abuse began, and that they appointed him to a position in which he could take Plaintiff out alone and unsupervised. *(Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 7 - Affidavit of Mary Melinda Taylor; Exhibit 7 - Deposition of Amy B at pages 25-29; 34-35; Exhibit 8 – Affidavit of Amy Marie Betzen).*

In analyzing questions of duty, the Supreme Court balances "the risks, foreseeability and likelihood of injury against the social utility of the actor's conduct," as well as "the magnitude of the burden of guarding against the injury and the consequences of placing the burden on the defendant." *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 525 (Tex. 1990); *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987); *Nixon v. Mr. Property Management*, 690 S.W.2d 546, 550 (Tex. 1985).

The "foremost and dominant consideration" in this balancing test is foreseeability, *El Chico*, 732 S.W.2d at 311, which weighs heavily in favor of a duty in this case. Significantly, the foreseeability of what happened to Amy B. is not challenged by the Watchtower Defendants.

One has a duty to exercise reasonable care to avoid foreseeable injury to others, particularly where the actor's conduct "has at least partially created" the danger. *Id.* at 312. The foreseeability" analysis is the same for both duty and proximate cause. *Mellon Mortgage Co. v. Holder,* 5 S.W.3d 654, 659 (Tex. 1999). Foreseeability means that the actor as a person of ordinary intelligence should have anticipated the dangers his actions creates for others. *Nixon v. Mr. Property Management,* 690 S.W.2d 546, 550 (Tex. 1985). Foreseeability does not require that the actor anticipate a particular accident, only that he reasonably anticipate the general character of the injury. *El Chico,* 732 S.W.2d at 313; *McClure v. Allied Stores of Texas, Inc.,* 608 S.W.2d 901, 903 (Tex. 1980).

In *Read v. Fetter,* 990 S.W.2d 732 (Tex. 1998), the Texas Supreme Court recognized that "sending a sexual predator into a home poses a foreseeable risk of harm to those in the home". Obviously, allowing a little girl to go out alone with a pedophile, or encouraging her to go to his home, or endorsing him as her "mentor" poses similar risks of harm.

The clear foreseeability of harm in this case must be balanced against "the social utility of the actor's conduct."

In *Golden Spread,* the Court defined the "actor's conduct" as boy scouting. 926 S.W.2d at 291. Here, if that conduct is defined as "organized religion," its social utility would be unquestionable. However, such a definition would ignore that the true conduct at issue here: the Watchtower Defendants' substitution of their disciplinary policy for that of the criminal justice system. Plaintiff would submit that the social utility of that conduct, in view of this State's compelling interest in protecting children

from sexual abuse, is negligible. *See e.g. Ginsberg v. New York*, 390 U.S. 629, 640, 88 S.Ct. 1274, 1281, 20 L. Ed. 2d 195 (1968); *Hightower v. State*, 822 S.W.2d 48 (Tex. Crim. App. 1991).

The second stage of the balancing test weighs the magnitude of the burden of guarding against the injury and the consequences of placing that duty on the defendants.

The burden in this case is minimal. It involves only exercising ordinary care not to take affirmative steps to allow a known pedophile to obtain unsupervised access to young girls. When that burden is balanced against the consequences of placing the duty of the Watchtower Defendants, the scales tip overwhelmingly in favor of a duty because the Watchtower Defendants voluntarily *assumed* that duty.

When Kelley committed sexual assault in Dumas, those Elders concealed his crime from law enforcement (a Class B misdemeanor, Tex. Fam. Code 261.109, Acts 1975, 64th Leg., Ch. 476, Sec. 54 at 1272) and imposed their own discipline. Having assumed the responsibility of dealing with this child molester and regulating his conduct, the Defendants had a duty to do so with ordinary care, particularly since they effectively deprived the criminal justice system of having the opportunity to do so.

Under Texas law, one who voluntarily enters upon an affirmative course of action affecting the interests of another is regarded as assuming a duty to act and must do so with reasonable care. *Otis Eng'g Corp. v. Clark*, 668 S.W.2d 307 (Tex. 1983); *Chambers v. Hermann Hospital Estate*, 961 S.W.2d 177, 188 (Tex. App. – Houston [1st Dist.] 1996. See also *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 837 (Tex. 2000). When an actor

assumes a duty to act, he may not abandon that duty if he has put the other person in a worse position than if he had not acted or has caused the one on whose behalf the action was taken to forego other opportunities of obtaining assistance. *Brownsville Medical Center v. Garcia*, 704 S.W.2d 68 (Tex.App.—Corpus Christi, 1985 writ ref'd n.r.e.)

When the Watchtower Defendants chose to shelter Kelley from law enforcement and to substitute their judgment for the criminal justice system, they assumed a duty they would not otherwise have had. Thus, contrary to the Watchtower Defendants' arguments, Plaintiff does not allege that Defendants' failure to report Kelley to law enforcement was negligence *per se*. Defendants are correct that *Perry v. S.N.*, 973 S.W.2d 301 (Tex. 1998), foreclosed a theory of recovery based on a negligent violation of the reporting statute. Here, however, Defendants' disobedience of statue was not only willful, it was part of an organization-wide policy that included also preventing the victim from obeying the reporting statute *(Exhibit 3 - Affidavit of James Whitney; Exhibit 4 - Affidavit of William Bowen)* It was one of a series of decisions that required the Watchtower Defendants to exercise reasonable care to protect other, potential and foreseeable victims of the criminal they were harboring.

3. **Superior Knowledge and Right to Control**

In analyzing duty issues, the Supreme Court also has looked at whether one party had superior knowledge of the risk or a right to control the actor who caused the harm. *Golden Spread Council, Inc. v. Akins*, 926 S.W.2d at 290. *Graff v. Beard*, 858 S.W.2d 918, 920 (Tex. 1993) Both of these factors exist in this case.

Although the extent of their superior knowledge remains concealed in the evidence Defendants are withholding from discovery, it is clear from Plaintiff's summary judgment evidence that components of the Watchtower Defendants' organization knew, and the Amarillo-Southwest Congregation should have known, about Kelley's dangerous propensities. *(Exhibit 3 - Affidavit of James Whitney; Exhibit 1 - Answer of Larry Kelley; Exhibit 4 – Affidavit of William Bowen; the testimony of Elder Dugan given and recorded at the hearing on Plaintiff's Omnibus Motion to Compel on January 30, 2004 which is specifically incorporated herein by reference; Exhibit 12 – Objections and Responses of the Dumas Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 3, Privilege Log to Request No. 4, Privilege Log to Request No. 16(b); Exhibit 13 – Objections and Responses to The Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's First Request for Production, Privilege Log to Request No. 32 and Privilege Log to Request No. 34; Exhibit 14 – Deposition of Larry Kelley, pages 93-95).*

Plaintiff has also submitted evidence of the control exercised by the Watchtower Defendants. Kelley's authority to "lead out for Service" was delegated by Elders of the Amarillo Southwest Congregation. *(Exhibit 3 - Affidavit of James Whitney; Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 8 – Affidavit of Amy Marie Betzen; Exhibit 9 – Affidavit of Mary Melinda Taylor).* He could not have "led out for service" without authority from the Elders. *(Exhibit 3 - Affidavit of James Whitney; Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 8 – Affidavit of Amy Marie Betzen; Exhibit 9 – Affidavit of*

Mary Melinda Taylor). The Dumas Congregation had exercised control by placing restrictions on Kelley, albeit secretly. *(Exhibit 1 - Answer of Larry Kelley).*

4. Duty Arising Out Of Relationship With The Parties

Texas law recognizes that a duty may exist because of the relationship of the parties. *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d at 525; *Otis Engineering Corp. v. Clark*, 668 S.W.2d at 309. Here a duty exists because of the relationship between the Watchtower Defendants and both Larry Kelley and Amy B.

Kelley was the Defendants' agent when he "led out for Service." Because of that relationship, Defendants had a duty to exercise ordinary care in his selection and supervision. *Wise v. Complete Staffing Services, Inc.*, 56 S.W.3d 900 (Tex. App. Texarkana 2001, reh'd overruled); *Read v. Fetter*, 990 S.W.2d 732 (Tex. 1998).

It does not matter that Kelley was not paid by the Watchtower Defendants. He was still their appointed agent. *Smith v. University of Texas*, 664 S.W.2d 180 (Tex.App.—Austin 1984, writ ref'd n.r.e.), identified four criteria to be used in determining if a volunteer would have the same status as an employee. The court considered whether the employer:

1. Has a right to direct the duties of the volunteer;
2. Has an interest in the work to be accomplished;
3. Accepts direct or incidental benefit derived from the volunteer's work; and
4. Has a right to fire or replace the volunteer.

The evidence submitted by Plaintiff in her summary judgment response satisfies each of these factors:

1. The Watchtower Defendants have to approve any man who leads out in Service and keep reports on the Service activities;
2. Service is a significant avenue by which the Watchtower Defendants bring new members into the organization;
3. The Watchtower Defendants receive both monetary and membership benefits from Service and also spread their message this way;
4. The Watchtower Defendants have absolute say over who can and cannot lead out in Service.

(Exhibit 3 - Affidavit of James Whitney; Exhibit 2 - Affidavit of James Anthony Betzen).

The Watchtower Defendants had duty not to appoint or retain a dangerous agent, particularly a pedophile whom they knew, or by the exercise of reasonable care should have known, posed an unreasonable risk of harm to others. *Wise v. Complete Staffing Servs., Inc.*, 56 S.W.3d 900, 904-05 (Tex.App.—Texarkana 2001, no pet.). More specifically, they had a duty not to appoint a known pedophile to positions in the organization where he could obtain unsupervised access to young women. *See Golden Spread Council, Inc. v. Akins*, 926 S.W.2d at 294.

The Watchtower Defendants also owed a duty because their relationship of trust and confidence with Amy B. created an informal fiduciary relationship. *Texas Bank & Trust Co. v. Moore*, 595 S.W.2d 502, 507 (Tex. 1980); *Holland v. Lesesne*, 350 S.W.2d 859, 862 (Tex.Civ.App. - San Antonio 1961, writ ref'd n.r.e.).

Unlike the formal fiduciary relationship such as trustee and cestui que trust, guardian and ward, or attorney and client, an informal relationship exists wherever a special confidence is reposed in someone who is bound to act in good faith and with due regard to the interests of the other. *Texas Bank & Trust Co. v. Moore, Id.*, at 507; *Holland v. Lesesne, Id.*, at 862. RESTATEMENT OF TORTS §874. Such special confidence may

be created by express agreement or implied by the circumstances. *Texas Bank & Trust Co. v. Moore, Id.*, at 507; *American Tank & Mfg. Co. v. First Nat'l Bank of Littlefield*, 370 S.W.2d 948 (Tex.Civ.App. - Amarillo 1963, writ ref'd n.r.e.); *Kinzbach Tool Co., Inc. v. Corbett-Wallace Corp., supra; Holland v. Lesesne, supra*, at 862. An "informal" fiduciary duty may arise from a moral, social, domestic or purely personal relationship of trust and confidence." *Associated Indem. Corp. v. CAT Contracting*, 964 S.W.2d 276, 287 (Tex. 1998).

Factors to be considered in determining the existence of an informal fiduciary duty are: a relationship over time. *Hedley v. duPont*, 580 S.W.2d 662, 666 [Tex.Civ.App. - Houston [14th Dist.] 1979, writ ref'd n.r.e.; the entrustment of confidential information *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 777 [Tex. 1958]; the provision of, and reliance upon, advice or judgment *Thigpen v. Locke*, 363 S.W.2d 247 [Tex. 1962]; *Kalb v. Norsworthy*, 428 S.W.2d 701 (Tex.Civ.App. - Houston [1st Dist.] 1968, no writ); *Page Airways, Inc. v. Associated Radio Service Co.*, 545 S.W.2d 184 [Tex.Civ.App. - San Antonio 1976, writ ref'd n.r.e.]; and superior knowledge regarding the issues entrusted to the fiduciary; *Adickes v. Andreoli*, 600 S.W.2d 939 (Tex.Civ.App. - Houston [1st Dist.] 1980, writ dism'd); *Tuck v. Miller*, 483 S.W.2d 898 (Tex.Civ.App. - Austin 1972, writ ref'd n.r.e.).

Plaintiff's summary judgment establishes every single element and more.

The affidavit of James Whitney, who held many positions of leadership within the Jehovah's Witness organization, including Elder, between 1970 and 1992, describes

the extraordinary trust, confidence and obedience that members placed in the organization and its Elders:

- "All local congregations, Elders, and other leaders and members were expected to follow the policies of the governing Body without hesitation, question or objection"
- "Even when a member felt or believed that the Elder(s) was in error in their counsel and/or decisions, the Elder(s) had to be obeyed and respected because they represented the Organization and its Governing Body."
- "Members of the congregation were taught to place their trust and confidence in the Elders and those to whom the Elders delegated authority."
- "Jehovah's Witness children were taught and expected to place their trust in the congregation Elders and those to whom the Elders delegated authority."
- Minor children were expected to obey the Elders "over and above their parents."

(Exhibit 3 – Affidavit of James Whitney).

Plaintiff's summary judgment proof establishes that Amy B. placed that degree of trust, confidence and obedience in the church and its Elders. As a Jehovah's Witness, Amy B. was taught to obey the Elders, and those such as Kelley whom the Elders appointed to leadership roles. That obedience was to be "in all things and without question," because the Elders "represented the Governing Body of Jehovah's Witnesses who only had (the Betzen's) best interests at heart." *(Exhibit 2 - Affidavit of James Anthony Betzen; Exhibit 9 - Affidavit of Mary Melinda Taylor; Exhibit 8 – Affidavit of Amy Marie Betzen).* The Elders in question actually advised Amy B.'s father to allow Kelley to become her surrogate grandfather and mentor. *(Exhibit 2 - Affidavit of James Anthony Betzen).*

The Watchtower Defendants maximized their extraordinary hierarchal control. (See *Exhibit 10 – Affidavit of Don Adams)* and therefore cemented their confidential relationship by exercising influence over the persons with which witnesses like Amy B.

could associate. As a Jehovah's Witness, Amy B. was taught not to associate with non-members. She was taught that all of her "associations" should be from the church, and that persons who were not witnesses were not "good associations," even if they were members of her family. *(Exhibit 2 - Affidavit of James Anthony Betzen).*

And the Elders were entrusted with the most confidential of information. Members were counseled that all allegations of wrongdoing would be handled by the body of Elders, and should only be reported to the Elders. *(Exhibit 4 - Affidavit of William Bowen; Exhibit 3 – Affidavit of James Whitney).*

Under Texas law, this evidence establishes a relationship of trust and confidence giving rise to an informal fiduciary relationship.

B. Recognition Of A Duty In This Case Does Not Violate The First Amendment

The Watchtower Defendants argue that the First Amendment prohibits this Court from finding that they voluntarily assumed a duty or that they had a duty arising out of a relationship of trust and confidence.[4]

They cite only two cases in support of their argument regarding assumed duty. The first, *Serbian Orthodox Diocese for the United States of America and Canada v. Milivolevich*, 426 U.S. 696 (1976) was discussed at length in Plaintiff's Reply to the Response of Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's Omnibus Motion to Compel and Defendants' Motion for Protective Order which is incorporated herein for all purposes.

[4] The Watchtower Defendants have not claimed that the enforcement of a duty arising under Section 302B of the Restatement (Second) Torts or from their agency relationship with Larry Kelley violates the First Amendment.

Serbian has nothing to do with this case. *Serbian* involved the issue of whether a bishop was appropriately defrocked pursuant to church tenets and stands for the proposition that Courts should not interpret questions of theology or church doctrine. The case before this Court has to do with the crime of child sexual abuse and this state's compelling interest in protecting its children from such abuse. *Ginsberg v. New York*, 390 U.S. 629, 640, 88 S.Ct. 1274, 1281, 20 L.Ed. 2d 195 (1968). The Watchtower Defendants have admitted in their summary judgment motion that their religious tenets do not sanction the crime of child sexual abuse. (*Defendant's Brief in Support of Motion of Summary Judgment, page 7*). Thus, there is no need for this Court to interpret church doctrine or resolve theological conflicts in order to impose a duty on these defendants because of their voluntary conduct.

The Watchtower Defendants rely on *Turner v. Church of Jesus Christ of Latter Day Saints*, 18 S.W.3d 877 (Tex.App.—Dallas 2000) to support their argument concerning assumed duty and fiduciary duty. *Turner* involved an adult missionary who sued the church because he became ill while performing missionary services in Guatamala. The Turner's claims all centered around the church's training of missionaries and conducting its missionary program. For the court to have honored the Turner's claims, it would have had to dictate the content of the church's missionary training program which was entirely religious. *Turner* reaffirmed the proposition that the First Amendment prohibits government regulation of the content of religious beliefs or teachings or a church's employment practices.

But *Turner's* significance does not end there. The court specifically noted the absence of any "compelling state interest" or "potential public damages" involved in the Turner's claims. 18 S.W.3d at 893. Obviously, this case involves both.

The United States Supreme Court has consistently upheld neutrally-applied secular laws that advance a compelling state interest. In *United States v. Lee*, 455 U.S. 252 (1982), the Supreme Court accepted the Amish community's argument that the payment of taxes violated its religious beliefs. However, the Court stated:

> The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, *e.g., Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244(1879). The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. *Thomas v. Review Bd. Of Indiana Employment Security Div.* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 828, 28 L.Ed.2d 168(1971); *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

In similar cases that involved the specific religion organization in this lawsuit, courts have uniformly held that considerations of child safety and welfare prevailed over any claimed infringement of religious freedom.

In *Prince v. Commonwealth of Massachusetts*, 64 S.Ct. 438 (1944), the United States Supreme Court ruled that the First Amendment did not preclude the state from enforcing neutrally-applied secular laws designed to protect the safety and welfare of a child, even though the laws were inconsistent with the family's religious beliefs as members of the Jehovah's Witnesses. *See also, Jehovah's Witnesses v. King County Hospital*

Unit No.1, 278 F. Supp 488 (W.D. Washington 1967) *judgment affirmed*, 88 S.Ct. 1260 (1961).

Similarly, in *State v. Perricone*, 181 A.2d 751 (1962), the New Jersey Supreme Court found no First Amendment impediment to the government's ability to limit religious conduct to protect the health of a child whose Jehovah's Witness parents refused a blood transfusion for their child because of their religious tenets. The court noted that "while freedom to believe is absolute, freedom to exercise one's beliefs is not and must be considered in light of the general public welfare." [5]

The Watchtower Defendants cite two other cases in support of their argument that recognition of a fiduciary duty in this case would violate the First Amendment. However, neither are controlling.

Doe X V v. Roman Catholic Diocese of Dallas, No. 05-99-01774 WL 856963 was a lawsuit by an abuse victim filed more than seven years after limitations expired. The Plaintiff attempted to reverse an adverse summary judgment by arguing a vague theory of "fiduciary duty." Apparently, he claimed that a church owes such a duty as a matter of law, and therefore limitations had been tolled.

The opinion, unpublished for its obvious lack of precedential value, states that the plaintiff was unable to cite any cases holding that a church owes such a duty. Amy B. would agree that, in general and without more, a church does not owe a fiduciary

[5] See also extensive list of cases cited in Plaintiff's Reply to the Response of Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses to Plaintiff's Omnibus Motion to Compel and Defendant's Motion for Protective Order at pages 14-17, which is specifically incorporated herein by reference.

duty. However, whether an informal fiduciary duty exists is a fact-specific inquiry, and, as discussed above, the requisite elements exist in this case. *Hedley v. duPont*, 580 S.W.2d 662, 666 (Tex.Civ.App. - Houston [14th Dist.] 1979, writ ref'd n.r.e.); *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 777 (Tex. 1958); *Thigpen v. Locke*, 363 S.W.2d 247 (Tex. 1962); *Kalb v. Norsworthy*, 428 S.W.2d 701 (Tex.Civ.App. - Houston [1st Dist.] 1968, no writ); *Page Airways, Inc. v. Associated Radio Service Co.*, 545 S.W.2d 184 (Tex.Civ.App. - San Antonio 1976, writ ref'd n.r.e.); *Adickes v. Andreoli*, 600 S.W.2d 939 (Tex.Civ.App. - Houston [1st Dist.] 1980, writ dism'd); *Tuck v. Miller*, 438 S.W.2d 898 (Tex.Civ.App. - Austin 1972, writ ref'd n.r.e.).

The Watchtower Defendants cite *Hawkins v. Trinity Baptist Church*, 30 S.W. 3rd 446 (Tex. App.—Tyler 2000), which concerned a pastor who had sexual relations with a church secretary while he was providing marital counseling to the secretary and her husband. The suit alleged two alternative theories of liability: that the pastor had violated the Sexual Exploitation by a Mental Health Service Provider Act, Sec. 81.001, Tex. Civ. Prac. & Rem. Code, and that he had breached fiduciary duties to the plaintiffs.

In reversing summary judgment as to the first cause of action, the Court dissected the claims barred by the First Amendment from those that were not on the basis of which cause of action focused on secular conduct and which required a determination of a pastor's standard of care. That analysis actually supports Amy B's argument in this matter and is consistent with other cases finding no First Amendment bar.

The Court noted that Sec. 81.001 focuses on conduct rather than belief and observed that the First Amendment does not "categorically insulate religious relationships from judicial scrutiny," 30 S.W. 3rd at 452. Nor does it "require a minister's counseling relationship with a parishioner to be purely secular in order for a court to review the propriety of the conduct occurring within that relationship." *Id.* It found therefore that the statutory cause of action based only on conduct was not prohibited by the First Amendment.

It characterized the breach of fiduciary duty claim as essentially one of "clergy malpractice," which is disfavored in virtually all jurisdictions because it requires a court to determine what a pastor should or should not do in the performance of his religious duties.

Thus the Plaintiffs presented the Court with alternative theories. The first concerned the propriety of "conduct" measured against purely secular standards, and while that conduct occurred in an arguably-religious setting, it nevertheless involved "violation of social duties or subversion of good order." *Citing Tilton v. Marshall,* 925 S.W. 2d 672, 677 (Tex. 1996). The second theory would have required a determination of what a reasonably prudent pastor would have done under the same or similar circumstances, an inquiry into religious beliefs and practices that necessarily invades First Amendment-protected territory.

Sanders v. Casa View Baptist Church, 134 3d 331 (5th Cir. 1998), applied Texas law to finding a fiduciary duty in a case involving a minister who engaged in sexual relations with plaintiffs during marital counseling. The Court explained the distinction

between a fiduciary duty claim that would be barred by the First Amendment and one that would not.

> ...Consequently, to invoke the protection of the First Amendment for conduct taking place within his counseling relationship with the plaintiffs, Baucum must assert that the specific conduct allegedly constituting a breach of his professional and fiduciary duties was rooted in religious belief. *See Smith*, 494 U.S. at 881, 110 S.Ct. at 1601; *Yoder*, 406 U.S. at 215, 92 S.Ct. at 1533; *see also Destefano*, 763 P.2d at 283-84 ("In the spiritual counseling context, the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused plaintiff's distress was in fact part of the belief and practices of the religious group"); *MacDonnell*, 696 A.2d at 702 (holding that in order to be protected, the "conduct at issue must have been part of the beliefs and practices of the defendant's religion")

134 F.3d at 337.

In Amy B's case, the conduct at issue involved the Watchtower Defendants' essentially placing her "in harm's way" by allowing Kelley to have unsupervised access to her. That conduct was not "part of the beliefs and practices of the defendants' religion" and thus does not enjoy First Amendment protection. The Watchtower Defendants' literature describes the need to take precautions to protect children from pedophiles.

See, *"Pay attention to Yourselves and all the Flock,"*, page 93, 1991 ed *(Exhibit 3, Affidavit of James Whitney):*

> "Victims of sexual abuse need to be treated with extreme thoughtfulness and kindness. Elders should always do what they reasonably can to protect children from further abuse; follow the Society's directions on such matters. (g85 1/22 p.8)

See, *August 1, 1995 letter "To All Bodies of Elders in the United States (Exhibit 4, Affidavit of William Bowen):*

> ....Additionally, steps should be taken to protect the child, or other children, from further sexual abuse. Obviously, parents would be keenly interested in taking adequate precautions in this regard. Helpful information along these lines can be reviewed in the January 22, 1985, and October 8, 1993, issues of *Awake!* Loving elders, too, will want to act in a way that demonstrates their protective care, since the word "overseer" carries the thought of one who watches over, a guardian, a shepherd of the flock. (See *"Pay Attention to Yourselves and to All the Flock,"* pages 90 and 93.) Thus, they would want to take steps to protect a child abuse victim when a judicial committee determines that the child molester is repentant and will remain a member of the Christian congregation. The same concern would be shown when a pedophile is disfellowshipped and later cleans up his life and is reinstated.

See also, *March 14, 1997 letter "To All Bodies of Elders in the United States (Exhibit 4 – Affidavit of William Bowen):*

> ....What can the elders do to help protect our children? The elders should be alert to the activity of any who are known to have molested children in the past. Individuals who have manifested a weakness in this regard should be sensitive to their need not to be alone with children. They should refrain from holding children or displaying other forms of affection for them. It would be appropriate for elders to give kindly cautions to any who are doing things that may be a temptation or a cause for concern to others in the congregation – 1 Cor. 10:12, 32.

See also, *November 6, 2000 letter from the Society Service Department (Exhibit 4 – Affidavit of William Bowen):*

> ....For good reason, the January 1, 1997, issue of The Watchtower, page 29, states: "A dedicated adult Christian who falls into the sin of child sexual abuse reveals an unnatural fleshly weakness. Experience has shown that such an adult may well molest other children....Therefore, in the best interest the congregation and its members, neither

> the local congregation nor the Society should be viewed as delegating authority or position to one who is a known child molester....
>
> ...Hence, you should not extend to him any specific responsibility that could be construed as an assigned duty, even though some assignments might be considered minor. He should not be used to handle accounts, literature, magazines, subscriptions, or territories. Nor would he be used as an attendant, microphone handler, to operate sound equipment, to represent the congregation in prayer, or to present "Announcements" on the Service meeting. He would not be used as the reader at the Congregation Book Study or Watchtower Study, nor to conduct a meeting for field service. It would be advisable not to have a book study in his home. And, he would not qualify to auxiliary or regular pioneer....
>
> ...This would include not allowing children (other than his own) to spend the night in his home, not working in field service with a child, not cultivating friendships with children, and the like....

A case from the Second Circuit Court of Appeals illustrates the contrast between Amy B.'s claim and the cases cited by Defendants. *Martinelli v. Bridgeport Roman Catholic Church*, 196 F.3d 409 (2nd Cir. 1999) involved allegations of child sexual abuse by a priest and a jury found that the diocese violated fiduciary duties to the plaintiff. The diocese argued that the Free Exercise Clause barred such a finding because it was based on religious doctrine and practices, and pointed to trial testimony that the bishop was like a "shepherd" to his "flock," and evidence about the responsibilities of a bishop under Canon Law.

Affirming the judgment, the Court noted that to the extent that the jury considered religious teachings and tenets, it did so to determine whether the plaintiff's

obedience to such tenets gave rise to a fiduciary relationship with the diocese, not to determine their validity.

> "The obvious distinction between the proper use of religious principles as facts and an improper decision that religious principles are true or false bears a certain family resemblance to the more mundane rules of hearsay. Evidence of a statement made out of court may be inadmissible as hearsay to prove the truth of the facts asserted in it, but may be admissible for the non-hearsay purposes of proving that the statement was made or that other facts can be inferred from the making of the statement. *See* Fed.R.Evid. 801(c). Similarly, the proposition advanced by a particular religion that "a bishop is like a 'shepherd' to the 'flock' of parishioners" cannot be considered by a jury to assess its truth or validity or the extent of its divine approval or authority, but may be considered by the same jury to determine the character of the relationship between a parishioner and his or her bishop."

196 F.3d at 431.

Unlike the plaintiffs in *Hawkins*, Amy B's claim of fiduciary duty does not require determination of a standard of care of a religious counselor, and unlike *Doe*, Plaintiff does not argue that a church-member relationship is fiduciary as a matter of law. Plaintiff's claim mirrors that of *Martinelli*, specifically that the factual context of her relationship with the congregation elders established the elements of an informal fiduciary relationship, without regard to whether the tenets and teachings underlying that relationship were right or wrong.[6]

---

[6] See also *Christenson v. Erickson*, 99 Or. App. 104, 781 P.2d 383 (Or. Ct. App 1989)(Claims by victim of child sexual abuse against a church for negligent supervision, breach of fiduciary duty, intentional infliction of emotional distress and respondeat superior are not barred by First Amendment) and *Moses v. Defendants of Colorado*, 863 P.2d 310 (Colo. 1993)(The First Amendment does not bar an adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on the sexual relationship between parishioner and priest).

III.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff hereby requests that Defendants' Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses Motion for Summary Judgment be denied in all respects and the Court grant such other and further relief that Plaintiff may be justly entitled.

Respectfully submitted,

FIBICH, HAMPTON,
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the above and foregoing has been furnished to all counsel of record via certified mail, return receipt requested, regular mail, hand delivery and/or facsimile, on this 9th day of March 2004.

Hartley Hampton

IN AND FOR THE: 251ST DISTRICT COURT
TO: AMY B., PLAINTIFF

JUL 21 2003

FROM: LARRY KELLEY, DEFENDANT

RE: WRITTEN ANSWER TO PLAINTIFF'S ORIGINAL PETITION - CAUSE NO. 091048-00

DELIVERED 7TH DAY OF JULY 2003 BEFORE 10:00 AM.

Since I, Larry Kelley, am unable to locate an attorney who will take my case pro bono, I will attempt to answer plaintiff's claims myself.

My wife and I are on a limited, fixed income, we have both been receiving Social Security Disability out of which we must budget our living expenses, climbing medical bills and prescriptions.

CONCERNING C PARAGRAPH 21:

It is true that while I lived in Dumas, I was appointed to the position of Elder in the Dumas Congregation, however as an elder, I was never given the specific assignment of instructing and supervising children in the congregation. In fact, in every congregation I have ever attended, both of those assignments always rested with their parents. The only time children would come to our home was with their parents for an organized home bible study or in a social setting.

FILED
CAROLINE WOODBURN
DISTRICT CLERK
2003 JUL -7 A 9:17
POTTER COUNTY, TEXAS
BY DEPUTY

COPY COPY

CONCERNING C PARAGRAPH 22:

When I committed my only offense in Dumas, indecency with a child, it was not with a young girl from the Dumas Congregation. It was with a girl who lived in Amarillo. I felt such disgust for my behavior that I went to the Elders of the Dumas Congregation the next day and confessed what I had done.

I was immediately removed from all positions of authority and was forbidden to make any comment at any meeting. I was also instructed to go to my wife and to the girl's parents and tell them what I had done.

CONCERNING C PARAGRAPH 23:

My family and I moved to Amarillo for business reasons in 1989. I was not transferred by the Watchtower Defendants.

CONCERNING C PARAGRAPH 24:

I spent several months of 1992 incarcerated and completed ten (10) years of therapy in an approved Sex Offenders/Victims Program and completed ten (10) years of "shock probation."

IN AND FOR THE: 251ST DISTRICT COURT
TO: AMY B., PLAINTIFF
FROM: LARRY KELLEY, DEFENDANT

CONCERNING C PARAGRAPH 25:

I don't intend to minimize my offense, however plaintiff implies that abuse took place from 1988 through 1992 when, in fact, there were only two (2) instances of sexual contact.

Respectfully submitted,

Larry Kelley

Larry Kelley, Defendant

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CAROLINE WOODBURN
DISTRICT CLERK

2003 JUL -7 A 9:17

POTTER COUNTY, TEXAS

BY ldk DEPUTY

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

by computerized stenotype machine at the offices of Ronald T. Spriggs, 112 West 8th Avenue, Suite 400, in the City of Amarillo, County of Potter, and State of Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES

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ALSO PRESENT:

Mr. Randy Hopper - Videographer

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(Deposition Exhibit No. 10 marked for identification.)

THE VIDEOGRAPHER: Today's date is December 5th, 2003, and the time is approximately 8:59 a.m.

LARRY KELLEY,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. HAMPTON:

Q. Tell us, please, your first -- let me start over.

MR. HAMPTON: It's a little early in the morning.

Q. Tell us your full name, please, sir.

A. Larry Keith Kelley.

Q. Mr. Kelley, let me show you what I've marked as Deposition Exhibit 10. Are you the same Larry Keith Kelley that filed that document with the court?

A. Yes.

Q. Okay. What have you done, Mr. Kelley, to prepare for this deposition?

MR. SPRIGGS: I'm going to object to -- based upon attorney-client privilege anything that me and my client have done or talked about, I'm going to object to that.

Q. (BY MR. HAMPTON) I certainly would not want you to tell me anything that your attorney has told you or any communications between you and your lawyer, but other than meeting and talking to your lawyer, have you reviewed any documents?
A. No.
Q. Have you read any depositions?
A. The ones that were sent to me.
Q. Which ones were those?
A. First of all, I didn't read all of any of them, because they were so lengthy, but I read some.
Q. How many depositions were sent to you?
A. The only one I remember is Amy Betzen's.
Q. Okay. Were there other depositions as well as Amy Betzen's?
A. I didn't see them if there were.
Q. Okay. You read part of Amy Betzen's deposition?
A. Correct.
Q. Have you reviewed any other document?
A. I don't believe so.
Q. Other than your lawyer, who have you met with to prepare for this deposition?
A. No one.
Q. Have you spoken to anyone on the phone to prepare for this deposition, other than your lawyer?

A. I just recall -- I misspoke about that first question about if I had spoken to anyone about this deposition.
Q. Yes, sir.
A. And there is another person. I believe his name is Paul.
MR. SPRIGGS: No, Paul works with me, so that's part of --
THE WITNESS: Oh, okay.
Q. Okay. Have you spoken by telephone with anybody other than Paul or your lawyer?
A. Only to the extent of finding out if the attorney would represent me and --
MR. SPRIGGS: I'm going to instruct you not to even mention anything that you communicated to me or anybody in my office or anybody affiliated with me.
Q. And I would not want you to. I'm not asking you for that. I'm asking you for other people. I want to specifically exclude your lawyer and anybody working for him.
A. Okay.
Q. Have you talked by phone with anyone else?
A. Yes.
Q. Who?
A. I was afraid you were going to ask that

question. It's an Amarillo attorney.
MR. SPRIGGS: I'm going to object to that. If you spoke to another attorney that would also be claimed as attorney-client privilege with that attorney.
Q. But I am entitled to know who he is.
A. I really don't remember.
Q. Was it another attorney that you talked to about representing you?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. Have you talked to any -- are you still a member of the Jehovah's Witnesses?
A. No.
Q. Have you talked to anybody associated with the Jehovah's Witnesses about this case before today?
A. No.
Q. Now, you have retained Mr. Spriggs fairly recently, did you not?
A. Correct.
Q. Do you remember when you retained Mr. Spriggs?
A. The date, no.
Q. Tell me where you live.
A. My street address is 3113 Southwest 11th, Apartment B, as in boy.

Q. Thirty?
A. One thirteen.
Q. One?
A. Thirteen.
Q. Thirteen?
A. Southwest 11th.
Q. Okay.
A. Apartment B.
Q. How long have you lived at that address?
A. I'm not sure. It's been over a year, though, I know.
Q. Okay. Where did you live before that?
A. On East 33rd Street.
Q. What address?
A. I can't remember the address.
Q. How long did you live at that address?
A. Eight or nine years. I'm not sure.
Q. And you can't remember the address?
A. Right.
Q. Okay.
A. Wait, forty -- it just won't come.
Q. Was it in the 4000 block?
A. Forty --
Q. Okay.
A. It just won't come.

Q. These were both Amarillo addresses?
A. Yes.
Q. Where -- where did you live before East 33rd Street?
A. On -- on Paramount.
Q. In Amarillo?
A. Yes, in an apartment, and I can't even remember the name of the apartments.
Q. How long did you live there?
A. About a year, I think.
Q. Where did you live before that?
A. In -- I was in prison before that.
Q. Did you retain the house that you had in Amarillo while you were in prison?
A. The apartment?
Q. Yes.
A. Yes, my wife stayed there.
Q. What was -- what was that address?
A. I can't remember. I'm trying to remember whether she moved while I was in prison or if I was there when I . . .
Q. Where did you live right before you went to prison?
A. Either that address or the previous one in Bell Place Apartments.

Q. In what?
A. Bell Place Apartments.
Q. You said either that one or the previous one at Bell Place Apartments?
A. Uh-huh.
Q. What address is the one you called that one?
A. Bell Place Apartments -- oh, oh, the one on Paramount.
Q. Did you live anywhere other than prison between Paramount and Bell Place Apartments?
A. No.
Q. So there was no residence in between the two that either you or your wife lived in?
A. Correct.
Q. Okay. Where did you live before Bell Place Apartments?
A. That one just won't . . .
Q. Was it in Amarillo? Was it in Amarillo?
A. I can't remember.
Q. Bell Place, Paramount, East 33rd and 11th Street are all Amarillo addresses?
A. Yes.
Q. Before you moved to Amarillo, you lived in Dumas?
A. Correct.

Q. You came to Amarillo in 1989?
A. I believe that's right.
Q. What month in 1989?
A. I don't remember.
Q. What time of the year?
A. Even that I can't remember.
Q. Was it hot or cold?
A. I really can't remember even the move.
Q. Did you live anywhere between the time you left Dumas and the time you came to Amarillo?
A. No.
Q. Tell me where you lived in Dumas. What was your address? The last address you had in Dumas.
A. Right. It was the only place we lived in Dumas, and here again, that address has disappeared.
Q. So you lived in one residence in Dumas?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. For how many years?
A. I don't remember.
Q. You don't remember how many years you lived in Dumas?
A. Huh-uh.
Q. How long did you live at Bell Place Apartments?

A. That one, too, I don't remember.
Q. More than a year?
A. I believe so, uh-huh.
Q. If you came to Amarillo in 1989 and you went to prison in 1992; is that right?
A. I think that's correct.
Q. Did you live at Bell Place Apartments for about three years?
A. That would sound approximate.
Q. What's your date of birth?
A. November 28, 1938.
Q. How old a man are you right now?
A. I'm sixty-five.
Q. Where were you born?
A. Dallas.
THE WITNESS: Can I get a glass of water, just a sip.
(Discussion off the record.)
Q. Do you recognize 609 South Pierce as an address where you have lived in the past?
A. 609 South Pierce? That would be in town, wouldn't it? It just doesn't come to me at all.
Q. Which street are the Paramount Apartments on?
A. Paramount.
Q. Okay. Is Bell Place -- are the Bell Place

Apartments on Bell Street?
A. Bell, uh-huh.
Q. 4400 Bell?
A. I believe that's correct.
Q. Did you live at 3110-A Paramount when you were arrested?
A. That's possible. I didn't remember if I was at Bell or at Paramount, so . . .
Q. Okay. Now, you told me a minute ago that you were born in Dallas?
A. Uh-huh.
Q. In 1938. How long did you live in Dallas?
A. Until I was nine.
Q. Which would have been 1947?
A. Or eight. I can't remember. Yeah. Eight or nine.
Q. Then where did you live?
A. Paris, Texas.
Q. How long did you live in Paris?
A. Approximately three years.
Q. That gets us to about 1950?
A. That's when we moved here.
Q. You moved where?
A. Amarillo.
Q. Okay. How long did you live in Amarillo the

first time?
A. I lived here until I joined the Army, and spent my Army time at Fort Carson, and then --
Q. How old were you when you joined the Army?
A. I was eighteen, I believe.
Q. Which would get us to about 1958?
A. Uh-huh, that's when I joined.
Q. All right. And were you in the Army for three years?
A. Uh-huh.
Q. You have to answer yes or no.
A. I'm sorry. Yes.
Q. Uh-huh and huh-uh look the same when they're written down.
A. Sorry.
Q. So you spent three years in the Army, which gets us to about '61?
A. Yes.
Q. Then where did you go?
A. Out of the Army, we went to right across the street -- no. There was one place before that. It was a duplex.
Q. What city?
A. Amarillo still.
Q. So you returned to Amarillo?

A. Yes.
Q. In '61?
A. Yes.
Q. And how long did you live in Amarillo this second time I'll call it?
A. Until I -- until we moved to Dumas, I believe.
Q. Okay. Now, you were twenty-one when you came back to Amarillo, back from the Army?
A. Okay.
Q. Does that sound right?
A. It sounds right, uh-huh.
Q. Did you move back in with your parents?
A. No, I got married in the Army in the Alaska. Caroline Lee Bailey was her maiden name. Her father was an Air Force master sergeant.
Q. Where does she live now?
A. I believe she's living in Sherman, Texas.
Q. When is the last contact you had with Carolyn Lee Bailey?
A. Many years ago.
Q. Has she remarried?
A. Yes.
Q. What is her name now?
A. I don't know what it is.
Q. What's her date of birth?

A. I'm sorry, that evades me also.
Q. How old was she, compared to you?
A. I think she was a year younger than I was.
Q. What city in Alaska were you born in -- I mean, married in?
A. Fairbanks.
MR. SPRIGGS: Let him finish his question before you answer.
A. Oh, I'm sorry.
Q. And I apologize, about another twenty minutes and I'll start hopefully get warm and be able to make sense. What city in Alaska were you married in to Carolyn?
A. Fairbanks.
Q. Okay. Do you remember the date you were married?
A. Oh, I've got to remember that. July 17th, 1959.
Q. Okay. You went to Fort Carson when you joined the Army in 1958?
A. Uh-huh.
Q. True?
A. True.
Q. And that was for basic training?
A. Uh-huh.
Q. True?

A. True.
Q. And we know that you were in Alaska in 1959?
A. True.
Q. Where else did you serve?
A. After 18 months in Alaska, they transferred me to Yuma, Arizona.
Q. So you went from Fort Carson to Alaska?
A. Yeah.
Q. To Fairbanks, Alaska?
A. Yes.
Q. To Yuma, Arizona?
A. Correct.
Q. And did you serve out your tour of duty in Yuma?
A. Yes.
Q. And then you came back to Amarillo with your bride, Carolyn Lee?
A. Yes.
Q. Okay. And that marriage lasted until -- for how long?
A. I don't remember the exact date. It was --
Q. How old were you?
A. -- '65 or '66, I believe.
Q. Okay. So you were about twenty-eight --
A. Uh-huh.
Q. -- when you were divorced?

A. I guess.
MR. SPRIGGS: You have to answer out loud or else this lady gets mad.
THE WITNESS: Oh, I'm sorry.
A. I think so.
Q. And you live -- you were living here in Amarillo --
A. Yes.
Q. -- at the time, so the divorce was filed and -- the divorce granted here in Amarillo?
A. Correct.
Q. Okay. And this would have been in about 1965?
A. Yes.
Q. Now, when you returned to Amarillo in 1961, you were going to tell me the address where you lived in Amarillo.
A. Okay. I can take you there. It's just east of Taylor, across the street from that park, the Polk Street Methodist Church. It's catty-cornered across Taylor, so it would be in the 200 block of East 14th, I believe.
Q. And that was the first place you set up housekeeping after you got out of the Army?
A. Right. Uh-huh.
Q. A place you probably remember, right?
A. Uh-huh.

Q. How long did you live there? Were you living there when you got divorced?
A. No, huh-uh. Between the divorce and that address, we also lived -- oh, my goodness. I'm trying to --
Q. Where were you living at the time you were divorced?
A. That's what I'm trying to think. It was a house one or a block and a half off of Washington on . . .
MR. SPRIGGS: Listen to me.
THE WITNESS: I'm sorry, I don't remember.
MR. SPRIGGS: I want you to answer his questions. I don't want you speculating or guessing. If he asks you a question and you understand it and can give him an answer, give him an answer. I don't want you guessing, okay? Listen to his question, answer his question.
THE WITNESS: I don't remember.
Q. Okay. If you divorced in 1965, how much longer did you live in Amarillo before you moved somewhere else to some other town?
A. I don't know. I would just have to guess.
Q. Well, you were fifty-one when you moved from Dumas to Amarillo, were you not, approximately?
A. I don't remember. I just --

Q. Well, if you moved -- you do remember your birthday is 11-28-38, right?
A. Uh-huh.
Q. And you moved from Dumas to Amarillo in 1989. We've established that.
A. Uh-huh.
Q. So you would have been about fifty-one, correct?
A. Okay.
Q. Now, how old were you when you moved to Dumas?
A. That should have been -- I just don't remember. I would have to guess and I don't want to do that.
Q. Did you and Carolyn have any children?
A. Yes, three.
Q. Three kids?
A. (Witness nods head up and down.)
Q. What are their names?
A. Melody, Doris, and Scott.
Q. What is Melody's full name?
A. Melody Kay, K-A-Y, Kelley.
Q. Where does she live?
A. I'm not sure.
Q. You don't know where she lives?
A. No, sir.
Q. Is she married?
A. Yes.

Q. Do you know her husband's name?
A. David Law, L-A-W.
Q. Do you know what he does for a living?
A. Not now.
Q. Do you know what he ever did for a living?
A. He at one time was a painter and window washer.
Q. In what city?
A. Amarillo and Dumas that I know of.
Q. Do you know whether they still live in either Amarillo or Dumas?
A. I know they're living somewhere in Colorado. I don't have an address.
Q. Are they in the Jehovah's Witnesses?
A. Yes.
Q. What is Doris's full name?
A. Doris Gaye, G-A-Y-E.
Q. What's her last name?
A. Her married name is Shedd, S-H-E-D-D.
Q. Do you know Melody's date of birth?
A. Her birthday is October the 22nd, 1960.
Q. Do you know Doris' date of birth?
A. April 11th, 1962.
Q. Where does Doris live?
A. In Columbia, Missouri.
Q. What is -- her husband's name is Shedd?

A. Yes.
Q. What is his first name?
A. Mark.
Q. Do you know what he does for a living?
A. He works for a natural gas company. I don't remember the name of it.
Q. Are you still in contact with him?
A. Yes.
Q. With Doris and Mark?
A. Yes.
Q. Are they in the Jehovah's Witnesses?
A. They're in and out.
Q. Do you know their phone number?
A. No.
Q. What is Scott's full name?
A. Larry Scott Kelley.
Q. What is his date of birth?
A. November 17th, 1964.
Q. Are you still in contact with him?
A. Yes.
Q. Where does he live?
A. I think he lives in Austin, Texas.
Q. Does Melody have any kids?
A. Yes.
Q. How many?

A. Three that I know of. I think they may have had another child.
Q. Are you estranged from Melody?
A. Yes.
Q. What are the three kids that you know of named?
A. Michael, Keith and Joey.
Q. How about Doris, does she have any kids?
A. Yeah.
Q. How many?
A. She had three, but the middle boy was killed in a car wreck last month.
Q. I'm sorry to hear that. What was his name?
A. His name was Jerrod.
Q. Okay. What are the other two's names?
A. I'm sorry. Let me get a sip of this. Casey is the boy's name, and Stephanie is the girl.
Q. Is Larry Scott Kelley married?
A. Yes.
Q. What is his wife's name?
A. Kelly.
Q. Kelly Kelley?
A. (Witness nods head up and down.)
Q. Is that yes?
A. I'm sorry, yes.
Q. Now, he's been married before, has he not?

A. Yes.
Q. What is his first wife's name?
A. Kelly.
Q. So he's been married to two women, both named Kelly Kelley?
A. Uh-huh, that's correct.
Q. And he has kids by the first marriage?
A. Yes.
Q. And their names are what? Does he have a daughter named Amy?
A. Not that I'm -- oh, wait, yes. Yes, he does.
Q. Okay. Does he have any other -- and that's by his first marriage?
A. Correct.
Q. What are the names of his other kids by his first marriage?
A. Oh, this is terrible.
Q. Well, let's come back to that.
A. Okay.
Q. The two women named Kelly, these are two different women, are they not?
A. Correct.
Q. Do you know how many kids your son has in total?
A. Counting stepchildren or --
Q. No, natural children.

A. Natural children. I think two. Two.
Q. Okay. Is Amy his natural daughter?
A. Yes, uh-huh.
Q. What is the name of his other natural child?
A. I think it's Scott.
Q. And is Kelly number 1 or Kelly number 2 Scott's mother?
A. Kelly number 1. Oh, wait. I'm sorry. I'm sorry. I've been confused about this for a long time.
MR. SPRIGGS: If you know, tell him if you don't, tell him I don't know. I don't want you guessing.
THE WITNESS: I'm sorry, I keep forgetting.
A. I don't know.
Q. Do Amy and Scott live together, Amy your granddaughter, Amy and your granddaughter Scott, do they live together -- I mean, grandson Scott?
A. I don't know.
Q. This is harder than it looks.
A. I know.
Q. I don't know.
A. I understand. So is this.
Q. I know it is.
A. I don't know that.
Q. Does your granddaughter Amy live with her mother?

A. I would have to assume so, I don't know.
Q. Does Scott have a -- does your son Scott have a prison record?
A. Yes.
Q. When did he go to prison?
A. I don't remember.
Q. What was it for?
A. It was for -- I don't know. Never did know the charge, but it was related to sexual abuse, and I believe it was on his stepdaughter.
Q. Okay. I didn't ask you about stepchildren.
A. I know. I'm sorry.
Q. No. I'm sorry, because I meant to. How many stepchildren does your son Scott have?
A. Here again, I don't know, so I guess I better say that.
Q. Okay. Does he have some number of stepchildren by his first wife, Kelly number 1?
A. I don't know.
Q. Was he married to his first wife, Kelly number 1, at the time that he was charged with whatever charges arose out of this sexual abuse?
A. No.
Q. They were already divorced?
A. No, the time that he was in prison was before he

married Kelly number 1.
Q. Okay. Had he been married before Kelly number 1?
A. Yes.
Q. Okay. What was that woman's name?
MR. JONES: Oh, let it be Kelly.
THE WITNESS: Oh, please.
MR. HAMPTON: Messed up my numbering system. I'll have to go back and reask all of those questions.
THE WITNESS: I'm sorry.
A. I don't know.
Q. (BY MR. HAMPTON) Okay. How many times has your son Scott been married?
A. Three.
Q. And it was the first wife whose name you can't remember who had the stepdaughter -- oh, who had the daughter whom he molested and went to prison for sexual abuse?
A. Correct.
Q. What city did this happen in?
A. I don't know.
Q. It was in Dumas, wasn't it?
A. No.
Q. You're sure it was not in Dumas?

A. I'm sure it wasn't in Dumas.
Q. Okay. Now, your son Scott is thirty-nine years old, right?
A. Yes.
Q. How old was he when he left home?
A. I don't remember.
Q. When he left home, did he go into the military?
A. No.
Q. Did he go off to school?
A. No.
Q. Did he go to work? Beg your pardon?
A. I don't know.
Q. Where were you living when he left home?
A. In Dumas.
Q. When he left home, did he move away from Dumas?
A. Yes.
Q. Where did he move?
A. Amarillo.
Q. How long did he live in Amarillo?
A. I don't know.
Q. Other than Austin, Texas; Dumas, Amarillo, and prison, where has he lived?
A. Well, he lived in Arizona, some town in Arizona for a period of time, but I don't remember the name of the town or how long.

Q. Do you remember what period of time he lived there, what decade?
A. Before he went to prison, you mean?
Q. Yeah. Was it before or after he went to prison?
A. It was before, yeah.
Q. Do you remember when he went to prison?
A. No.
Q. It was before you went to prison, wasn't it?
A. Yes.
Q. Were you in prison at the same time he was in prison?
A. I don't remember.
Q. How long did he serve?
A. Seven years.
Q. Did he do seven years?
A. I don't know.
Q. Was his sentence seven years, or do you know that?
A. I don't know that either. And I don't know the charge. I'm sorry.
Q. You don't know the charge, but you know what -- the conduct that it was related to?
A. Yeah.
Q. Did you testify in his criminal trial?
A. No.

Q. Did he go to trial?
A. That I don't know either. This will help you get a picture. I --
MR. SPRIGGS: Answer his questions now.
A. All right. Oh, okay.
Q. What will help? Is there something that will help us understand this?
A. We didn't know he was in prison until he called us from prison.
Q. Do you remember when that happened?
A. No.
Q. Did you and your son sexually abuse the same child?
MR. SPRIGGS: I'm going to object to that and instruct you not to answer.
MR. HAMPTON: On what basis?
MR. SPRIGGS: On the Fifth Amendment.
MR. HAMPTON: I'm entitled to ask the question and, in fact, I have to ask the question.
Q. (BY MR. HAMPTON) You're asserting your Fifth Amendment right and refusing to answer the question of whether if you and your son abused the same child; is that correct?
MR. SPRIGGS: That's correct.
MR. HAMPTON: I'm entitled to have him

answer that question.
MR. SPRIGGS: That's correct.
Q. Is that correct?
A. That's correct.
Q. All right, sir. Was your son's first wife a Jehovah's Witness?
A. Yes.
Q. Was his second wife, Kelly number 1, a Jehovah's witness?
A. No.
Q. How about Kelly number 2?
A. No.
Q. Is your son still a Jehovah's Witness?
A. No.
Q. Have you been to his home in Austin?
A. Yes.
Q. Where does he live in Austin?
A. I don't know the address.
Q. What kind of work is he doing?
A. He does tire work.
Q. What kind of tire work?
A. Truck tires.
Q. Fixes flats and so forth?
A. Yes, uh-huh.
Q. Is Kelly number 2 working, too?

A. No.
Q. Do you know where the criminal charges were filed, what county, what town?
A. Scott's, you mean?
Q. Yes.
A. No.
Q. How far did you get in school?
A. I graduated high school.
Q. In Amarillo?
A. Yes.
Q. What high school?
A. Amarillo High.
Q. And that was right before you went into the Army, correct?
A. Correct.
Q. Other than Carolyn Lee, have you been married to anyone else?
A. Yes, my current wife.
Q. Is that Judy?
A. Correct.
Q. What is her full name?
A. Judy Beatrice.
Q. When did you all get married?
A. On -- I'm sorry. Oh, I'm in trouble now.
Q. We'll come back to that. How long have you been

married?
A. Thirty-four years. September 29th, 1967, I believe.
Q. So about two years after you and Carolyn were divorced?
A. Yes.
Q. Do you and Judy have any kids?
A. No.
Q. Have you had any kids?
A. No.
Q. Now, tell me if you would, please, can you -- where you -- are you employed currently?
A. No.
Q. When is the last time you worked, the last time you were employed?
MR. SPRIGGS: Last time or place?
Q. Well, I'm going to ask both. Here's what I want you to do. I want you to either start at the first or start at the back, whichever you want to do, and take me through your work life history. Can you do that for me?
A. As best I can.
Q. That's all I can ask.
A. My last job I had was office manager for Applied Industrial Technologies here in Amarillo. And before that was -- they changed their names.

Q. Well, what name do you remember?
A. Pameco.
Q. Were you -- what was your job there?
A. Okay. That was in Dumas, and I was assistant manager there.
Q. What kind of business was Pameco?
A. The same as Applied Industrial, bearings and seals, industrial and agricultural supplies.
Q. Okay. Before that?
A. Okay. Now, that was in Dumas. Did I tell you that?
Q. Yes, sir.
A. Before that, I was working in the Hereford store of the same company.
Q. Were you living in Hereford or Dumas?
A. No, I was living in Amarillo at that time.
Q. Okay. And commuting?
A. Yes.
Q. Okay.
A. Before that, I was making barbecue sandwiches at -- I can't remember the order. Doug's, I think was the first, Doug's Bar-B-Que.
Q. Where?
A. On Georgia.
Q. Here in Amarillo?

A. Yes, uh-huh.
Q. Okay. Did you make barbecue sandwiches at more than one place?
A. No, there was several.
Q. You say no, it was several?
A. It was several places.
Q. You don't have to worry about the order, just give me the names of them.
A. Hickory Stick.
Q. What street was Hickory Stick?
A. Georgia turns into -- McMasters.
Q. Okay.
A. And, oh, I wish I could go faster with this.
MR. SPRIGGS: Take your time, just answer his question.
THE WITNESS: Uh-huh.
Q. I tell you what, I'll send you maybe an interrogatory, and you can spend -- take your time and answer this question, but --
A. Okay.
Q. -- let me make sure I understand how far we've gotten. You've told me that you lived in Dallas until you were eight or nine, and then you moved to Paris, Texas. Then you moved to Amarillo, graduated high school, joined the Army, came back to Amarillo, worked in Amarillo for a

period of time and then moved to Dumas; is that true? Is that correct?
A. I just -- I've left out --
Q. Is there somewhere you --
A. -- five years.
Q. Okay. Is there somewhere you lived between the time that you lived in Dumas and the time you lived in Amarillo?
A. I lived in New York for -- I think we went in '68 and returned in seventy -- late '72.
Q. Did you move from Amarillo to New York?
A. Yes.
Q. Did you return from New York to Amarillo?
A. Correct.
Q. Where did you live in New York?
A. Seven Cohawney Road.
Q. How do you spell Cohawney?
A. C-O- --
Q. What city?
A. -- H-O-W-N-E-Y. Scarsdale, New York.
Q. What did you do in Scarsdale, New York?
A. I didn't work in Scarsdale. I commuted into the city, and I had an agent and was doing TV commercials and industrial films and that type of thing.
Q. So you were an actor?

A. Yes, uh-huh.
Q. You've also done some of that around here, haven't you?
A. Yes, uh-huh.
Q. You've been a TV personality in the Amarillo area?
A. Correct, uh-huh.
MR. SPRIGGS: Let him finish his question now before you answer.
THE WITNESS: Okay.
Q. Tell me about that. What have you done?
A. As regards what?
Q. As a TV personality in this area.
A. Worked at Channel 10.
Q. In Amarillo?
A. Yes, uh-huh.
Q. Were you Mr. Mimikin?
A. Uh-huh, yes.
Q. Was Mr. Mimikin a clown?
A. No, he was a scientist.
Q. A scientist? What did -- did you have your own TV show?
A. Yes, uh-huh.
Q. TV show for little kids?
A. Uh-huh.

Q. Is that a yes?
A. Yes.
Q. During what period of time?
A. From '63 to '67, I believe.
Q. Tell me how this -- tell me about your show. Was it a 30 minute show?
A. No, it was an hour, but it was --
Q. An hour show?
A. -- it was mainly cartoons. That's basically what I did was introduce commercials or cartoons. There was not an audience. It was just me. My wife was also on the show as Mrs. Mimikin.
Q. Okay. So you didn't have a bunch of little kids there --
A. No.
Q. -- on the show with you?
A. No.
Q. Did you also make appearances around town?
A. Yes.
Q. And you were sort of a celebrity, right?
A. Well, I wouldn't use that word, but I was recognized when I had the costume on.
Q. And people could hire you to come to their kids' birthday parties and things like that?
A. Yes, uh-huh.

Q. Go to schools?
A. Yes.
Q. Entertain the little children?
A. Yes.
Q. When did you, Mr. Kelley, first realize that you were sexually attracted to children?
MR. SPRIGGS: I am going to object on that and assert the Fifth Amendment right.
Q. Mr. Kelley, are you going to assert your Fifth Amendment right and refuse to answer the question of when you realized -- when you first realized that you were sexually attracted to children?
A. Yes.
Q. Okay. Did you ever sexually abuse any children that you came into contact with during the period that you were portraying Mr. Mimikin the scientist?
MR. SPRIGGS: Let me object to that. Are you talking about the period between 1963 and 1967?
MR. HAMPTON: Yes, sir, or any other time that he was appearing as Mr. Mimikin.
MR. SPRIGGS: Well, I'm going to object to that and assert the Fifth Amendment right. If you're going to -- if you're not going to tie it down to those specific years, I'm going to object to that on Fifth Amendment basis and instruct my client not to answer.

MR. HAMPTON: Okay.
Q. (BY MR. HAMPTON) Mr. Kelley, do you refuse to answer the question of whether you sexually abused any children that you came into contact with while you were playing Mr. Mimikin based on your Fifth Amendment rights?
MR. SPRIGGS: Yes.
THE WITNESS: Yes.
Q. Okay. Who was your boss at Applied Industrial Technologies?
A. I can't remember his last name. His first --
Q. What's his first name?
A. First name was Frank.
Q. Frank?
A. Uh-huh.
Q. Can you remember the name of your boss at Pameco Dumas where you were assistant manager?
A. George Stidger.
Q. Was he the manager?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. How about Pameco Hereford, who was your boss there?
A. Chuck Kelley.
Q. Is he related to you?

A. Yes.
Q. How is he related?
A. He's my brother.
Q. Okay. Do you have other brothers living in this area?
A. No. That's my only sibling.
Q. Okay. Who was your agent in New York?
A. Lester Lewis.
Q. When did you become a Jehovah's Witness?
A. When I lived in New York. I don't remember a specific date.
Q. It was somewhere between 1968 and 1972?
A. Correct.
Q. Now, when you returned from New York in 1972 and you came back to Amarillo for a while and then to Dumas, did you continue to appear as Mr. Mimikin on occasions?
A. No.
Q. I don't mean on television shows, I mean --
A. I understand.
Q. -- did you continue to do your Mr. Mimikin routine for private functions?
A. No.
Q. Did you, when you returned from New York or after you got back from New York, did you ever do any kind of acting in this area again?

A. Yes.
Q. Tell me about that.
A. I lip-synched to comedy records.
Q. Where?
A. Oh, mostly -- mostly at my home or somebody else's home.
Q. This was after you had come back from New York?
A. Correct.
Q. This was after you had become a Jehovah's Witness, true?
A. True.
Q. Did you do this at Jehovah's Witness' functions? Did you do your lip-synching routine?
A. Once or twice, I think.
Q. Did you do any other acting after you got back from New York in this area?
A. I appeared at the -- at several Cowboy Poet meetings out at the Big Texan.

(Deposition Exhibit No. 11 marked for identification.)

Q. Let me show you Deposition Exhibit 11.
MR. SPRIGGS: Can you read that?
THE WITNESS: Yeah. I've seen that article before.
MR. SPRIGGS: Okay.

Q. (BY MR. HAMPTON) It appears to be a clip from a newspaper.
A. Uh-huh, yes.
Q. And it refers to you appearing at a Cowboy Poet Breakfast at Big Texas Steak Ranch?
A. That's what I just said.
Q. Now, the last sentence says that you performed in the Mr. Mimikin TV show in the 1960s?
A. Uh-huh.
Q. Right?
A. Correct.
Q. So this was after the 1960s were over, obviously?
A. Correct.
Q. There's a date scribbled or written in the margin of this article and the date is 5-7-92. You can look at it.
A. Uh-huh, yeah, I remember seeing that.
Q. Were you still performing as late as May 7th of 1992 at these Cowboy Poet Breakfasts?
A. Yeah, I was very reluctant when I was invited to do so, but I was encouraged by several members of that organization.
Q. What organization?
A. The poet --cowboy poet group.

Q. Now, can you take a look at that article, please, sir?
A. Uh-huh.
MR. SPRIGGS: This is something else, give that exhibit to her.
Q. The article refers to you as a pantomime artist?
A. Uh-huh.
Q. Is that what you were when you were appearing at these Cowboy Poet Breakfasts?
A. That's what I referred to myself as most of my life, but what that means or meant to me was lip-synching to records, and that's what I did. I put on a comedy record and like this is a picture of me lip-synching "Mule Train".
Q. Is this a picture of you while you were doing this lip-synch routine that you did when you got back from New York?
A. "Mule Train", yes.
Q. But this is the lip-synch routine?
A. Correct.
Q. And is this a publicity picture that you used?
A. I'm guessing, yes.
Q. Well, you had publicity pictures, didn't you?
A. Uh-huh.
Q. Is that a yes?

A. Yes.
Q. And when you were going to appear somewhere, you had a little press release with a publicity picture that could be sent to the newspapers for them to use, true?
A. Correct.
Q. Did you have an agent here in Amarillo?
A. Not as such. None that I, you know, paid anything to --
Q. Did you have an informal agent, an unpaid agent?
A. I had a friend at the Globe News who was the one encouraging me to not go bury myself under a rock, which is what I was trying to do.
Q. Did this friend at the Globe News book gigs for you?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. What's the friend's name?
A. I can't remember.
Q. This article says that -- it says: Kelley -- I'll read from it. It says: Kelley makes numerous television and nightclub appearances. What television appearances were you making during this period of time in the early nineties, late eighties?
A. None.

Q. So this is false?
A. Uh-huh.
Q. Is that a yes?
A. In other words -- what they probably took that from what had been written before when I was like in New York, or -- you know, because I always had a picture and then a bio on the back.
Q. The article refers to nightclub appearances?
A. Uh-huh.
Q. What nightclubs -- what nightclub appearances were you making during the late eighties, early nineties?
A. That's the same situation. In other words, it was coming from another period of my life, and they referred it to that time.
Q. What comedy records or songs did you lip-synch to besides "Mule Train"?
A. "How Could You Believe Me When I Said I Loved You When You Know I've Been a Liar All My Life" by Fred Astaire and Jane Powell.
MR. SPRIGGS: What's that again?
THE WITNESS: "How Could You Believe Me When I Said I Loved You When You Know I've Been a Liar All My Life."
MR. SPRIGGS: Okay.
THE WITNESS: It's from Royal Wedding, a

motion picture from the fifties.
Q. Do you still remember the words?
A. Do you still want more?
MR. SPRIGGS: No, that's -- I probably listened to that myself.
Q. What other songs have you lip-synched to?
A. Okay. There was the "Man on the Flying Trapeze", which was a Spike Jones number where this guy gets all of his words miscombobulated, the fly on the man in Pat trees and, you know, like that. And -- my goodness. "Yellow Rose of Texas." This was by Stan Freberg, I don't know if you're familiar with that. A lot of Stan Freberg I did.
Q. Did you dress up sort of like this fellow on Exhibit 11 looks like?
A. That's what I wore for "Mule Train".
Q. Okay. What did you wear for these other acts?
A. Oh, I would put on a different hat or a vest.
Q. But you wanted to look funny?
A. Yeah.
Q. Did kids like your act?
A. Yeah, I think they were amused sometimes, you know. Most of it was they were laughing at the record or whatever.
Q. Did you ever use this act that you've described

to us to get access to any kids to sexually abuse?
A. No.
Q. Tell me about what -- about the circumstances of you joining the Jehovah's Witnesses when you were in New York.
A. Uh-huh. A couple came to our door there in Scarsdale and I invited them in and set up a Bible study with us, and they came by and -- every week for the Bible study. And then they invited us to a meeting and it just progressed from there.
Q. Did you ever visit Bethel when you were in New York?
A. Yes.
Q. Did you ever do any work at Bethel?
A. No.
Q. How many times did you visit?
A. Twice.
Q. Tell me about the circumstances of your visits.
A. Once was when that couple took my wife and I through to show us how the books and things are produced. And then the second time was when we took another couple through.
Q. Were you baptized in New York?
A. Yes.
Q. Did you attain any position -- well, let me back

up a minute. What congregation did you belong to in New York?

A. I think it was the Hartsdale -- no, that's not -- that's not right. It was one of those small towns there in upper Westchester.

Q. Was it Scarsdale?

A. No.

Q. Was it in New York or New Jersey?

A. It was in Westchester County there by the city or west.

Q. So it was a small congregation in Westchester County?

A. Yes, uh-huh.

Q. And you don't remember the name of it?

A. It was just, you know, they call them the congregation at whatever location.

Q. What did they call this one, do you remember?

A. That's what I'm trying to recall and it was the town, and I can't remember.

Q. Do you remember what highway it was on?

A. It was -- there was a throughway, but I can't remember the name of the town.

Q. What direction from Scarsdale was it?

A. East -- northeast.

Q. How far?

A. I would just be guessing, I don't know.

Q. Well, did you commute from your house in Scarsdale --

A. Yes.

Q. -- to that Kingdom Hall?

A. Yes.

Q. How long did it take you?

A. Oh, 15 minutes.

Q. By car?

A. Yes.

Q. Did you attain any position in that congregation?

A. No.

Q. So when you left Scarsdale, you were a publisher?

A. Correct.

Q. Why did you move back to Amarillo?

A. At that time, there was terrible crime, drugs in New York, and we thought we would save the children by getting them out of that environment. And the first day we were back in Amarillo, the headlines of the paper was crime increases 40 percent in Amarillo. So it was -- you know, it was a reminder there's no escape.

Q. Did you get in any trouble in Scarsdale?

A. No.

Q. Did you molest any children in Scarsdale?

A. No.

Q. Had you molested any children yet before you moved back to Amarillo from Scarsdale?

A. No.

Q. When you returned to Amarillo in 1972, what congregation did you join in Amarillo?

A. The -- I think it's the one that later became Southwest, but I -- they were meeting at a different location, and I can't remember if they still used that one or changed it once they got further out southwest of town.

Q. Okay. Have you attended any congregations in Amarillo other than the Southwest Congregation and its predecessor?

A. You mean just going to a meeting?

Q. No, sir, I mean, being a member. I apologize.

A. Okay. I don't think so.

Q. You've been a member of whatever congregation it was in Westchester County east of Scarsdale. That's the first congregation that you joined?

A. Yes, uh-huh.

Q. The second congregation is the predecessor to Amarillo-Southwest?

A. Uh-huh.

Q. True?

A. True.

Q. The third congregation is Amarillo-Southwest, true?

A. It seems like there's another that I'm forgetting about.

Q. Well, there was Dumas.

A. No, this -- I mean, in Amarillo.

Q. Okay. So if we were going to list all the congregations to which you belonged, we have the one in New York.

A. Uh-huh.

Q. We have Amarillo-Southwest's predecessor.

A. Uh-huh.

Q. We would have Amarillo-Southwest, we would have Dumas, and there's one more that you can't remember; is that true?

A. Well, like I say, I'm not sure that there is that other one.

Q. Did you ever attain any position in the congregation that later became Amarillo-Southwest?

A. I'm sorry, one more time.

Q. Yes. Did you -- were you -- were you anything other than a publisher in the congregation that preceded Amarillo-Southwest?

A. No, huh-uh.

Q. Had that congregation become Amarillo-Southwest before you moved to Dumas?
A. I'm not sure.
Q. When did you become a ministerial servant?
A. I don't know. I -- I . . .
Q. In what congregation --
A. I never thought about --
Q. I'm sorry?
A. I said, I've never thought about a time period on that.
Q. In what congregation were you a member when you first became a ministerial servant?
A. I think it was Southwest.
Q. Was that the first or the second time you were a member of Amarillo-Southwest? In other words, was it before or after you lived in Dumas?
A. This was before.
Q. Have you ever belonged to a congregation called Parkway?
A. That's the one I was thinking about, okay.
Q. Where is Parkway Congregation?
A. Okay. That's on I-40 East.
Q. Okay.
A. I don't -- yeah. Yeah, I think I was a member of that.

Q. Now, chronologically how would that fit in the order?
A. Okay. It would be New York, the first Southwest. Parkway. Oh, my goodness, I can't remember when that -- that happened. There was just so much that was happening, you know, changing jobs and . . .
MR. HAMPTON: Okay. Do y'all want to take a little break?
THE VIDEOGRAPHER: Going off the record, the time is approximately 10:18 a.m.
(Agreed recess.)
THE VIDEOGRAPHER: Now back on the record, the time is 10:31 a.m.
Q. (BY MR. HAMPTON) Mr. Kelley, you were married to Judy during the time that you lived in New York; is that correct?
A. No, we got married here. Those years I get confused a lot about.
Q. Who was your wife during the years you lived in New York?
A. Judy was.
Q. Well, that's -- yeah. Let's back up.
A. I didn't get married in New York to her.
Q. Yeah, I'm sorry. Let me ask the question again. You married Judy before you moved to New York?

A. Right.
Q. And she lived with you in New York?
A. Yes.
Q. And did the three kids live with you in New York?
A. Yes.
Q. Why did you and Caroline get divorced?
A. Oh, incompatibility, I guess, is the --
Q. Did you --
A. -- short version.
Q. Did she voluntarily give up custody of the kids?
A. Yes.
Q. Have any of your kids ever been sexually abused?
A. Not that I know of.
Q. When did you first become an elder?
A. I'm not sure.
Q. Have you been an elder in -- well, strike that.
Were you an elder in the congregation that was the predecessor to Southwest?
A. No.
Q. Were you an elder in Parkway?
A. No.
Q. Were you an elder in Amarillo-Southwest before you moved to Dumas?
A. I don't know. That's the one I'm not sure of.

Q. But you know you were an elder in Dumas?
A. Correct.
Q. As an elder, you went to meetings of other congregations within the circuit, did you not?
A. Yes.
Q. Are Amarillo-Southwest and Dumas in the same circuit?
A. Yes.
Q. When you were at Dumas, when you lived in Dumas, who were the elders in that congregation besides yourself that you remember?
A. There was Lyle Jones and Rodney Jones, Doug Dickman and that's the only three I can call to mind right now.
Q. Who was the presiding overseer?
A. Here again, I'm not sure.
Q. Was it one of those three?
A. I don't remember.
Q. Who was the circuit overseer?
A. That I really don't remember.
Q. What elders do you remember at Amarillo-Southwest predecessor?
A. Chuck Regal.
Q. Do you remember who the presiding overseer was when you were going to Amarillo Southwest's predecessor?

A. No.
Q. Do you remember the circuit overseer?
A. No.
Q. Do you remember the names of any elders at Parkway?
A. No.
Q. Is Parkway in the same circuit as Dumas and Amarillo-Southwest?
A. Yes.
Q. When you left Dumas and came back to Amarillo, did you join Amarillo-Southwest immediately?
A. Yes.
Q. Who were the elders there? We know Chuck Regal was an elder, don't we?
A. Right.
Q. Is there a Larry Laws?
A. Yes.
Q. Is he an elder?
A. Yes.
Q. Was there a Cartwright?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. What's his first name?
A. I can't remember.

Q. Can you remember the names of any other elders at Amarillo-Southwest when you were there?
A. I'm sorry, I can't.
Q. In Exhibit 10, this answer that you -- or this document that you filed with the court, you state that you moved from Dumas to Amarillo in 1989 for business reasons. What were those business reasons?
MR. SPRIGGS: I'm going to object to that question and -- based on the Fifth Amendment. I think the document speaks for itself. Instruct my client not to answer.
Q. So, Mr. Kelley, are you going refuse to answer on the basis of the Fifth Amendment the question of what the business reason that you moved from Dumas to Amarillo in 1989 was?
A. Yes, I am.
Q. Was there something other than a business reason that caused you to move from Dumas to Amarillo?
A. No.
Q. Is there something about the business you were in in 1989 that you believe put you in jeopardy of criminal exposure?
A. No.
Q. Is there something about the circumstances of why you moved from Dumas to Amarillo in 1989 that you

believe causes you criminal exposure?
MR. SPRIGGS: I'm going to object to that, and instruct my client not to answer based upon the Fifth Amendment.
Q. So, Mr. Kelley, are you going to refuse to answer the question of whether there was anything about the circumstances of you moving from Dumas to Amarillo that causes you to worry about criminal exposure on the basis of the Fifth Amendment?
A. Yes, I am.
Q. How would you characterize the role of an elder in the Jehovah's Witnesses?
A. They are a leader of the congregation and teacher. They handle the business of the congregation.
Q. Anything else?
A. I'm sure there are, but that's about all I can think of right now.
Q. When you were an elder in Dumas and any other congregations in which you were an elder, you recognized that you were perceived as a leader in that congregation?
A. Yes.
MR. JONES: Object to form.
Q. You recognized that you were perceived as a teacher in that congregation, true?
MR. SPRIGGS: Object to form. You still

need to answer.
THE WITNESS: I'm sorry, what did you say?
MR. SPRIGGS: You still need to answer.
THE WITNESS: Oh.
A. Yes.
Q. (BY MR. HAMPTON) You recognized that your role was to "shepherd the flock" as that term is used in the title of the book that you used to guide you in your responsibilities, correct?
MR. SPRIGGS: Object to form, but you still need to answer.
A. Yes.
Q. You've heard that term shepherd the flock quite a bit, have you not?
A. Yes.
Q. What does shepherd the flock mean, Mr. Kelley?
MR. JONES: Object to form.
Q. What does it mean to you?
A. Protect it.
Q. Protect it?
A. (Witness nods head up and down.)
Q. Is that a yes?
A. Yes.
Q. And that's the meaning of the term in the Jehovah's Witness organization, is it not?

MR. JONES: Object to form.
A. Yes.
Q. The flock is the congregation?
A. Yes.
Q. True?
A. Yes.
Q. The elder is the shepherd?
A. Yes.
Q. And when the term shepherd the flock is used in the Jehovah's Witness Congregation, what that means is that the elder is supposed to protect the congregation?
MR. SPRIGGS: Object to form.
MR. JONES: Object to form.
A. Yes.
Q. Protect the congregation specifically from evil, correct?
MR. SPRIGGS: Object to form.
A. Yes.
Q. And you recognized when you were an elder that that was your role?
MR. SPRIGGS: Object to form.
A. Yes.
Q. You recognized that that's what the congregation expected you to do?
MR. SPRIGGS: Object to form.

A. Yes.
Q. And you accepted that role willingly?
MR. SPRIGGS: Object to form.
A. Yes.
Q. The elders are regarded as leaders in the organization you've told us.
MR. SPRIGGS: Object to form.
A. Yes.
MR. JONES: Object to form.
Q. Members of congregations are taught to look up to the elders?
MR. SPRIGGS: Object to form.
A. Yes.
Q. Members of the congregation are taught to trust the elders?
MR. SPRIGGS: Object to form.
A. Yes.
Q. Members of the congregation are taught to rely on elders to protect them?
MR. SPRIGGS: Object to form.
A. Yes.
Q. You said that elders are also responsible for handling the business of the congregation?
A. Yes.
Q. And that would include handling the finances of

the congregation?
A. Yes.
Q. That would include taking care of the Kingdom Hall?
A. Yes.
Q. Both in terms of maintenance and in terms of the financial structure?
A. Yes.
Q. That would in turn -- that would -- excuse me.
The administrative or the business function of the congregation from time to time would include investigating reports of misconduct?
MR. SPRIGGS: Object to form.
Q. Correct?
A. Yes.
Q. The administrative or business side of the elders' job would, from time to time, include disciplining members of the congregation who committed misconduct?
MR. JONES: Object to form.
MR. SPRIGGS: Object to form.
A. Yes.
Q. The elders act in committees oftentimes, do they not?
A. Yes.
Q. And you served on committees while you were an

elder, did you not?
A. Yes.
Q. And you served on committees that took care of the finances of the congregation?
A. I don't remember.
Q. Did you serve -- well, let me ask you this: Were there committees that took care of the finances of the congregation?
A. I think so.
Q. Were there committees that took care of the Kingdom Hall, the physical plant?
A. I'm not sure. I don't think they were called committees or, you know.
Q. Okay. Well, one thing for sure is that the function of investigating reports of misconduct within the congregation are handled by what's called judicial committees; is that true?
A. Correct.
Q. And those judicial committees are acting in the administrative -- in the administrative capacity of the elders; is that correct?
MR. JONES: Object to form.
MR. SPRIGGS: Object to form.
A. Yes.
Q. And if the admin -- if a judicial committee

investigates misconduct and imposes discipline, again, that function is in the administrative capacity of the elders, correct?

MR. JONES: Object to form.

MR. SPRIGGS: Object to form.

A. Yes.

Q. Did you ever serve on a judicial committee?

A. Yes.

Q. On how many times?

A. I don't remember.

Q. More than once?

A. Yes.

Q. Starting with the first time you remember being on a judicial committee, what were the allegations that you were investigating?

MR. SPRIGGS: I'm going to object, instruct my client not to answer that based on Rule 505, Texas Rules of Evidence.

MR. JONES: I join in that objection.

Q. Now, I'm not asking you for the name of the individual. I'm not asking you for the name of the victim. I'm not asking you for any specific names or dates, Mr. Kelley. I'm asking you just to tell me what the nature of the allegations that you were investigating were the first time you remember serving on a judicial

committee?

MR. SPRIGGS: I'm still going to raise that same objection and instruct my client not to answer that.

Q. Are you refusing to answer the question that I've asked at your counsel's -- based on your counsel's advice and instruction?

A. Yes, I am.

Q. When you served on this judicial committee, did you meet with the accused?

A. Yes.

Q. Did you meet with the accuser?

A. Sometimes.

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

A. Yes --

MR. SPRIGGS: Object to form. You still can answer.

A. Yes.

Q. In other words, the committee had told the accused to come meet with them?

MR. SPRIGGS: Object to form.

A. Yes.

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

MR. SPRIGGS: Object to form.

A. Yes.

Q. And these judicial committees are comprised of how many elders typically?

MR. SPRIGGS: Object to form.

A. I can't remember the minimum required, but --

Q. Was it usually three?

A. Yes, it was usually three.

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

MR. SPRIGGS: Object to form.

A. Sometimes.

MR. HAMPTON: What's the basis of your objection?

MR. SPRIGGS: What was the question again?

MR. HAMPTON: What was the basis of your objection.

MR. SPRIGGS: What was the question and I'll tell you my objection -- the basis.

MR. HAMPTON: Why don't you read the question back.

(The requested information was read.)

MR. SPRIGGS: It calls for speculation.

MR. HAMPTON: Okay.

MR. SPRIGGS: It's arbitrary.

MR. HAMPTON: It's what?

MR. SPRIGGS: Arbitrary.

MR. HAMPTON: Arbitrary?

MR. SPRIGGS: Uh-huh.

MR. JONES: My objection is that it tends to infringe upon the First Amendment rights of my clients.

MR. HAMPTON: Okay.

Q. (BY MR. HAMPTON) And when you met with -- when you and other members of the judicial committees that you served on met with the accused, the purpose was for the accused to respond to the allegations that had been made, correct?

MR. JONES: Object to form.

MR. SPRIGGS: Object to form.

A. Yes.

Q. As an elder, were you expected to attend Kingdom Ministry Schools?

A. Yes.

Q. Did you attend Kingdom Ministry Schools?

A. Yes.

Q. When you were an elder in, for example, the Dumas Congregation, did you attend Kingdom Ministry Schools?

A. Yes.

Q. Every three or four years or so?

A. I don't remember exactly, but a period of time.
Q. Okay. You attended more than one, did you not?
A. I can't remember that either.
Q. What meetings did you go to when you were an elder that included elders of the other congregations? Let me help you out. One of them was Kingdom Ministry Schools that you've talked -- we've talked about, true?
A. True.
Q. Did you have meetings of the other congregations in the circuit from time to time?
A. True.
Q. Were they called circuit assemblies?
A. Yes.
Q. And what other meetings would you have while you were an elder at Dumas that included other elders?
A. There would be district assemblies.
Q. Okay. Any others?
A. When the circuit overseer or district overseer visits the congregation, there would be meetings.
Q. Now, when you would go to these meetings, such as the circuit assemblies and the district assemblies and the Kingdom Ministry Schools and you would see elders from other congregations, did you get to know them, some of them?
A. Yes.

Q. And at all of these meetings, at the Kingdom Ministry Schools, at the circuit assemblies, at the district assemblies, while you were a Dumas elder, there would be elders from Amarillo-Southwest there as well, would there not?
A. Yes.
Q. And you knew Chuck Regal from the days that you were a member and he was an elder at whatever cong -- whatever the name of the congregation was that preceded Amarillo-Southwest, true?
A. Yes.
Q. And you would see Chuck Regal at the circuit assemblies, at the district assemblies and the Kingdom Ministry Schools while -- after you had become an elder in Dumas, true?
A. Yes.
Q. And Chuck Regal was somebody that you knew on a personal basis?
A. Yes.
Q. And you would speak to him?
A. Yes.
Q. And he knew that you were an elder in Dumas, didn't he?
A. Yes.
MR. SPRIGGS: Object to form.

Q. He would have to know that you were an elder in Dumas, because only elders attend the Kingdom Ministry School, true?
MR. SPRIGGS: Object to form.
A. Yes.
Q. And in order to get into the Kingdom Ministry School, you have to be an elder, right?
MR. SPRIGGS: Object to form.
A. Yes.
Q. And you saw Chuck Regal at Kingdom Ministry Schools when you were an elder in Dumas?
A. Yes.
Q. And you saw Chuck Regal at district and circuit assemblies after you became an elder in Dumas, did you not?
A. Yes.
Q. And once again, you wouldn't be there if you were not an elder, true?
MR. SPRIGGS: Object to form.
A. Yes.
Q. Did you and Mr. Regal discuss the fact that you had become an elder in the Dumas congregation?
MR. SPRIGGS: I'm going to object to that and instruct my client not to answer that based upon Rule 505, Texas Rules of Evidence.

MR. HAMPTON: And what possible application of Rule 505 or what possible application would Rule 505 have to a conversation with Mr. Regal and Mr. Kelley about his becoming an elder?
MR. SPRIGGS: Well, because any discussions that he may have with Mr. Regal, he may be making those in confidence.
Q. (BY MR. HAMPTON) Did you -- did Mr. Regal congratulate you for becoming an elder in the Dumas congregation?
A. I don't remember.
Q. Do you recall having any confidential conversations with Chuck Regal at either Kingdom Ministry School or district assembly or circuit assembly about your becoming an elder in the Dumas congregation?
MR. SPRIGGS: I'm going to object to that and instruct my client not to answer based upon Rule 505.
Q. Do you remember that ever even happening?
MR. SPRIGGS: Instruct my client not to answer.
Q. So you refuse to tell me whether or not you even had a confidential conversation with Chuck Regal?
A. I do.
Q. Did you ever make any confession to Chuck Regal at a Kingdom Ministry School, did you ever confess to

anything?
MR. SPRIGGS: I'm going to raise the same objection based upon Rule 505 and instruct my client not to answer.
Q. You're screwing up your face. You don't remember ever confessing to Chuck Regal at a Kingdom Ministry School, do you?
MR. SPRIGGS: I'm going to instruct my client not to answer that based on 505. And we will object to the sidebar comment about him screwing up his face, because there are a lot of faces in here screwed up.
MR. HAMPTON: Stipulate to that.
MR. SPRIGGS: Okay.
(Discussion off the record.)
Q. (BY MR. HAMPTON) Now, you know from your experience as an elder that elders receive instructions about a broad range of topics from the Watchtower Society, true?
A. True.
Q. Those instructions come in written form or in the form of letters to all bodies of elders, correct?
THE REPORTER: I'm sorry, all?
Q. Yeah, let me ask that question again. Some of those instructions come in writing in the form of letters addressed to all bodies of elders?

A. True.
Q. Some of those instructions come at the Kingdom Ministry School?
A. True.
Q. Some of those instructions come in the books that the elders use?
A. Yes.
Q. And elders are expected to obey those instructions and carry them out?
MR. JONES: Object to form.
Q. True?
A. True.
Q. Now, based on your experience as an elder in the Dumas Congregation, were the other elders at the Dumas Congregation good about strictly carrying out the instructions that they received from the Watchtower Society?
MR. SPRIGGS: I'm going to object to -- object based upon Rule 505 and instruct my client not to answer.
Q. Were the elders at the Amarillo Congregation good about strictly following the instructions they received from the Watchtower Society?
MR. SPRIGGS: I'm going to raise the same objection and instruct my client not to answer that.

Q. (BY MR. HAMPTON) And you're going to obey your counsel's instruction and refuse to answer that question for me?
A. Yes, I am.
Q. Okay.
MR. JONES: And I'm going to object to form just while we're here.
MR. HAMPTON: And the basis of your objection to form?
MR. JONES: Is that it's vague.
Q. (BY MR. HAMPTON) You remember being instructed on things as mundane as to how to keep files in the Kingdom Hall, don't you?
A. I -- I don't --
Q. You don't remember that?
A. -- remember that, huh-uh.
Q. Okay. Do you remember letters from the Watchtower Society about -- you don't remember letters about how to keep the filing system?
A. No, I don't.
Q. Okay. Can you think of any instruction that you and the other elders at Dumas ever received from the Watchtower Society that you didn't strictly obey?
MR. JONES: I'm going to object to form.
A. No, I don't.

Q. Can you think of any instruction that the elders at Amarillo-Southwest, to your knowledge, ever received that they didn't strictly obey?
A. I don't know.
Q. When you moved from Dumas to Amarillo and joined the Amarillo-Southwest Congregation, you were still a Jehovah's Witness, were you not?
A. Yes.
Q. You had neither disassociated nor been disfellowshipped?
A. Correct.
Q. The first time you were -- the first and only time you were ever disfellowshipped was after you pled guilty to sexual abuse of Amy Betzen and Tamara Jordan, correct?
A. Would you --
Q. Yeah. And I -- I can see why that question would cause you trouble. You've only been disfellowshipped once; is that true?
A. Yes.
Q. And that result -- that was the result of the sexual abuse that you committed in the early nineties in Amarillo, correct?
A. Correct.
Q. Okay. Were you disfellowshipped on April 23,

1992?
A. I'm not sure. I don't recall the date.
Q. And tell me in your words why you were disfellowshipped.
MR. SPRIGGS: Object to form. I'm going to instruct my client not to answer that based upon the Fifth Amendment.
Q. Now, Mr. Kelley, are you going to assert your Fifth Amendment rights and refuse to tell us and tell the jury why you were disfellowshipped?
A. Yes, I am.
Q. Were you disfellowshipped by the Amarillo-Southwest Congregation?
A. Yes.
Q. Have you ever been reinstated?
A. No.
Q. Have you ever applied to be reinstated?
A. No.
Q. Have you ever made any effort at all to be reinstated?
A. No.
Q. Have you been told whether or not you would be reinstated?
MR. SPRIGGS: I'm going to object to that based upon Rule 505 of the Texas Rules of Evidence,

instruct my client not to answer.
Q. You're going to refuse to answer that question?
A. Yes, I am.
Q. Have you discussed with anyone whether or not you could be reinstated?
MR. SPRIGGS: I'm going to object to that based on Rule 505, Texas Rules of Evidence, and instruct my client not to answer.
Q. When you moved from Dumas to Amarillo, what position in the church did you occupy?
A. I believe I was just a publisher at that time.
Q. Okay. Have you been back to a Kingdom Hall since you got out of prison?
A. I may have. I don't remember.
Q. When is the last memory you have of going to a Kingdom Hall?
A. I remember being seated on the back row and Amy Betzen's father looking at me and very upset.
Q. When was this?
A. This was shortly after I got out of prison.
Q. Was this at Amarillo-Southwest or Parkway?
A. Amarillo-Southwest.
Q. Have you attended any meetings at Parkway since you got out of prison?
A. No.

Q. In Exhibit 10 you make the statement on page 2: I was immediately removed from all positions of authority and was forbidden to make any comment at any meeting.
Were those restrictions in place when you moved from Dumas to Amarillo?
MR. JONES: Objection, form.
MR. SPRIGGS: I'm going to object -- I'm going to object to that also, too, based upon the Fifth Amendment right and instruct my client not to answer any questions regarding that document.
Q. (BY MR. HAMPTON) Mr. Kelley, are you going to refuse, based on your Fifth Amendment right, to tell the jury whether or not you were still under the restrictions that you describe in Exhibit 10?
A. Yes, I am.
Q. Is Exhibit 10 a document that bears your signature on the third page?
MR. SPRIGGS: I'm going to object to that and instruct my client not to answer regarding any -- based upon the Fifth Amendment regarding any question regarding that document. I think the document speaks for itself.
Q. Is that your signature, Mr. Kelley?
MR. SPRIGGS: I'm going to instruct my client not to answer any questions regarding that document

based upon his Fifth Amendment right.
Q. Are you going to assert the Fifth Amendment to the U.S. Constitution and not tell the jury whether or not this is your signature on the third page of this document that you've already told us you filed with the court?
A. Yes, I am.
Q. Did you type Exhibit 10?
MR. SPRIGGS: Once again, I am going to object to that -- object to that and instruct my client not to answer based upon the Fifth Amendment, his Fifth Amendment right.
MR. JONES: And I'm just going to object to form.
MR. SPRIGGS: Instruct him not to answer.
Q. (BY MR. HAMPTON) Mr. Kelley, I mean you no disrespect, and I don't mean to be badgering you and I hope you don't think I am, but are you going to assert your Fifth Amendment right to the U.S. Constitution and refuse to tell the jury whether or not you typed the document that you've already testified you filed with the court?
A. Yes, I am.
Q. When a brother in the Jehovah's Witnesses moves from one congregation to another, is a letter of introduction sent from the first congregation to the

second?
MR. JONES: Object to form.
MR. SPRIGGS: I'm going to object to form.
A. I don't know if it is every instance. Sometimes.
Q. Do you know whether a letter of introduction was sent from Dumas to Amarillo when you moved?
A. I don't know.
Q. Did any elders in Dumas meet with you before you moved to discuss your move to Amarillo?
A. Not as -- as elders or a committee.
Q. Okay. So there was no meeting where elders at the Dumas Congregation met with you and told you that they would not be giving you a letter of introduction to Amarillo?
MR. SPRIGGS: I'm going to object and instruct my client not to answer based upon Rule 505, Texas Rules of Evidence.
Q. Do you refuse to answer that question?
A. Yes.
Q. Did Don Regal, to your knowledge, know that you had been stripped of your position by the Dumas Congregation when you came to Amarillo?
MR. JONES: Object to form.
A. I'm sorry, Don Regal?

Q. Chuck Regal.
A. Okay.
MR. JONES: Same objection.
MR. SPRIGGS: Object to form.
Q. Let me ask the question again so y'all -- I want y'all to get your harmony down.
MR. JONES: Getting this stereophonically, is that it?
MR. HAMPTON: Getting it stereophonically.
MR. SPRIGGS: I'm the leader.
Q. (BY MR. HAMPTON) I'm going to ask it again and don't answer, let them object.
Did Chuck Regal know when you moved from Dumas to Amarillo that you had been stripped of your position as an elder by the Dumas Congregation?
MR. JONES: Object to form.
MR. SPRIGGS: Object to form.
A. Did he know?
Q. Yes, sir.
A. I don't know. I thought he did.
Q. And what was the reason that you thought he did?
MR. JONES: I'm going to object to this if it gets into a conversation with Mr. Regal that might be privileged under 505.
MR. SPRIGGS: I would agree and raise the

same objection. So if this goes to a conversation you had with Mr. Regal, I'm going to instruct you not to answer.
Q. (BY MR. HAMPTON) Well, let me just ask you this question, then: Is the reason that you thought that Mr. Regal knew that you had been stripped of your position by the Dumas Congregation based on a conversation that you had with Mr. Regal?
MR. SPRIGGS: And I'm going to --
Q. I don't want you to tell you -- tell me about the conversation, just tell me yes or no --
MR. SPRIGGS: Now I'm going to --
Q. -- whether it did.
MR. SPRIGGS: Now I'm going to object under Rule 505, and instruct my client not to answer that question.
MR. HAMPTON: So let this get this straight. You object to me asking the basis of his belief that Chuck Regal knew that Dumas had stripped him of his position as an elder if the basis of that belief was the result of a conversation with Chuck Regal. And then you go one step further and refuse to let him answer whether or not the basis of your first objection is valid. Is that what you're doing?
MR. SPRIGGS: I think you lost me in all of these reasonings.

MR. HAMPTON: Well, you -- no, actually you've lost me.
MR. SPRIGGS: No, I think the record is clear -- no, the record is clear where I made my objection.
MR. HAMPTON: Well then, let's do it again and make sure that I've got it right.
MR. SPRIGGS: Okay. I apologize, but you lost me.
Q. (BY MR. HAMPTON) What is the reason that you think that Chuck Regal knew that you had been stripped of your position as an elder by the Dumas Congregation?
MR. SPRIGGS: And I'm going to instruct my client that, if it's based on a conversation he had with Chuck Regal, that he not answer based on Rule 505, Texas Rules of Evidence.
MR. HAMPTON: Okay.
MR. JONES: I join that objection.
Q. (BY MR. HAMPTON) Now your counsel, as well as the Jehovah's Witness lawyer, has said that you should not answer that question if the basis for that belief is a conversation that you had with Mr. Regal. So my question is: Is it based on a conversation you had with Mr. Regal or not?
MR. SPRIGGS: And still my response to

that, if it is based upon a question -- I mean, if it is based upon a conversation, that you not answer that.

Q. Okay. If it's based on a conversation, don't answer it. But if it isn't based on a conversation, if it's based on something else, I want the jury to get the benefit of your testimony.

A. My answer is no, it was not based upon a conversation with Chuck Regal.

Q. Good. What was it based on?

A. Just my understanding of how many times a letter of introduction is sent from one congregation to another. I didn't know for sure. I hadn't asked anybody, but I just assumed.

Q. So you assumed that Mr. Regal knew that you had been stripped of your position because of your understanding of the way the Jehovah's Witness organization functions? Would that be fair to say?

A. Yes.

Q. Based on your understanding of what the organization does when a member moves from one congregation to the next?

A. Sometimes.

Q. And you also knew that when an elder is deleted as an elder -- which is what happened to you in Dumas, true?

A. Correct.

Q. You know that a form is filled out and sent to the Watchtower Society, do you not?

MR. JONES: I'm going to object to form.

MR. SPRIGGS: Object to form.

MR. JONES: My specific objection is to the use of the phrase Watchtower Society.

MR. HAMPTON: What do you want me to call it? You tell me and I'll call it anything you want.

MR. JONES: You chose the names when you sued us.

MR. HAMPTON: Okay.

Q. (BY MR. HAMPTON) You know, do you not, that when an elder is deleted, a form is filled out by the congregation that deletes the elder, and that form is sent to the defendants in this lawsuit, don't you?

MR. SPRIGGS: Object to form.

MR. JONES: Object to form.

MR. HAMPTON: You don't want me to call you the defendants in the lawsuit?

MR. JONES: My objection now is that it's vague. There's several defendants.

MR. HAMPTON: That's a good point.

Q. (BY MR. HAMPTON) You know that when an elder is deleted by a congregation the congregation fills out a

form and sends it to Bethel, do you not?

MR. SPRIGGS: Object to form.

MR. JONES: Object to form.

A. Here again, I assumed that, but it was not knowledge that I was aware of.

Q. Uh-huh. Where did you assume the form was being sent? I want to get the name right so I can use it right.

MR. SPRIGGS: Object to form.

Q. Should I call it Bethel? Should I call it the Watchtower Society? What should I call it?

MR. SPRIGGS: Object to form.

A. Many times they just say we're sending it to the brothers.

Q. Okay.

A. In New York.

Q. Can I refer to it as the brothers in New York then, so that you and I can be on the same wavelength?

MR. JONES: You can, but I'll object to form.

MR. HAMPTON: I'm not worried about that. I just want him to understand what I'm talking about.

Q. (BY MR. HAMPTON) Would you refer to it in your vernacular as the brothers in New York?

A. Yes.

Q. Okay. Well, so that you and I can communicate,

I'll do the same.

(Deposition Exhibit No. 12 marked for identification.)

Q. Look at Exhibit 12 to your deposition or Deposition Exhibit 12.

MR. SPRIGGS: Sticker upside down.

MR. HAMPTON: Well, object to form.

(Discussion off the record.)

MR. HAMPTON: Has the witness seen it yet? Are we going to show it to him?

MR. SPRIGGS: No, the lawyers see it first.

MR. JONES: Has it got a number on it?

MR. HAMPTON: 12.

MR. JONES: I mean a Bates number.

MR. JENSEN: No, it has not been produced.

MR. SPRIGGS: You've seen it?

THE WITNESS: Yes.

MR. SPRIGGS: Hold on, I think he's going to have questions --

THE WITNESS: Okay.

MR. SPRIGGS: -- regarding that.

Q. (BY MR. HAMPTON) That is a document that is used when ministerial servants or elders are recommended by a congregation, true?

MR. SPRIGGS: Object to form.

A. This is the first time I have ever seen it.
Q. Okay. Well then, we'll go on to something else.
A. Okay.
Q. Thank you.

(Discussion off the record.)

Q. When you moved back from Dumas to Amarillo, did you ever attain any position other than publisher?
A. No.
Q. Were you ever a ministerial servant?
A. I don't remember.
Q. Okay. Don't remember whether or not you were a ministerial servant?
A. After coming back from Dumas.
Q. Okay. You spoke up at meetings?
A. Yes.
Q. You led out for service?
MR. SPRIGGS: Object to form.
A. No.
MR. SPRIGGS: But you can answer.
Q. I didn't understand your answer.
A. No, I didn't lead out.
Q. But you went on service?
A. Yes.
Q. You took groups of people out on service?
A. I went with groups of people.

Q. You assigned people?
A. No. I went with people.
Q. Okay.
A. And brothers that were elders or ministerial servants would make the assignments.
Q. So you deny that you in any way supervised service?
A. Yes.
MR. SPRIGGS: Object to form.
A. After.
Q. Okay. Did you lead Bible study?
A. No.
Q. Handle the microphone?
A. No.
Q. Take care of music?
A. No.
Q. None of that stuff?
A. No.
Q. Well, what functions, other than speaking up at meetings, did you do? What did you do in the congregation other than that?
A. That's it.
Q. Okay. Who did you molest in Dumas?
MR. SPRIGGS: I'm going to object to that under the Fifth Amendment, and instruct my client not to

answer.
Q. Do you refuse to tell the jury, based on the Fifth Amendment, who you sexually abused in Dumas?
MR. SPRIGGS: I'm going to instruct my client under the Fifth Amendment not to answer that question.
Q. Well, I think I'm at least entitled to have him tell me he's not going to answer it. Are you going to answer my question?
A. I respectfully refuse to answer on the grounds I might incriminate myself.
Q. Okay. What did you do to that person in Dumas?
MR. SPRIGGS: I'm going to raise the same objection under the Fifth Amendment, instruct my client not to answer.
Q. Are you going to answer that question?
A. No.
Q. Based on the Fifth Amendment?
A. Yes.
Q. How many times did you sexually assault someone in Dumas?
MR. SPRIGGS: I'm going to raise the same objection under the Fifth Amendment, instruct my client not to answer.
Q. Do you refuse to answer?

A. I refuse to answer.
Q. How many people did you sexually abuse in Dumas?
MR. SPRIGGS: Same objection, the Fifth Amendment.
Q. Do you refuse to answer?
A. I refuse to answer.
Q. Did you admit to the elders in Dumas that you had committed sexual abuse of one or more people?
MR. SPRIGGS: Fifth Amendment, same objection -- objection, Fifth Amendment.
MR. JONES: I'll add an objection under 505.
Q. (BY MR. HAMPTON) So you refuse to answer the question, based on the Fifth Amendment to the U.S. Constitution of whether you admitted to the elders in Dumas that you sexually abused one or more children?
A. Yes.
MR. SPRIGGS: And also under Rule 505.
Q. Did the elders in Dumas convene a judicial committee to investigate the circumstances of the sexual abuse you committed against one or more people?
MR. SPRIGGS: I'm going to raise -- I'm going to object to that based upon the Fifth Amendment, also under Rule 505.
Q. Do you refuse to answer that question based on

the Fifth Amendment?
A. Yes.
Q. Did you ever sexually abuse anyone in the Dumas Kingdom Hall?
MR. SPRIGGS: Same objection.
Q. Do you refuse to answer that question?
A. I refuse to answer that question.
Q. Based on the Fifth Amendment?
A. Yes.
Q. Did the Dumas Congregation discipline you for committing one or more acts of sexual abuse against children?
MR. SPRIGGS: I'm going to object to that, and instruct my client not to answer based upon the Fifth Amendment, also based upon Rule 505.
Q. Do you refuse to answer that question?
A. I refuse to answer, yes.
Q. Based on the Fifth Amendment?
A. Correct.
Q. Did the Dumas Congregation report the fact that you had been deleted as an elder for committing sexual assault on one or more children to the brothers in New York?
MR. JONES: Object to form.
MR. SPRIGGS: I'm going to object -- excuse

me, what was that question again? I'm sorry.
MR. HAMPTON: Go ahead and object to it. This is one you need to object to.
MR. SPRIGGS: Let me object to that under rule -- Fifth Amendment, also Rule 505.
Q. (BY MR. HAMPTON) Okay. So do you refuse to answer the question of whether the Dumas Congregation elders reported to the brothers in New York the fact that you had been deleted as an elder because of sexually assaulting one or more children?
A. Yes, I do.
Q. Isn't it true that you were stripped of all positions of authority by the Dumas Congregation after you admitted committing sexual assault on one or more children there?
MR. SPRIGGS: Object to that on the Fifth Amendment and also under Rule 505, and instruct my client not to answer.
Q. Do you refuse to answer those questions?
A. Yes.
Q. How long were the restrictions imposed by the Dumas Congregation on you in place?
MR. SPRIGGS: I'm going to object to that based upon the Fifth Amendment, also under Rule 505, and instruct my client not to answer.

Q. Do you refuse to answer that question based on the Fifth Amendment?
A. Yes, I do.
Q. Were those restrictions that were imposed after you admitted sexually assaulting one or more children still in place when you moved to Amarillo?
MR. SPRIGGS: I'm going to object upon -- I'm going to object to that based on rule -- the Fifth Amendment, also Rule 505, and instruct my client not to answer.
Q. Do you refuse to answer that question?
A. Yes.
Q. Based on the Fifth Amendment?
A. Correct.
Q. Based on the -- your privilege to avoid doing anything that would incriminate yourself?
A. Yes.
Q. Okay. So you would refuse to answer any questions about any sexual assaults that you have committed in Amarillo because any such testimony might incriminate yourself, true?
MR. SPRIGGS: No, don't answer that. I'm going to object to that based upon the Fifth Amendment, Rule 505, and instruct my client not to answer.
Q. So you refuse to answer that question?

A. Yes.
Q. And you refuse to answer the question of what -- of what the Dumas Congregation did or didn't do as a result of your admitting sexually assaulting one or more children, true?
MR. SPRIGGS: I'm going to object to that question, and instruct my client not to answer based upon the Fifth Amendment right and also Rule 505.
Q. You refuse to answer that question?
A. Yes.
Q. When did you meet Amy Betzen?
MR. SPRIGGS: I'm going to object to that, and also instruct my client not to answer based upon the Fifth Amendment.
Q. So you refuse to give any testimony about when you first met Amy Betzen based on the possibility that it might further incriminate yourself?
MR. SPRIGGS: I'm going to object to that based on the Fifth Amendment, instruct my client not to answer.
Q. You refuse to answer?
A. Yes.
Q. When did you first realize you were sexually attracted to Amy Betzen?
MR. SPRIGGS: I'm going to instruct my

client not to answer that based on the Fifth Amendment, and instruct him not to answer that question.
Q. Do you refuse to answer that question based on the Fifth Amendment?
A. Yes.
Q. How old was Amy Betzen when you first met her?
MR. SPRIGGS: I'm going to instruct my client not to answer that, object to it based upon the Fifth Amendment.
Q. You refuse to tell us how old she was when you first met her?
A. Yes.
Q. Based on the Fifth Amendment?
A. Yes.
Q. Had you known Ms. Betzen's family?
MR. SPRIGGS: I'm going to instruct my client not to answer that question based on the Fifth Amendment, instruct him not to answer.
Q. Do you refuse to answer that question?
A. Yes.
Q. Who is -- do you know J. D. and Carla Huffman?
MR. HAMPTON: You better object.
MR. SPRIGGS: We don't know who they are.
Q. Do you know them?
A. I don't think so.

Q. Do you know somebody named Joan that's got five kids named Rachel, Esther, Mary Jo, Laurie and Nicky?
A. Wait a minute. I think I remember J. D. and Carla.
Q. Uh-huh.
A. Now, what's the next group?
Q. A lady named Joan who was related to Amy Betzen somehow and had five kids named Rachel, Esther, Mary Jo, Laurie and Nicky?
MR. SPRIGGS: She is related to Amy Betzen then I would object on the Fifth Amendment, and instruct my client not to answer.
Q. So you're not going to answer any questions about whether or not you know this lady named Joan based on the Fifth Amendment?
A. Yes.
Q. Did J. D. and Carla Huffman know that you had sexually assaulted one or more children in Dumas?
MR. SPRIGGS: I'm going to object --
MR. JONES: Object to form.
MR. SPRIGGS: -- on the Fifth Amendment, and instruct my client not to answer that question.
Q. You refuse to answer?
A. Yes.
Q. Based on the Fifth Amendment?

A. Yes.
Q. Were you married when you met Amy Betzen?
MR. SPRIGGS: I'm going to object, and instruct my client not to answer based upon the Fifth Amendment.
A. And I agree.
Q. You agree you refuse to answer?
A. Uh-huh.
Q. Was your son still in jail for abusing his daughter when you first met Amy Betzen?
MR. SPRIGGS: Object to that on the Fifth Amendment, instruct my client not to answer.
A. I refuse to answer.
Q. Let's go back to this period of time 1990, 1991. Was your wife having some health problems?
A. Yes.
Q. What was the nature of those health problems?
A. She had real bad back pain and it was difficult for her to walk.
Q. Did she have a weight problem?
A. Yes, she did.
Q. Were some members of the Amarillo-Southwest Congregation coming over to your apartment to help with cooking and cleaning?
MR. SPRIGGS: I'm going to object to that

on the Fifth Amendment, and instruct my client not to answer.
Q. You refuse to answer the question of whether there were people from the Amarillo-Southwest Congregation coming over to help your wife with cooking and cleaning, because that might incriminate you?
MR. SPRIGGS: I'm going to object to that on the Fifth Amendment, instruct my client not to answer.
Q. You refuse to answer that question?
A. Yes, I do.
Q. Did Amy Betzen come over to your house to help with the cooking and cleaning?
MR. SPRIGGS: I'm going to object to that on the Fifth Amendment basis and instruct my client not to answer.
Q. Do you refuse to answer?
A. I refuse to answer.
Q. Did you take Amy Betzen out on service with you?
MR. SPRIGGS: I'm going to object to that under the Fifth Amendment, instruct my client not to answer.
Q. Do you refuse to answer that question?
A. I plead the Fifth.
Q. Excuse me?
A. I plead the Fifth Amendment.

Q. Did you assign Amy to yourself --
MR. SPRIGGS: I'm going to object on the Fifth --
Q. Excuse me -- to take out on service?
MR. SPRIGGS: I'm going to object to that on the Fifth Amendment, and instruct my -- instruct my client not to answer that question.
Q. Do you refuse to answer that question?
A. Yes.
Q. Do you take the Fifth?
A. Yes.
Q. Amy's parents trusted you, didn't they?
MR. JONES: Object to form.
MR. SPRIGGS: Object to that on the Fifth Amendment, and instruct my client not to answer.
Q. Do you take the Fifth on that question?
A. Yes.
Q. Did Amy Betzen sleep over at your house?
MR. SPRIGGS: I'm going to object to that based upon the Fifth Amendment, instruct my client not to answer.
Q. Do you take the Fifth on that question?
A. Yes.
Q. Tell us about the times that you sexually abused Amy Betzen.

MR. SPRIGGS: I'm going to object to that based upon the Fifth Amendment, and instruct my client not to answer.
Q. Do you take the Fifth on that question?
A. Yes.
Q. Have you been convicted of sexual assault?
A. No.
Q. Well, have you been convicted of any sex crimes?
A. Yes.
Q. Are you currently a registered sex offender?
A. Yes.
Q. Okay. What was the crime -- what were the crimes that you were convicted of?
A. Indecency with a child.
Q. There were actually two kids, were there not?
A. Yes.
Q. And one was Amy Betzen and the other was Tamara Jordan, true?
A. Correct.
Q. So you have already been criminally convicted for anything you did to Amy Betzen; is that correct?
A. Correct.
MR. SPRIGGS: I'm going to object to that it calls -- I'll object to form. But you can still answer that.

THE WITNESS: Thank you.
Q. What was your answer?
A. What was your question?
Q. You have already been criminally convicted for anything that you did to Amy Betzen, haven't you?
MR. SPRIGGS: Now, I'm going to object that to that based on form. And you can answer.
A. Yes.
Q. Okay.
MR. HAMPTON: Marty, is this already an exhibit? I don't want to mess up the numbers -- I don't want to be the first one to mess up our exhibit numbers.
MR. JONES: Do you have a copy of the deposition? I take it you don't have a copy of her deposition.
MR. HAMPTON: Let's just mark it again. That's not going to hurt anything, is it?
MR. JONES: It's not that big of a deal, is it?
MR. HAMPTON: No, not to me.
(Deposition Exhibits Nos. 13 & 14 marked for identification.)
Q. (BY MR. HAMPTON) Let me show you a couple of documents and let you look at them together. They're Exhibits 13 and 14. Have you looked at those documents?

MR. JONES: I don't think those have been marked before.
MR. HAMPTON: Okay.
THE WITNESS: Okay.
Q. (BY MR. HAMPTON) Have you looked -- have you had an opportunity to look at those documents?
A. Yes.
Q. Now, Exhibit 14 is a document that begins by saying in the name and authority of the State of Texas. Have you ever seen that document before?
MR. SPRIGGS: Mr. Hartley, with your permission, I'll explain to my client what it is. It may refresh his memory.
MR. HAMPTON: Well, I doubt if he's ever seen it, but you go ahead.
(Sotto voce discussion between witness and counsel.)
A. Yes, I have seen document --
Q. What is Exhibit 14?
A. -- 14.
Q. And just in your own words, what do you understand it to be?
A. It's a copy of my indictment.
Q. Okay. And that's the indictment pertaining to Amy Betzen, correct?

A. Correct.

(Deposition Exhibit No. 15 marked for identification.)

Q. And Exhibit 15 is a copy of your indictment pertaining to Tamara Jordan; is that true?

A. Yes.

Q. And Exhibit 13 is a copy of a document entitled Admonishments?

A. Okay.

Q. Is that correct?

A. Yes.

Q. And that is your signature at the bottom over the word Defendant, correct?

A. Yes.

Q. And that is a document that you signed when you pled guilty to the crimes described on Exhibits 14 and 15, correct?

A. Yes.

Q. Okay. Now, can you tell us, please, the circumstances, in your own words, of your inappropriate sexual contact with Amy Betzen that serves as the basis of Exhibit 14 that you have in front of you?

MR. SPRIGGS: I'm going to object to that on the Fifth Amendment, and instruct my client to limit any testimony he would give to this date that's listed in

the indictment. I see one here, it appears to be June 10th. If, in fact, he can remember what happened on June 10th, then he can testify about it. Anything else, I will instruct him not to testify.

And in the other case, the indictment states the date of November 27th, 1991. If he can remember it, then he can talk about it. If he can't remember that specific date, that he not mention it at all.

Q. (BY MR. HAMPTON) Mr. Kelley, did you abuse Amy Betzen on more than one occasion?

MR. SPRIGGS: I'm going to object to that and -- on the Fifth Amendment, instruct my client not to answer.

Q. Do you assert your Fifth Amendment rights and refuse to tell the jury whether you abused Amy Betzen more than once?

A. Yes.

Q. Did you abuse Tamara Jordan more than once?

MR. SPRIGGS: Same objection based upon the Fifth Amendment, instruct my client not to answer.

Q. Do you assert your Fifth Amendment right and refuse to tell the jury whether you abused Tamara Jordan more than once?

MR. SPRIGGS: I'm going to object that and

instruct my client not to answer that question based upon the Fifth Amendment.

A. I agree.

Q. You take the Fifth --

A. Yes.

Q. -- and refuse to answer that question? True?

A. True.

Q. When did you learn that Amy Betzen had told her parents that you had abused her?

MR. SPRIGGS: Object to that based on the Fifth Amendment, and instruct my client not to answer.

Q. Do you -- do you take the Fifth Amendment and refuse to answer the question of when you learned that Amy had told her parents what you had done?

A. Yes.

MR. SPRIGGS: I'm going to object to that, instruct my client not to answer based upon the Fifth Amendment. He's asserting his Fifth Amendment right.

MR. HAMPTON: I understand that. But I need to have him say it, so --

MR. SPRIGGS: Well, you can ask him whether or not he's going to answer, but you can't couch it in a way as that he is trying to give you an answer. You asked him whether or not he's asserting his Fifth Amendment right. The other garbage, if you want to put it in there

you can, and I will go ahead and raise an objection to it.

Q. (BY MR. HAMPTON) Are you going to assert your Fifth Amendment rights and refuse to testify about any facts concerning what you knew and when you knew it about Amy Betzen telling her parents or the authorities, and so forth, about your abuse of her?

MR. SPRIGGS: Object on the Fifth Amendment, instruct my client not to answer.

A. I agree. I plead the Fifth.

Q. Okay. Did Chuck Regal tell you to turn yourself in?

MR. SPRIGGS: I'm going to object upon object upon -- object upon Rule 505, and instruct my client not to answer that.

Q. And do you refuse to answer?

A. I refuse to answer.

Q. Did anybody tell you to turn yourself in?

MR. SPRIGGS: I'm going to object upon Rule 505, and instruct my client if, in fact, it pertains to any clergy member, that he not answer that question.

A. I agree.

Q. And you assert the Fifth Amendment?

A. I assert the Fifth Amendment.

MR. JONES: And Rule 505.

A. And rule.

MR. HAMPTON: He gets to say that?
MR. JONES: I'm just asking. I'm sorry.
MR. SPRIGGS: Yeah.
Q. Did the Amarillo-Southwest Congregation form a judicial committee?
MR. SPRIGGS: I'm going to object. That's speculative, it's ambiguous. For what?
Q. To investigate your sexual abuse of Amy Betzen?
MR. SPRIGGS: Then I'm going to object to that upon Fifth Amendment and Rule 505, instruct my client not to answer.
A. I refuse to answer.
Q. Let me ask that question again because this is not funny. You know that you were the subject of a judicial committee inquiry by the Southwest -- Amarillo-Southwest Congregation elders, do you not?
MR. SPRIGGS: I'm going to object to that based upon Rule 505 and instruct my client not to answer.
A. I refuse to answer it.
Q. And the judicial committee that ultimately disfellowshipped you acted just like the other judicial committees that you've told us about earlier in the deposition, didn't they?
MR. SPRIGGS: I'm going to object to that based upon Rule 505, and instruct my client not to answer,

and also the Fifth Amendment.
Q. You refuse to answer that?
A. Yes.
MR. HAMPTON: I think you're probably going to make your flight.
Q. When is the last time you saw Amy Betzen?
A. I don't remember.
Q. After you had been accused of sexually abusing her, did you follow her into a rest room at a Jehovah's Witness convention?
MR. SPRIGGS: I'll object to that upon the Fifth Amendment, and instruct my client not to answer that.
THE WITNESS: Not to answer?
MR. SPRIGGS: Not to answer.
A. I'll plead the Fifth.
Q. Did you see her at Westgate Mall and follow her?
MR. SPRIGGS: I'm going to object based upon Rule 505, and instruct my client not to answer.
A. Plead the Fifth.
Q. Was the congregation at Amarillo-Southwest warned about you when you moved from Dumas to Amarillo?
MR. JONES: Object to form.
MR. SPRIGGS: I'm going to object under Rule 505, instruct my client not to answer, and also

objection to form.
Q. (BY MR. HAMPTON) You refuse to answer that question?
A. Yes.
Q. Was the congregation in Dumas warned about you after that judicial committee stripped you of all your authority?
MR. SPRIGGS: I'm going to object under Rule 505, and also instruct my client not to answer, and also objection to form.
MR. JONES: Join.
Q. (BY MR. HAMPTON) Was the congregation in Dumas told why you were deleted as an elder?
MR. JONES: Object to form.
MR. SPRIGGS: Object to Rule -- object under Rule 505, instruct my client not to answer, and also objection to form.
A. I agree.
Q. And take the Fifth?
A. Yes.
MR. HAMPTON: I assume you're going to have a couple of hours. Let's take a break for a minute.
THE VIDEOGRAPHER: Going off the record, it is 11:42.
(Agreed recess.)

THE VIDEOGRAPHER: Now back on the record, the time is 11:53.
Q. (BY MR. HAMPTON) Mr. Kelley, I'm almost through. I'm going to ask you a series of questions just in case we have to go before a judge sometime and have a ruling on some of these issues that you've refused to testify about.
As I understand it, you will take the Fifth Amendment and refuse to answer any questions about anything concerning your abuse of any other children besides Tamara Jordan and Amy Betzen, correct?
A. That's correct.
Q. You will take the Fifth and refuse to answer any questions about whether you committed any other acts of sexual abuse with Amy Betzen, other than the one that's referred to in Exhibit 14 as occurring on June 10, 1991?
A. Yes.
Q. Likewise, whether you committed any other acts of sexual abuse on Tamara Jordan, other than the one referred to in Exhibit 15 as occurring on November 27, 1991?
A. Yes.
Q. You refuse to answer any questions on the basis of the Fifth Amendment about anything that happened in Dumas concerning sexual abuse that you committed there,

true?
A. Yes.
Q. You refuse to answer any questions based on the Fifth Amendment about any activities of the judicial committee of the Amarillo-Southwest Congregation concerning allegations of sexual abuse against you?
A. Yes.
Q. You refuse to answer any questions on the basis of the Fifth Amendment about what the elders at the Amarillo-Southwest Congregation knew about your history of abusing children?
A. Yes.
Q. You refuse to answer any questions based on the Fifth Amendment about the document that you filed with the court that has been marked as Exhibit 10, true?
A. Yes.
Q. You refuse on the basis of the Fifth Amendment to answer any questions about why you were disfellowshipped?
A. Yes.
Q. You refuse on the basis of the Fifth Amendment to answer any questions about any contact you have had with Amy Betzen after you got out of prison?
A. Yes.
Q. Any contact you had with Amy Betzen before you

went to prison?
A. Yes.
Q. About any relationship that you had with Amy Betzen's parents?
A. Yes.
Q. About any of the circumstances around which you sexually assaulted or abused Amy Betzen, other than the one described in Exhibit 14 as occurring on June 10, 1991?
A. Yes.
Q. And you say that you don't remember the incident that occurred on June 10, 1991?
A. Yes.
Q. Did you ever sexually abuse Amy Betzen in a car?
MR. SPRIGGS: I'm going to object to that based upon the Fifth Amendment, and instruct my client not to answer.
A. I plead the Fifth.
Q. Did you ever sexually assault Amy Betzen in a swimming pool?
MR. SPRIGGS: Object to that based on the Fifth Amendment, and instruct my client not to answer.
A. Plead the Fifth.
Q. Did you ever sexually assault Amy Betzen in your apartment?
MR. SPRIGGS: I'm going to object to that

based on the Fifth Amendment, instruct my client not to answer.
A. Plead the Fifth.
Q. Did you ever sexually assault Amy Betzen in your place of employment?
MR. SPRIGGS: I'm going to object on that based upon the Fifth Amendment, and instruct my client not to answer.
A. I plead the Fifth.
Q. Did you ever sexually assault Amy Betzen in the Kingdom Hall?
MR. SPRIGGS: I'm going to object to that based on the Fifth Amendment, instruct my client not to answer?
A. I plead the Fifth.
Q. Did you ever sexually assault Amy Betzen when you were going out on service?
MR. SPRIGGS: I'm going to object to that based upon the Fifth Amendment, instruct my client not to answer.
A. I plead the Fifth.
MR. HAMPTON: At this time, I'm going to pass the witness, subject to asking the court to rule on his refusal to answer some of these questions and reconvening subject to any ruling of the court.

MR. JONES: Subject to the court's ruling, I have no questions at this time.
MR. SPRIGGS: I'll reserve my questions for time of trial.
THE VIDEOGRAPHER: Going off the record. Today's date is December 5th, 2003. The time is 11:57 a.m.

(End of proceedings.)

CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON

I, LARRY KELLEY, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
LARRY KELLEY

STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared LARRY KELLEY, known to me (or proved to me on the oath or through _____ (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office on this

_____ day of _____, _____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My Commission Expires: _____

CAUSE NO. 91,048-C

AMY B., Plaintiff,	IN THE DISTRICT COURT
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

REPORTER'S CERTIFICATION

ORAL AND VIDEOTAPED DEPOSITION OF LARRY KELLEY

DECEMBER 5, 2003

I, DANA FOSTER MORELAND, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, LARRY KELLEY, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on_____, 2003, to the witness or to the attorney for the witness for examination, signature, and

return to me by _____, 2004.

That the amount of time used by each party at the deposition is as follows:

Mr. Hartley Hampton - 02:34
Mr. Ron Spriggs - 00:00
Mr. Marty Jones - 00:00

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

Mr. Hartley Hampton, Attorney for Plaintiff
Mr. Ron Spriggs, Attorney for Defendant, Larry Kelley
Mr. Marty Jones, Attorney for Defendants

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of this action.

Further certification requirements pursuant to Rule 203 of the Texas Code of Civil Procedure will be complied with after they have occurred.

Certified to by me on this _____ day of _____, 2003.

_____
DANA FOSTER MORELAND, CSR
Texas CSR 2341 (Exp. 12/31/05)
AMARILLO COURT REPORTING, INC.
Firm No. 23
P. O. Box 19628
Amarillo, Texas 79114
(806) 374-4091

FURTHER CERTIFICATION UNDER TRCP RULE 203

The original deposition was/was not returned to the deposition officer on _____, _____.

If returned, the attached Changes and Signature page(s) contain(s) any changes and the reasons therefor.

If returned, the original deposition was delivered to Mr. Hartley Hampton, Custodial Attorney;

That $_____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

The deposition was delivered in accordance with Rule 203.3, and a copy of this certificate, served on all parties shown herein, was filed with the Clerk.

Certified to by me on this _____ day of _____, _____.

_____
DANA FOSTER MORELAND, CSR
Texas CSR 2341 (Exp. 12/31/05)
AMARILLO COURT REPORTING, INC.
Firm No. 23
P. O. Box 19628
Amarillo, Texas 79114
(806) 374-4091

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

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

PRESENT:

GREGORY S. LOVE, ESQ.
(of the firm of Messrs. Love & Norris, Western Union Building, 314 Main Street, Suite 300, Fort Worth, Texas 76102)
and
WILLIAM L. BRELSFORD, JR., ESQ.
(of the firm of Messrs. Nolen, Saul & Brelsford, 350 University Avenue, Suite 280, Sacramento, California 95825)
appeared on behalf of the plaintiffs;

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

ALSO PRESENT:

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

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

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WITNESS

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

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

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

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

MR. BRELSFORD: Dennis S.

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

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

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

Will counsel please announce their appearances for the record?

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

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

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

MR. FALK: Will our court reporter now swear the witness, please?

(Witness sworn.)

MR. FALK: Please proceed.

JAMES WALTER WHITNEY

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCHNACK

Q. Please state your full name, please.

A. James Walter Whitney.

Q. Mr. Whitney, we were introduced a few

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fornication, drunkenness, drug abuse, child sexual abuse, and other less serious matters.

Q. What are some other less serious matters that Judicial Committees would be formed to handle?

A. Possibly, let's say, smoking.

Q. Did you ever serve on a Judicial Committee?

A. Yes.

Q. At what congregation?

A. Petaluma West.

Q. How many times?

A. It was four or five times I was on a committee, yes.

Q. And what types of matters came before the Judicial Committees on which you sat?

A. Smoking, masturbation, theft, fornication. I forget the -- I forget the other one.

Q. Did any of them deal with childhood sexual abuse?

A. On the committees I served on, no.

Q. Describe the procedure as to how a Judicial Committee gets formed.

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A. Normally when there is an accusation two Elders are assigned to look into a matter. Based on their findings, they will recommend usually to the presiding overseer to form a Judicial Committee.

Q. Is that the way it happened in the Petaluma West Congregation?

A. More or less.

Q. What do you -- when you give a qualifier I'm going to follow up. What do you mean, more or less?

A. It didn't always 100 percent of the time perfectly follow procedure, but it was very close to procedure.

Q. Why would it differ? How would it differ from what you've described?

A. Sometimes events do not happen in a -- in a perfect world where they happen according -- events don't happen according to procedure, so perhaps in one case of a minor child having a problem they talk to an Elder, so maybe instead of two Elders investigating it might only be one.

Q. And do you have any information as to how Judicial Committees were formed at the Saint Helens Congregation?

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A. They would be formed the same procedure, by the same procedure.

Q. And how do you know that?

A. Because all congregations of Jehovah's Witnesses everywhere on this earth follow the same procedure as directed by its Governing Body through the Watchtower Society

Q. With respect to Judicial Committees, what actions can be taken by a Judicial Committee for those persons who are not deemed repentant?

A. What actions? They can be disfellowshipped.

Q. Anything else?

A. They can be declared disassociated.

Q. What is disfellowshipping?

A. When a person is removed from membership in the congregation and they are totally shunned by all of their associates, friends, family, whatever.

Q. What are the reasons that someone might be disfellowshipped?

A. For serious wrongs.

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Q. Is that a term of art, serious wrongs?

A. No, I use that to try to concisely convey to you what it would be.

Q. Okay. Give me a list of what some serious wrongs might be.

A. Adultery, fornication, homosexuality, child abuse, of course, pedophilia. And when I say child abuse I also meant it in a broader category of physical abuse, violence.

It could be smoking, drunkenness, drug abuse. And what would be also considered serious may be not following the society's policies and procedures.

Q. And what is disassociation?

A. Disassociation generally is an action that is considered taken by the person themselves to disassociate from the congregation, but they are treated the same as if they are disfellowshipped.

Q. And you also mentioned above -- just a few minutes ago that someone could be declared disassociated?

A. Yes.

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Q. What did you mean by that?
A. Well, for example, they may take some action, join the military. They don't write a letter and say, "Hi, I'm disassociating myself," but rather the congregation learns of it and declares them disassociated by their action.
Q. Are you familiar with public reproof?
A. Yes.
Q. What is that?
A. That is where an announcement is made to the congregation by a member of the Elders, the Body of Elders, stating that a person -- and they will state the person's name -- has been publicly reproved.
It acknowledges that that person has met with the Elders and has received some level of discipline for some unspecified conduct.
Q. What are the requirements to be publicly reproved?
A As opposed to disfellowshipping?
Q. Yes.
A. Repentance. Therefore, the Elders determine not to disassociate -- not to disfellowship but to instead publicly reprove,

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let's say.
Q. Were any Judicial Committees ever formed to address some type of wrongdoing on your part?
A. Yes.
Q. Which congregations?
A. In Petaluma prior to it becoming a split in the two congregations. There was a -- I don't know where else a committee would have been formed, let's say.
Well, there would have been in Saint Helens because of the letter and then in Petaluma. Yes, it would be in Petaluma when -- Petaluma West or what became Petaluma West.
Q. So there were three formed in Petaluma with respect to you, is that correct?
A. Two in Petaluma. And I don't recall. There was one also in Richland. That would be three.
Q. Okay. Tell me about the one in Richland first.
A. Well, there was a Judicial Committee formed in Richland and I was given private reproof.

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Q. What was the wrongdoing on your part?
A. Smoking.
Q. And you said there were two formed in Petaluma?
A. Yes.
Q. What was the first one formed for? What type of conduct on your part was addressed?
A. Smoking.
Q. And what about the second one?
A. The second one was formed because I had had a hooker in my hotel room.
Q. By hooker you mean prostitute?
A. Yes.
Q. And how did that information come to the congregation such that a Judicial Committee was formed?
A. I volunteered it. I came forward and confessed.
Q. Were there other things you confessed to as a part of that Judicial Committee?
A. I don't recall.
Q. Do you recall anything about your conduct in Portland at all dealing with prostitutes?

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A. No, there was none there.
Q. How about in San Francisco?
A. No.
Q. With adult entertainment clubs?
A. No.
Q. Masturbation to pornography?
A. No. Masturbation but not to pornography.
Q. Did you ever use the telephone to do dial-up porn or anything like that?
A. Not that I recall, no.
Q. What years were these Judicial Committees held in Petaluma?
A. The first one for smoking I forget. It was '71 or '72, right in there. The second one would have been sometime in '80 -- I believe it was late '85.
I just don't recall the exact time frame.
Q. Would '87 sound about right?
A. I don't recall a Judicial Committee in '87.
Q. So you think it was about 1985?
A. I think so.

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

A. No.
Q. In the Saint Helens Congregation I think you testified earlier that you were a Ministerial Servant?
A. Yes.
Q. Did you resign from that position or were you removed?
A. I resigned.
Q. Why did you resign?
A. My wife's health was the primary reason and because I intended to eventually fade away from Jehovah's Witnesses.
Q. That's when you wrote the letters to resign, is that correct?
A. Yes.
Q. Do you know what time frame that was roughly?
A. I believe I presented the first letter late April of '92, and then the second letter was presented in the summer, perhaps July/August time frame, of '92.
Q. Why did you have to write the second letter?
A. Because the Body of Elders had

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

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

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

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

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member of Jehovah's Witnesses, and I still very much wanted to continue my association.
Q. What was your wife's medical condition or conditions at that time?
A. Clinical depression.
Q. And were you working at that point, employed outside the house?
A. Yes.
Q. You were still at the nuclear plant, correct?
A. I believe so, yes.
Q. Okay. Let's change topics again here. Have you ever seen a transcript of any deposition of any Watchtower or Jehovah's Witnesses representative?
A. No.
Q. Have you ever seen an affidavit or a sworn declaration from any Watchtower or Jehovah's Witness representative?
A. Yes.
Q. Okay. What have you seen?
A. I saw a copy of an affidavit.
Q. Whose affidavit?
A. Don Adams.

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Q. When did you see it?
A. In the book Crisis of Conscience, I believe.
Q. And that's the book written by Franz?
A. Yes.
Q. Have you seen any other affidavits or sworn declarations of any Watchtower or Jehovah's Witness representative other than the Don Adams affidavit you referenced?
A. I believe -- I believe I may have in parts of very old trial transcripts going back to the 1950s and '40s and beyond, but not currently, no.
Q. Nothing in the last 20, 30 years?
A. No.
Q. What was the Don Adams affidavit that you referenced?
A. It had to do with the Kingdom Hall issue in Bonham, Texas.
Q. What was the Kingdom Hall issue in Bonham Texas in general terms?
A. Yes. There was a lawsuit between a congregation and the society over ownership of the Kingdom Hall.

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

transcripts or declarations or affidavits in his discussions with you?
A. No.
Q. Have any other legal representatives involved in the California lawsuits referenced any such transcripts, affidavits, or sworn declarations to you?
A. No.
Q. I can get this letter out, if we need. I'm referring to a letter that was sent to us by Rudy Nolen of Mr. Brelsford's law firm that says your testimony would impact certain plaintiffs in the California cases, so I'm going to just list their names, and I'll show you the letter after lunch here --
A. Okay.
Q. -- if we need to. Do you know who Deanna Coe is?
A. Deanna Coe?
Q. C-O-E. She was allegedly abused by Vince Diorio.
A. Yes, I would know Deanna.
Q. Okay.
A. Not as Coe.

Q. What was the last name that you know her as?
A. Diorio.
Q. And what is Deanna Coe's relationship to Vince Diorio?
A. Stepdaughter.
Q. Do you know Jocelyn Amos?
A. No.
Q. She was allegedly abused by Don Glew.
A. I don't know the name.
Q. Do you know Sherry DeLaTorre or Sherry Glew?
A. I briefly met her once.
Q. Okay. What were the circumstances of that meeting?
A. We were at a family gathering of several people, several Witnesses, which Don Glew and his family attended.
Q. And what is Sherry's relationship to Don Glew?
A. I thought she was his daughter at the time, and I assume she is his daughter.
Q. You don't know anything different as you sit here today?

A. I believe -- I believe she may have been his stepdaughter, but I don't recall how I learned that.
Q. So as far as you know, she was either his daughter or his stepdaughter?
A. Yes.
Q. And when did you meet her? When was that one time, how long ago?
A. That would be sometime in the mid-'80s.
Q. Where was that gathering?
A. At Howard Whitney's house.
Q. Any relation?
A. No.
Q. Are you in contact with Howard Whitney --
A. No.
Q. -- any longer? No. But there's no family relationship between you and Howard Whitney?
A. No. A coincidence of last name.
Q. Do you know who Fred Fritzinger is?
A. No.
Q. Do you know who Dennis Smith, Jr. is?

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A. No.
Q. Do you know who Nicholas Smith is?
A. No.
Q. Do you know who Michael Glew is?
A. I know of him.
Q. How do you know of him?
A. I believe he would have been at the family gathering at Howard Whitney's house.
Q. And do you know Michael Glew's relationship to Donald Glew?
A. I believe he would have been his son.
Q. Blood son or stepson?
A. I don't know.
Q. Do you know who Rebecca Glew is?
A. The name rings a bell, and I don't recall offhand whether she would be another daughter or a wife.
I don't -- I don't remember.
Q. She's a plaintiff in one of these suits.
A. Okay.
Q. Would that help you?
A. I would presume she's his daughter or stepdaughter.

Q. Of Don Glew?
A. Yes, but I do recall the name as I met the Glew family.
Q. How did you come to meet Donald Glew?
A. At Howard Whitney's house. Howard introduced him as a longtime friend.
Q. Is that the first time you met Don Glew?
A. Yes.
Q. Had you heard of him previously?
A. Yes, Howard Whitney had made mention of him.
Q. And was Donald Glew a friend of Howard Whitney?
A. Yes.
Q. And what had Howard Whitney said about Donald Glew before you met him?
A. That they were friends.
Q. How many people were at this gathering at the Howard Whitney house?
A. I recall the three families; my family, Howard's family, and the Glew family, and I believe that would have at least been somewhere close to 20 people.

Q. And Donald Glew was married at the time?
A. Yes.
Q. Who was his wife?
A. I forget her first name.
Q. And how many children did the Glews have, whether they were theirs or stepchildren?
A. I don't recall how many children they had. It seemed like they had four or more, but I'm not really sure.
Q. Did you know anything about Donald Glew before that gathering other than what Mr. Whitney had told you?
A. No.
Q. When did you next meet Donald Glew?
A. I don't recall meeting him after that. Perhaps one more time at Howard's house, but I -- that's a vague recollection.
Q. So it would have been another social gathering?
A. Yes.
Q. Any other contact you've had with Donald Glew then other than those two social gatherings?

A. No.
Q. Do you have any information about his alleged sexual abuse of any of these people I've listed; Jocelyn Amos, Sherry DeLaTorre, Fred Fritzinger, Dennis Smith, Jr., Nicholas Smith, Michael Glew, or Rebecca Glew?
A. Can I -- can I -- what kind of information do you mean?
Q. Any type of information. First of all, do you have any -- let's break it down. Do you have any personal knowledge of the abuse that he allegedly perpetrated on them?
A. Personal?
Q. You didn't witness it, I assume?
A. No, I didn't witness it, no.
Q. Okay. Tell me then what you've heard.
A. Whatever I heard is a result of my contact with Howard Whitney and his wife, Karen, their children through my children, as well as Joe Risonsky, an Elder in the Petaluma West Kingdom Hall.
And I'm sure there were other discussions with others. Ron LaForce I know I had

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discussions -- no, you need to strike that.
Ron LaForce had no discussion with me about Don Glew.
Q. Okay. So you've had discussions with Karen and Howard Whitney?
A. Yes.
Q. And who were the other persons you mentioned?
A. Joe Risonsky.
Q. Okay. And anyone else?
A. I don't recall.
Q. Okay. What did Karen Whitney tell you about Donald Glew and the abuse of these persons?
A. I believe with her it's more of a vague recollection, because she was upset over what happened to their children, and I believe it was in just general discussion as our -- as we visited, grieving the fact of her child being molested by Don Glew, but there was nothing beyond that with her specifically that I recall.
Q. You said her child was molested by Don Glew?
A. Yes.

Q. Okay.
A. Karen Whitney's, yes.
Q. Yes. Okay. And that's what -- again I'm having trouble hearing --
A. Okay.
Q. -- because of the echoes in here, so I apologize.
A. Okay.
Q. So I just wanted to make sure that's what you had said as opposed to me hearing something differently, okay?
A. No.
Q. Okay. Now, with respect to Howard Whitney, what did he tell you about Donald Glew?
A. He learned as a result of this event with his children, and he had also conveyed to me, first of all, that Don had been recently arrested.
That's how a lot of it came out with respect to abusing his own children or stepchildren.
And Howard relayed that what he learned is that Don had also molested children in many other congregations over a long period of time.

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

but -- or my wife might have been present. I don't recall our children being present.
Most of my discussions with Howard were just between he and I.
Q. And Joe Risonsky, when did you have discussions with Joe?
A. I don't know exactly when. During that time frame.
Q. How many did you have?
A. Probably two or three discussions.
Q. And what was discussed?
A. I asked about Don Glew. I asked about all of the events in general. I asked him what he knew, what was going to happen.
A number of people were concerned, but so -- but I don't recall the overall -- I don't recall the total substance, just --
Q. How did he respond when you asked those questions?
A. He was fairly open with information, but he -- I don't recall everything he told me.
Q. Tell me what you do recall.
A. Well, he also confirmed the arrest. And I had asked him what the Elders were going to

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do, and he said, "Well, there's nothing for us to do. He's arrested."

I recall that. I don't recall anything else in particular of his response.

Q. And did he say anything about Donald Glew having molested children in other congregations?

A. I don't recall. I believe -- I believe he did, but I don't recall exactly what he said.

I just know that his conversation was confirming what Howard had told me.

Q. Confirming in what sense?

A. Well, that Don had a record. And I know Joe Risonsky, that would have been a concern to him.

Q. With respect to Donald Glew, was he in Risonsky's congregation?

A. In Petaluma West, or where are you?

Q. Wherever.

A. I don't know. He could have been.

Q. Why were you asking Joe those questions?

A. Well, because I was concerned with

respect to what went on. That's a very serious thing to be arrested for child abuse, child molestation, and clearly among a man that I had and my family had associated with, a man around my children, so I asked Joe because of his position as an Elder, a trusted friend as well, but primarily as an Elder, because I knew he would have some kind of take on the situation, and I wanted to know is the guy going to go to jail, were there other children in our congregation affected, were there children elsewhere, and Joe was able to confirm that, but he didn't confirm specifics for me.

Q. So again, though, you're not sure if Donald Glew was in that Petaluma Congregation?

A. I don't recall Donald Glew ever being a member of the Petaluma Congregation. If he was, it was never during a time that I was there.

Q. So he was never a member of any of the Petaluma Congregations while you were there?

A. Correct.

Q. It goes without saying then that Donald Glew didn't hold any positions in any of those congregations while you were there?

A. In any of the Petaluma Congregations.

Q. Correct.

A. Correct. He did not that I know of.

Q. I apologize if I asked you this. Do you know who Jocelyn Amos is?

A. No.

Q. You don't know a Jocelyn by some other last name?

A. If I knew the last name there's a possibility. The name Jocelyn does not ring a bell, either.

Q. Do you know Joe Amos, J-O-E?

A. No.

Q. Because the reason I ask that, in one of the lawsuits Jocelyn A. is a minor by and through her guardian ad litem, Joe A., and I know they provided the name of Amos for Jocelyn.

A. Yes.

Q. So I assume Joe is also Amos, but that doesn't ring a bell to you?

A. Not offhand, no.

Q. Okay. And are you familiar with any Smiths that were in the Petaluma Congregations while you were there?

There's a Dennis Smith, Jr. listed as one of the victims, so I assume there's a Dennis Smith, Sr.

A. No.

Q. But that doesn't ring a bell for you, either?

A. No.

Q. What do you know of the circumstances as to where Donald Glew committed the sex abuse? What did you hear about that?

A. Where? In other congregations. I believe the one congregation, Tracy, California rings a bell or in that general area.

I believe he may have been in the East Bay Congregation and also North Bay Marin County area.

Those are general recollections. I understand he was in a number of congregations, and in some he served as a Ministerial Servant.

Q. With respect to Deanna Coe or Deanna Diorio, what do you know about the circumstances of Vince Diorio's alleged abuse of her?

Do you know where it occurred, for example, what location in the house? Was it

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someplace else?
A. No, I don't know those circumstances.
Q. Do you -- do you have any of that information with respect to any of these victims that I've listed?
A. No, none of the ones that you've listed.
Q. So, for example, with respect to Michael Glew, you didn't hear anything about where Donald Glew perpetrated the sex abuse, whether it was in the house --
A. No.
Q. -- or some other location?
A. No.
Q. The same question with respect to Rebecca Glew?
A. No.
Q. And I assume the same response, because you don't know who the Smiths are?
A. Correct.
Q. And Fred Fritzinger?
A. No.
Q. And Sherry DeLaTorre or Sherry Glew, again no details --

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A. Right.
Q. -- as to where that occurred?
A. Not the details, no.
Q. So other than the two contacts you had with Donald Glew and his family at those two social gatherings, there's really no interaction between you and the Glews at all, is that correct?
A. Myself and the Glews, no.
Q. Okay. What about others in your family?
A. My children -- and this was the cause of concern that Howard Whitney contacted me. My children had stayed the night at their home when Don Glew stayed there during the time that he molested one of Howard's children and possibly two children, but I know for sure one child, and --
Q. They stayed at the Glew home, you said?
A. No, Howard Whitney's home.
Q. At Howard Whitney's home?
A. Because the Glews were there visiting and the Glews stayed over the night, so I was concerned because my -- there was a potential that if one of his children or two of his children were

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molested during that time frame, perhaps one of mine.
Q. Was the Glew family from out of town then that they stayed overnight there?
A. Yes.
Q. Where were they from at that point?
A. I don't recall it. I have a vague recollection of Tracy, California or an East Bay area congregation, but I don't recall the town at this time.
Q. And Howard and Karen Whitney then lived in Petaluma?
A. Yes, at that time.
Q. Okay. Who told you about Donald Glew's alleged abuse of others in other congregations?
A. Howard Whitney and Joe Risonsky confirmed the same thing.
Q. Anyone else?
A. I don't recall anyone else.
Q. How do you recall the Donald Glew abuse coming to light? Was it the arrest that triggered it from your point of view?
A. Well, the arrest is what brought it

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

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

Q. How did you meet Vince Diorio?
A. He was in the Petaluma Congregation when I became a Witness in 1970.
Q. How old is Vince generationally?
A. I would say he's about 15 years older than I am, thereabouts.
Q. And did you have contact with Vince from time to time?
A. Fairly frequently, yes.
Q. And what's fairly frequently?
A. Well, at the meetings every week or at least twice a week at the Kingdom Hall. Sometimes when we went out door to door I may have worked with him door to door.
Q. And how did it come to light that he had sexually abused Deanna Coe or Deanna Diorio?
A. How did it come to light to me?
Q. Yes.
A. When I was congregation secretary I received the judicial files along with the other congregation records maintained by the secretary.
Those files were in disarray, falling out of envelopes, not filed in accordance with the society procedure, and I sat down and went through

them and sorted them out, which involved reading those files, and that is how I read about Vince Diorio.
Q. Okay. What did you read about him in those files?
A. I recall one judicial file dealing with Vince and his molesting his -- two of his daughters, and then the other file dealt with one of his daughters, who had her own separate judicial file where that topic was discussed.
Q. Okay. And which two daughters did he molest, according to those files?
A. The ones I recall were Debbie and Dawn.
Q. And from what time frame were those judicial files?
A. When I became secretary in -- sometime in early '84, those files predated, I believe, 1980.
I just don't recall the exact date.
Q. And had he confessed and repented?
A. I don't recall whether he confessed or they confronted him.
Q. Did he repent?

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

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

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

Mr. Gregory S. Love
Mr. William L. Brelsford, Jr.
Mr. Robert J. Schnack

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

JAMES WALTER WHITNEY

having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Continued)
by MR. SCHNACK

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

A. Yes.

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

They are listed as Roman numeral, correct?

A. Correct.

Q. Do you see those?

A. Yes.

Q. Okay. Let's go through them briefly. The first one says that you're going to testify about the Watchtower Society organizational and operational structure?

A. Yes.

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

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

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

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

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

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

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

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

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

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

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

Q. Do Ministerial Servants sit on Judicial Committees?

A. They can.

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

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

Q. Who was that?

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

Q. Which congregation was that?

A. Petaluma West.

Q. Were you a member at that time?

A. Yes.

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

A. No.

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

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A. No, that's primarily teaching is all I can think of at the moment.
Q. Do Elders and Ministerial Servants undergo the same training?
A. Fundamentally, yes.
Q. What do you mean, fundamentally?
A. Well, the Elders are perhaps given a little bit more training as a result of their position.
They will -- for example, part of their training might be a meeting with the circuit district overseer at a circuit assembly, where Ministerial Servants might not participate in that meeting.
There may be some training offered there, new information that the circuit district overseer might convey that would be considered part of their training.
Q. How about the Kingdom Ministry Schools? Can you describe those?
A. Those schools are for Elders and Ministerial Servants. They have -- in my experience, they have operated in different ways at different times.

Sometimes both the Elders and Ministerial Servants attended both days, sometimes Ministerial Servants attended with the Elders one day and then just the Elders the next day.
The difference again would be in the information conveyed to the Elders.
Q. The Elders get different information from the Ministerial Servants?
A. Additional information that would be different or maybe more intense discussion of the same information expanded.
Q. Did you ever attend a Kingdom Ministry School?
A. Yes.
Q. How many times?
A. I don't recall the exact number of times. It seems like it was three.
Q. And what positions did you hold at the times you attended those schools?
A. In all situations I was a Ministerial Servant.
Q. So you were never an Elder when you attended one of those schools?
A. No.

Q. How often are those schools given?
A. It varies. I can't say how often, because it's whenever they schedule it.
Q. So there's no set rotation; every 24 months, every 12 months, anything like that?
A. I don't recall a set schedule.
Q. Are the duties and responsibilities set out in writing for Ministerial Servants?
A. Yes.
Q. Are the duties and responsibilities for Elders set out in writing?
A. Yes.
Q. Are there other positions for which the duties and responsibilities are set out in writing?
A. Yes.
Q. What are those other positions?
A. Regular Pioneers, Special Pioneers, Auxiliary Pioneers.
Q. Anything else?
A. I can't think of anything.
Q. With respect to Roman numeral three, you are going to testify about instructional materials and their use within the Watchtower?

A. Yes.
Q. Is this based on your personal experience?
A. Yes.
Q. Is it based on anything else?
A. Yes. Well, or secondhand information I received from Elders but primarily my personal experience.
Q. And when did you receive this secondhand information from Elders?
A. Over the course of the years of my being involved in the congregation, just my interaction with Elders, they would share information.
Q. And that was again while you were a practicing Jehovah's Witness?
A. Yes.
Q. Roman numeral four concerns the policies and procedures regarding Judicial Committees and the files and materials they generate?
A. Yes.
Q. Do you see that?
A. Yes.

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Q. What are you going to testify to in that regard?
MR. LOVE: Objection, I mean, just to the extent that I've given you a list of- the areas I intend to cover by what I expect he knows.
I don't want you to think that the testimony he's giving you is something we have prearranged, so I object to the extent he knows what I'm going to ask him.
MR. SCHNACK Q. Okay. What do you expect to testify about in that regard on this topic?
THE WITNESS A. I guess I'm a little confused here by the interaction. I don't know what questions precisely are going to be asked by either party at any time, but by looking at this I can tell you if I'm asked questions about the topic of Judicial Committees and files and the materials generated that I'm going to talk about my role as an Elder, my role both in taking notes on Judicial Committee and in maintaining those files and records for the congregation as congregation secretary.

Q. Okay. Well, let's go back to that then. You were an Elder in roughly what, 1984 to 1985?
A. Correct.
Q. And what files, in your experience, back then were generated by Judicial Committees?
A. What files?
Q. Yes. My understanding is you're going to testify -- and I grant this is counsel's rendition of the topic, but what would you testify to if you were asked what types of files get generated by Judicial Committees?
A. Well, the types of files would be primarily disciplinary action at one degree or another.
Q. And what type of materials actually get generated by the Judicial Committees when they deal with these disciplinary matters?
A. File notes that the Elders take. Each Elder may take extensive notes or short notes, but they're all compiled and put into a sealed manila envelope.
And if there is an action taken, such as disfellowshipping, there will be a society form

attached that is used to notify the society of that action.
The envelope is marked with the names of the Elders on the committee and the name of the individual who was dealt with and any other -- probably a date of some sort.
Especially if they have ongoing action with the individual, there will be some kind of dating.
Q. What are the purposes underlying the Judicial Committees from the church standpoint?
A. The overriding phrase is to -- and the most important is to keep the congregation clean, to protect the image of the organization.
Q. What do you mean, to keep the congregation clean?
A. Well, that's what I -- that was part of my second statement, to keep the image of the organization, the reputation of the organization looking good in their minds to the public.
Q. And where do you get that opinion as to the purpose of the Judicial Committees?
A. Twenty-five years of association with Jehovah's Witnesses. It's just -- it develops

over time.
You can also find it in various publications.
Q. That the purpose is to protect the image of the organization to the outside public?
A. That is the -- I don't know if it's used in those exact words, but that's what you would understand, sure.
They want to protect the image of the organization, yes.
Q. And there's no other purpose to these Judicial Committees, in your view?
A. Well, I said that was the prime purpose.
Q. Okay. Is there any other prime purpose?
A. If possible, to work with the individual who's accused in some way, but the prime purpose, and as stated in our training, is the image of the congregation, to keep the congregation clean, but if we can help the individual on some level, great.
Q. But that's secondary, in your opinion?

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

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training at conventions.
Q. And who does this training?
A. Well, the Watchtower Society oversees, directs the training. They send representatives from New York to the conventions and they oversee our conventions.
Q. And how about the procedures with respect to Judicial Committees? Are there written procedures for those?
A. Yes.
Q. And where are those found?
A. The organization books that I referenced, also the book Pay Attention to Yourselves and to All the Flock, which is a manual given exclusively to Elders.
Q. Okay. Let's go to Roman numeral five. It says Watchtower Society's policies, procedures, practices regarding reporting of child sex abuse to the authorities?
A. Yes.
Q. Are you familiar with those policies and procedures?
A. Yes.
Q. Where do you obtain this information?

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

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

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

Watchtower's policies, practices, or procedures regarding reporting of child sex abuse to the authorities?
A. Yes.
Q. Okay. What is your dispute with it?
A. That we're instructed not to report to the authorities.
Q. That's what you believe Watchtower instructs?
A. Yes.
Q. And what do you base that belief on?
A. When I was told by the presiding overseer not to report a molester in our congregation to the authorities, and he confirmed that with the circuit overseer.
Q. Okay. When was that?
A. That would be back in either late '85 or early '86, sometime in that time frame.
Q. And who was the presiding overseer?
A. That told me not to report?
Q. Correct.
A. That would be Ron Strubb.
Q. And who was the circuit overseer?
A. Harry Snow.

Q. And who were you told not to report about?
A. Bill Elliott.
Q. And how did you come to know that Bill Elliott had committed sex abuse?
A. An Elder in the congregation called me and told me.
Q. Who was that Elder?
A. Joe Risonsky.
Q. And when you got the information from Joe, what did you do?
A. Immediately I didn't do anything. I subsequently talked to Ron Strubb about it.
Q. And Ron told you then what, to go to the circuit overseer, or he went to --
A. No, he told me not to report to the authorities, and then he went to the circuit overseer.
Q. What information did you get with respect to Bill Elliott?
A. That he had been caught molesting non-Witness children in his apartment complex in Petaluma, California and that they met with him and quickly disfellowshipped him.

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

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Bill had a track record that he learned of that went back over several congregations of having molested other children for which he received mild discipline.
Q. What other congregations?
A. I don't recall. North of Petaluma primarily.
Q. In California?
A. Yes.
Q. But up the cost?
A. It was not up the cost but up U.S. 101, congregations up in that corridor. I just don't remember which ones he was in.
I mean, I can give you a list, a litany of congregations, but I just don't know which ones he was in.
Q. But you'd be speculating --
A. Yes.
Q. -- as to which ones? Okay. Any other information that leads you to believe that Watchtower instructs persons not to report to the authorities with respect to childhood sex abuse?
A. Nothing comes to mind at the moment.
Q. So in your mind as you sit here today

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it's that one incident?
A. No. I'm sorry. I thought -- okay. I misunderstood you. Another instance is in Saint Helens, Oregon when I told the Elders that they needed to report an individual for his long history of molestation.
Q. Who was that?
A. And the -- who was who?
Q. The abuser.
A. The abuser? John Allen.
Q. Okay. Go ahead.
A. And they begged me not to, and then I was finally told to keep my trap shut.
Q. Okay. Who begged you not to report it?
A. Our congregation secretary, Gene Church.
Q. And when did you go to Gene Church with this information?
A. He was in my home.
Q. What time frame?
A. I believe that was in April of '93.
Q. And how did you come to know that John Allen had committed sex abuse?

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A. Some of the Elders' children who were friends with my children mentioned it. I confirmed it with other Witnesses I knew, and I then confronted Gene Church when he was in my home.
Q. How did you confirm it with other Witnesses that you knew?
A. That they knew or that John was a molester? I had talked to one individual who had been a past presiding overseer Congregation Servant, and he knew of John's history.
I believe the current presiding overseer in that congregation -- when I say current, current at the time -- Jack Fields, had confirmed it for me.
In my living room another Elder, our school overseer, Curt Hardy, was there. He confirmed it. So they -- no one denied that John Allen was a child molester.
The county sheriff said that there was a file at child services on him and talked about investigating into John further.
Q. How did you find out the sheriff had a file?

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A. Because I went to the sheriff and told him about John Allen.
Q. So you reported it?
A. Yes.
Q. Any other instances from your experience that suggest the Watchtower organization instructs people not to report child abuse to the authorities?
A. My many experiences with people who have been Jehovah's Witnesses over the years who have likewise received similar instruction in various forms, whether they were victims, families of victims, Elders, Ministerial Servants.
Q. That's what others have told you?
A. Yes.
Q. Any other personal experiences for you other than the two you've mentioned?
A. I believe there are. I just -- I would like to leave that open and come back to that some other time, because I just don't recall at the moment.
Q. Okay. I don't -- I don't get another time.
A. Okay.

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

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the authorities.
A. Yes.
Q. And it sounds like the authorities already knew about it when it came to light.
A. Yes, but then it also triggers, okay, now what if we get another molester, do we go to the authorities about that molester.
And we did have other molesters, because Bill Elliott popped up in the scene, so it was certainly in the -- in my mind regarding Simms and Diorio.
Q. Well, let's go back, though, because you had said that Elliot came up in either late '85 or early '86.
A. Yes.
Q. And Glew was arrested after that.
A. That may be, but I would -- I would still be asking the question, okay, now he's arrested, now what do we do?
Q. Okay. Maybe I misunderstood your answer then, because I thought you said after Glew then Bill Elliott came up.
A. I may have. I may have misspoken.
Q. Let's go back to Judicial Committees.

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Is there a biblical basis for Judicial Committees?
A. No, not in my mind.
Q. What about in the mind of Jehovah's Witnesses?
MR. LOVE: Objection.
MR. SCHNACK: You can go ahead and answer.
THE WITNESS: Okay. Well, I thought I heard the word objection.
MR. SCHNACK: You did, but that doesn't mean you can't answer.
THE WITNESS: Okay. Yes, Jehovah's Witnesses believe in -- that there is a biblical basis.
MR. SCHNACK Q. So why do you believe there is not a biblical basis for it?
THE WITNESS A. Because I haven't found it in the Bible.
Q. Roman numeral eight on the sheet there in front of you, Exhibit 1, mentions congregation policies, procedures, and practices?
A. Mm-hmm.
Q. Are there any congregation policies, procedures, and practices that are distinct to

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certain congregations?
A. They're the same for all congregations worldwide.
Q. So it's identical worldwide --
A. Yes.
Q. -- in every congregation?
A. Yes.
Q. Roman numeral nine said that you're going to talk about your own experiences with child sexual abuse and abusers within Watchtower?
A. Yes.
Q. Okay. Why don't you tell me about your own experiences with child sexual abuse and abusers within Watchtower.
A. Well, that would involve the perpetrators we've already discussed; Bill Elliott, Jim Simms, Vince Diorio, Don Glew, John Allen, my experiences in interactions that we've pretty much hit on throughout our discussion today.
Q. Okay. Let's talk about Jim Simms.
A. Okay.
Q. Did you know Jim Simms?
A. Yes.

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Q. Okay. How did you come to know him?
A. He moved into our congregation.
Q. Which one?
A. Petaluma West.
Q. What time period?
A. It was in the early to mid-'80s. I forget the exact time frame.
Q. And what interactions did you have with Jim Simms?
A. Numerous, but he was in my book study. I was a book study conductor, Elder.
Q. Okay. And what interactions did you have with Mr. Simms with respect to child sex abuse?
A. I didn't have direct interactions with him on that topic. That is, I did not talk to him about it. Because I was congregation secretary, I obtained judicial file notes on Jim Simms.
They were unprotected in a -- they were not in a sealed envelope, and I followed procedure and put them in a sealed envelope.
Prior to doing so I reviewed those notes.

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

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

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endangering his own children.
Q. Do you have any information that Jim Simms was involved in molesting any of the plaintiffs we've talked about here today?
A. No.
Q. How about Jim McKay?
A. Jim McKay? Be more specific.
Q. Wasn't he on your list as well?
A. I don't recall him being discussed.
Q. Does his name show up there?
A. Okay. Because I never have seen this, so I --
MR. SCHNACK: No, I understand that.
MR. LOVE: I think he shows up on my list.
MR. SCHNACK: Well, Mr. Nolen wrote to me that perpetrators about whom Whitney will provide testimony, and one of them was Jim McKay.
THE WITNESS: Okay.
MR. LOVE: Okay.
MR. SCHNACK: And I don't know who authored the letter between you and Mr. Nolen, so --

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MR. LOVE: We worked on it together.
MR. SCHNACK Q. So do you know Jim McKay?
THE WITNESS A. Yes.
Q. Okay. How did you come to know him?
A. He was in the Saint Helens Congregation when I moved there. Ultimately my oldest daughter, Jennifer, married his son, Aaron.
Q. Okay. And what do you know about Mr McKay with respect to childhood sex abuse?
A. Two or three years ago he was arrested for having molested a young girl. I believe she was around 11 years old.
She was not a Witness. She told some friends at school, who told the schoolteacher, who contacted the authorities.
The authorities met him at his home. And everything I learned on this were from a number of sources.
Q. What sources?
A. My daughter, my son-in-law, my ex-wife, and the Columbia County district attorney.
Q. And how does that relate to the

Jehovah's Witnesses?
A. Well, Jim McKay is one of Jehovah's Witnesses and, to my knowledge, still is.
Q. Okay.
A. And he was in the Saint Helens Congregation.
Q. Okay. And was he ever brought up on any types of charges for childhood sex abuse to a Judicial Committee that you know of?
A. Yes, he was publicly reproved.
Q. When did that occur?
A. Sometime after he was arrested. I don't know the exact time.
Q. That happened sometime after 2000 then?
A. Yes.
Q. Any other dealings with Jim McKay that is relevant to childhood sex abuse?
A. Relevant, yes. Not my direct dealings, just knowledge I have. For the life of me I do not understand, you know, why he still is allowed to have his -- one of his grandchildren, a young child, live with him, but that's all that I can tell you at the moment.

Q. Let's go to John Allen.
A. Okay.
Q. How do you know John Allen?
A. I met John Allen. He was the first person I met in Saint Helens when my family and I moved there.
Q. And that was again in '88 or '89?
A. That would be -- that would be in 1989, late '89.
Q. And what were the circumstances of your meeting him?
A. I drove into the Kingdom Hall parking lot with my family. We were scoping out the area we were moving to, and he happened to be standing in the parking lot.
He had just come out of the Kingdom Hall, so I introduced myself, and that's how we first met.
Q. Okay. And what does John Allen have to do with childhood sex abuse?
A. He had molested a number of children in Saint Helens. I understand from the Elders he had a very long record.
I understand from the county sheriff

that he had -- there was a child services file on him, and I had observed him in one situation.
I guess you could call me an eyewitness to one situation, where I believe he was handling -- mishandling his youngest daughter, Alva, and that is he was running his hands up her dress.
I don't know how graphic you want this to get. But he was -- in my opinion, he was doing what he shouldn't be doing.
All in all, when the Elders notified their children not to have anything to do with John because he was a molester, and some of their children managed to tell mine, that was the final straw for me.
Q. Okay. I'm not clear on what --
A. Yes.
Q. You said the Elders notified whom?
A. Their own children. They talked to their own children. They didn't help the rest of us, but they had helped their own children.
Q. And when did that occur?
A. Well, that would have been sometime in '93, because I confronted the Elders in my home

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

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A. No, I never did.
Q. Anything else with respect to John Allen and childhood sex abuse?
A. I can't think of anything at the moment.
Q. Well, we've talked about Bill Elliott, have we not?
A. I believe we did talk about him.
Q. Well, we can go through the same questions.
A. Okay.
MR. SCHNACK: Let me find my notes.
(Pause.)
MR. SCHNACK Q. Okay. We earlier talked about Elliot in 1985, when he moved into the congregation?
THE WITNESS A. Right.
Q. Anything we haven't talked about with respect to Bill Elliott along these same lines?
A. I can't think of anything.
Q. Okay. I just don't want to waste your time here on it if we've covered it.
A. Okay.
Q. What about Vince Diorio? Anything

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other than what we've talked about earlier? You saw a Judicial Committee file on Vince --
A. I saw --
Q. -- that you think was pre-1980?
A. I saw a file. And, of course, I became concerned, as did Joe Risonsky, when Vince Diorio was finally reinstated.
Joe wanted to keep a close eye on him. And ultimately I did interact with Vince on a Judicial Committee, not under the allegation that he abused anyone, but he was smoking.
His wife had caught him at it. But I removed myself from that committee and let the other Elders -- another Elder step in, and they redisfellowshipped Vince.
His wife ultimately divorced him a second time. And I understand that there was even more discussion about more molestation that they hadn't uncovered earlier.
Q. Why did you remove yourself from that Judicial Committee?
A. I felt a conflict of interest, because I had smoked earlier and Vince was on the committee.

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

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NO. 91,048-C-1

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLEY,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

FILED
CAROLINE WOODBURN
DISTRICT CLERK
2004 MAR 17 P 4:59
POTTER COUNTY, TEXAS
BY

DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES & AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES' OBJECTIONS TO PLAINTIFF'S SUMMARY JUDGMENT EVIDENCE

Defendants, Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses & Amarillo-Southwest Congregation of Jehovah's Witnesses (collectively referred to as the "Church Defendants" and individually referred by name) file the following objections to the evidence incorporated and attached to Plaintiff's Response to the Church Defendants' Motion for Summary Judgment, as follows:

I. Answer of Larry Kelley

1. The Church Defendants object to the admission of Larry Kelley's original answer, attached as Exhibit "1" to Plaintiff's Response, in its entirety. Larry Kelley's original, *pro se* answer has been wholly supplanted and replaced by Larry Kelley's First Amended Original Answer, filed of record in the above-captioned and styled lawsuit. *Sosa v. Central Power & Light*, 909 S.W.2d 893 (Tex. 1995); *Vaughn v. Hughes*, 917 S.W.2d 477 (Tex. App.—Fort Worth 1996, no writ).

II. AFFIDAVIT OF JAMES ANTHONY BETZEN

1. "Amy was taught by the Elders in the Jehovah's Witnesses that she was to obey them and those whom the Elders approved for leadership roles in the congregation. This obedience was to be in all things and without question. My family was taught that we should trust the Elders and any leaders they appointed because they represented the Governing Body of the Jehovah's Witnesses who only had our best interests at heart." The Church Defendants object to this testimony as inadmissible speculation as to what was taught by the Elders and the Jehovah's Witnesses to Amy Marie Betzen or any other family members besides the Affiant. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

2. "There were a number of different leadership responsibilities that were delegated by the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses to Larry Kelley." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

3. "The delegation of these responsibilities by the Elders to Larry Kelley represented to the congregation that Larry Kelley was someone to whom the members owed their obedience and trust." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

4. "The responsibilities that were assigned to Larry Kelley included, among others, leading out in service (which includes making decisions about who will be together as service teams on any given Sunday) and leading in prayer during congregational meetings." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

5. "As Pioneers, Larry and Judy Kelley were held out as role models." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

6. "Each member provides the Service Overseer for the congregation a report on how many hours he/she spent in Service and who they went on Service with each time. A record of all Service performed by each member and children is kept by the Elders of each congregation." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

7. "Typically, the Elders let out on weekends, but on weekdays, they often delegated this role to others." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications

and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

8. "The men appointed by the Elders for 'leading out in Service' are given the authority to divide the members and children into service partners or groups and coordinate the areas to which the respective partners will go. The responsibility of 'leading out in Service' is a significant delegation of authority from the Elders of the congregation. It is doubly so if the man is also approved as a full-time Pioneer or an Auxiliary Pioneer like Larry Kelley." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

9. "On more than one occasion, I discussed with the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses, that my daughter, Amy, was completing her Service requirements with Larry Kelley who was leading out in Service and assigning Amy to himself as his service partner. The Elders assured me that this was a good thing for my daughter to be doing." The Church Defendants object to this testimony as inadmissible hearsay as it includes an out-of-court statement offered for the truth of the matter asserted.

10. "Every action he took with or toward my daughter originated in a church activity. In fact, stated another way, I knew of no contact Larry Kelley had with my daughter that did not arise from a church activity." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

11. "In the Jehovah's Witnesses' organization, members are taught, and my family was taught, that all their activity should involve the church. We were taught that we should only associate with other Witnesses rather than 'worldly persons.' We were taught that members of our family who are not Witnesses were also 'worldly' and therefore not 'good associations.'" The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

12. "Larry Kelley and his wife filled that void for Amy, and acted like surrogate grandparents." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

13. "I know that the Elders in the Southwest congregation knew about, and actively encouraged, this relationship between my daughter and the Kelleys." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

14. "My daughter also went with other women in the congregation to the Kelley's home to help with cooking and cleaning. This was a church activity." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal

knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

15. "The Elders encouraged all congregation members to support Pioneers. Because Judy Kelley was a regular Pioneer and Larry Kelley was an auxiliary Pioneer and because of Judy Kelley's physical disabilities, the congregation was encouraged by the Elders to help the Kelleys and Amy was encouraged to go to the Kelleys' home to help with these tasks." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

16. "The Elders made me believe that this was a good thing for Amy to be doing." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

17. "After Kelley's abuse of my daughter became known, Larry Laws told me that he had once seen Amy and Larry Kelley alone in Pampa, Texas and regretted the fact that he had not said anything about it." The Church Defendants object to this testimony as inadmissible hearsay, as it includes out of court statements offered for the truth of the matter asserted. The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

18. "Even after he admitted his crime, Kelley was permitted to continue to come to the Kingdom Hall, which Amy was also attending." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

19. "They refused to take any action." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Finally, this statement is inconsistent with other statements made by Mr. Betzen that Elders had investigated and ordered Kelley to surrender to law enforcement authorities.

III. AFFIDAVIT OF JAMES WHITNEY

1. "All policies of the Society were promulgated and disseminated to all Congregations under the direction of its Governing Body. All local Congregations, Elders, all of their leaders and members were expected to follow the policies of the Governing Body without hesitation, question or objection." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

2. "No one became an Elder or ministerial servant without the approval of the Watchtower Society, as directed by its Governing Body. The Watchtower Society, under the direction of its Governing Body, also approved the "position(s)" each Elder held in the Congregation, such as Presiding Overseer, Field Service Overseer, and Congregation Secretary, etc."

The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

3. "No one was 'removed' or 'deleted' as an Elder or ministerial servant without notice to the Watchtower Society, under the direction of its Governing Body, along with a statement of the reason for the deletion." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

4. "In the event an Elder or ministerial servant was deleted for issues relating to child sexual abuse, the Form S2B would and should indicate that." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

5. "Such appointments and announcements of special, regular and auxiliary Pioneers were greeted by the members of the congregation with significant applause because it signaled to them that the person so appointed was considered a leader by the Elders and will be treated as such by the congregation. In the case of men, it is considered an act of 'reaching out for the office of overseer' and any such 'appointment' is an approved status with the congregation." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer

such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

6. "All of the above responsibilities were considered significant within the Society and denote significant trust in the person to whom the responsibilities were given. And, in the case of men, it denoted a level of authority as described in the following statements under the subheading, "delegation of authority." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

7. "Even when a member felt or believed that the Elder(s) was in error in their counsel and/or decisions, the Elder(s) had to be obeyed and respected because they represented the Organization and its Governing Body." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

8. "Elders of the congregations are considered to be shepherds of the members and are expected to care for their needs. Members of the congregation were taught to place their trust and confidence in the Elders and those to whom the Elders delegated authority. Members were also taught that the Elders act in the members' best interests. Jehovah's Witnesses' children were taught and expected to place their trust in the congregation Elders and those to whom the Elders delegated authority. Minor children were expected to be under the direction of the congregation in addition to their parents, and this meant obeying the Elders over and above their parents." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed

to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

9. "These delegations of authority were significant communication (signal) to the members of the congregation that the man to whom responsibilities were delegated were acting as a representative of the Elders and should be both obeyed and trusted." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

10. "The responsibility for 'leading out in service' was given to a male who had the approval of the Elders for leadership. The man or men appointed by the Elders for leading out in service were given the authority to assign the members and children into service partners/groups and coordinate the areas to which the respective partners/groups go. The responsibility of leading out in service is a significant delegation of authority from the Elders of the congregation. A man cannot lead out in service unless he is appointed to do so by an Elder. Preference for such leading assignments is given first to Elders or ministerial servants, but, for example, during mid-week service, or on occasion weekend service, preference with shift to a man who the Elders hold as qualified to head, especially if he is a regular Pioneer or auxiliary Pioneer." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

11. "All of this sends a signal to the members that such a man is being considered for greater responsibility and appointment to higher positions in the congregation." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

12. "Elders were instructed by the Society's representatives to not report matters of wrongdoing, including allegations of child sexual abuse, to the authorities (police, etc.). Members of the Society were required to handle matters of wrongdoing within the Society or reporting the matter to the Elders. It was the job of the Elders to investigate and handle reports of wrongdoing. If a serious matter such as child sexual abuse was involved, the Elders formed a judicial committee if they believed there was merit to the allegation." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

13. "The Society prohibited Elders from reporting their investigations or the outcome of judicial committee proceedings to the secular authorities, the congregation or individual members." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

14. "Likewise, victims of molestation are instructed to keep the names of the perpetrator in strict confidence." The Church Defendants object to this testimony as inadmissible speculation.

Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

15. "For a Jehovah's Witness to be told that there is nothing more that can be done in a judicial way means that they must live with the issue as is . . . and if they break confidence or make the issue public, means they can be sanctioned by the Elders for slandering the name and reputation of the molester. This would include any efforts to take the matter to the civil authorities. We were orally instructed not to report such matters to the authorities, because the world does not really help molesters, and victims, and it is preferable to handle the matter within the congregation." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

16. "When I strongly urged the Elders to report our former presiding overseer to the authorities, I was told that we do not act as the world's police and to not make such a report. The Elder so instructing me then checked the circuit overseer and later confirmed that it is the policy of the organization to not make any reports to the authorities." The Church Defendants object to this testimony because it constitutes inadmissible hearsay, as it includes out of court statements offered for the truth of the matter asserted. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

17. "This article (Attached hereto as Exhibit 3) shows that Ministerial Servants are not merely low level unskilled labor, but rather, are closely aligned with the Elders as leading support

staff in a congregation...and they can be used in 'qualified' teaching and leading assignments." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

18. "This article (Attached hereto as Exhibit 4) shows that men are exhorted to "reach out" and to qualify as Ministerial Servants and Elders. Part of this reaching out involves carrying out assignments as instructed, and part of this advancement means taking advanced assignments, such as leading the meeting for Field Service as is shown in subsequent documents. Ministerial Servants can share in special training schools that enable them for continued advancement." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

19. "This document (Attached hereto as Exhibit 5) shows that those working territories are under the supervision of the Service Overseer. And he can and does assign "qualified" brothers to visit certain homes. This demonstrates that he can appoint men who are not necessarily Elders or Ministerial Servants." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes

inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

20. "This document (Attached hereto as Exhibit 6) shows exhortation to men to 'reach out' and measure up to the qualifications of Elders, etc. This exhortation and process is repeated over and over again and again among Jehovah's Witnesses." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

21. "This document (Attached hereto as Exhibit 7) shows that men who are not yet Elders or Ministerial Servants may be used in leading and teaching in Service Meeting parts. They are closely supervised, and cannot act on their own." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

22. "This document (Attached hereto as Exhibit 8) shows that the Book of Study is vital, and is deliberately designed to be convenient throughout the congregation territory to enable newly interested persons from the public to attend. This weekly meeting is not a light meeting, but reviews and studies more complex publications of the Watchtower Society, and often requires greater in-depth teaching. Further, the Book Study is the center from which Jehovah's Witnesses engage in their public

preaching work. The book study Conductor assigns someone to be sure to lead the group…this "lead" is assigned to a qualified man, who may not necessarily be an Elder or Ministerial Servant." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

23. "The point of this article (Attached hereto as Exhibit 9) is to show that men who are not Ministerial Servants can be used in advanced positions that involve teaching." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

24. The point of this article (Attached hereto as Exhibit 10) is to show that Ministerial Servants are not merely low level unskilled labor, but share equally with the Elders in caring for the needs of the congregation, including taking the lead in their most sacred activity." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

25. "The point of this article (Attached hereto as Exhibit 11) is to show that "leading" the Meeting for Field Service is an "assigned" activity, and not something anyone just takes upon themselves to do. And the one conducting the meeting assures that all in the group know their assigned car group, etc." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

26. "This article (Attached hereto as Exhibit 12) shows the ranking order of who conducts these meetings, but in any event, the Service Overseer (Elder) is responsible to make the assignment of who conducts the meeting, and that this meeting is "Sponsored" by the Congregation per the Watchtower directive." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

27. "Again, this article (Attached hereto as Exhibit 13) places this meeting on the same level as other congregation meetings, and there is always someone assigned to conduct it, showing that they are under the supervision of the Elders." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the

article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

28. "This article (Attached hereto as Exhibit 14) shows that even when a more experienced Publisher is helping a less experienced Publisher, such an arrangement is an assignment that is made through the Congregation Book Study Conductor. This shows that the congregation takes responsibility at every turn, including when an older adult male would work with young children." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

29. The point of this article (Attached hereto as Exhibit 15) shows that Ministerial Servants share in a serious work known as "Shepherding", which is normally reserved for Elders. As an Elder, and Ministerial Servant, I shared in this activity many times...and often it turned out that the Congregation member being visited would share confidential information that could lead to additional meetings with the Elders. Clearly, a Ministerial Servant is not a mere unskilled worker, but is used to carry out some of the more serious and sensitive responsibilities." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

30. "This article (Attached hereto as Exhibit 16) shows that a Ministerial Servant can be used in the most sensitive of congregational responsibility and authority by filling in on a Judicial Committee as an Elder would." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

31. "The following article (Attached hereto as Exhibit 17) is quoted to a great extent because it gives many details on how Ministerial Servants are not low-level workers, but are held in high esteem, as examples, as reaching out to be Elders, and in a trusted position of authority. This article goes so far as to show that Ministerial Servants are nor subordinate to the Elders, but as fellow workers, thus telling the whole congregation through a Watchtower magazine article that a Ministerial Servant is someone to be highly trusted and respected." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

32. This article (Attached hereto as Exhibit 18) continues the process of frequently urging men to reach out, be noticed, and take on assignments. This is an important feature to Jehovah's Witness men. It is the normal course of operations to see men, even those who are not Ministerial Servants, being assigned by the Elders to carry out responsible congregational activities, being placed in positions

of trust and authority on a regular basis so that such men may become fully qualified and appointed as Ministerial Servants and Elders." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

33. The Church Defendants object to the entire section of the Affidavit under the heading, "October 1972 KM: Question Box: "What is meant by "some years ago" on page 170, paragraph two, in the "Organization" book?:", including each and every paragraph in said section. The Church Defendants object to this testimony as inadmissible hearsay, as it includes out of court statements offered for the truth of the matter asserted. The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, the article speaks for itself and Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

34. The Church Defendants object to the entire section of the Affidavit under the heading, "The Society procedures used in cases when a Jehovah's Witness moves to another congregation:", including each and every paragraph in said section. The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony.

Further, the testimony includes inadmissible, unsupported conclusions of law and fact. Further, Affiant's testimony is not the best evidence of the contentions, opinions, facts or allegations offered.

IV. Affidavit of William Bowen

1. "The Society expected the Elders to follow the instructions contained in the BOE letters without hesitation, question or objection." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

2. "Elders were instructed not to report matters of wrongdoing, including child sexual abuse, to outside authorities. Elders were also instructed to counsel members of the local congregations that all allegations of wrongdoing, including child sexual abuse, were to be handled by the body of Elders at the congregation. Any allegation of wrongdoing was to be reported only to the Elders." The Church Defendants object to this testimony as inadmissible hearsay, as it includes out of court statements offered for the truth of the matter asserted. The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

V. Excerpts from the Oral Deposition of Amy B. Taken on November 13, 2003

1. Page 34, lines 2 through 6. The Church Defendants object to this testimony as inadmissible speculation. Further, the Deponent lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

2. Page 34, lines 12 through 23. The Church Defendants object to this testimony as inadmissible speculation. Further, the Deponent lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

3. Page 38, lines 9 through 13 and 16 through 21. The Church Defendants object to the testimony as inadmissible hearsay, as it includes out of court statements offered for the truth of the matter asserted.

4. Page 48, lines 16 through 21. The Church Defendants object to the testimony as inadmissible hearsay, as it includes out of court statements offered for the truth of the matter asserted.

5. Page 98, lines 20-25; page 99, lines 1 through 12. The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

VI. AFFIDAVIT OF AMY MARIE BETZEN

1. "At the Amarillo Southwest Congregation of Jehovah's Witnesses, Larry Kelley had a number of leadership responsibilities. These responsibilities included leading out for service and praying in the congregational meetings. He was also an auxiliary pioneer. I was taught by the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses that because Larry Kelley was given these leadership roles, I was to obey him in all things and that he could be trusted with my welfare." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

2. "I was encouraged by the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses to help out with Larry Kelley's wife, Judy Kelley, by cooking and cleaning in their home. I was also assigned by the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses to work with Judy Kelley to prepare for presentations in the weekly Theocratic Ministry School which involved my going to the Kelley home. Larry Kelley also often took me from the congregational meetings to his home to complete "Watchtower" studies required by the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible hearsay and unsupported conclusions of law and fact.

VII. AFFIDAVIT OF MARY MELINDA TAYLOR

1. "While at the Amarillo Southwest Congregation of Jehovah's Witnesses, Larry Kelly had a number of leadership responsibilities. These responsibilities including leading out for service and praying in the congregational meetings." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

2. "I also have personal knowledge that the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses knew that Larry Kelly was taking Amy Betzen out for service." The Church Defendants object to the testimony as inadmissible speculation. The Affiant lacks personal knowledge, qualifications or an expert basis to offer such an opinion or testimony. Further, the testimony is unsupported by the predicate facts supporting the assertion of personal knowledge.

3. "I also have personal knowledge that the Elders of the Amarillo Southwest Congregation of Jehovah's Witnesses encouraged members of the congregation to help out in Larry Kelly's home because of Judy Kelley's health problems. The Elders knew about, encouraged and supported Amy Betzen going to the Kelly home to help clean and care for Judy Kelley." The Church Defendants object to this testimony as inadmissible speculation. Further, the Affiant lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

VIII. Excerpts from the Deposition of Larry Kelley Taken on December 5, 2003

1. Page 94, lines 24 through 25; page 95, lines 1 through 21. The Church Defendants object to this testimony because the questions posed to the deponent were vague, ambiguous, did not properly identify the subjects or objects of the questions, called for speculation and the testimony constitutes inadmissible speculation. Further, the deponent lacks or has failed to demonstrate a personal knowledge, the necessary qualifications and a sufficient factual basis to offer such opinions or factual testimony. Further, the testimony includes inadmissible, unsupported conclusions of law and fact.

IX. Reliance on Privilege Logs as Summary Judgment Evidence

The Church Defendants object to Plaintiff's reliance on the Defendants' privilege logs as evidence in Plaintiff's Response. Specifically, Plaintiff supports factual assertions by citing to the Church Defendants' privilege logs to Plaintiff's Requests numbers 3, 4, 16(b), 32, and 34. Plaintiff's erroneous reliance on the Church Defendants' privilege logs is misplaced because a privilege log is not evidence.

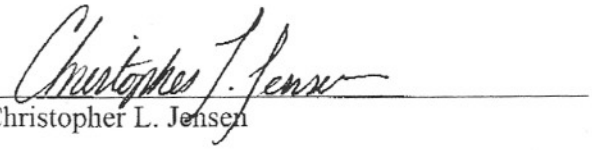
Appellate courts reviewing discovery disputes based on privilege logs do not consider the logs themselves in determining if documents referenced by the logs are privileged. In this context, the Waco Court of Appeals stated, "we did not consider any information listed on the privilege logs as evidence. The logs were not incorporated into any affidavits and thus the information contained in the logs is no more than an unproven assertion like any other pleading." *In re Monsanto Co.*, 998 S.W.2d 917, 929 (Tex.App. – Waco 1999, orig. proceeding). In other words, the logs themselves were not subject to use as evidence of whether the underlying documents were privileged. Similarly, Plaintiff in the instant dispute should not be able to use the Church Defendants' privilege logs as summary judgment evidence, because they are no more than "unproven assertion[s]." *Id.* For this reason, the Watchtower Defendants object to Plaintiffs' use of their privilege logs as evidence in Plaintiffs' Response to the Watchtower Defendants' Motion for Summary Judgment.

X. Conclusion

For these reasons, the Church Defendants respectfully request that the Court sustain these objections to Plaintiff's Summary Judgment evidence.

Respectfully submitted,

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Christopher L. Jensen

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was sent to the following as signified below on this 17 day of March, 2004:

Hartley Hampton, Esq. Fibich, Hampton, Leebron & Garth, L.L.P. 1401 McKinney, Suite 1800 Five Houston Center Houston, TX 77010	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☑
	By Hand Delivery	☐

Gregory S. Love Kimberlee D. Norris Love & Norris 314 Main Street, Suite 300 Fort Worth, TX 76102-7423	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☑
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Ronald T. Spriggs Law Offices of Ronald T. Spriggs 112 W. 8th, Suite 400 Amarillo, TX 79101	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☑
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Christopher L. Jensen

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FILED
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DISTRICT CLERK

2004 MAR 17 P 4:59

POTTER COUNTY, TEXAS

BY

NO. 91,048-C-1

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

FILED
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DISTRICT CLERK
2004 MAR 17 P 4:59
POTTER COUNTY, TEXAS
BY

DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, and AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses (collectively referred to as the "Church Defendants" and individually referred to by name) file this Reply to Plaintiff, Amy B.'s ("Plaintiff") Response to the Church Defendants Motion for Summary Judgment ("Response"), showing the Court as follows:

I. INTRODUCTION

The Motion for Summary Judgment of the Church Defendants ("Motion") and Plaintiff's Response reveal two basic issues for the Court to decide. The Court must first determine whether Plaintiff's claims against the Church Defendants are barred by the applicable statute of limitations. Second, in light of the Plaintiff's recognition that a common law duty does not exist, the Court must

determine whether any of the Church Defendants assumed a duty to protect Plaintiff from the intentional criminal conduct of a third person.

The pleadings and summary judgment evidence demonstrate that the Church Defendants are entitled to summary judgment on all of Plaintiff's claims because Plaintiff's claims are barred by either the two or four-year statutes of limitations. Further, Plaintiff's reliance on the exception to the applicable statutes of limitations is misplaced. As such, the five-year statute of limitations found in TEX. CIV. PRAC & REM. CODE 16.0045 does not govern Plaintiff's claims against the Church Defendants.

Further, the Church Defendants are entitled to summary judgment on Plaintiff's claims against them because Plaintiff cannot raise a fact issue by identifying an affirmative act, intentionally and knowingly undertaken by one or more of the Church Defendants that provides a basis for Plaintiff's contention that the Church Defendants assumed a legal duty to protect Plaintiff from Larry Kelley. First, Texas law does not recognize an assumption of a duty based upon knowledge and inaction. Second, the Church Defendants' internal, religious beliefs, teachings and practices concerning discipline and internal governance cannot provide a factual basis for the assumption of a duty because imposing liability based solely on the Church's religious policies violates First Amendment protections. Further, Plaintiff's effort to re-characterize the type of fiduciary duty asserted, from a fiduciary duty to a confidential relationship, must fail because Texas case law precludes the possibility of a confidential relationship existing between Plaintiff and one or more of the Church Defendants in this lawsuit.

In the alternative, the only fact issue arguably raised by Plaintiff would be whether the Amarillo-Southwest Congregation assumed a duty by allegedly delegating authority to Kelley to lead out in service. While the Church Defendants disagree with Plaintiff's characterization that

Kelley was authorized to "lead out in service" and while such an appointment is not an affirmative act intentionally and knowingly undertaken for purposes of assuming a duty to protect the Plaintiff from Larry Kelley, at a minimum, the remaining Church Defendants are entitled to summary judgment. The remaining Church Defendants did not authorize and no summary judgment evidence raises a fact issue as to whether any of the other Church Defendants authorized Kelley to lead out in service. As such, the Court should grant the Motion for all Church Defendants other than the Amarillo-Southwest Congregation and should grant the Motion against all claims against the Amarillo-Southwest Congregation other than the specific issue of whether the Amarillo Southwest Congregation assumed a duty by allegedly appointing Kelley to lead out in service.

Finally, the Church Defendants take strong exception to most of the allegations made by the Plaintiff. However, assuming such allegations are true as required for purposes of summary judgment practice, the Church Defendants are still entitled to summary judgment.

II. PLAINTIFF'S CLAIMS AGAINST THE CHURCH DEFENDANTS ARE NOT SUBJECT TO §16.0045

Plaintiff contends that her fraud, fraudulent concealment, breach of fiduciary duty, negligence, negligent hiring, retention and supervision and gross negligence claims against the Church Defendants are not barred by limitations because said claims somehow fall within an expansive interpretation of TEX. CIV. PRAC. & REM. CODE §16.0045 and suit was brought on or before June 5, 2003. Section 16.0045, which became effective in civil actions filed on or after June 15, 1995, provides:

> (a) A person must bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates:
>
> (1) Section 22.011, Penal Code (sexual assault); or
>
> (2) Section 22.021, Penal Code (aggravated sexual assault).

> (b) In an action for injury resulting in death arising as a result of conduct described by Subsection (a), the cause of action accrues on the death of the injured person.
>
> (c) The limitations period under this section is tolled for a suit on the filing of a petition by any person in an appropriate court alleging that the identity of the defendant in the suit is unknown and designating the unknown defendant as "John or Jane Doe." The person filing the petition shall proceed with due diligence to discover the identity of the defendant and amend the petition by substituting the real name of the defendant for "John or Jane Doe" not later than the 30th day after the date that the defendant is identified to the plaintiff. The limitations period begins running again on the date that the petition is amended.

In this case, Plaintiff's sexual assault and battery claims against Larry Kelley, the perpetrator of the sexual assault on the Plaintiff, are governed by §16.0045's five-year statute of limitations.[1] However, Plaintiff's claims against the Church Defendants are not governed by §16.0045's five-year statute of limitations because §16.0045 cannot be construed to govern tort claims, other than sexual assault and battery claims, brought against a party, such as the Church Defendants, that did not actually perpetrate a sexual assault or battery against the Plaintiff. *See generally, Doe v. Reverend Jesse S. Linam*, 225 F.Supp.2d 731, 734 (S.D. Tex. 2002) (applying two-year statute of limitations to negligence claims; four-year statute of limitations to fraud claims; and five-year statute of limitations to sexual assault and battery claims relying on vicarious liability theories).

As an initial matter, the text of §16.0045(a) applies only to the conduct of the perpetrator, Larry Kelley, and not to Plaintiff's claims against the Church Defendants. Plaintiff argues that §16.0045 applies "to *any* cause of action against *any* defendant" without providing any support.

[1] At least in theory, Plaintiff's sexual assault and battery claims brought directly against Defendants, which necessarily depend on the Court's application of a theory of vicarious liability, such as respondeat superior or ratification, were governed by §16.0045's five-year statute of limitations. However, Plaintiff appears to have abandoned all vicarious liability claims against the Chruch Defendants. Additionally, the Church Defendants have conclusively proved that, as a matter of law, there exists no genuine issue of material fact as to each one of Plaintiff's theories of vicarious liability brought directly against the Church Defendants.

Response p. 4 (emphasis in original). In fact, the Plaintiff emphasizes the word "any" when "any" is not found in the statute. If the Legislature had intended to have the effect argued by Plaintiff, the Legislature could have said:

> "A person may bring any cause of action against any person for personal injuries not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates: (1) Section 22.011, Penal Code (sexual assault)'

The Legislature did not draft the statute in that manner and the Plaintiff ignores the context of the statute and rules of statutory construction to arrive at her interpretation.

Further and to the extent that Plaintiff argues that §16.0045 has a broader scope, the Church Defendants believe that the statute is ambiguous, in that it is not apparent from the text whether the application of the five-year statute of limitations is limited to sexual assault and battery claims brought by a victim against a defendant who committed the sexual assault or battery, or whether the legislature intended §16.0045(a) to apply to any type of claim brought against any type of defendant in any type of case in which the plaintiff's injuries arise as a result of a sexual assault.

An important question regarding the scope of a statute's application can undoubtedly justify a court's statutory construction of the statute. In his concurrence in *Texas Employers Ins. Assoc. v. Holmes*, Justice Smedley wrote:

> An ambiguity justifying the interpretation of a statute is not simply that arising from the meaning of particular words, but includes such as may arise in respect to the general scope and meaning of a statute when all of its provisions are examined.' 50 Am.Jur., p. 209, Sec. 226. The text quoted is well supported by the cited case. *Coosaw Mining Company v. State of South Carolina*, 144 U.S. 550, 561-563, 12 S.Ct. 689, 36 L.Ed. 537, 541, 542. 196 S.W.2d 390, 399 (Tex. 1946).

Further, if a statute is "capable of being understood by reasonably well-informed persons in two or more different senses," then it is ambiguous and subject to statutory construction by a court. *Teleprofits of Texas, Inc. v. Sharp*, 875 S.W.2d 748, 750 (Tex. App.—Austin 1994, *no writ*). In

this case, the parties' contrasting interpretations of §16.0045 are evidence of the statute's ambiguity. As such, this Court must utilize the principles of statutory construction to determine whether §16.0045 governs Plaintiff's claims of fraud, fraudulent concealment, breach of fiduciary duty, negligence, negligent hiring, retention and supervision and gross negligence against the Church Defendants.

Applying the principles of statutory construction to §16.0045, it is clear that the Texas legislature intended §16.0045 to provide a limited exception to the general two-year statute of limitations, otherwise governing tort claims, for sexual assault and battery claims in cases in which those specific claims are brought by a victim against the perpetrator of the sexual assault and battery. *See* TEX. CIV. PRAC. & REM. CODE §16003(a) ("Except as provided by §§ 16.010 and 16.0045, a person [. . .].") The "cardinal rule" and the overriding purpose of statutory construction is "that a court must look to the intent of the legislature and must construe the statute so as to give effect to that intent." *Knight v. Int'l Harvester Credit Corp.*, 627 S.W.2d 382, 384 (Tex. 1982). In doing so, the court must strictly scrutinize the statute in its entirety, "rather than through study of isolated portions." *McCulloch v. Fox & Jacobs, Inc.*, 696 S.W.2d 918, 921 (Tex. App.—Dallas 1985, *writ ref'd n.r.e.*), *citing Taylor v. Firemen's & Policemen's Civil Service Commission,* 616 S.W.2d 187, 190 (Tex.1981). In its quest to determine the legislature's intent, the court "is not confined to the literal meaning of the words used but must consider that which is implied as well as that which is express." *Id.* Further, when confronted with competing interpretations of the meaning of a statute, the court may resort to the canons of construction to aid its analysis. *See City of Abilene v. Meek*, 311 S.W.2d 654, 656-57 (Tex. Civ. App.—Eastland 1958, *writ ref'd*).

The most useful canon of construction in this Court's resolution of the parties competing interpretations of §16.0045 is the well-established canon of construction that provides, "statutes which constitute exceptions to general statutes are to be strictly construed." *Moss v. Bross*, 221 S.W. 343, 344 (Tex.Civ.App.—Austin 1920, *no writ*); *see also Davidson v. Gray*, 97 S.W.2d 488, 491 (Tex. Civ.App.—Eastland 1936, no writ); *Bridges v. U.S.*, 346 U.S. 209, 215-16 (1953). Prior to the enactment of §16.0045 in 1995, civil claims of sexual assault and battery were subject to §16.003's two-year statute of limitations. *See S.V. v. R.V.*, 933 S.W.2d 1, 3-4 (Tex. 1996). Section 16.003's two-year statute of limitations, like most statutes of limitations, is intended by the legislature to:

> compel the assertion of claims within a reasonable period while the evidence is fresh in the minds of the parties and witnesses. Society's interest in repose is to have disputes either settled or barred within a reasonable time. It is based on the theory that the uncertainty and insecurity caused by unsettled claims hinder the flow of commerce. *Computer Assoc's Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996).

Generally, a statute of limitations does not grant a right of action, but actually restricts the period within which a party can assert a right. Instead of creating substantive rights, a statute of limitations limits substantive rights. It compels a party to bring a cause of action within a reasonable time so the opposing party has a fair opportunity to defend it. *Hunt Steed v. Steed*, 908 S.W.2d 581, 583 (Tex.App.—Fort Worth 1995, *writ denied*). However, in 1995, the Texas legislature provided a statutory exception to the general two-year statute of limitations, in regards to claims of sexual abuse and battery brought by a victim of a sexual assault against the perpetrator of the sexual assault in a civil action. *See S.V.*, 933 S.W.2d at 3-4; *see also,* TEX. CIV. PRAC. & REM. CODE §16.003.

The statutory exception in §16.0045 should be strictly construed in accordance with the overriding purpose of the general two-year statute of limitations, not liberally construed and expanded to include within its scope not only a victim's sexual assault and battery claims against the perpetrator of the assault, but also any other claims against any other category of defendant in any case in which plaintiff's injuries could arise from a sexual assault. Such a liberal interpretation of §16.0045 is prohibited by the canon demanding strict construction of statutory exceptions to generally-applicable statutes, especially when the generally-applicable statute in this case, *i.e.*, §16.003, is intended to limit a party's substantive right of legal recourse.

Secondly, another important and relevant canon of construction provides, "a statute should be given a reasonable interpretation to avoid injustice or absurd consequences." *McCulloch*, 696 S.W.2d at 921, *citing Gulf Ins. Co. v. James*, 185 S.W.2d 966, 969 (1945). With this canon in mind, the Court must predict and assess the legal consequences of adopting Plaintiff's interpretation of §16.0045. This Court's adoption of Plaintiff's interpretation of §16.0045 has far reaching consequences that stand to significantly impact Texas jurisprudence and produce results that have no support within the text of §16.0045, when read in its entirety. Under Plaintiff's interpretation of §16.0045, a plaintiff who is sexually assaulted has five years from the date the cause of action accrues, more than twice the amount of time provided for under the otherwise applicable §16.003, to bring "any" type of claim against "any" category of defendant that may be potentially liable for any of the multitude of circumstances that may lead to the commission of a sexual assault.

For example, suppose a criminal enters an apartment complex via an automatic gate that is not functioning properly. The criminal goes undetected on the premises, at least in part, because of questionable security lighting on the premises. The criminal breaks the lock on the

door of an apartment and sexually assaults one of the tenants.[2] Utilizing the Plaintiff's liberal interpretation of §16.0045, not only would the plaintiff have five years from the date the cause of action accrued to bring a civil action for sexual assault and battery against the criminal, but the Plaintiff would also have five years from the date the claims accrue to bring: a premises defect claim against the premises owner and/or management company; a product defect claim against the manufacturer, retailer, and installer of the security gate and lock on the apartment door; and a claim against the manufacturer, retailer, and installer of the lights. Plaintiff's interpretation of §16.0045 would create an unreasonable result, particularly in light of the fact that the text of §16.0045 does not indicate that such a far reaching and absurd result was ever intended by the Texas legislature.

Third, another critical canon of construction provides that "in ascertaining this [the legislature's] intent, courts must examine the entire statute or act and not merely an isolated portion thereof." *State v. Terrell*, 588 S.W.2d 784, 786 (Tex. 1974). The text of §16.0045, if read in its entirety, demonstrates the legislature's intent that the §16.0045 exception apply only to sexual assault and battery claims brought by a victim against the perpetrator of the sexual assault. Subsection (c) of §16.0045 evidences an intent by the legislature to limit the potential defendants under the scope of §16.0045 to the actual perpetrators of the sexual assault or aggravated sexual assault. Subsection (c) provides for a tolling of the five-year statute of limitations in cases where the identity of a victim's assailant is unknown and the plaintiff designates the "defendant" as John or Jane Doe in his/her petition. In Subsection (c), the legislature describes a potential defendant under §16.0045 as a "defendant in the suit," who may be known or unknown, and can be designated as John or Jane Doe. Obviously, subsection (c) is

[2] This hypothetical is based loosely on the facts described in *Nixon v. Mr. Prop. Mngt Co., Inc.*, 690 S.W.2d 546 (Tex. 1985).

intended to toll the five-year statute of limitations in a circumstance where a victim is sexually assaulted by someone who conceals their identity. As such, the legislature is implicitly describing the type of claim that it intends for §16.0045 to govern, *i.e.*, a sexual assault and battery claim brought by a victim of a sexual assault or aggravated sexual assault against the perpetrator of the assault. Therefore, the text of §16.0045, read in its entirety, demonstrates an intent on the part of the Texas legislature to merely extend the length of time that a victim can bring sexual assault and battery claims against a perpetrator of the assault from two to five years. The text of the statute, read as a whole, does not support a finding that the legislature intended §16.0045 to supplant the general two-year statute of limitations in regards to any other claims or any other defendants.

For these reasons, the exception to the generally applicable statute of limitations found in §16.0045 cannot be interpreted to apply to any other claim or defendant, other than a victim's sexual assault and battery claims against the perpetrator of the sexual assault. As such, Plaintiff's fraud, fraudulent concealment, breach of fiduciary duty, negligence, negligent hiring, retention and supervision and gross negligence claims against the Church Defendants are not governed by §16.0045's five-year statute of limitations and, in turn, are barred.

III. CHURCH DEFENDANTS ARE NOT VICARIOUSLY LIABLE FOR LARRY KELLEY'S CONDUCT

Prior to the Church Defendants' filing of the Motion, Plaintiff sought to hold the Church Defendants vicariously liable for the conduct of Larry Kelley, via the application of various doctrines, such as respondeat superior and ratification. Plaintiff has now abandoned her ratification and respondeat superior claims against the Church Defendants, but still insists on characterizing Larry Kelley as an agent and/or vice-principal of one of more of the Church Defendants. *See* Plaintiff's Response, n.2. It is clear that Plaintiff's characterization of Larry Kelley as an agent

and/or vice-principal of one or more of the Church Defendants is being used by Plaintiff to support the argument that the Church Defendants owed Plaintiff a legal duty, but it is unclear whether Plaintiff still maintains that the Church Defendants are vicariously liable for Larry Kelley's conduct, via application of a vice-principal and/or agency theory. To the extent that this Court interprets Plaintiff's Response to make such claims, the Church Defendants rely on the argument, authority and evidence presented in the Motion and Brief, as they relate to Plaintiff's previously abandoned vicarious liability claims. The summary judgment evidence clearly demonstrates that Larry Kelley was never generally or specifically authorized to sexually assault Plaintiff.

IV. ALTERNATIVELY, THE CHURCH DEFENDANTS DID NOT OWE PLAINTIFF A LEGAL DUTY

Only if this Court holds that Plaintiff's claims against the Church Defendants are governed by an expansive interpretation of TEX. CIV. PRAC. & REM. CODE §16.0045, then this Court must also determine whether the Church Defendants owed Plaintiff a legal duty to protect her from Larry Kelley. In the Response, Plaintiff generally contends that one or more of the Church Defendants assumed a legal duty to protect Plaintiff from Larry Kelley. Plaintiff points to three general categories of conduct, attributable to one or more of the Church Defendants, by which one or more of the Church Defendants allegedly assumed, by its conduct, a legal duty to protect Plaintiff from Larry Kelley.

First, Plaintiff contends that the knowledge by some Church Defendants' of Larry Kelley's criminal history and the failure of one or more of the Church Defendants to take any affirmative action to prevent Larry Kelley from sexually abusing Plaintiff, despite this knowledge, constituted an alleged breach of that assumed legal duty. This first assumed duty allegation is insufficient to form a factual basis for Plaintiff's argument that one or more of the Church Defendants assumed a

legal duty to protect Plaintiff because the alleged failure to act does not constitute an affirmative act on the part of the Church Defendants.

Second, Plaintiff argues that the Church Defendants assumed a legal duty to protect Plaintiff from Larry Kelley when one or more of the Church Defendants subjected Larry Kelley to the internal discipline of the Jehovah's Witnesses. This category of alleged conduct cannot provide the factual basis for Plaintiff's argument that the Church Defendants assumed a duty to protect Plaintiff because First Amendment protections preclude a court from assessing the reasonableness of the Church Defendants' religious beliefs, teachings and practices, which would include the discipline or expulsion from membership.

Third, Plaintiff, after conceding that Texas law forecloses the possibility that a member of the clergy or church can be a formal fiduciary of a member of the congregation, contends that one or more of the Church Defendants owed Plaintiff an informal fiduciary duty to protect her from Larry Kelley. However, Texas case law relied on by the Church Defendants' in their Motion for Summary Judgment draws no such distinction between a formal fiduciary relationship and a confidential relationship. Nor does Texas case law support the possibility of a trier of fact finding that an informal fiduciary relationship existed between Plaintiff and one or more of the Church Defendants.

A. Knowledge of Larry Kelley's Criminal Past Does *Not* Translate into a Legal Duty to Protect Future Victims

In her Response, Plaintiff asserts that the Church Defendants undertook an affirmative course of conduct, whereby one or more of the Church Defendants took upon itself the legal duty to protect Plaintiff from Larry Kelley. In support of this proposition, Plaintiff primarily relies on the Texas Supreme Court's decision in *Golden Spread Council, Inc. v. Akins*. 926 S.W.2d 287 (Tex. 1996). In *Golden Spread*, the Court held that the council's affirmative act of recommending a scoutmaster to a church congregation, coupled with actual knowledge of the dangerous past of one

of the potential referrals, created a duty on the part of the council not to recommend a person whom the council knew to be dangerous. *Id* at 291. The Court stressed that the imposition of a legal duty in the case was dependent on a combination of knowledge and affirmative conduct.

> We impose no other duty on GSC than this. Specifically, GSC had no duty to investigate Estes on its own or to divulge to the church sponsor of Troop 223 or others the information it had received from the Hearns. GSC's only duty was to exercise reasonable care, based on the information it received, in recommending scoutmasters. [...] We are not imposing a duty on GSC to control Estes' sexual conduct. *Id* at 292.

In fact, in his concurrence in *Golden Spread*, Justice Cornyn argued that the Supreme Court should have adopted the child abuse reporting statute in TEX. FAM. CODE §261.101 as a basis for negligence per se (an issue that was later specifically rejected by the Court in *Perry v. S.N.*, 973 S.W.2d 301, 309 (Tex. 1998)). Justice Cornyn wrote:

> I write separately, however, because section 261.101(a) of the Family Code imposes an independent duty to report abuse or neglect of a child, and that duty should be acknowledged by the Court as an additional basis of civil liability. Instead, under the narrow duty imposed by the Court, a person who knows that child has been abused, but who does nothing, is absolved from civil liability for whatever preventable harm is subsequently done to the child—harm that might have been prevented had that person merely dialed the telephone and reported it to authorities. *Id* at 293.

Therefore, in order to establish a legal duty under *Golden Spread*, Restatement 302B, *comment e* or Texas case law regarding the assumption of a legal duty, Plaintiff must demonstrate that one or more of the Church Defendants, acting with knowledge of the particular danger Larry Kelley posed to foreseeable victims, undertook an affirmative act, which constituted negligence and proximately caused Plaintiff's alleged damages. Knowledge of the particular dangers posed by Larry Kelley, standing alone or coupled with inaction on the part of one or more of the Church Defendants, cannot provide a factual basis for Plaintiff's contention that the Church Defendants

assumed a legal duty to protect Plaintiff from Larry Kelley under Texas law. Several of Plaintiff's arguments in her Response fall short of this legal threshold. *See* Plaintiff's Response pp. 9-11, 13 ("The Watchtower Defendants were unquestionably on notice that Kelley was a sexual predator, yet they allowed him to remain in their midst while concealing the dangers that he posed from both law enforcement and from the other congregants. They not only deprived law enforcement of the opportunity to prosecute Kelley, they deprived the other church members from taking precautions to protect their own children."; "It also imposed a duty on the Watchtower Defendants to exercise at least reasonable care to prevent Larry Kelley from obtaining unsupervised access to other little girls."; "Failing to take action when Kelley and Amy B. were seen alone together in Pampa, Texas."; "Plaintiff has offered summary judgment proof that the Watchtower Defendants knew that Larry Kelley was a pedophile. [...] Yet, they did not report him to law enforcement, probably counseled his victim and her family to keep quiet about the matter, and did nothing to warn other members of the Congregation."). All of these allegations constitute a claim that knowledge and inaction should impose a duty. However, Texas law does not support Plaintiff's argument.

B. The First Amendment Prohibits the Church Defendants' Religious Discipline of Larry Kelley from Establishing a Legal Duty to Protect Plaintiff

Plaintiff argues that one category of affirmative conduct by which the Church Defendants assumed a legal duty to protect Plaintiff includes one or more of the Church Defendants' subjection of Larry Kelley to discipline within the Church itself. Plaintiff contends that by failing to report Larry Kelley's misconduct to secular authorities and by instituting its own "disciplinary policy" the Church Defendants assumed a legal duty to protect Plaintiff from Larry Kelley in the future. Plaintiff goes so far as to suggest that the Defendants "assumed the responsibility of dealing with this child molester and regulating his conduct" and the Church Defendants "substitute[d] their judgment for the criminal justice system." Response pp. 14 and 15. As an initial matter, the

investigation and actions of the Church Defendants based upon interpretation of scripture do not support this statement. The summary judgment evidence does not support this statement. More importantly, however, the internal, religious discipline by one or more of the Church Defendants cannot provide the factual basis for Plaintiff's argument that the Church Defendants assumed a legal duty to protect the Plaintiff from Larry Kelley because the protections afforded by the First Amendment prevent a court from determining the reasonableness of the Church Defendant's religious practices, teachings and beliefs.

As just one example to illustrate the issue, we need look no further than the Plaintiff's continuous references to the allegation that Kelley was appointed to lead out in service. The Church Defendants take issue with such allegations. As can be seen in the Affidavit of Merton Campbell and Chuck Regal, attached as Exhibits A and B, Larry Kelley never held a position of authority or leadership in the Amarillo-Southwest Congregation. Further, a person leading a meeting for service need not be in a position of authority, be an adult, or be male. Thus, conducting a meeting for service does not provide the indicia of leadership. This disagreement is not raised to overcome Plaintiff's allegations on this issue. Rather, this issue reveals that Plaintiff's arguments will require the Court to determine: 1) whether the version of Church policy and practice told by the Plaintiff or the version told by the Church Defendants is the actual policy of the Church; and 2) whether such policy is reasonable or allows a church to assume a duty by adherence to a policy based upon scriptural interpretation.

In *Turner v. Church of Jesus Christ of Latter-Day Saints*, the Dallas Court of Appeals refused, under First Amendment grounds, to conduct an analysis in which the Court would have been forced to determine whether a Church's religious practices, as they related to the content and structure of its missionary program and protocol, were unreasonable or inherently flawed. 18

S.W.3d 877 (Tex. App.—Dallas 2000, *pet. denied*). In her Response, Plaintiff appears to agree with the result in *Turner*, noting that the content of the Church's missionary program was "entirely religious." However, the missionary program at issue in Turner included secular aspects, such as health care and safety training for foreign missionaries. *Id* at 882-83. Still, the Court held:

> If the courts address these allegations and find for the Turners, then the courts will be ruling that the curriculum at the missionary training program left Turner unprepared to preach the gospel in Guatemala. If the courts find for the Church, then the courts will be approving the curriculum of the training program and essentially certifying that Turner was prepared to preach the gospel in Guatemala. Either way, the courts' reaching these claims would constitute active government involvement in the religious activity of training missionaries. As the Turners note in their brief, "The Establishment Clause is to protect against state 'sponsorship, financial support, *and active involvement* ' in religious activity. Likewise, the courts' approval or rejection of the working and living conditions and the level of medical care available in Guatemala would actively involve the government through the courts in the Church's religious activity of operating a mission. Unlike the neutral statutes approved in *Agostini,* the judicially imposed governmental controls the Turners seek are aimed solely at a religious institution's performance of its religious activities. The Turners' claims concerning all aspects of the Missionary Program and its training program are barred by the Establishment Clause. *Id* at 891-92.

The conduct that Plaintiff argues forms the factual basis for the Church Defendants' assumption of a legal duty to protect Plaintiff, *i.e.*, the Church Defendants' religious disciplining of Larry Kelley, is a religious practice based on the Church's interpretation of scripture. Thus, the concerns expressed by the *Turner* court apply with even greater force to this case. As such, this Court's evaluation of the reasonableness of the Church Defendants' disciplining of Larry Kelley stands to violate not only the Establishment Clause of the First Amendment, but the Free Exercise Clause and the First Amendment protections identified in *Serbian E. Orthodox Dioces.* *See* 426 U.S. at 713.

C. The Church Defendants Cannot Be Informal Fiduciaries of the Plaintiff

Plaintiff concedes that, as a matter of Texas law, a clergyman or church does not owe a formal fiduciary duty to a member of the congregation. However, Plaintiff insists that this does not foreclose the possibility that Plaintiff and one or more of the Church Defendants may have had a confidential relationship, whereby the Church Defendants would owe Plaintiff a fiduciary duty. Plaintiff's attempt to expand Texas jurisprudence regarding confidential relationships must fail because, as a matter of Texas law, a confidential relationship cannot exist between plaintiff and one or more of the Church defendants.

It is true that an informal fiduciary relationship "may arise from a moral, social, domestic or purely personal relationship of trust and confidence." *See Associated Indemnity Corp. v. CAT Contracting, Inc.*, 964 S.W.2d 276, 287 (Tex. 1998). This informal fiduciary relationship is usually referred to as a confidential relationship. *See id.*

> The law recognizes the existence of confidential relationships in those cases 'in which influence has been acquired and abused, in which confidence has been reposed and betrayed.' We do not create this duty lightly, however. To impose an informal fiduciary duty in a business transaction, the special relationship of trust and confidence must exist prior to, and apart from, the agreement made the basis of the suit. *See id* at 287-88.

However, the vast majority of reported cases wherein a Texas court has found an informal fiduciary duty to exist feature a factual situation where the parties to the informal fiduciary relationship have entered into some type of business transaction.[3] This generally common element of confidential relationship cases in Texas is glaringly missing in this case.

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[3] In fact, each one of the cases cited by Plaintiff regarding an informal fiduciary relationship features a business agreement between the parties to the alleged informal fiduciary relationship. *See Texas Bank & Trust Co. v. Moore*, 595 S.W.2d 502 (Tex. 1980)(one party alleged to have inappropriately accepted transfers by another as a joint tenant with rights of survivorship in the funds); *Holland v. Lesesne*, 350 S.W.2d 859 (Tex. Civ. App.—San Antonio 1961, *writ ref'd n.r.e.*)(lessee of real property sued joint lessee of the same property for constructive trust on sale of real property); *American Tank & Mfg. Co., Inc. v. First Nat'l Bank of Littlefield*, 370 S.W.2d 948 (Tex. Civ. App.—Amarillo 1963, *writ ref'd n.r.e.*)(describing the relationship between a depository institution and a customer);

Second, Plaintiff unsuccessfully attempts to distinguish the case of *Hawkins v. Trinity Baptist Church* by arguing that Plaintiff's claim somehow does not "require determination of a standard of care of a religious counselor." In fact, that is precisely what Plaintiff seeks to accomplish by her claim of breach of an informal fiduciary relationship between her and the Church Defendants. Plaintiff is essentially asking the Court to determine whether the Church Defendants breached their fiduciary duty to Plaintiff by "placing her in harm's way." The same First Amendment trepidations that led the *Hawkins* Court to conclude that there is no fiduciary or confidential relationship between a member of a congregation and a member of the clergy are present in this case. In this case, Plaintiff wishes to ask whether the Church Defendants dishonored their moral and personal relationship of trust and confidence with the Plaintiff by not fulfilling her expectations as a member of the Church. Texas courts have refused to let plaintiffs ask this question.

Similarly, in *Bryan R. v. Watchtower Bible and Tract Society of New York*, 738 A.2d 839 (Maine 1999), the plaintiff alleged that the defendants had prior knowledge of molestation by a member, that the defendants investigated and demoted the perpetrator from a ministerial servant to a baptized entry level member, and that the defendants did not alert the members of the church to the

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Kinzbach Tool Co. v. Corbett-Wallace Corp., 160 S.W.2d 509 (Tex. 1942)(employee of seven years sued by employer for brokering a contract between employer and undisclosed competitor); *Associated Indemnity Corp. v. CAT Contracting, Inc.*, 964 S.W.2d 276 (Tex. 1998)(holding that no such relationship exists between a contractor and its surety on a performance contract with a property owner); *Hedley v. DuPont*, 580 S.W.2d 662 (Tex. Civ. App.—Houston [14th Dist.] 1979, *judgm't rev'd* 570 S.W.2d 384 (Tex. 1978)(geologist brought suit against business oil and gas development partners regarding breach of agreement); *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958)(licensor brought suit against licensee after breach of license agreement); Thigpen *v. Locke*, 363 S.W.2d 247 (Tex. 1963)(company owners sued investor and officer of the corporation for the rescission of deeds executed in the latter's favor); *Kalb v. Norsworthy*, 428 S.W.2d 701 (Tex. Civ. App.—Houston [1st Dist.] 1968, *no writ*)(alleged relationship between accountant and employer over execution of a promissory note in favor of accountant); *Page Airways, Inc. v. Associated Radio Serv. Co.*, 545 S.W.2d 184 (Tex. Civ. App.—San Antonio 1977, *writ ref'd n.r.e*)(relationship between joint venturer that executed a promissory note in favor of another joint venturer); *Andickes v. Andreoli*, 600 S.W.2d 939 (Tex. Civ. App.—Houston [1st Dist.] 1980, *writ dism'd*)(alleged relationship arising out of a real estate transaction between business associates); *Tuck v. Miller*, 483 S.W.2d 898 (Tex.Civ.App.—Austin 1972, *writ ref'd n.r.e*)(relationship arose between parties to a loan agreement).

perpetrator's deeds. In addition, the plaintiff alleged that the perpetrator was able to "earn his trust and confidence because the church placed [the perpetrator] in a position of leadership and respect" and that the defendants "allowed [the perpetrator] to lead 'Field Ministry Excursions' which included" plaintiff. *Id.* at 843. Based on these allegations, plaintiff alleged that the defendants breached a fiduciary duty owed to him as a member of the congregation. *Id.* The court noted that the crux of plaintiff's claim was that "because of an alleged special relationship with its members" the church had a duty to protect its members from each other "at least when the church and its agents are aware of a potential danger posed by a member." *Id.* After a persuasive discussion of confidential relationships, the court determined that no confidential or fiduciary relationship existed. Likewise, this Court should decline to adopt a new standard espoused by the Plaintiff for the assumption of a duty.

Therefore, for the reasons stated in the Motion and this Reply, Plaintiff's claim of fiduciary duty, regardless of its most recent manifestation, must fail as a matter of law.

D. The Church Defendants did not assume a duty

Plaintiff, with unfettered boldness, asserts that the Church Defendants assumed a duty they would not otherwise have had by choosing "to shelter Kelley from law enforcement and to substitute their judgment for the criminal justice system." Response p. 15. With the use of bald allegations, the Plaintiff attempts to spin inaction into "sheltering" Kelley. Kelley was not sheltered and there is no summary judgment evidence to support such an accusation. Further, the reliance on scriptural guidance was not a "substitute" for the criminal justice system. Thus, the inaction complained of on the one hand and the action taken to discipline Kelley on the other do not raise a fact issue on the requisite elements to establish an assumption of a duty to protect Plaintiff from another member of the congregation.

In a case under very similar circumstances, the Minnesota Court of Appeals rejected the contention that Jehovah's Witnesses congregation and Watchtower Bible and Tract Society of New York assumed a duty. *Meyer et. al v. Lindala*, 2004 WL 422668 (Minn. App. 2004). The plaintiffs in *Meyer* made the same allegations as does Plaintiff in this case. "Meyer and Doe stated that members are expected to bring all allegations of wrongdoing to congregation elders." *Meyer* at 3. Similarly, the Plaintiff in this case argues the "Dumas Congregation convened a judicial committee [of elders], demoted Kelley from the position of Elder, and imposed restrictions on him that prevented him from occupying any positions of authority." Response p. 8. "If a member makes an allegation of wrongdoing to anyone other than an elder, including law enforcement, that person can be accused of gossip or slander, which are punishable offenses within the organization." *Meyer* at 3. "The elders instructed Meyer not to report the abuse to anyone and threatened she would be 'disfellowshipped' if she did so." *Meyer* at 3. Plaintiff states the Dumas Elders "would have instructed Kelley's victim and her family to not tell anyone about the incident." Response p. 8. The plaintiffs in *Meyer* alleged that the defendants were liable by holding the perpetrator out "as an appropriate person with whom to associate." *Meyer* at 4. Plaintiff claims that some Defendant assured Plaintiff's father "that it was a good thing to be completing her service requirement with Kelley" and that some Defendant held "Kelley out as a role model." Response p. 10. Despite these allegations, the court noted there is no duty to take action for another's aid or protection absent a "special relationship." *Meyer* at 7. The court further stated that providing "faith-based advice or instruction, without more, does not create a special relationship." *Id* at 6. Ultimately, the court held that the defendants "did not assume a duty owed to [the plaintiffs] but rather acted within their constitutional rights to religious freedom, which includes the authority to 'independently decide matters of faith and doctrine' and 'to believe and speak what it will.'" *Id.* at 7 (citation omitted).

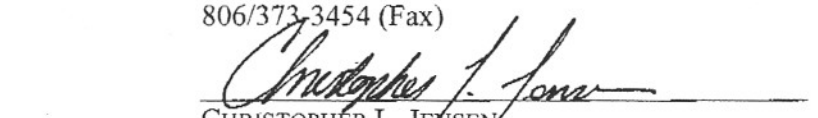
Ultimately, Plaintiff's repeated assertions of vile action, inaction, and intent do not create a duty and do not raise a fact issue as to whether a duty was assumed by the Church Defendants. This is true even for the Amarillo-Southwest Congregation which allegedly authorized Kelley to lead out in service. However, if the Court is of the opinion that the elders of the Amarillo-Southwest Congregation assumed a duty by allegedly authorizing Kelley to lead out in service, the Court should still grant the Motion for Summary Judgment for the other Church Defendants and grant a partial summary judgment in favor of the Amarillo-Southwest Congregation.

VI. CONCLUSION

The Church Defendants move this Court to grant summary judgment on all of Plaintiff's claims against them because said claims are barred by the applicable statutes of limitations. Alternatively, the Church Defendants move this Court to grant summary judgment on each one of Plaintiff's claims that do not or cannot, as a matter of Texas law, establish that one or more of the Church Defendants intentionally and knowingly assumed a duty to protect Plaintiff from Larry Kelley.

Respectfully submitted,

Marvin W. Jones
State Bar No. 10929100
Christopher L. Jensen
State Bar No. 00796825
Mitchell Murphy
Texas State Bar No. 24037157
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806/468-3300
806/373-3454 (Fax)



CHRISTOPHER L. JENSEN
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was sent to the following as signified below on this 17 day of March 2004:

Hartley Hampton, Esq. Fibich, Hampton, Leebron & Garth, L.L.P. 1401 McKinney, Suite 1800 Five Houston Center Houston, TX 77010	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☑
	By Hand Delivery	☐

Gregory S. Love Kimberlee D. Norris Love & Norris 314 Main Street, Suite 300 Fort Worth, TX 76102-7423	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☑
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Ronald T. Spriggs Law Offices of Ronald T. Spriggs 112 W. 8th, Suite 400 Amarillo, TX 79101	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☑
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Christopher L. Jensen

CHRISTOPHER L. JENSEN

245569_1.DOC

EXHIBIT A

NO. 91,048-C-1

AMY B.,	§	**IN THE 251ST DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	**IN AND FOR**
	§	
Defendants.	§	**POTTER COUNTY, TEXAS**

AFFIDAVIT OF MERTON CAMPBELL

STATE OF NEW YORK

COUNTY OF PUTNAM

Before me, the undersigned authority, on this day personally appeared Merton Campbell, who, after being duly sworn, did testify as follows:

1. My name is Merton Campbell, I am over the age of 21, am competent to make this affidavit and have personal knowledge that the statements contained herein are true and correct.
2. I have been one of Jehovah's Witnesses for over 65 years.
3. I am an Elder working full-time in the Service Department of the United States branch office for Jehovah's Witnesses. The Service Department provides spiritual advice and counsel to elders serving in congregations of Jehovah's Witnesses throughout the United States.

4. I am familiar with the process by which male members of congregations of Jehovah's Witnesses are appointed to positions of authority in congregations of Jehovah's Witnesses. I also have access to the records which indicate who has held and currently holds such positions of authority in congregations located in the State of Texas.
5. Larry Kelley never held a position of authority or leadership in the Southwest Congregation, Amarillo, Texas.
6. I am also familiar with the meeting that Jehovah's Witnesses generally have prior to their engaging in the field ministry, which is called a "meeting for service." Typically, congregation elders or ministerial servants conduct the meetings for service and they help those in attendance who need assistance with arrangements for their public ministry.
7. However, an individual does not have to be in a position of authority to conduct a meeting for service within a congregation of Jehovah's Witnesses. Any baptized male, including minors, and even a baptized woman who, based on beliefs and practices of Jehovah's Witnesses would never be appointed to a position of authority as an elder or ministerial servant, could conduct a meeting for service when an elder or ministerial servant is not available.
8. Therefore, the mere fact that a person conducts a meeting for service does not necessarily mean that he or she is in a position of authority within the congregation of Jehovah's Witnesses.
9. Further, conducting or leading a group out in field service is not an appointed position within congregations of Jehovah's Witnesses.

Merton Campbell

Before me, a notary public, on this day personally appeared Merton Campbell, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct.

Sworn to and subscribed before me on this the 17 day of March 2004.

Michael A. Guzman
NOTARY PUBLIC

MICHAEL A. GUZMAN
Notary Public-State of New York
No. 01GU6076764
Qualified in Putnam County
My Commission Expires July 1, 20 06

EXHIBIT B

NO. 91,048-C-1

AMY B.,	§	**IN THE 251ST DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	**IN AND FOR**
	§	
Defendants.	§	**POTTER COUNTY, TEXAS**

AFFIDAVIT OF CHARLES REGAL

STATE OF TEXAS

COUNTY OF POTTER

Before me, the undersigned authority, on this day personally appeared Charles Regal, who, after being duly sworn, did testify as follows:

1. My name is Charles Regal, I am over the age of 21, am competent to make this affidavit and have personal knowledge that the statements contained herein are true and correct.
2. I have been one of Jehovah's Witnesses for over 46 years.
3. I am an Elder in the Southwest Congregation, Amarillo, Texas, and have served in that capacity for over 31 years. I have known the Plaintiff and Plaintiff's family since they began attending meetings at the Southwest Congregation, Amarillo, Texas, referred to by some as the Amarillo-Southwest Congregation of Jehovah's Witnesses. I have known Larry Kelley over 30 years.

4. Larry Kelley never held a position of authority or leadership in the Southwest Congregation, Amarillo, Texas.

5. I am also familiar with the "meeting for service" that Jehovah's Witnesses generally have prior to their engaging in their public ministry. When available, a congregation elder or ministerial servant generally conducts these meetings for service, during which they help those in attendance who need assistance with arrangements for their public ministry.

6. An individual does not have to be in a position of authority to conduct a meeting for service within a congregation of Jehovah's Witnesses. Any baptized male, including minors, and even a baptized woman who, based on beliefs and practices of Jehovah's Witnesses would never be appointed to a position of authority as an elder or ministerial servant, could conduct a meeting for service when an elder or ministerial servant is not available.

7. Therefore, congregation members do not view a person who conducts a meeting for service as having a position of authority or leadership within the congregation just because they conduct such a meeting.

8. Further, conducting or leading a group out in field service has never been an appointed position with any congregation of Jehovah's Witnesses that I have ever been associated with.

Charles Regal

Charles Regal

Before me, a notary public, on this day personally appeared Charles Regal, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct.

FILED
CAROLINE WOODBURN
DISTRICT CLERK

Sworn to and subscribed before me on this the 17 day of March 2004.

2004 MAR 17 P 5:05

POTTER COUNTY, TEXAS

BY _____ DEPUTY

Janice M.C. McCreary

NOTARY PUBLIC

Janice M.C. McCreary
NOTARY PUBLIC,
STATE OF TEXAS
My Commission Expires 06-21-2007

No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, 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

FILED
251st DISTRICT COURT
POTTER COUNTY, TEXAS
24th day of March 19 2004
at 2:41 o'clock p. M.
Judge

PLAINTIFF'S OBJECTIONS TO DEFENDANTS' UNTIMELY SUMMARY JUDGMENT EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, AMY B., Plaintiff in the above entitled and numbered cause, and files the following Objections to Defendants' Untimely Summary Judgment Evidence and in support would show the following:

FILED
CAROLINE WOODBURN
DISTRICT CLERK
2004 MAR 25 A 7:
POTTER COUNTY, TEXAS
BY

I.

On March 17, 2004, only seven (7) days prior to the hearing on Defendants' Motion for Summary Judgment, Defendants', in violation of the Texas Rules of Civil Procedure and the Rule 11 Agreement between the parties, filed with this Court additional evidence in support of and in expansion of Defendants' original Motion for Summary Judgment.

Plaintiff objects to this Court's consideration of the Affidavit of Merton Campbell dated March 17, 2004 and filed with this Court on the same day and the Affidavit of Charles Regal dated March 17, 2004 and filed with this Court on the same date on the following grounds:

1. Rule 166(a)(c) requires a movant for summary judgment to submit its motion and any supporting affidavits at least twenty-one (21) days prior to the hearing on the Motion for Summary Judgment. Defendants have not sought or obtained leave of court to file these untimely affidavits.

2. The parties entered into a Rule 11 Agreement wherein the Plaintiff agreed to submit its summary judgment response and evidence fourteen (14) days prior to the hearing, rather than seven (7) as required by the rules, in order to allow Defendants the opportunity to file reply briefing only. Plaintiff specifically rejected a Rule 11 Agreement proposed by Defendants that would have permitted Defendants to submit additional summary judgment evidence after the 21 day deadline in the Rules. (See Exhibits A and B).

WHEREFORE, PREMISES CONSIDERED, Plaintiff hereby objects to the Affidavit of Merton Campbell dated March 17, 2004 and the Affidavit of Charles Regal dated March 17, 2004 and requests that these Affidavits be stricken from the summary judgment record and for such other and further relief that Plaintiff may be justly entitled.

Respectfully submitted,

FIBICH, HAMPTON,
LEEBRON & GARTH, L.L.P.

By: _____

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(817) 335-2912-Telecopy

ATTORNEYS FOR PLAINTIFF

No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, 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 Jury Trial Requested

PLAINTIFF'S OBJECTION

1. Plaintiff objects to Defendants' untimely submission of the Affidavit of Merton Campbell dated March 17, 2004 as a violation of Rule 166(a)(c) and the February 12, 2004 Rule 11 Agreement of the parties.

Objection GRANTED: _____
Judge Presiding

Objection DENIED: _____
Judge Presiding

No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, 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 Jury Trial Requested

PLAINTIFF'S OBJECTION

1. Plaintiff objects to Defendants' untimely submission of the Affidavit of Charles Regal dated March 17, 2004 as a violation of Rule 166(a)(c) and the February 12, 2004 Rule 11 Agreement of the parties.

Objection GRANTED: _____
Judge Presiding

Objection DENIED: _____
Judge Presiding

No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLEY Defendants.	§	251st DISTRICT COURT

ORDER SETTING HEARING

Defendants, Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses Motion for Summary Judgment is set for hearing at **2:30 p.m. on March 24, 2004, in the 251st District Courtroom at the Potter County Courthouse at 501 S. Fillmore, Suite 6C, Amarillo, Texas.**

All briefing, evidence, and other documentation to be filed or presented by the Non-Movants as part of or in support of a response to the Motion for Summary Judgment, should be filed with the Court and served on opposing counsel on or before Wednesday, March 10, 2004.

02/09/2004 MON 11:05 [TX/RX NO 8759] 002

All briefing presented by the Movants in reply to Non-Movants' response to the Motion for Summary Judgment, should be filed with the Court and served on opposing counsel on or before Wednesday, March 17, 2004.

IT IS SO ORDERED.

SIGNED THIS 12th day of February, 2004.

JUDGE PRESIDING

Agreed As To Form:

Hartley Hampton
Attorney for Plaintiff

Ronald Spriggs
Attorney for Larry Kelley

Marvin W. Jones
Attorney for Church Defendants

pls note for my Sign.

NO. 91,048-C-1

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

ORDER SETTING HEARING

Defendants, Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, Dumas Congregation of Jehovah's Witnesses and Amarillo-Southwest Congregation of Jehovah's Witnesses Motion for Summary Judgment is set for hearing at **2:30 p.m. on March 24, 2004, in the 251st District Courtroom at the Potter County Courthouse at 501 S. Fillmore, Suite 4C, Amarillo, Texas.**

All briefing, evidence, and other documentation to be filed or presented by the Non-Movants as part of or in support of a response to the Motion for Summary Judgment, should be filed with the Court on or before Wednesday, March 10, 2004.

and serve on opposing counsel

All briefing, ~~evidence, and other documentation to be filed or~~ presented by the Movant ~~as part of or in support of a reply~~ in reply to nonmovants' response to the Motion for Summary Judgment, should be filed with the Court and served on opposing counsel on or before Wednesday, March 17, 2004.

IT IS SO ORDERED.

SIGNED THIS ___ day of _____, 2004.

_____
JUDGE PRESIDING

Agreed As To Form:

_____
Hartley Hampton
Attorney for Plaintiff

_____
Ronald Spriggs
Attorney for Larry Kelley

_____
Marvin W. Jones
Attorney for Church Defendants

238734_1.DOC

FILED
CAROLINE WOODBURN
DISTRICT CLERK
2004 MAR 25 A 11:34
POTTER COUNTY, TEXAS
BY _____ DEPUTY

1st Judicial District of Texas

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JUDGE PRESIDING
POTTER AND RANDALL COUNTIES
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March 29, 2004

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Gregory S. Love
Love & Norris
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Ronald T. Spriggs
Law Office of Ronald T. Spriggs
112 West Eighth Avenue, Suite 400
Amarillo, Texas 79101

FILED
CAROLINE WOODBURN
DISTRICT CLERK
2004 MAR 30 P 1:47
POTTER COUNTY, TEXAS
BY

Re: Cause No. 91,048-C; *Amy B. vs. Watchtower Bible and Tract Society of New York, Inc., et al.;* In the 251st District Court, Potter County, Texas

Dear Counselors,

On January 30th 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

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 (14th 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

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".

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

FILED
CAROLINE WOODBURN
DISTRICT CLERK

2004 MAR 30 P 1:48

POTTER COUNTY, TEXAS

BY KP

251st Judicial District of Texas

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CHUCK WIEGER - BAILIFF
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April 21, 2004

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FILED
CAROLINE WOODBURN
DISTRICT CLERK
2004 APR 26 P 2:19
POTTER COUNTY, TEXAS
01
BY HK DEPUTY

Re: Cause No. 91,048-C; *Amy B. vs. Watchtower Bible and Tract Society of New York, Inc., et al.;* In the 251st District Court, Potter County, Texas

Dear Counselors,

Please be advised that *Plaintiff's Motion for Clarification* has been brought to the attention of the Court. Without ruling on the merits of the motion, it is apparent to the Court that there are some legitimate concerns which need to be clarified. Although I do not believe that a hearing is necessary; I do believe that it would be appropriate to allow all parties the

opportunity to file a written trial brief or position statement with respect to the issues raised.

In that regard, please be advised that the Court will take up by submission the Plaintiff's motion on Monday, May 3, 2004. Any responsive pleadings or trial briefs must be filed by April 30, 2004. Thank you.

Sincerely,

Patrick A. Pirtle

cc: District Clerk

FILED
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DISTRICT CLERK

2004 APR 26 P 2:19

POTTER COUNTY, TEXAS

BY HK DEPUTY

No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLEY Defendants.	§	251st JUDICIAL DISTRICT Jury Trial Requested

PLAINTIFF'S THIRD AMENDED PETITION

COMES NOW AMY B., Plaintiff in the above-numbered and entitled cause, and files this Third Amended Petition and would show:

I.

Plaintiff AMY B. is a resident of Texas.

Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York has answered and appeared herein.

Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., a corporation organized and existing under the laws of the State of Pennsylvania, has filed a Special Appearance herein.

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POTTER COUNTY, TEXAS
BY HK DEPUTY 02

Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has answered and appeared herein.

Defendant DUMAS CONGREGATION OF JEHOVAH'S WITNESSES has answered and appeared herein.

Defendant AMARILLO - SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES has answered and appeared herein.

Defendant LARRY KELLEY has answered and appeared herein.

The Defendant entities are collectively referred to as the "WATCHTOWER DEFENDANTS".

II.

Venue is proper in Potter County, Texas because a substantial part of the events complained of herein took place in Potter County, Texas and Defendant LARRY KELLEY currently resides in Potter County.

III.

The WATCHTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY sits at the top of a strict chain of command that extends over each individual and Defendant entity in the organization. These individuals and entities act as agents and alter egos on behalf of the governing body. Authority for any actions by the organization, it leader and/or its members must derive from the GOVERNING BODY, which has absolute authority over every person and all

matters in the organization and its worldwide operations.

The WATCHTOWER DEFENDANTS are so organized and controlled and their affairs are so conducted that they are alter egos of each other and operate as a single business enterprise.

Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume responsibility for the protection and discipline of its membership, especially the children of members, including investigating reports of child abuse and acting upon the results of that investigation.

IV.

This lawsuit concerns the sexual abuse that Plaintiff, AMY B., suffered beginning when she was eight years old, at the hands of Defendant Larry Kelley. The abuse occurred when Plaintiff was caused to go to Kelley's home and on "service calls" with Kelley by the Watchtower Defendants.

Kelley had been a former elder, and thus a leader, in Defendant Dumas Congregation. Because of one or more previous incidents of child sexual abuse, Kelley was disciplined by that congregation in approximately 1985. However, the Watchtower Defendants knowingly and intentionally concealed the crime from law enforcement authorities pursuant to a policy that all such matters would be handled within the Watchtower organization.

Subsequently, Kelley moved to Amarillo, and joined Defendant Southwest Congregation. Defendant Southwest Congregation either knew, or should have known,

that Kelley was a pedophile. Specifically, either Defendant Dumas notified the Southwest Congregation of that fact, or negligently failed to do so.

V.

In approximately 1991, Defendant Southwest congregation caused Plaintiff Amy B to go to Kelley's home to help attend to his disabled wife, perform "Watchtower" study and go alone with Kelley while they performed "service" for the congregation. The abuse occurred on those occasions.

VI.

Upon trial of this case, the evidence will show that the tragic events in question, and Plaintiff's resulting injuries and damages were proximately caused by the conduct of Defendants, acting individually and through their agents and alter egos. Specifically, the Watchtower Defendants:

1. Negligently caused Plaintiff, beginning when she was eight years old, to be alone with someone the Watchtower Defendants knew, or should have known, to be a pedophile;

2. Negligently caused Plaintiff to go to the home of someone the Watchtower Defendants knew, or should have known, to be a pedophile;

3. Negligently permitted someone the Watchtower Defendants knew, or should have known, to be a pedophile to "lead out for Service" and then use that position to obtain unsupervised access to Plaintiff;

4. Negligently failed to take any action when they were on notice that Kelley had taken Plaintiff to another town;

5. Knowingly and intentionally withheld and concealed from secular law enforcement authorities the fact that Larry Kelley had sexually assaulted at least one other child in approximately 1985;

6. Maintained and enforced an organization-wide policy preventing the reporting of child sexual abuse to law enforcement;

7. Assumed the responsibility and duty of investigating reports of child sexual abuse within the Watchtower organization, disciplining offenders and protecting other potential victims, while negligently performing those duties; and

8. Defendant Dumas Congregation negligently recommended Kelley to the Amarillo-Southwest Congregation.

Each of these acts and omissions was a proximate cause of Plaintiff's damages.

VII.

Defendants conduct constituted "malice", as that term is defined in law. Accordingly, this is an appropriate action for the assessment of exemplary or punitive damages, for which Plaintiff hereby brings suit.

VIII.

Upon trial of this case, it will be shown that Plaintiff was caused to sustain injuries and damages as a proximate result of Defendants' negligence, and Plaintiff will respectfully request the Court and Jury to determine the amount of loss Plaintiff has incurred in the past and in the future, not only from a financial standpoint, but also in terms of good health and freedom from pain and worry. There are certain elements of damages which are provided by law that Plaintiff is entitled to have the Jury in this case consider separately to determine the sum of money for each element that will fairly and reasonably compensate Plaintiff for the injuries and damages and losses incurred and to

be incurred. From the date of the incident in question up to the time of trial of this case, such elements of damages to be considered separately and individually for the purpose of determining the sum of money to compensate Plaintiff are as follows:

1. The physical pain that Plaintiff has suffered as a result of the incident in question up to the time of trial;

2. The mental anguish that Plaintiff have suffered from the date of the incident in question up to the time of trial;

3. The amount of reasonable medical and custodial expenses necessarily incurred in the treatment of Plaintiff's injuries from the date of the incident in question up to the time of trial;

4. The loss of any earnings sustained by Plaintiff from the time of the incident in question up to the time of trial; and

5. The damages resulting from the physical and mental impairment suffered by Plaintiff and the resulting inability to do those tasks and services that Plaintiff ordinarily would have been able to perform.

From the time of trial, the elements of damages to be separately considered which Plaintiff will sustain in the future beyond the time of trial, are such of the following that are shown by a preponderance of the evidence:

1. The physical pain that Plaintiff will suffer beyond the time of trial;

2. The mental anguish that Plaintiff will suffer in the future beyond the time of trial;

3. The reasonable value of medical and custodial expenses that will necessarily be incurred in the treatment of Plaintiff's injuries in the future beyond the time of trial;

4. The loss or reduction in Plaintiff's earnings or earning capacity in the future caused by the injuries sustained in the incident in question; and

5. The damages resulting from the physical and mental impairment that Plaintiff will continue to suffer in the future and the resulting inability to do those tasks and services that Plaintiff ordinarily would have been able to perform in the future beyond the time of trial of this case.

Because of all of the above and foregoing, Plaintiffs have been damaged, and will continue to be damaged in a sum greatly in excess of the minimal jurisdictional limits of this Honorable Court, for which amount Plaintiffs now bring suit.

Further, Plaintiffs are entitled to recover exemplary damages from Defendants in a sum equal to the maximum amount permitted by Section 41.008 of the Texas Civil Practice and Remedies Code.

IX.
JURY DEMAND

Plaintiff requests a trial by jury and has submitted herewith the appropriate jury fee.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final trial, she recover the damages, as specified above, from the Defendants, both jointly and severally, plus costs of court, interest at the legal rate, both pre-judgment and post-judgment, and have such other and further relief, general and special, at law and in equity, to which she may show herself justly entitled under the facts and circumstances.

Respectfully submitted,

FIBICH, HAMPTON,
LEEBRON & GARTH, L.L.P.

By: _____

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LOVE & NORRIS

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(817) 335-2800-Telephone
(817) 335-2912-Telecopy

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the above and foregoing has been furnished to all counsel of record via certified mail, return receipt requested, regular mail, hand delivery and/or facsimile, on this 19th day of April, 2004.

_____
Hartley Hampton

FILED
CAROLINE WOODBURN
DISTRICT CLERK

2004 APR 21 A 9:20

POTTER COUNTY, TEXAS

BY HK DEPUTY

NO. 91,048-C

AMY B.,	§	IN THE 251ST DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	IN AND FOR
	§	
Defendants.	§	POTTER COUNTY, TEXAS

DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AND AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES' FIRST AMENDED ANSWER & SPECIAL EXCEPTION TO PLAINTIFF'S THIRD AMENDED PETITION

COME NOW WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, and AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES, hereinafter collectively referred to as the "Answering Defendants," in the above-entitled and numbered cause, and file the following First Amended Original Answer to Plaintiff's Third Amended Petition herein, showing the Court as follows:

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DISTRICT CLERK

2004 MAY 11 P 3:47

POTTER COUNTY, TEXAS

BY

I.
SPECIAL APPEARANCE OF CERTAIN OTHER DEFENDANTS NOT WAIVED

In a separately filed pleading, Watch Tower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc. and Religious Order of Jehovah's Witnesses filed their special appearances pursuant to TEX. R. CIV. P. 120a. Subsequently, Plaintiff non-suited Kingdom Support Services, Inc. and Religious Order of Jehovah's Witnesses from this lawsuit. Therefore, only Watch Tower Bible and Tract Society of Pennsylvania, Inc.'s special appearance remains before this Court. Watch Tower Bible and Tract Society of Pennsylvania, Inc. is not included in this pleading, and by filing this pleading, Answering Defendants do not waive or in any other manner limit the special appearance filed by Watch Tower Bible and Tract Society of Pennsylvania, Inc.

II.
SPECIAL EXCEPTION

The Answering Defendants specially except to the damage allegations of Plaintiff's Third Amended Petition on the grounds that they are vague and general. Pursuant to TEX. R. CIV. P. 47, Defendants request that Plaintiff be required to replead to state the maximum amount of damages sought.

III.
GENERAL DENIAL

Answering Defendants place in issue all matters contained in Plaintiff's Third Amended Petition by general denial as authorized by Rule 92, TEX. R. CIV. P.

IV.
AFFIRMATIVE DEFENSES

3.1 Without waiving the foregoing, but in addition thereto, the Answering Defendants evidence their intent to rely upon affirmative defenses herein, including, but not limited to, those affirmative defenses enumerated in TEX. R. CIV. P. 94, together with such other statutory or

common law affirmative defenses, whether now in existence or to exist, whether recognized by this state or any other state, which might be raised by the facts of this case.

3.2 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert as a separate affirmative defense that Plaintiff's claims are barred by the applicable statute of limitations.

3.3 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert as a separate affirmative defense that Plaintiff's claims in their entirety are barred by laches.

3.4 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert as a separate affirmative defense that the claims of Plaintiff were solely caused by the acts or conduct of third parties.

3.5 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert as a separate affirmative defense that the First Amendment of the United States Constitution and the Texas Constitution preclude the imposition of any liability against these Answering Defendants, or any of them, based upon the allegations which have been set forth in Plaintiff's pleadings.

3.6 Without waiver of the foregoing, but in addition thereto, the Answering Defendants generally invoke the provisions of Chapter 33 of the TEX. CIV. PRAC. & REM. CODE, to the extent applicable to this action.

3.7 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert that Plaintiff's claim for punitive damages against the Answering Defendants would violate the Answering Defendants' due process and equal protection rights guaranteed by the Constitutions of the United States and of the State of Texas.

3.8 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert that Plaintiff's claim for punitive damages against the Answering Defendants cannot be sustained to the extent that Plaintiff seeks an award of punitive damages under Texas law by a jury that: 1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition and amount of a punitive damages award; 2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment; 3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, based in whole or in part on the residence, financial position or corporate status of the Answering Defendants; 4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague, arbitrary or does not define with sufficient clarity the requisite conduct or mental state; 5) is not properly instructed regarding Plaintiff's burden of proof with respect to each and every element of a claim for punitive damages; and/or, 6) is not subject to trial court and appellate review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards. Such deficiencies, separately or collectively, would violate the Answering Defendants' due process and equal protection rights guaranteed by the Constitutions of the United States and the State of Texas.

3.9 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert that Plaintiff's claim for punitive damages against the Answering Defendants cannot be sustained to the extent that Plaintiff seeks an award of punitive damages made under a process which fails to bifurcate the issue of punitive damages from the remaining issues, because such a process would violate Answering Defendants' due process and equal protection rights guaranteed by the Constitutions of the United States and the State of Texas.

3.10 Without waiver of the foregoing, but in addition thereto, the Answering Defendants generally invoke the provisions of TEX. CIV. PRAC. & REM. CODE §41.005(a) which bar the award of exempting damages in this case.

3.11 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert that Plaintiff's claim for punitive damages against the Answering Defendants cannot be sustained to the extent that the Plaintiff seeks an award of punitive damages jointly and severally against some or all of the Defendants, including the Answering Defendants, without specific apportionment among them, because such an award would violate Answering Defendants' due process and equal protection rights guaranteed by the Constitutions of the United States and the State of Texas and TEX. CIV. PRAC. & REM. CODE §41.006.

3.12 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert that Plaintiff's recovery of punitive damages, if any, is limited to the amount provided for in Chapter 41 of the TEX. CIV. PRAC. & REM. CODE.

3.13 Without waiver of the foregoing, but in addition thereto, the Answering Defendants assert that Plaintiff's claim for punitive damages against the Answering Defendants cannot be sustained to the extent that Plaintiff seeks an award of punitive damages under Texas law subject to no predetermined limits on the amount of punitive damages a court or jury may impose, because such an award would violate Answering Defendants' due process and equal protection rights guaranteed by the Constitutions of the United States and the State of Texas.

V.
CONCLUSION & PRAYER

WHEREFORE, the Answering Defendants pray this Court to enter judgment that Plaintiff take nothing, assess costs against Plaintiff and award the Answering Defendants all other and further relief, in law or in equity, to which they may be justly entitled.

FURTHER, the Answering Defendants pray that after hearing, their Special Exception be granted and that Plaintiff be ordered to replead and cure said pleading defect and, if Plaintiff does not or cannot do so, that all such damage allegations be stricken from Plaintiff's pleadings.

Respectfully submitted,

Marvin W. Jones
State Bar No. 10929100
Christopher L. Jensen
State Bar No. 00796825
Mitchell Murphy
Texas State Bar No. 24037157
SPROUSE SHRADER SMITH P.C.
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P.O. Box 15008
Amarillo, Texas 79105-5008
806/468-3300
806/373-3454 (Fax)

Marvin W. Jones
Christopher L. Jensen
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was sent to the following as signified below on this 11 day of May 2004:

Hartley Hampton, Esq. Fibich, Hampton, Leebron & Garth, L.L.P. 1401 McKinney, Suite 1800 Five Houston Center Houston, TX 77010	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☑
	By Hand Delivery	☐

Gregory S. Love Kimberlee D. Norris Love & Norris 314 Main Street, Suite 300 Fort Worth, TX 76102-7423	Certified Mail, Return Receipt Requested	☑
	United States Regular Mail	☐
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Ronald T. Spriggs Law Offices of Ronald T. Spriggs 112 W. 8th, Suite 400 Amarillo, TX 79101	Certified Mail, Return Receipt Requested	☐
	United States Regular Mail	☑
	Overnight Mail	☐
	By Facsimile Transmission	☐
	By Hand Delivery	☐

Christopher L. Jensen

Marvin W. Jones
Christopher L. Jensen

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2004 MAY 11 P 3:47

POTTER COUNTY, TEXAS

BY BN

CASE NO. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
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
Defendants.	§	256TH JUDICIAL DISTRICT

SUPPLEMENTAL EVIDENTIARY SUPPORT FOR PLAINTIFF'S MOTION FOR CLARIFICATION AND MOTION FOR LEAVE TO CONDUCT ADDITIONAL DISCOVERY

COMES NOW AMY B., Plaintiff in the above-numbered and entitled cause, and provides this Court with additional evidentiary support for Plaintiff's Motion for Clarification which was submitted to the Court on April 28, 2004.

FILED
CAROLINE WOODBURN
DISTRICT CLERK

2004 NOV 24 A 11:03

POTTER COUNTY, TEXAS
BY HK 02

I.
STANDARD OF REVIEW

In the WATCHTOWER DEFENDANTS' Motion for Summary Judgment, Plaintiff's allegations regarding agency and single business enterprise were not challenged, nor did the WATCHTOWER DEFENDANTS provide any summary judgment evidence to the contrary.

The supplemental information provided herein supplies evidentiary support for the allegations made in Plaintiff's Second Amended Petition, though the burden of providing summary judgment evidence remains on the WATCHTOWER DEFENDANTS.

II.
PLAINTIFF HAS PLEAD AGENCY AND SINGLE-BUSINESS ENTERPRISE

Paragraph III. of Plaintiffs Second Amended Petition states:

> "The WATCHTTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY sits at the top of a strict chain of command that extends over each individual and Defendant entity in the organization. These individuals and entities act as agents and alter egos on behalf of the governing body. Authority for any actions by the organization, it leader and/or its members must derive from the GOVERNING BODY, which has absolute authority over every person and all matters in the organization and its worldwide operations.
>
> "The WATCHTOWER DEFENDANTS are so organized and controlled and their affairs are so conducted that they are alter egos of each other and operate as a single business enterprise."

III.
AGENCY

The primary fact issue that determines agency is control. *Walker Insurance Services v. Bottle Rock Power Corp.*, 108 S.W.3d 538 Tex. App. - Houston [14th Dist.] 2003); *Royal Mortgage Corp. v. Montague*, 41 S.W. 3d 721, 732 (Tex. App. - Fort Worth 2001, no pet.). The attached deposition testimony makes it clear that the Watchtower Defendants employ a hierarchical structure to provide instructions and ensure that those instructions are followed by the agent congregations, Elders and other appointed officials. The evidence also establishes that the Governing Body is the ultimate source of all instructions and directives for the Jehovah's Witnesses organization. Thus, all of the Watchtower Defendants and their appointed Elders and Overseers in Amarillo are agents of the Governing Body and of each other.

Accordingly, Defendants Watchtower New York and Watch Tower Pennsylvania's Motions for Summary Judgment should be denied.

IV.
EVIDENCE CONCERNING WATCHTOWER DEFENDANTS' CORPORATE ORGANIZATION AND STRUCTURE HAS BEEN RECENTLY OBTAINED IN SIMILAR LITIGATION

On August 26 and 27, 2004, the "person with most knowledge" about Watch Tower Pennsylvania's contacts with the state of California gave deposition testimony in the matter styled *Charissa W. and Nicole D. vs. Watchtower*

Bible and Tract Society of New York et al (Case No. 26-22191 in the Superior Court of California, County of Napa).

Though the deposition of Alex Reinmueller focused on California contacts, testimony was provided about the structure of the WATCHTOWER DEFENDANTS' organization and interrelationships. It is clear from Mr. Reinmueller's testimony that the WATCHTOWER DEFENDANTS are a single business enterprise and agents of the Governing Body and of one another as plead in Plaintiff's Second Amended Petition.

Plaintiff believes that a deposition concerning the relationship of Watchtower New York and Watch Tower Pennsylvania to Texas and the Amarillo-Southwest Congregation of Jehovah's Witnesses would provide similar and consistent evidence.

A. Governing Body Controls

As Plaintiff's Second Amended Petition alleges, the GOVERNING BODY is an unincorporated group of men that direct all of the policies and activities of the worldwide organization known as the Jehovah's Witnesses. This Governing Body uses corporations and individuals to carry out its instructions as indicated below:

1. Congregations are required to conform to Governing Body directives and appointments

[Reinmueller pg. 386 line 6 – pg. 397 line 4]
{Refers to document attached hereto as Exhibit A – "Organized to Accomplish…"}

Q. I want you to pick up Exhibit 9 with me and turn to page 28. In the first full paragraph on the left-hand side, the second

sentence, do you see a sentence that starts with "The congregations"?

A. Yes.

Q. Do you see where it reads: **"The congregations acknowledge and conform to the guidance of the Governing Body as it outlines organizational arrangement for the benefit of all"**?

Do you see that?

A. Yes.

Q. Watch Tower Pennsylvania would be a part of that organizational arrangement, correct?

A. Yes, it would.

Q. It says "they," and they're referring to the congregations, **"accept the appointments made of older men to oversee the branches, districts, circuits, and congregations," correct?**

A. **That is what it says.**

2. The Governing Body controls through publications and letters

[Reinmueller pg. 71 line 18 – pg. 72 line 9]
*{Refers to document attached as **Exhibit B** – "Branch Operating Procedures"}*

Q. Do you see a paragraph that reads, **"The Governing Body gives direction to the branch committees throughout the world by means of such publications as the Watchtower and Awake Magazines, Our Kingdom Ministry, publications outlining organizational arrangements, as well as various letters to all branches and to individual branches answering local problems."**

Did I read that right?

A. Yes.

Q. **And at least in the mid 1980's was how the Governing Body communicated, correct?**

A. **Yes, correct.**

3. The Governing Body uses corporate entities (Watch Tower Pennsylvania and Watchtower New York) as mere agents to control

a. Jehovah's Witnesses corporations are "mere administrative agencies" for the Governing Body

[Reinmueller pg. 249 line 12 – pg.2517 line 20]
*{Refers to document attached hereto as **Exhibit C – "Theocratic Organization..."**}*

Q. If you would, pick up the one that is the 1971 article, the Theocratic Organization With Which To Move Forward Now, if you would, turn to page 759. I want to direct your attention to the item of the right-hand column, the sentence that starts "from." Do you see that in the middle of the bottom paragraph?

A. "From the Societies"?

Q. Yes. Does it read: "From the Society's present day charter as amended in 1944, **the Society as a legal corporation is merely an 'administrative agency' of the Jehovah's Witnesses."**

Did I read that right?

A. Yes, you did.

Q. It continues, "Hence also of the Governing Body of Jehovah's Witnesses," correct?

A. Correct.

Q. It reads on, "So the Society's voting members see that this Governing Body could mostly directly use that administrative agency as an instrument in behalf of the work of the faithful and discreet slave class by having members of the Governing Body on the board of directors of the Society."

Did I read that right?

A. Yes.

Q. The reference to the Society is in a capital S at the beginning, correct?

A. Yes.

Q. And that is referencing the Society, the Watch Tower Pennsylvania, correct?

A. That appears to be correct.

Q. And it continues, "They recognize that the Society **Watch Tower Bible and Tract Society of Pennsylvania is** not the administrative body, but **merely an agency for administering matters."**

Did I read that right?

A. Yes, you did.

Q. What does it mean to you, "An agency for administering matters"?

A. **All of the legal corporations used by Jehovah's Witnesses are viewed as mere tools or agencies to accomplish specific purposes. They do not represent, or are not the same as, the ecclesiastical organizations we refer to known as the Jehovah's Witnesses.**

They're simply, as here quoted, Agencies used to perform specific functions for legal purposes."

b. Governing Body maintains complete control through corporate board members and officers of Jehovah's Witnesses corporations

1. Governing Body as Watch Tower Pennsylvania

[Reinmueller pg. 234 line 18 – pg. 236 line 3]
*{Refers to document attached hereto as **Exhibits D and E** – Discovery Responses}*

Q. Isn't it true that these names listed as the officers, board of director members, and policy making and operations people for Watch Tower Pennsylvania are Governing Body members for each of those years up to and including October 5, 2000?

A. Yes, that's true.

Q. Without exception, correct?

A. From 1980 on, yes, it's true.

Q. Now, go back to Exhibit 25 where it lists those people from 1970 to 1980.

A. From 1970 to 1980, it's also true.

Q. ...**With respect to the people responsible for making policy making and operations decisions for Watch Tower Pennsylvania, those people from 1970 to October 5, 2000**

would be members of the Governing Body, correct?

A. **Yes. All of the directors were members of the Governing Body.**

Q. ...Isn't it true that the people identified as being responsible for the policy making and operations from 1970 to October 5, 2000 were members of the Governing Body, correct?

A. Yes, correct.

Q. And likewise, the officers and directors for Watch Tower Pennsylvania from 1970 through October 5, 2000 were members of the Governing Body?

A. Yes, that's true.

2. Governing Body operated through Watch Tower Pennsylvania

[Reinmueller pg. 247 line 2 -- pg. 248 line 3]
*{Refers to document attached hereto as **Exhibit F** – "Your Word is a Lamp..."}*

Q. I want you to pick up Exhibit 7, which is the Lamp book, Exhibit 7. That, too, is a book for which Watch Tower Pennsylvania owns the copyright, correct?

A. Correct.

Q. Please turn to page 42. Do you see on the bottom of page 42 paragraph that starts "in order"?

A. Yes.

Q. It reads: "In order to carry out the preaching work most effectively under modern-day conditions, the faithful and discreet slave has organized a legal corporation, the Watch Tower Bible and Tract Society of Pennsylvania."

Did I read that right?

A. Yes.

Q. And down further in that same paragraph, "The visible Governing Body is closely identified with the board of the Society."

Did I read that right?

A. Yes, you did.

Q. And during that time period, that was true, wasn't is it?

A. Yes.

c. Jehovah's Witnesses corporations are mere instruments through which the Governing Body issues and enforces its directives

[Reinmueller pg. 256 line 13 – pg. 258 line 9]
*{Refers to document attached hereto as **Exhibit G** – Affidavit of Don Adams}*

Q. And Don Adams presently is the president of Watch Tower Pennsylvania; is that correct?

A. That's correct.

Q. And has been for a few years, correct?

A. Yes, that's true.

Q. In paragraph six on the second page, it reads: **"To implement their decisions, the Governing Body uses a hierarchical organization together with corporate entities when appropriate to accomplish its worldwide work of teaching and declaring the good news as God's Established Kingdom."**

Did I read that right?

A. Yes.

Q. Then it goes on. "The principal corporation used by the Governing Body is the Watch Tower Bible and Tract Society of Pennsylvania."

Did I read that right?

A. Yes.

Q. **It goes further and talks about the Watch Tower Bible and Tract Society of Pennsylvania being the instrument through which the Governing Body directs 95 branches.**

Do you see that in paragraph seven?

A. The wording here is slightly different than how you characterized it.

Q. Let's break it down. The principal statement being made is that the Governing Body directs 95 branches through branch committees, Correct?

A. That is correct.

Q. And the predicate primary to that is under the Watch Tower Bible and Tract Society of Pennsylvania, true?

A. That is what is said.

Q. It goes further to "The purpose being to implement the directives of the Governing Body," correct?

A. That's correct.

4. Appointed Jehovah's Witnesses leaders report to Jehovah's Witnesses corporations

[Reinmueller pg. 402 line 25 – pg. 403 line 18]

Q. With respect to reports by elders or traveling overseers, from 1970 up to the present, who have they reported to?

A. **Elders, circuit overseers, district overseers, report to the service department, the US Service Department.**

Q. **And under which corporation does the US Service Department operate?**

A. **The US Service Department operated under Watchtower Bible and Tract Society of New York up until October of 2000, and since that time, Christian Congregation of Jehovah's Witnesses.**

Q. And Christian Congregation of Jehovah's Witnesses is a separate corporation?

A. That's correct.

5. Appointed leaders are required to follow instructions from Governing Body, Watch Tower Pennsylvania and Watchtower New York

[Reinmueller pg. 103 lines 4 – 23]

Q. In 1981, if a circuit overseer or district overseer received instructions from the Watch Tower Pennsylvania office of the secretary treasurer, did they follow these instructions?

A. I am sure to the best of their ability, they would.

Q. And they were expected to follow the instructions, correct?

A. To the extent that they were in a position to do so, sure.

Q. And the office of the secretary treasurer knows what a circuit overseer and a district overseer is, don't they?

A. I am sure that's true.

Q. I mean, they're going to give them instructions that they expect them to carry out, correct?

A. To the extent they're able to do so, correct.

[Reinmueller pg. 378 line 25 – pg. 381 line 11]

Q. I want you to look with me on page 20 (*Exhibit H, the March 15, 1990 Watchtower).* In about an inch and a half down, do you see a sentence on the left-hand side that starts with "Members"?

A. Yes.

Q. It says, "Members of a branch committee implement instructions received by means of the Society's books, magazines, and Our Kingdom Ministry as well as general letters and special letters dealing with local problems."

Did I read that right?

A. Yes.

Q. General letters and special letters would be some of the letters we looked at in the last two days, correct?

A. Yes. They would be included.

Q. So a letter from Watch Tower Pennsylvania would be included amongst those ways in which instructions were given, correct?

A. Yes.

Q. And if a member of a branch committee received a letter from Watch Tower Pennsylvania which was one of the general or special letters, they implement those instructions, correct?

A. They would do their best to implement them, yes.

Q. Down further under that paragraph that starts 21, do you see that?

A. Yes.

Q. It says, "Under the direction of the Holy Spirit, branch committees recommend mature spiritual men to serve as circuit and district overseers. After being appointed directly by the Governing Body, they serve as traveling overseers. These brothers visit circuits and congregations in order to build them up spiritually and **help them apply instructions received from the Governing Body.**"

Did I read that right?

A. Yes.

Q. So that's talking about circuit and district overseers helping congregations apply the instruction received, correct?

A. Yes.

Q. And those instructions it talks about above can include general and special letters from Watch Tower Pennsylvania, correct?

A. They can.

Q. And it also includes books and magazines of which Watch Tower Pennsylvania holds the copyright, correct?

A. Yes, that's correct.

6. Jehovah's Witnesses corporations exercise control over appointed leaders on behalf of the Governing Body

[Reinmueller pg. 390, line 18 – p. 391, line 12]
*{Refers to document attached hereto as **Exhibit 1** – 9/20/77 Letter from WTPA}*

Q. Isn't it true that this particular document is outlining when a circuit overseer and district overseer and how they could take vacations?

A. Yes.

Q. So even though they are volunteers, there is structure to how they could take time off, correct?

A. Yes.

Q. Of course, Watch Tower Pennsylvania is the entity providing instructions for how and when this happens, correct?

A. It's conveying those instructions, yes.

Q. **And the person that receives those instructions are expected to follow those instructions, correct?**

A. **Yes.**

B. Governing Body controls Jehovah's Witnesses publications

[Reinmueller pg. 69 lines 2 – 18]

Q. If I understand your prior testimony, the Governing Body will determine what is written, and the writing department at Watch Tower Pennsylvania will get it written, correct?

A. Governing Body will decide either the -- either decide the topics of what is written, and at times, to the best of my knowledge, sometimes the writing department may present idea and may be that they're approved or not approved.

Q. Ultimately when something is going to get published, the writing committee of the Governing Body will approve of it before it gets published; is that correct?

A. That is correct.

C. The Governing Body controls through Jehovah's Witnesses publications

[Reinmueller pg. 71 line 18 – pg. 72 line 9]
*{Refers to document attached hereto as **Exhibit A** – "Branch Operating Procedures"}*

Q. Do you see a paragraph that reads, "The Governing Body gives direction to the branch committees throughout the world by means of such publications as the Watchtower and Awake Magazines, Our Kingdom Ministry, publications outlining organizational arrangements, as well as various letters to all branches and to individual branches answering local problems."

Did I read that right?

A. Yes.

Q. And at least in the mid 1980's was how the Governing Body communicated, correct?

A. Yes, correct.

V.
ADDITIONAL DISCOVERY

WATCHTOWER DEFENDANTS have claimed that any inquiry into the corporate or operational structure of this single business enterprise would infringe upon the First Amendment of the United States Constitution. As the above deposition excerpts demonstrate, a thorough inquiry can be made that has nothing to do with the religious beliefs or doctrine of the Jehovah's Witnesses organization.

Accordingly, a Notice of Taking Deposition Duces Tecum of the person(s) with most knowledge regarding the organizational structure of the Jehovah's Witnesses organization is attached hereto. Plaintiff requests leave of this Court to take such deposition (attached as **Exhibit J**).

VI.
CONCLUSION

Notwithstanding the WATCHTOWER DEFENDANTS' misleading argument that Plaintiff is inappropriately attempting to pierce a corporate veil, the Court should focus on Plaintiff's Second Amended Petition, the summary judgment evidence (or lack thereof) and the standard or review.

The WATCHTOWER DEFENDANTS' Motion for Summary Judgment should be denied; or in the alternative, Plaintiff should be allowed to both replead and conduct discovery on the corporate relationship of and between the WATCHTOWER DEFENDANTS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Supplemental Evidentiary Support for Plaintiff's Motion for Clarification and Motion for Leave to Conduct Additional Discovery has been served by regular mail to the agent or attorney for Watchtower Defendants on the 23rd day of November, 2004.

_____
HARTLEY HAMPTON

ORGANIZED
TO
ACCOMPLISH
OUR MINISTRY

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NOTE: Bible quotations in this book are from the *New World Translation of the Holy Scriptures*, 1981 edition, unless otherwise indicated.

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and to care for all His "belongings," or Kingdom interests on earth. (Matt. 24:45-47; Luke 12: 42-44) Rather than being an individual Christian, the 'faithful slave' today is the remnant, still living on earth, of the composite body of Christ's anointed footstep followers. Such remaining ones are a part of spiritual Israel, the anointed congregation of God. (Gal. 6:16; compare Isaiah 43: 10.) This remnant is faithfully discharging the responsibilities of the "slave" during this time of the end by taking the lead in the preaching of "this good news of the kingdom" throughout all the earth and by providing spiritual food at the proper time for the household of faith.—Matt. 24:14.

USE OF RELIGIOUS CORPORATIONS

During these last days of the present wicked system of things, the "belongings" of the Master have increased abundantly throughout all the earth. This has placed a heavy responsibility on the 'faithful slave.' In discharging its responsibility to provide spiritual food at the proper time and in order to get the good news of the Kingdom preached before the end comes, the remnant on earth, as "the faithful and discreet slave" class, has formed certain agencies, or legal entities. It has proved to be the course of wisdom for the 'faithful slave' to organize certain corporations that are recognized by the laws of various countries. These religious corporations own and operate printing facilities that produce and distribute Bibles and Bible literature on a worldwide basis for use in the Kingdom ministry.

The first in time and the principal corporation used in this way is the Watch Tower Bible and Tract Society of Pennsylvania. This nonprofit religious society was incorporated in 1884, is made

up of dedicated, baptized Christians and is exclusively devoted to advancing the interests of true worship in the earth. The Watch Tower Society has extended its works worldwide, establishing branch offices in various countries. Also, in compliance with local governmental regulations, a number of other religious societies have been legally formed, such as the Watchtower Bible and Tract Society of New York, Inc. (1909) and the International Bible Students Association in London, England (1914). All these legal instrumentalities cooperate with one another. These and other legal corporations are used by the modern-day Governing Body of Jehovah's Witnesses to facilitate the preaching of the good news worldwide and to care for the spiritual needs of the entire congregation of God in all parts of the earth.

STRUCTURE UNDER BRANCH ORGANIZATION

Whenever a branch office is established, a Branch Committee of three or more elders is appointed to care for the various responsibilities involved in looking after the work in the country or countries under the jurisdiction of that particular branch. One member of the committee serves as the coordinator of the Branch Committee.

Local congregations under each branch organization are arranged into circuits and a number of circuits make up a district. Circuits and districts may be of various sizes depending on geographical and language considerations, as well as the number of congregations within the area assigned to a branch. A circuit overseer is appointed to serve the congregations in each circuit. District overseers visit the different circuits, serve at circuit assemblies and spend some time serving

congregations, usually with the circuit overseer present. The duties of traveling overseers are set out from time to time in *Our Kingdom Ministry* as well as in correspondence addressed to them by the Society.

All in the organization recognize God's way of theocratic control. The congregations acknowledge and conform to the guidance of the Governing Body as it outlines organizational arrangements for the benefit of all. They accept the appointments made of older men to oversee the branches, districts, circuits and congregations. They look to "the faithful and discreet slave" for spiritual food at the proper time. (Matt. 24:45-47) The 'faithful slave' remnant and its Governing Body, in turn, adhere strictly to the headship of Christ, hold to Bible principles and submit to the direction of holy spirit. As all work together in unity, the results are the same as those experienced by the congregations in the first century. We are told at Acts 16:5: "Therefore, indeed, the congregations continued to be made firm in the faith and to increase in number from day to day."

CHAPTER 5

OVERSEERS TO SHEPHERD THE FLOCK

DURING his earthly ministry Jesus proved himself to be the Fine Shepherd. (John 10:11) We are told that once, upon viewing the crowds following him, "he felt pity for them, because they were skinned and thrown about like sheep without a shepherd." (Matt. 9:36) Peter and the other apostles observed closely his loving concern. How different he was from the false

shepherds of Israel who neglected the flock to such an extent that the sheep were scattered and spiritually starved! (Ezek. 34:7, 8) By observing Jesus' fine example of teaching and caring for the sheep, even to the point of laying down his life for them, the apostles learned how to help those with faith return to Jehovah, the Shepherd and Overseer of their souls.—1 Pet. 2:25.

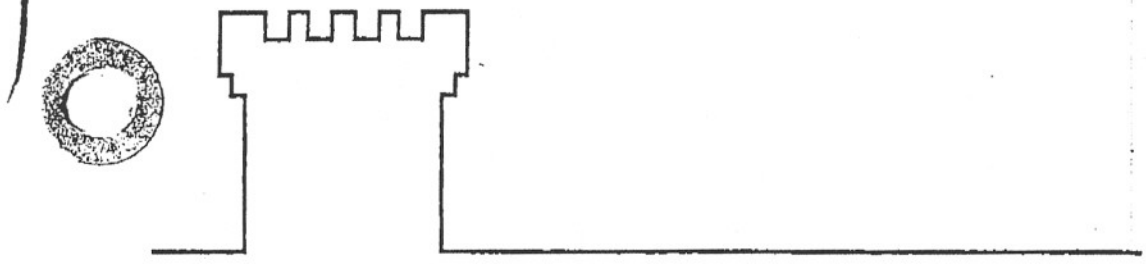
By precept and example Jesus reinforced the serious responsibility he had laid upon the apostles to care for the sheep. They never lost sight of it. On one occasion Jesus impressed very strongly upon Peter's mind and heart the importance of feeding and shepherding the sheep. (John 21:15-17) Peter was deeply moved by this as indicated later in his exhortation to older men. In his first inspired letter he wrote: "Therefore, . . . shepherd the flock of God in your care, not under compulsion, but willingly; neither for love of dishonest gain, but eagerly; neither as lording it over those who are God's inheritance, but becoming examples to the flock."—1 Pet. 5:1-3.

Peter's words apply with equal force to overseers in the congregation today. The need for having overseers in the congregations today is the same as it was back there in the first century, namely, to shepherd the flock of God. In his letter Peter emphasized the proper attitude that overseers should have in caring for such responsibility. Imitating Jesus, they should serve willingly, eagerly and as examples to the flock, taking the lead in Jehovah's service.

We can indeed be grateful for having spirit-appointed overseers in the congregation today. The benefits we receive are many. For example, overseers give spiritual encouragement and personal attention to the needs of individual mem-

BRANCH OFFICE PROCEDURE
DWELLING IN UNITY

PLAINTIFF'S EXHIBIT
B



BRANCH ORGANIZATION

Effective December 15, 1977

This material in *Branch Organization* should not be copied or duplicated nor should the book be taken away from the library.

Made in the United States of America

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Revised 1/92

Chapter 1

Governing Body and Branch Committees

1. GOVERNING BODY: The Governing Body is made up of brothers who are anointed servants of Jehovah God. They act as representatives of the "faithful and discreet slave" class which has the responsibility for giving direction and impetus to the Kingdom work. (Matt. 24:45) While the Governing Body delegates certain details or responsibilities to committees made up of its own members, or committees made up of other dedicated servants of God, or to instruments such as corporations and legal agencies, it always takes the lead for the smooth functioning of the organization and the unity of all of God's people. As the Governing Body, it has the prerogative to use its discretion and look into any matters it deems necessary to examine with regard to the Kingdom work. To oversee various aspects of the work, committees have been established as follows.

2. SERVICE COMMITTEE: This committee supervises all areas of the evangelizing work, including service matters affecting congregation organization, shepherding activity of elders and traveling representatives who are caring for the spiritual welfare of God's people around the earth, also all pioneer activity. Annual reports from the branches dealing with the field activity worldwide are examined and acknowledged by this Committee. The monthly field service reports (S-81) and the missionary home reports (A-24) are also considered by this Committee. Assignments of territories to the branches are the responsibility of the Service Committee. (Gal. 2:9) However, each branch makes its own individual territory assignments. Difficult service-related questions and problems that come in should be referred to and will be handled by this Committee. The Service Committee supervises preparation of copy for *Our Kingdom Ministry* and cooperates with the Writing Committee in getting final copy approved.

3. The Service Committee is responsible for calling in Gilead School students. This Committee is also responsible for making assignments of students to their places of postgraduate service in the field. All correspondence with missionaries regarding their service is handled by this Committee.

4. Zone visits by members of the Governing Body, or by others who are qualified, are arranged by the Service Committee.—Acts 8:14.

5. WRITING COMMITTEE: This Committee supervises putting the spiritual food into written and recorded form for publication and distribution to our brothers and the public in general.

6. The publications that this Committee supervises include the *Watchtower* and *Awake!* magazines, all bound books, booklets, pamphlets, tracts, final copy for *Our Kingdom Ministry*, handbills, Bibles, or any revisions of these.

1:1-6

It approves the scripts for dramas, radio recordings, slide and film programs, talk outlines and manuscripts.

7. The Writing Committee supervises the translation work done throughout the earth.

8. PUBLISHING COMMITTEE: This Committee supervises the printing, publishing and shipping of literature throughout the world. The Committee takes responsibility for the oversight of the factories and properties owned and operated by various corporations used by Jehovah's Witnesses throughout the world, as well as the financial operations of the Watch Tower Bible and Tract Society of Pennsylvania and other legal agencies used by Jehovah's Witnesses at the present time. It oversees legal, tax and business matters in connection with publishing the good news of the Kingdom in all parts of the earth.

9. Jehovah's Witnesses in many lands entrust their contributions for advancing the Kingdom work to various corporations and societies organized by Jehovah's Witnesses. Branch offices compile financial reports in accord with the laws of the land and the policies of the theocratic organization. These are considered by the Publishing Committee for their information and are helpful in planning the best use of the funds available to Jehovah's Witnesses for the worldwide Kingdom work. The various legal agencies holding the funds may use this money for payment of invoices, reimbursements, as well as other necessary expenditures. Should conditions in a country change and legal agencies are no longer available to be used, other appropriate arrangements will be made according to the conditions at that time for handling financial operations.

10. Major real estate transactions and significant construction projects that are proposed should be presented to the Governing Body before action is taken. When such projects have been approved then details will be taken care of by the corporation or corporations involved. Arrangements for the dedication of new branch facilities will be handled by the Governing Body.

11. Requisitions for normal purchases of printing equipment, vehicles, typewriters and other equipment for publishing factories and branches worldwide are approved by the coordinator and one other member of the Publishing Committee who has been named for that service by this Committee. Proposals for major acquisitions of machinery and other expensive equipment are to be submitted to the Governing Body with this committee's recommendations for approving the purchases.

12. Direction for the operations of all publishing factories and maintenance of properties is given by the Publishing Committee with routine matters being handled by the coordinator who should keep the Committee informed.

13. The Publishing Committee also recommends appropriate contributions for literature for many of the branches throughout the world, taking into consideration production and shipping costs, as well as inflationary trends.

14. Questions from branch offices relative to publishing, shipping, financial, legal, tax and property matters are given to the Publishing Committee for handling.

15. Copies of the branch inventory are reviewed by this Committee. This Committee also supervises the approval of branch orders for literature.

16. Questions and recommendations concerning reimbursements and financial matters should be referred to this Committee.

17. The Publishing Committee supervises the properties and the obtaining of the material needs of the Bethel homes and farms. This includes approving requisitions for purchase of unusual or expensive items for maintenance or expansion of these properties, but routine requisitions for food, linens, housekeeping and maintenance supplies, fuel, furniture, etc., may be approved by those having authorization.—See 3:8.

18. TEACHING COMMITTEE: This Committee's responsibility is to supervise schools, assemblies and Bethel family instruction for the spiritual education of Jehovah's people. The Committee supervises outlining the material to be used in teaching and takes oversight of the various departments that are now responsible for this education.—Isa. 54:13, 14; John 6:45.

19. The Committee is responsible to see that there is a proper arrangement and time allotment for each of the congregational meetings. This committee works in close cooperation with the Service and Writing Committees.

20. Fields of instruction handled by this Committee include the following: 1. Watchtower Bible School of Gilead; 2. Kingdom Ministry School; 3. Theocratic Ministry School; 4. Bethel Entrants' School; 5. Program at Bethel table; 6. Bethel Family meetings; 7. International Conventions; 8. District Conventions; 9. Circuit Assemblies; 10. Special Assembly Days; 11 Radio and TV programs; 12. Pioneer Service Schools; 13. Literacy classes; 14. News Service.

21. The Teaching Committee endeavors always to provide the necessary instruction and arrangements for building up spiritually the elders, publishers, Bethel families, newly interested persons and others, encouraging all to 'pay constant attention to themselves and to their teaching.'—1 Tim. 4:16.

22. Branch Committees should make their own local organizational arrangements for their circuit assemblies, special assembly days and district conventions.

23. PERSONNEL COMMITTEE: This Committee takes oversight of the arrangements made for the personal and spiritual assistance of members of the Bethel families.—Eph. 4:3; Phil. 2:1-5; Jas. 5:14-16.

24. The Personnel Committee oversees the selection and invitation of new members of the Bethel and Farm families around the world, and handles questions concerning their staying in Bethel service.

25. When new members arrive at Bethel a member or representative of the Branch Committee should speak to them on the importance of looking after their spiritual needs and explain arrangements for providing spiritual assis-

tance to them and for their discussing personal problems with any of the Bethel elders. Every help should be offered to aid new members to adjust to living at Bethel. They will be spoken to about the importance of working whole-souled and putting Kingdom interests first.

26. **All Bethel elders should be available to the members of the family** who have problems and they should be observant as to any difficulties or discouragement on the part of any member, being ready to offer personal counsel and help. It should be made clear to all elders just what their responsibilities are and what they are expected to do themselves. Serious problems may be reported to the Branch Committee. Bethel elders appreciate the value of giving encouragement to fellow workers and commendation for things well done. Efforts should be continued to maintain a good attitude and wholesome spirit among all members, as well as appreciation for their service privileges and a feeling of being needed and appreciated. —Matt. 11:29, 30.

27. It should be practical to handle most personal problems locally in the branch, but major questions and problems can be taken up with the Personnel Committee.

28. Copies of Bethel volunteer lists should be sent in with the Annual Reports for review by the Personnel Committee.—See 16:27-30.

29. **If a member of the family desires to leave**, he should submit at least a thirty-day notice in writing to the Branch Committee if at all possible. In this way arrangements can be made for someone to replace him in the work assignment.

30. **When any worker is transferred from one position to another,** it would be a good thing to let him know why. Thus he will not wonder if the change is because of a failure on his part, or if there is something on which he should try to improve.

31. CHAIRMAN'S COMMITTEE: This Committee is composed of the current chairman of the Governing Body, the previous chairman and the one next in line to be chairman. The current chairman will serve as the coordinator.

32. The Chairman's Committee of the Governing Body should be alert to see that the Governing Body operates smoothly and efficiently and that there is no unnecessary overlapping of work of the various Committees.

33. Reports on major emergencies, disasters or persecutions and any other urgent matters affecting Jehovah's Witnesses will come immediately to this Committee and will be taken up with the Governing Body.

34. LEGAL CORPORATIONS: The Watch Tower Bible and Tract Society of Pennsylvania is the oldest corporate agency of Jehovah's Witnesses. It works with other legal agencies such as the Watchtower Bible and Tract Society of New York, Inc., the International Bible Students Association, and many others scattered throughout the earth in order to print and ship the good

news. All these agencies are subject to and work under the direction of the "faithful and discreet slave" class and its Governing Body.

35. BRANCH COMMITTEES: Jehovah's Witnesses through their Governing Body operate branch offices located in most of the principal countries of the world. The Governing Body of Jehovah's Witnesses approves of the recommendations for elders who will serve on the Branch Committees for such offices. The Branch Committee has the responsibility for the oversight of the preaching of the good news of Jehovah's Kingdom in the territory assigned to the branch. Within this territory it also gives the necessary supervision to the Christian congregations, missionaries, special pioneers, pioneers, and interested ones, organizing the congregations into circuits and districts and making recommendations to the Governing Body for the appointment of circuit and district overseers, Bethel family members and students for Gilead School.

36. **The Governing Body gives direction to the Branch Committees** throughout the world by means of such publications as the *Watchtower* and *Awake!* magazines, *Our Kingdom Ministry,* publications outlining organizational arrangements, as well as various letters to all branches and to individual branches answering local problems. In addition, the booklet *Dwelling Together In Unity* has been provided, giving certain basic guidelines in connection with Bethel family arrangements, also the booklet, *Missionary Counsel Booklet,* outlining the basic arrangements for missionaries serving throughout the world under the direction of the Governing Body.

37. In large branches, necessary **recommendations** for Bethel overseer, factory overseer and office overseer are made **by the Branch Committee to the Governing Body.** Other assignments of volunteers are made by the Branch Committee. Instructors for the Kingdom Ministry School or Pioneer Service School also may be appointed by the Branch Committee.

38. The appointment as a member of the Branch Committee or to a position of oversight in the branch organization is not for any specified period of time. On the recommendation of the Branch Committee, the Governing Body will be pleased to consider the recommendation for adjustments, or **removal, or reassignment of individuals** having in mind the advancement of the Kingdom work.

39. It may be sufficient to have three members form the Branch Committee in some branches, but in large branches where other factors are involved, such as printing operations, extensive territories or a variety of languages, it would seem advisable that the membership of such a Committee be five or more, providing an opportunity for additional elders to be familiar with the details of the work in that particular branch area. For example, the Branch Committee might include a factory overseer in a large branch, someone from the Service Department, someone having to do with the Bethel home, someone handling the finances, missionaries, etc. It is also desirable for one or more members of the Branch Committee to be citizens

THEOCRATIC ORGANIZATION WITH WHICH TO *Move Forward Now*

THOSE "twelve apostles of the Lamb" were gifts from the great Theocrat Jehovah through Jesus Christ to the congregation. The psalm of David (68:18) had foretold such gifts, and the apostle Paul matches the psalm to its fulfillment and says: "Wherefore he says [in Psalm 68:18]: 'When he ascended on high he carried away captives; he gave gifts in men.' . . . And he gave some as apostles, some as prophets, some as evangelizers, some as shepherds and teachers, with a view to the readjustment of the holy ones, for ministerial work, for the building up of the body of the Christ." (Eph. 4:8-12) At the beginning those twelve apostles, because of their position, served as a governing body for the whole congregation of believers. So they made appointments of qualified men in the congregation to assist them in less vital matters. As an illustration of this, when the Jerusalem congregation had increased to five thousand members and a disturbing difficulty arose, here is what happened:

2 "So the twelve called the multitude of the disciples to them and said: 'It is not pleasing for us to leave the word of God to distribute food to tables. So, brothers, search out for yourselves seven certified men from among you, full of spirit and wisdom, that we may appoint them over this necessary business; but we shall devote ourselves to prayer and to the ministry of the word.' And the thing spoken was pleasing to the whole multitude, and they selected . . . and they placed them before the apostles, and, after having prayed, these laid their hands upon them. Consequently the word of God went on growing, and the number of the disciples kept multiplying in Jerusalem very much." —Acts 6:1-7.

3 As those seven assistants were appointed by the apostolic governing body, who extended their hands in approval of such assistants, those appointments were theocratic, not congregational or democratic. Later on, official "older men" or "elders" (presbyters) were theocratically appointed and added to the governing body at Jerusalem. So, about the year 49 C.E., when Paul and Barnabas came to Jerusalem and submitted the question raised about circumcising non-Jewish believers, the governing body that handled and settled the issue was made up of "the apostles and the older men," under the guidance of God's holy spirit.—Acts 15:1-29; 16:4.

4 That first-century congregation was not some legal corporation that was registered and chartered by the Jewish go-

1. (a) According to Psalm 68:18, what were those twelve apostles? (b) As a group, how did they act together, and so what were they authorized to do?
2. How did the apostles take care of the difficulty over food distribution, and so what happened regarding the word of God?
3. (a) Why were those appointments of the seven assistants theocratic? (b) Were additions made to the governing body, and what does the account of the settling of the circumcision issue show?
4, 5. (a) What shows whether the first-century congregation was a legal corporation regulated by worldly authority or not? (b) The whole congregation is what, in a composite way, and how do the words of Isaiah 43:10 indicate this?

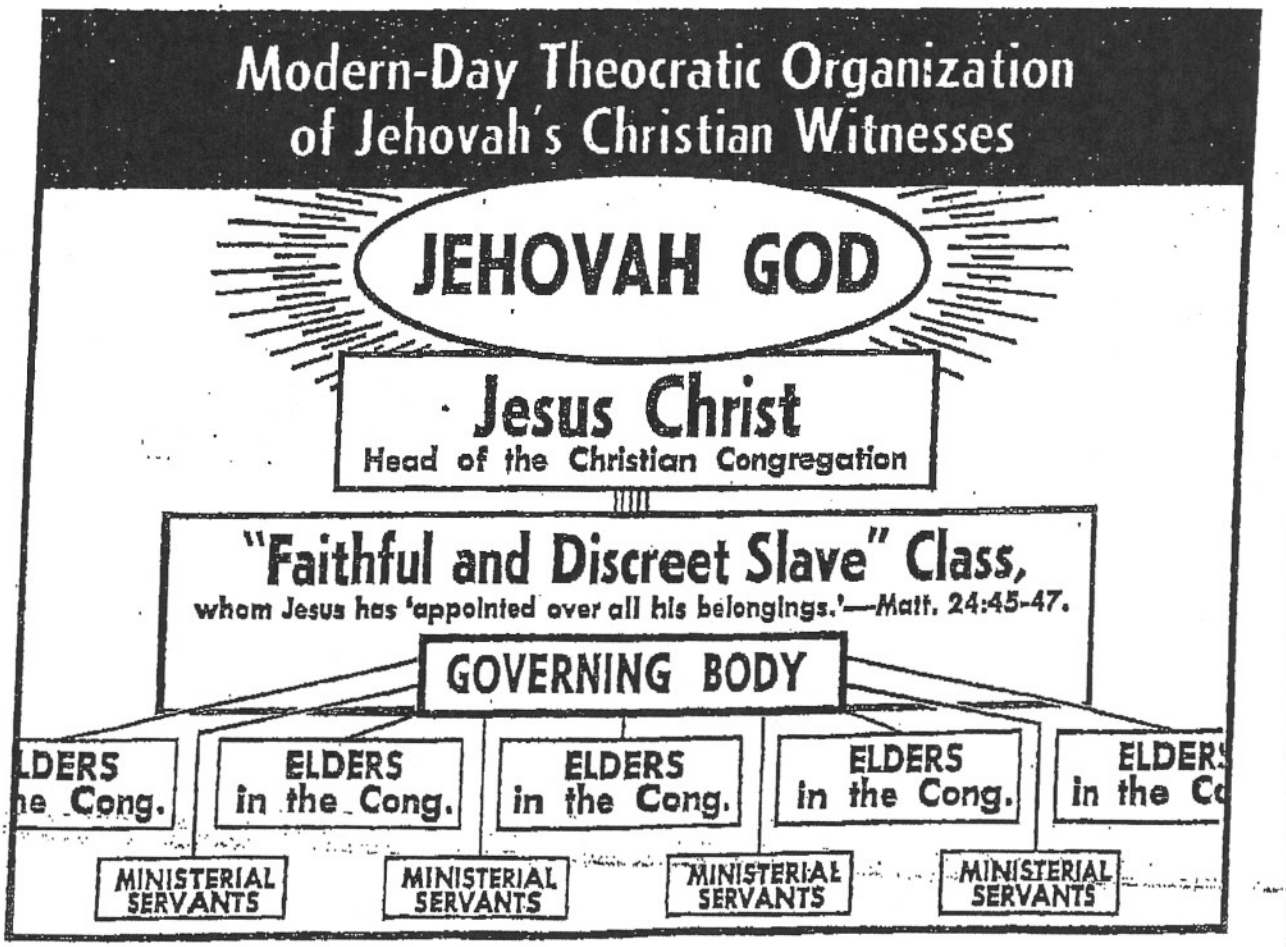
PLAINTIFF'S EXHIBIT C
EXHIBIT 32

ernment at Jerusalem or by the Senate of the Roman Empire, with officers to be appointed according to Caesar's specifications. No, but it was a theocratic organization with officers and assistants that were theocratically appointed by the governing body and Jesus Christ, the "head of the congregation." The "gifts in men" that had been given to it were, not from the Roman Emperor Caesar, but from the great Theocrat, Jehovah God, through Jesus Christ. For what purpose? "With a view to the readjustment of the holy ones, for ministerial work." (Eph. 4:11, 12) The whole congregation was a service body, all members rendering sacred service to the great Theocrat Jehovah. They were one composite "servant" of their Divine Ruler, whose witnesses they were. They were bearing witness that He had sent the promised Messiah in the person of Jesus Christ his Son. To them as spiritual Israelites the words applied:

8 "'You are my witnesses,' is the utterance of Jehovah, 'even my servant whom I have chosen.'"—Isa. 43:10.

8 Thus the many witnesses form one "servant," whom Jehovah calls "my servant whom I have chosen." This composite "servant" is the one whom Jesus Christ had in mind when he spoke of his going away and his returning, saying: "Who really is the faithful steward, the discreet one, whom his master will appoint

6. Who, then, is that "steward" and "slave" mentioned by Jesus in Luke 12:42-44?



over his body of attendants to keep giving them their measure of food supplies at the proper time? Happy is that slave, if his master on arriving finds him doing so! I tell you truthfully, He will appoint him over all his belongings."—Luke 12:42-44.

7 Notice that Jesus calls this "steward" also a "slave" to his master. In the prophecy on the conclusion of the system of things Jesus speaks of this same "slave" class, saying: "Who really is the faithful and discreet slave whom his master appointed over his domestics, to give them their food at the proper time? Happy is that slave if his master on arriving finds him doing so. Truly I say to you, He will appoint him over all his belongings." —Matt. 24:45-47.

8 Before Jesus Christ the Lord left by ascending to heaven, he gathered together his faithful disciples, including his loyal apostles. On the day of Pentecost following his ascension back to his heavenly Father, Jesus received and poured out the holy spirit on his disciples gathered together at Jerusalem, and thereby he appointed this "slave" class, this "steward" class, to give to his "domestics," his "body of attendants," spiritual food, "their measure of food supplies at the proper time." The slave class proceeded to do so.

INSPECTION, APPOINTMENT, "GIFTS IN MEN"

9 In the year 1914 C.E., at the close of the "appointed times of the nations," the Lord Jesus Christ was installed in the heavenly Messianic kingdom. Thereafter he undertook an inspection of the "slave" or "steward" class on earth. (Matt. 25: 14-30; Luke 19:11-27) He did find dedicated, baptized, anointed disciples on earth who, in spite of World War I and persecutions and other difficulties, were striving to serve the interests of Jehovah's Messianic kingdom. They were endeavoring to feed in a spiritual way the faithful "domestics" or "body of attendants" of the now reigning Lord and Master, Jesus Christ.

10 The facts of modern history show that in the year 1919 he revived these much afflicted disciples and gathered them together in a united body. Then he appointed them as his "slave" class "over all his belongings," that is, over all his royal interests at the earth. (Rev. 11:7-12) It was this active body of dedicated, anointed Christians who, in the summer of 1931, embraced a name to distinguish them from Christendom's sects, namely, Jehovah's witnesses.—Isa. 43:10-12; 44:8.

11 This "faithful and discreet slave" class of today has a visible governing body, just as the same class had a governing body back in the first century, from Pentecost of 33 C.E. forward.

12 As we have already observed, the "faithful and discreet slave" class back there was favored with gifts in men, or gifts in the form of men. These were provided by Jehovah God through Jesus Christ. According to Ephesians 4:7-11, not all of these gifts were apostles. Some were prophets, others evangelizers, others shepherds, still others teachers. Of course, the apostles were at the same time prophets, evangelizers, shepherds (pastors) and teachers. On the day of Pentecost, under the force of the outpoured holy spirit, the twelve apostles prophesied, in fulfillment of Joel 2:28, 29. (Acts 2:16-18, 21) They evangelized also, or declared good news,

7. How did Jesus refer to this same class in his prophecy on the conclusion of the system of things?
8. When and how did Jesus appoint this "steward" or "slave" class, and what did it proceed to do?
9. When did the Lord Jesus Christ undertake an inspection of the "slave" class, and what did he find about it?
10. What appointment did he make respecting that faithful "slave" class in 1919, and what name did it embrace in 1931?
11. What must be said about a governing body for this "faithful and discreet slave" class?
12, 13. (a) What spiritual services as rendered by the "gifts in men" did the twelve apostles render after the outpouring of the spirit? (b) What account proves that they did evangelizing?

for, after the twelve apostles were arrested, jailed, haled into court, flogged and released, what did they do? Acts 5:42 tells us:

13 "Every day in the temple and from house to house they continued without let-up teaching and declaring the good news [*evangelizein*, Greek] about the Christ, Jesus."

14 That account proves that they were not only evangelizers but also teachers. Were those apostles also shepherds or pastors? Yes. Remember how, at the Sea of Galilee, the resurrected Jesus told Peter to prove his love and affection by obeying the command: "Feed my lambs. . . . Shepherd my little sheep. . . . Feed my little sheep." (John 21:15-17) All the other apostles also became and acted as spiritual shepherds in the congregation. The very fact that the congregation is called the "flock of God" laid on these apostles the obligation to be shepherds of that flock.

15 However, although the twelve apostles and the apostle Paul were capable of serving and did serve as prophets, evangelizers, shepherds and teachers, they did not monopolize those forms of the Christian ministry. There were other dedicated, baptized men who specialized or were prominent in those varieties of ministries. (1 Cor. 12:4, 5) For instance, when the apostle Paul, at Ephesus, baptized those men, about twelve of them, "in the name of the Lord Jesus" and then laid his hands upon them, "the holy spirit came upon them, and they began speaking with tongues and prophesying." (Acts 19:1-7) The gift of miraculous prophecy was imparted by the holy spirit to many other dedicated, baptized Christians in the days of the apostles. (1 Cor. 12:7-10, 27-29; 14:29-32; Acts 13:1; 21:10) So not only the apostles prophesied.

16 What about the gift of spiritual "shepherds"? There is historical evidence that they were not lacking. About the year 56 C.E., when on his way to Jerusalem, Paul the "apostle to the nations" stopped at the seaport of Miletus and sent for the official elders of the nearby Ephesus congregation to come to him before his ship left. In the course of his farewell remarks Paul reminded these elders or presbyters of the spiritual work that they were appointed to render, saying: "Pay attention to yourselves and to all the flock, among which the holy spirit has appointed you overseers, to shepherd the congregation of God, which he purchased with the blood of his own Son. I know that after my going away oppressive wolves will enter in among you and will not treat the flock with tenderness." (Acts 20:28, 29) So those elders were both overseers and spiritual shepherds.

17 Doubtless, not one individual elder, presbyter, overseer or shepherd, but the entire "body of elders" was what the glorified Lord, Jesus Christ, called the "angel" that was symbolized by a heavenly star. Thus, about the year 96 C.E., he told the aged apostle John on the Isle of Patmos to write, saying: "To the angel of the congregation in Ephesus write: These are the things that he says who holds the seven stars in his right hand, he who walks in the midst of the seven golden lampstands." (Rev. 2:1; 1:20) The "body of elders" (or presbytery) there at Ephesus was to act like a star in shedding heavenly, spiritual light upon the congregation over which the holy spirit had made them shepherds. By such light these spiri-

14. Since the congregation is called the "flock of God," this laid what obligation upon the twelve apostles, and did they fulfill it?
15. How does the record show whether the apostles monopolized the ministry of prophesying?
16. How did Paul at Miletus show that others besides the apostles were to fulfill the ministry of spiritual shepherds?
17. Whom did the starlike "angels" of Revelation 1:20; 2:1 picture, and hence what was the responsibility of these?

tual shepherds would guide them aright. —1 Tim. 4:14, *margin*.

18 Further, with respect to the gift of shepherds to the first-century congregation, the apostle Peter wrote, about the years 62-64 C.E. Putting himself on a level with the "elders" of the congregations in Asia Minor, Peter wrote: "Therefore, to the elders among you I give this exhortation, for I too am a fellow elder and a witness of the sufferings of the Christ, a sharer even of the glory that is to be revealed: Shepherd the flock of God in your care, . . . becoming examples to the flock. And when the chief shepherd has been made manifest, you will receive the unfadable crown of glory." (1 Pet. 5:1-4, *margin*) So Peter recognized that the gift of shepherds included others besides the apostles.

19 "Teachers" were also given as "gifts in men." By these are meant, not parents who teach their children in family gatherings or ordinary congregation members who teach interested persons the Bible truths in their private homes, but men who are specially gifted with the art of teaching and who are therefore appointed to be teachers inside the congregation in its regular Bible studies. For instance, after his release from his first imprisonment in Rome, the apostle Paul wrote to Titus, whom he had left in Crete to appoint official elders for the congregations in city after city. When setting out the qualifications of such elders, who should also be overseers, Paul wrote: "An overseer must be . . . holding firmly to the faithful word as respects his art of teaching, that he may be able both to exhort by the teaching that is healthful and to reprove those who contradict."—Titus 1:5-9.

18. How does 1 Peter 5:1-4 show that Peter recognized that the gift of shepherds included others besides the apostles?

19. As indicated by Paul in Titus 1:5-9, who were the "teachers" that are included among the "gifts in men"?

20 About the same time the apostle Paul wrote Timothy, who had been given authority to make appointments. When telling him the basis on which overseers were to be appointed over a congregation, Paul lists sixteen qualifications. Among all these we note the seventh requirement to be: "qualified to teach." (1 Tim. 3:1-7) As an overseer had to be more than a "newly converted man," he must be officially an "elder." That the nonapostolic "elders" were among the "gifts" in the form of teachers, the apostle Paul indicated to Timothy by going on to tell him: "Let the elders who preside in a fine way be reckoned worthy of double honor, especially those who work hard in speaking and teaching." (1 Tim. 5:17, *margin*) Accordingly, today Jehovah's witnesses endeavor to have official "elders" to preside over the midweek Bible studies that are conducted in locations convenient for the members of the congregation who are living in that neighborhood. Only if enough elders are not available for all such weekly Bible studies, are "ministerial servants" used to conduct such local Bible studies. —1 Tim. 3:8, 9, 12, 13.

EVANGELIZING

21 Third among the "gifts in men" the apostle Paul names "evangelizers." (Eph. 4:8, 11) During his days in the flesh on earth the Lord Jesus Christ sent out more than just the twelve apostles to do evangelizing work. (Luke 9:1-6; 10:1-11) So too when he ascended to heaven and poured out the holy spirit upon his waiting disciples on the day of Pentecost, he gave others besides the twelve apostles to be evangelizers.

22 Philip of Caesarea, whom the apostles

20. How did Paul indicate to Timothy that the office of "elders" of congregations are "gifts" in the form of "teachers"?

21, 22. (a) Whom did Paul list third among the "gifts in men," and did Jesus appoint only the apostles to be such? (b) What man was personally called an "evangelizer," and to what extent did he act as such?

appointed with six others to look after the distribution of food to needy disciples in Jerusalem, did not remain long at that work that a ministerial servant of a congregation might perform. After his fellow worker, Stephen, was martyred, persecution broke out against the Christians at the instigation of Saul of Tarsus, and the disciples, except the apostles, were scattered from Jerusalem. Among these scattered disciples was Philip, and he went down to Samaria and did productive evangelizing work there. After that he presented the good news to an official eunuch of Queen Candace who was returning to Ethiopia, and then he did evangelizing work along the Mediterranean seacoast from Ashdod up to Caesarea. (Acts 8: 1-40) More than twenty years later Philip was still busy at his evangelizing work, for, when Paul and his missionary companions visited with Philip at Caesarea, he was still called "Philip the evangelizer." (Acts 21:8) As one of the "gifts in men" he proved to be of great value.

23 Timothy, a missionary companion of the apostle Paul, was another of the "gifts" in the capacity of an evangelizer. Shortly before his death, about 65 C.E., Paul wrote a second letter to Timothy and said: "Do the work of an evangelizer, fully accomplish your ministry [*di·a·ko·ni'a*, Greek]." —2 Tim. 4:5; 1 Thess. 1:1, 5; 2:2, 4, 8, 9; 3:2, 6.

AND WHAT ABOUT TODAY?

24 Today the Christian witnesses of Jehovah are heeding those words addressed to Timothy nineteen centuries ago. The official elders who are qualified to give public lectures from a speaker's platform are not the only ones who are doing evangelizing work. All the dedicated baptized members of the more than 27,150 congregations around the earth are doing so. In Revelation 14:6 we have the assurance that this is being done under angelic guidance, for that verse foretold an angel flying in midheaven who "had everlasting good news to declare as glad tidings to those who dwell on the earth, and to every nation and tribe and tongue and people."

25 In the first postwar year of 1919 there came the revival of our public Christian activity. Encouragement was then given to all those making up each congregation to take part in preaching God's kingdom—to the official elders and deacons or ministerial servants and to all others, dedicated men and women alike. Let them do this, not just by distributing four-page tracts, but also by going to the doors just as the then "colporteurs" did and offering to the householders directly books and booklets as Bible study helps. The article "Announcing the Kingdom" in the *Watch Tower* magazine said:

> The door of opportunity is opening before you. Enter it quickly. Remember as you go forth in this work you are not soliciting merely as the agent of a magazine, but you are an ambassador of the King of kings and Lord of lords, announcing to the people in this dignified manner the incoming of the Golden Age, the glorious kingdom of our Lord and Master, for which true Christians have hoped and prayed for many centuries. You are an angel of peace, bearing to a war-torn, sin-sick, sorrowing and broken-hearted world the glad message of salvation. How wonderful is our privilege!—*The Watch Tower* as of September 15, 1919, page 281, paragraph 6.

26 Now, after all the intervening years, we have the proof more than ever before that Jehovah God enthroned his Son Jesus Christ in the Messianic kingdom in the heavens at the close of the Gentile Times in the year 1914. We know that we are

23. Whom did Paul, by letter, tell to continue working as an evangelizer?
24. Who today are doing evangelizing work, and under whose guidance?
25. In 1919 to whom was encouragement given to do evangelizing work in a more direct manner, and what did *The Watch Tower* say?
26. In what momentous time are we living, according to the available proof, and what must go and what must come in?

in the "time of the end" as regards the political nations of this world and that the destruction of them in the approaching "great tribulation" upon the whole world is ominously near. (Dan. 12:1-4; Matt. 24:21, 22; Rev. 7:14) We, for our part, are approaching the portals of the righteous new order earth wide as promised by Jehovah God, which order will completely replace the tottering wicked system of things. The old order of these past thousands of years must go amid the fiery trouble ahead. The new order under Jehovah's theocratic government must come in!

27 This is the only good news on earth today. It is the Gospel. It is the Evangel. With it we can do glorious evangelizing work! In his prophecy of Matthew 24:14 and Mark 13:10 Jesus said that "this good news of the kingdom" must be preached internationally before the end of this system of things comes. Jehovah the great Theocrat has now provided us the theocratic organization for getting this good news preached to its completion.

28 Is that visible earthly organization eager to do that grand work? Look! The appointed elders and overseers of the congregations are actively working in that behalf. The ministerial servants of the congregations are cooperating in that behalf. The rank and file of the congregations, the dedicated men and women and their children, are taking part in the work, both from house to house and publicly. The governing body over all these theocratic congregations is whole-souled behind this evangelizing work and is making every arrangement for getting the work done within the time divinely allowed. The "faithful and discreet slave" class of today has been appointed over all the Kingdom interests belonging to the Lord Jesus Christ, and, as a faithful steward of his interests, it serves out spiritual food through the evangelizing work.

29 This worldwide evangelizing organization is not tailored according to any present-day legal corporation that may be required under the laws of man-made political governments that now face destruction in the "war of the great day of God the Almighty" at Har–Magedon. (Rev. 16:14-16) No legal corporation of earth shapes the evangelizing organization or governs it. Rather, it governs such corporations as mere temporary instruments useful in the work of the great Theocrat. Hence it is patterned according to His design for it. It is a theocratic organization, ruled from the divine Top down, and not from the rank and file up. The dedicated, baptized members of it are under Theocracy! Earthly legal corporations will cease when the man-made governments that chartered them perish shortly. But the theocratic organization will live on, serving its Supreme Theocratic Ruler. Under his protection it will enter into his righteous new order. It will be right there on hand, as soon as the "great tribulation" is over, and be instantly ready to serve as His instrument in his new order.

30 Forward, then, under Theocracy into the new order! Our Leader, the reigning heavenly King, Jesus Christ, moves at the head of our advancing column. Let us not break our ranks, nor run in fear and disorderly panic. We have nothing to fear at the massing of our many enemies. On our side is God the Almighty, the great Theocrat whom we obey as ruler rather than men. He is over us. It is his work that we are doing at his command through Jesus Christ. We are his "men of goodwill," and

27, 28. (a) What, then, is this information, and what must be done with it? (b) What has Jehovah provided for getting that work done, and what is its attitude toward that work?

29. (a) According to what is this organization patterned, and so what kind of organization is it? (b) How long will it be available as a divine instrument?

30. Why have we excellent reason to move forward unitedly into God's new order?

He takes delight in us. His spirit it is that pervades the whole organization, and this holy spirit is the active force that unites us unbreakably.

[21] Our life-giving message, the Evangel that we preach and teach, is from Him and is drawn from his revealed Word, the Holy Bible. Our message is true, and soon it must come to heart-gladdening fulfillment! Highly honored are we to be favored with the privilege of proclaiming and teaching it to all mankind. Immediately before us is the glorious reward for our living up to this marvelous privilege. Forward, then, unitedly into the new order under Theocracy! Make known to everybody just how fully we appreciate that Jehovah is now reigning as God King. —Ps. 96:10.

21. How are we highly privileged in connection with God's Word, and what should we make known to everybody?

A GOVERNING BODY *as different from* A LEGAL CORPORATION

ON Friday morning, October 1, 1971, the legal corporation known as Watch Tower Bible and Tract Society of Pennsylvania held its annual corporation meeting, this time in the Assembly Hall of Jehovah's witnesses at Buckingham, Pennsylvania. All seven members of the Board of Directors of said Society attended and had a part in the program presented. The membership of this Society is limited to five hundred at the most, there being at present four hundred and fifty such members throughout the earth. Many of these members attended this annual corporation meeting in person, still more by means of proxy. All together, 2,076 attended this corporation meeting, doubtless all of them being interested Christian witnesses of Jehovah.

At this meeting a question came up and was discussed from the platform. It was as to what the relationship is between the Board of Directors of the Society as a legal corporation and the Governing Body of Jehovah's Christian witnesses. Are they the same, identical, or are they different? Such questions were due to the fact that it has been published in print that the Governing Body of Jehovah's witnesses at headquarters is associated with the Board of Directors of the said Society. How did this come about, and does this make the Board of Directors the same as the Governing Body of Jehovah's witnesses all the earth around?

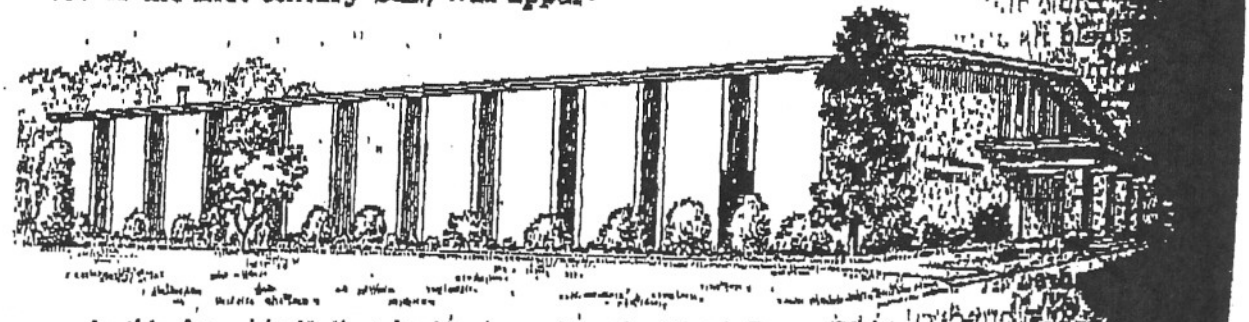
The official magazine of Jehovah's Christian witnesses is *The Watchtower Announcing Jehovah's Kingdom*. In the year 1944 the *Watchtower* magazine began to speak about the *governing body* of the Christian congregation. The true Christian congregation was established on the festival day of Pentecost of the year 33 C.E. at Jerusalem in the Roman province of Judea. On that notable day this

congregation of dedicated Christians, consisting then of about 120 members, was anointed with holy spirit, which Jehovah God poured out upon them through the glorified Jesus Christ. This anointed body of dedicated, baptized Christians was then given a special assignment of service. According to the prophetic words of Jesus Christ at Matthew 24:45-47, it was given the appointment as the "faithful and discreet slave." The now heavenly Jesus Christ was the Master and Lord of this anointed "slave" class.

The Bible book, Acts of Apostles, discloses that this anointed Christian congregation as a "slave" class had a visible, earthly governing body. On that day of Pentecost it was composed of twelve men, namely, the twelve apostles of the Lord Jesus Christ. Years later, about the year 49 C.E., this governing body was reported to include the then surviving apostles of Christ and the spiritual elders of the Jerusalem congregation. (Acts, chapter 15) This Christian governing body did not use as an administrative agency any legal corporation recognized, authorized and chartered by Caesar or any province of the Roman Empire. The decree issued was written up and carried by personal messengers to the Christian congregations that were concerned because of the non-Jewish or Gentile converts among them. The Christian apostle John, who wrote the last books of the Holy Bible toward the close of the first century C.E., was apparently the last surviving member of the original governing body appointed by Jesus Christ.

Centuries passed. Came the month of July of the year 1879. Then there appeared on the scene a new religious magazine called *Zion's Watch Tower and Herald of Christ's Presence*. It was then to be published monthly, at Pittsburgh, Pennsylvania, U.S.A., its first issue comprising only 6,000 copies. Its editor and publisher was a sincere Christian man, Charles Taze Russell, and the names of five other regular contributors to the magazine were announced. Besides calling attention to the second presence of Christ as due to be invisible and in the spirit, it came out unreservedly for the perfect human sacrifice of Jesus Christ as being the "ransom for all." (1 Tim. 2:5, 6) At that time C. T. Russell was associated with a Christian congregation of Bible students at Allegheny, Pennsylvania, and this congregation had requested him to serve as its religious pastor. Thereafter C. T. Russell became known world wide as "Pastor Russell."

In September of 1881 the issue of *Zion's Watch Tower* was published as a special edition featuring "Food for Thinking Christians." This commanded a lot of attention and had a wide distribution. Previously, other pamphlets had been published by C. T. Russell. In fact, during the preceding four years more than a million



In this Assembly Hall at Buckingham, Pa., the Watch Tower Bible and Tract Society of Pennsylvania held its annual corporation meeting for 1971

copies of these pamphlets had been circulated free of charge. For the purpose of more efficiently spreading Bible literature similar to such pamphlets, Zion's Watch Tower Tract Society was organized in 1881. But it was a legally unincorporated society. Three years later, in 1884, for the purpose of better taking care of all the responsibilities involved, Zion's Watch Tower Tract Society was legally incorporated under the Membership Corporation Law of Pennsylvania, the charter of the Society being issued on December 13, 1884. It was chartered to have a Board of Directors, from among whom a president, vice-president and secretary-treasurer were chosen. The six incorporators of the legal Society served as the first six directors thereof, to serve for a year at a time. —*Zion's Watch Tower*, January 1885.

In the year 1914 International Bible Students Association was incorporated in London, England, to work in conjunction with the American corporation, known since September 22, 1896, as Watch Tower Bible and Tract Society. As time went on, other legal religious corporations were organized in other lands to work in their respective lands in cooperation with the American religious corporation. As a consequence, many thousands of God-fearing persons around the globe became readers of the publications of the Watch Tower Bible and Tract Society and dedicated their all to Jehovah God through Jesus Christ and got baptized in symbol of this and looked to the editorial staff and publishers of the Watch Tower Society for spiritual food in the form of the *Watch Tower* magazine and other publications as aids to Bible understanding. These dedicated Christians became known as International Bible Students. They continued under this designation until July 26, 1931, when, at a general convention of the International Bible Students Association in Columbus, Ohio, U.S.A., a resolution was adopted to embrace the name Jehovah's witnesses.

GOVERNING BODY

According to the apostolic example of the first century C.E., these dedicated, baptized Christians known today as Jehovah's witnesses have a governing body, as specifically noted from the year 1944 onward. This governing body has through the years been associated with the publishers of the *Watch Tower* magazine and the Board of Directors of the legal religious corporation now known as Watch Tower Bible and Tract Society of Pennsylvania. According to Pennsylvania law, this corporation must hold annual corporation meetings at its registered offices in Pittsburgh, Pa., or elsewhere, as duly voted upon, and must elect directors to fill the vacancies of those whose three-year term of office is expiring, and also to transact all necessary obligations. From among the full board of seven directors, all of whom are dedicated, baptized, spirit-anointed Christians, the officers of the Society must be elected.

In view of what was presented from the platform by speakers to the "Divine Name" District Assemblies of Jehovah's witnesses around the earth during the summer of 1971, the question was being asked, Are the directors of the Watch Tower Bible and Tract Society of Pennsylvania the same as the governing body of Jehovah's witnesses, who are an unincorporated body of dedicated, baptized Christians and who worship Jehovah as their God? Also, at the annual corporation meeting of the Watch Tower Society such as that at Buckingham, Pennsylvania, do the members of the Society automatically elect the members of the governing body of Jehovah's witnesses by electing the members of the Society's Board of Direc-

tors? Such questions interested those attending the meeting.

Let us keep in mind that the governing body must be made up of dedicated, baptized Christians who are anointed with God's spirit and begotten by Him to be his spiritual children, and who are to be united with the glorified Jesus Christ in the heavenly kingdom. This must be so because, as in the case of the twelve apostles of Christ, the governing body is part of the "faithful and discreet slave" class and presides over it as spiritual shepherds and overseers. This "slave" class is made up of the spirit-begotten, spirit-anointed followers of Jesus Christ, and these followers make up his congregation on earth and unitedly serve as a composite "slave" of God under the Head of the Christian congregation, Jesus Christ. In consequence of this, and in order to answer the above questions, we are obliged to examine the spiritual status of the individual members of the Pennsylvania corporation who do the voting in of the directors of the Watch Tower Society. Who are these voting members?

By amendment to the Charter as voted upon in 1944, the membership of the Society was restricted to five hundred at the most, and these were to be men fully devoted to Jehovah God as dedicated, baptized disciples of Jesus Christ. These are selected by the Board of Directors of the Watch Tower Society. But their spiritual status must also come under scrutiny. Why so? Because not all these present-day members of the Society are spirit-anointed members of the "faithful and discreet slave" class. At this writing there are just 450 members of the Society, but less than half (or 200) of them are of the anointed remnant of the "slave" class. So the major number are disciples of Christ who have no heavenly hope. They are of Christ's "other sheep" whose hope is to gain everlasting life in a Paradise earth under his heavenly kingdom.

Hence the question arises, Can this majority of voters who are made up of such "other sheep," by voting in the directors of the Watch Tower Society, at the same time be voting in the members of the anointed governing body of the "faithful and discreet slave" class? Scripturally, they could not do so. Not just because they are not anointed heirs of God and joint heirs with Jesus Christ, but because the governing body of the "slave" class is not appointed by any man. It is appointed by the same one who appointed the twelve apostles in the first century C.E., namely, Jesus Christ the Head of the true Christian congregation and the Lord and Master of the "faithful and discreet slave" class! —John 15:16, 19.

Another thing to keep in mind is this: The directors of the Society now have their terms of office expire after three years, and each year there are directors whose term expires and who need to be replaced or be reelected to office by the members of the Society at its annual corporation meeting. Each year also the terms of the three officers of the Society expire, namely, those of the president, vice-president and secretary-treasurer (and now also of his assistant). But is this the case with the members of the governing body of the "faithful and discreet slave" class? No! The members of the governing body are not elected annually, but are in their positions of responsibility permanently as long as they live and continue faithful as disciples of Jesus Christ. That was the case with the twelve apostles and with the fellow elders of the Jerusalem congregation.

The governing body does not have officers such as the Society's Board of Directors has, namely, president, vice-president, secretary-treasurer and

tant secretary-treasurer. It has merely a chairman, such as the governing body of the first century had. Apparently, the apostle Peter was the chairman of the governing body on the festival day of Pentecost of 33 C.E., and the disciple James, the half brother of Jesus Christ, was the chairman at a later date, according to the account in Acts of Apostles. From this, and from what historical evidence there is available, the chairmanship of the governing body rotated, just the same as the chairmanship of the presbytery or "body of elders" of each Christian congregation rotated among the coequal elders.—1 Tim. 4:14.

From this it can clearly be seen that, when a member of the Society's Board of Directors is elected each year to the presidency of the Watch Tower Society, he is not simultaneously elected to the chairmanship of the governing body of Jehovah's witnesses. Any member of the governing body can be chairman thereof without being at the same time the president of the Watch Tower Bible and Tract Society of Pennsylvania. It all depends upon the rotation system for the chairmanship in the governing body. Only if the rotation method puts an individual in the chairmanship at the same time that he is elected by the Board of Directors to the presidency will one occupy the chairmanship and the presidency at the same time, for at least a year.

SIZE OF THE GOVERNING BODY

Another point worth noting is this: The membership of the governing body is not limited to the number of members of the Board of Directors of the Society, namely, to the number seven. The Christian congregation or the "faithful and discreet slave" class started out on Pentecost of 33 C.E. with twelve members on its governing body, and that governing body located at Jerusalem was increased from the twelve apostles of Christ to include other elders of the Jerusalem congregation. So the governing body at that vital Jerusalem council included the eleven surviving apostles of Christ, and the disciple James who seems to have been chairman for the occasion, also Judas (Barsabbas) and Silas as "leading men among the brothers," yes, "prophets," and doubtless Paul and Barnabas. That means at least sixteen anointed Christians associated with the governing body back there at Jerusalem. (Acts 15:22, 32) So it is today: the governing body of the "faithful and discreet slave" class includes more than the seven anointed Christians who are on the Board of Directors of the Society. This fact, in addition, makes it manifest that the voting members of the Watch Tower Bible and Tract Society of Pennsylvania do not nominate and elect the members of the governing body of the "slave" class. It further accentuates the difference between the governing body and the legal Board of Directors.

How is it, then, that members of the governing body come to be directors of the Pennsylvania corporation? This is according to the will of the voting members of the Watch Tower Society. They choose to be guided by God's inspired Word. They look to Jehovah God through Jesus Christ to direct them in this matter of voting for the Society's directors. From the Society's present-day Charter (as amended in 1944) the Society as a legal corporation is merely an "administrative agency"* of Jehovah's witnesses. Hence, also, of the governing body of Jehovah's

* Quoting from the Charter: "The purposes of this Society are: To act as the servant of and the legal world-wide governing agency for that body of Christian persons known as Jehovah's witnesses; to preach the gospel of God's kingdom under Christ Jesus unto all nations as a witness to the name, word and supremacy of Almighty God JEHOVAH; to print and distribute [continued on page 760]

witnesses. So the Society's voting members see that this governing body could most directly use that "administrative agency" as an instrument in behalf of the work of the "faithful and discreet slave" class by having members of the governing body on the Board of Directors of the Society. They recognize that the Society is not the administrative body, but is merely an agency for administering matters.

Hence the Society's voting members do not desire that there be any basis for conflict and division. They do not want to cause anything like a situation where the "administrative agency" controls and directs the user of that agency, which user is the governing body as representing the "faithful and discreet slave" class. No more so than to have the tail wag a dog instead of the dog's wagging its tail. A legal religious instrument according to Caesar's law should not attempt to direct and control its creator; rather, the creator of the legal religious instrument should control and direct it. In harmony with God's holy spirit, therefore, in order to have the greatest efficiency and perfect harmony between the governing body and the Board of Directors of the legal corporation, the voting members of the Society have wisely elected to the Directorate those whom they know are members of the governing body of the "faithful and discreet slave" class.

[*continued from page 758*] Bibles and to disseminate Bible truths in various languages by means of making and publishing literature containing information and comment explaining Bible truths and prophecy concerning establishment of Jehovah's kingdom under Christ Jesus; to authorize and appoint agents, servants, employees, teachers, instructors, evangelists, missionaries and ministers to go forth to all the world publicly and from house to house to preach and teach Bible truths to persons willing to listen by leaving with such persons said literature and by conducting Bible studies thereon; to improve men, women and children mentally and morally by Christian missionary work and by charitable and benevolent instruction of the people on the Bible and incidental scientific, historical and literary subjects; to establish and maintain private Bible schools and classes for gratuitous instruction of men and women in the Bible, Bible literature and Bible history; to teach, train, prepare and equip men and women as ministers, missionaries, evangelists, preachers, teachers and lecturers; to provide and maintain homes, places and buildings for gratuitous housing of such students, lecturers, teachers and ministers; to furnish gratuitously to such students, lecturers, teachers, educators and ministers suitable meals and lodging and to prepare, support, maintain and send out to various parts of the world Christian missionaries, teachers and instructors in the Bible and Bible literature, and for public Christian worship of Almighty God [through] Christ Jesus; to arrange for and hold local and world-wide assemblies for such worship; to use or operate radio broadcasting stations for preaching this gospel of the kingdom; and to do any and all other lawful things that its Board of Directors shall deem expedient for the purposes stated."

HOW THE GOVERNING BODY CAME TO EXIST

How did this governing body make its appearance in recent times? Evidently under the direction of Jehovah God and his Son Jesus Christ. According to the facts available, the governing body became associated with the Watch Tower Bible and Tract Society of Pennsylvania. C. T. Russell was patently of that governing body back there in the last quarter of the nineteenth century. Being fully dedicated to God through Christ, he set himself to apply his time, energy, abilities, wealth and influence to defending God's inspired Word and spreading its message. To that end he began publishing *Zion's Watch Tower* back there in July of 1879, believing, as he said in its columns, that this had Jehovah's backing, and hence there would be no solicitation for money. He manifested the qualifications of an overseer as set out in 1 Timothy 3:1-7 and Titus 1:5-9 and accordingly he was requested by the congregation of Christian Bible students at Allegheny to serve as its pastor or spiritual shepherd. Five years later Zion's Watch Tower Tract Society was incorp-

rated and served as an "agency" to minister spiritual food to thousands of sincere persons seeking to know God and to understand his Word and to come into relationship with him through Christ.

Dedicated, baptized, anointed Christians became associated with that Society at headquarters in Pennsylvania. Whether on the Board of Directors or not, they rendered themselves available for special work of the "faithful and discreet slave" class. They aided in the feeding and directing of the slave class, and thus a governing body made its appearance. This was evidently under the guidance of Jehovah's invisible active force or holy spirit. Also, under the direction of the Head of the Christian congregation, Jesus Christ the Son of God. True, the members of that governing body were not directly appointed by the Lord Jesus Christ. For that matter, not all the members of the governing body associated with the Jerusalem congregation in the first century were thus directly appointed. How, then, were those "elders" of the Jerusalem congregation who were not numbered among the twelve apostles made members of the governing body? Evidently by appointment of the original twelve apostles, acting under the guidance of Jehovah's holy spirit.

This is illustrated by the action of those twelve apostles when appointing Stephen and Philip and five other men to take care of certain business of the Jerusalem congregation. (Acts 6:1-8) Also, the apostle Paul pointed out in his remarks to the elders of the Ephesus congregation that the overseers of God's flock of spiritual sheep were appointed by God's holy spirit. (Acts 20:28) Thus, too, even though there were no apostles of Christ on hand in the nineteenth century, God's holy spirit must have been operative toward the formation of the governing body for his anointed remnant of the "faithful and discreet slave" class. The facts speak for themselves. There came on the scene a body of anointed Christians who accepted and undertook the responsibilities of governing the affairs of Jehovah's dedicated, baptized, anointed people who were following in the footsteps of Jesus Christ and endeavoring to fulfill the work stated in Jesus' prophecy at Matthew 24:45-47. Facts speak louder than words. The governing body is there. Thankfully Jehovah's Christian witnesses know and assert that this is no one-man religious organization, but that it has a governing body of spirit-anointed Christians.

ROTATION OF OFFICES IN THE DIRECTORATE?

In the governing body there is a rotation of the chairmanship of a year's length among the members thereof. Does this mean that there must be a rotation in the offices of the Watch Tower Bible and Tract Society of Pennsylvania among the Board of Directors each year at election time? No! The Society's Charter does not call for that.

CHAIRMANSHIP NOT DEPENDENT UPON PRESIDENCY

The governing body of the "faithful and discreet slave" class does have a rotation of the chairmanship among its members.* Since the governing body of the "slave" class preceded the legal corporation known as the Watch Tower Bible and Tract Society of Pennsylvania, the chairmanship of the governing body is not determined by or dependent upon who is elected president yearly of the Society. What follows? Even though the occupant of the presidency may remain in office over a number of years because of his suitability for that

* According to a Resolution adopted by the Governing Body of Jehovah's Witnesses at its meeting on September 6, 1971, the chairmanship of the Governing Body should rotate annually in alphabetical order according to the last name of each member.

highly responsible office, this does not interfere with the rotation system for the chairmanship among the governing body of the "slave" class. The governing body has the strictly spiritual field for its operation. The legal nonprofit corporation, the Society, has many additional duties as an administrative agency of Jehovah's witnesses.*

The governing body is very grateful to God for the religious Society that is to be used as an agency of Jehovah's Christian witnesses. This legal nonprofit Society, through being manned by faithful dedicated, baptized disciples of Jesus Christ, all ordained ministers, who volunteer their services as directly to Jehovah God, has tremendously facilitated the carrying on of the greatest work on earth today, namely, the preaching of the good news of God's now established kingdom in all the inhabited earth for a witness to all the nations before the end of this system of things arrives, shortly now. The functioning of the legal, religious society in this way has thus spared Jehovah's witnesses the vexatious problems, hindrances, interruptions and controversies that afflict the nonreligious, industrial, commercial, labor and legal establishments of the wicked world. Now this is because their religious society with 93 branch offices, and its associated societies, have had the volunteer services of thousands of dedicated workers world wide, and these have made over 230,000,000 Bible books and 530,000,000 booklets and have printed and distributed over four billion religious magazines, *The Watchtower* and *Awake!* This work they did in more than 160 languages at just a nominal cost for the printed literature. Thus we are amazed to see that during the past thirty years, or since 1942, these dedicated workers have produced 4,942,619,411 Bibles, bound books, booklets and magazines. With the end of this worldly system of things, its many legal corporations, organized under the laws of the political states, will cease to function as such, but the Christian witnesses of Jehovah will have to continue on.

AN INTERESTING PROBLEM

At the close of discussing matters such as the above at the annual chartered meeting of the Watch Tower Bible and Tract Society of Pennsylvania at Buckingham, Pa., on October 1, 1971, an interesting problem was posed for the audience, especially for the voting members present of the said Society. It was this: Nineteen hundred years ago, the "faithful and discreet slave" class with its governing body functioned without a legal corporation chartered by Caesar, and it did so—successfully, magnificently. What about the governing body of the "faithful and discreet slave" class of the present time?† Can it also function without the legal nonprofit corporation known as Watch Tower Bible and Tract Society of Pennsylvania? and succeed? In the light of the precedent established by the apostles and fellow elders of the Jerusalem congregation in the first century C.E., we leave you to answer the question for yourself.

* See excerpt of Charter quoted on page 759, column 2, and page 760, column 1.

† The present Governing Body comprises eleven anointed witnesses of Jehovah.

ANNOUNCEMENTS

■ Literature offer for **January:** Any 192-page book published prior to 1987 that the congregation may have in stock. Congregations that have on hand *Mankind's Search for God* may also offer it. **February:** *Life--How Did It Get Here? By Evolution or by Creation?*, *Revelation--Its Grand Climax At Hand!*, or any older 192-page book that the congregation has in stock. **March:** *Knowledge That Leads to Everlasting Life*. A special effort will be made to start home Bible studies. **April:** The *Watchtower* and *Awake!* magazines. Where interest is found on return visits, subscriptions may be offered. Offer the *Require* brochure, with a view to starting Bible studies.

■ All baptized publishers present at the Service Meeting the week of January 14 may obtain the Advance Medical Directive/Release card and the Identity Card for their children.

■ Starting in February, and no later than March 3, the new public talk for circuit overseers will be "Finding Security in a Dangerous World."

■ As announced at the 2001 district convention, the new book *Benefit From Theocratic Ministry School Education* will be made available beginning early in 2002. Starting January 1, 2002, literature requests for this book in English, Korean, and Spanish can be submitted through the congregations. Until it is available and shipments are made, it will appear as "Pending" on congregation packing lists. Additional languages will be announced later.

■ Congregations should make convenient arrangements to observe the Memorial this year on Thursday, March 28, after sundown. Although the talk may start earlier, the passing of the emblems *should not begin until after sundown*. Check with local sources to determine when sundown occurs in your area. Although it is desirable for each congregation to hold its own Memorial observance, this may not always be possible. Where a number of congregations normally use the same Kingdom Hall, perhaps one or more congregations can obtain the use of another facility for that evening. Where possible, we would suggest a minimum of 40 minutes between the programs so that all may benefit fully from the occasion, allowing time to meet visitors and encourage newly interested ones. Consideration should be given to traffic conditions and parking, including the dropping off and picking up of passengers. The body of elders should decide what arrangements would be best locally.

■ Researchers and others have contacted a number of brothers, seeking information about Jehovah's Witnesses and our organization. They have requested that survey forms be completed, supplying answers to questions related to our beliefs and teachings. If such individuals approach a congregation publisher, he should provide the name of the presiding overseer. The elders can handle such inquiries and make an appropriate response based on a letter addressed to all bodies of elders, dated April 25, 2001.

■ When the presiding overseer receives the New York Corporation Statement each month, he should see that all acknowledgments of contributions for the Society Kingdom Hall Fund and for the worldwide work are read to the congregation with the next accounts report.

■ *Awake!* in Chinese and Simplified Chinese is being changed from a semimonthly to a monthly edition.

■ *Awake!* in Cibemba is being changed from a monthly to a quarterly edition.

■ *The Watchtower* in Armenian is being changed from a semimonthly to a monthly edition.

■ Beginning with the January 2002 issues, *The Watchtower* (semimonthly) and *Awake!* (monthly) will be available in both Papiamento (Curaçao) and Papiamento (Aruba).

■ Beginning with the January 2002 issue, *The Watchtower* will be available in Mauritian Creole as a monthly edition.

■ Beginning with the January 1, 2002, issue, a large-print edition of *The Watchtower* will be available in Croatian and in Norwegian.

■ *Awake!* in Zulu is being changed from a semimonthly to a monthly edition.

■ New Publications Available:

Isaiah's Prophecy—Light for All Mankind I —Indonesian, Macedonian

Isaiah's Prophecy—Light for All Mankind I—Large Print —Chinese Simplified (Pinyin), French, Greek, Polish

New World Translation of the Holy Scriptures —Afrikaans, Chinese, Chinese (Simplified)

■ New Videocassettes Available:

The Greatest Man Who Ever Lived--On Videocassette, Volume 4 —American Sign Language

New Corporations Formed

The January 15, 2001, issue of *The Watchtower* reported on the organized way in which Jehovah's Witnesses are continuing to move forward with the Kingdom work in all the earth. It also explained how various legal entities are used as instruments to facilitate the spreading of the good news. Such entities or corporations are necessary to conform to local and national laws, as required by God's Word. (Rom. 13:1) Because of the diversity and scope of our work, the Governing Body has approved the formation of additional corporations to care for certain needs of Jehovah's Witnesses here in the United States. The new corporations are as follows:

Christian Congregation of Jehovah's Witnesses

Religious Order of Jehovah's Witnesses

Kingdom Support Services, Inc.

These will operate along with Watch Tower Bible and Tract Society of Pennsylvania and Watchtower Bible and Tract Society of New York, Inc. Congregations and publishers may receive correspondence from any of these corporations. Your cooperation with these adjustments made by the Governing Body in fulfilling its assignment to care for all the Master's belongings will be greatly appreciated. —Matt. 24:45-47.

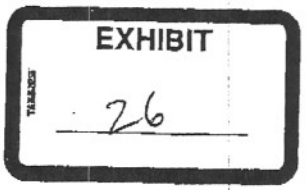
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Watch Tower Bible and Tract Society of Pennsylvania

Former and Current Directors

1980	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	L. A. Swingle	Assistant Secretary—Treasurer
	J. C. Booth	Director
1981	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	L. A. Swingle	Assistant Secretary—Treasurer
	J. C. Booth	Director
1982	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer]
	L. A. Swingle	Assistant Secretary—Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Director
1983	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	L. A. Swingle	Assistant Secretary—Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Director
1984	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1985	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1986	F. W. Franz	President
	M. G. Henschel	Vice President







	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1987	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
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	T. Jaracz	Assistant Secretary—Treasurer
1991	F. W. Franz	President
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	W. L. Barry	Vice President
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	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1992	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1993	M. G. Henschel	President
	W. L. Barry	Vice President



	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1994	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1995	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
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	W. L. Barry	Vice President
	T. Jaracz	Vice President
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	J. E. Barr	Assistant Secretary—Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1997	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1998	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J.E. Barr	Assistant Secretary—Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1999	M. G. Henschel	President
	J.E. Barr	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
	C. W. Barber	Assistant Secretary—Treasurer
10/5/00	D. A. Adams	President
	R. W. Wallen	Vice President



	W. F. Malenfant	Vice President
	R. E. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer
2000	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. E. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer
2001	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. E. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer
2002	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. E. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer
2003	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. E. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer

* W T P A 0 0 5 7 *

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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

PLAINTIFF'S EXHIBIT E

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 DEFENDANT'S RESPONSE TO PLAINTIFFS' FIRST SET OF SPECIAL INTERROGATORIES

EXHIBIT 25

PROPOUNDING PARTY: PLAINTIFFS CHARISSA W. AND NICOLE D.

RESPONDING PARTY: DEFENDANT WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, specially appearing[1]

SET NUMBER: ONE

Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Defendant") specially appears, see fn. 1, and provides the following answers to plaintiffs Charissa W. and Nicole D.'s ("Plaintiffs") interrogatories pursuant to CCP Section 2030. In answering these

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") earlier filed a motion to quash service of summons and complaint based on lack of personal jurisdiction in California. That motion is still pending in this Court. Therefore, Defendant Watch Tower PA specially appears with respect to these responses to plaintiffs' special interrogatories, which by Court order were to be limited to "Watch Tower Pennsylvania's contacts in California during the relevant time period."

RESPONSE TO INTERROGATORY NO. 8:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Defendant responds: Richard A. Abrahamson, Secretary-Treasurer.

INTERROGATORY NO. 9:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., from 1970 to the present, what role have you had in the investment or money management decision making for funds received by the Watchtower Society.

RESPONSE TO INTERROGATORY NO. 9:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it has no role in any investment or money management decisions of any other corporation or entity other than itself.

INTERROGATORY NO. 10:

With respect to Defendant Watchtower Bible and Tract Society of Pennsylvania, Inc.,

please identify the people responsible for your policy-making and operations from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 10:

Objection. This interrogatory is overly broad, vague and ambiguous. This interrogatory is overly broad. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA identifies the following persons as current and former directors:

1970	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
1973-74	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
	W. K. Jackson	Director
1975	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1976	N. H. Knorr	President
	F. W. Franz	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1977-81	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President

	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
1982-83	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	L. A. Swingle	Assistant Secretary—Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Director
1984-92	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1993-95	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1996-10/5/00	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
10/5/00-present	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. A. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer

INTERROGATORY NO. 11:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please identify all members of your Board of Directors since 1970.

RESPONSE TO INTERROGATORY NO. 11:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: See response to No. 10 above.

INTERROGATORY NO. 12:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please identify all officers of Watch Tower Bible and Tract Society of Pennsylvania since 1970.

RESPONSE TO INTERROGATORY NO. 12:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: See response to No. 10 above.

INTERROGATORY NO. 13:

Describe the relationship between you and Defendant Jehovah's Witnesses-Napa Congregation (including corporate, organizational and theocratic).

"Your Word Is a Lamp to My Foot"

PLAINTIFF'S EXHIBIT
tabbies
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EXHIBIT
tabbies
7

"Your Word Is a Lamp to My Foot"



"Your word is a lamp to my foot,
and a light to my roadway."
—Ps. 119:105.

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WATCHTOWER BIBLE AND TRACT SOCIETY
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INTERNATIONAL BIBLE STUDENTS ASSOCIATION
Brooklyn, New York, U.S.A.

Made in the United States of America

Dedicated
to the
"Father of the Celestial Lights,"
who is the divine Giver of the
"lamp" for our foot
and
in whose lighted roadway we should walk
by full dedication and water baptism
in the footsteps of Jesus Christ

Scriptural quotations in this book are taken from the *New World Translation of the Holy Scriptures*, unless otherwise indicated.

112:1) "You must love Jehovah your God with your whole heart and with your whole soul and with your whole strength and with your whole mind." (Luke 10: 27) "Jesus said to them: 'My food is for me to do the will of him that sent me and to finish his work.'" (John 4:34)

Why should one who has made a dedication to God be baptized?

"Go therefore and make disciples of people of all the nations, baptizing them in the name of the Father and of the Son and of the holy spirit." (Matt. 28:19) "Then Jesus came from Galilee to the Jordan to John, in order to be baptized by him. But the latter tried to prevent him, saying: 'I am the one needing to be baptized by you, and are you coming to me?' In reply Jesus said to him: 'Let it be, this time, for in that way it is suitable for us to carry out all that is righteous.' Then he quit preventing him. After being baptized Jesus immediately came up from the water; and, look! the heavens were opened up, and he saw descending like a dove God's spirit coming upon him. Look! Also, there was a voice from the heavens that said: 'This is my Son, the beloved, whom I have approved.'" (Matt. 3: 13-17) "When they believed Philip, who was declaring the good news of the kingdom of God and of the name of Jesus Christ, they proceeded to be baptized, both men and women." (Acts 8:12) "That which corresponds to this is also now saving you, namely, baptism, (not the putting away of the filth of the flesh, but the request made to God for a good conscience,) through the resurrection of Jesus Christ." (1 Pet. 3:21)

CHAPTER 2

An Organization Based on God's Word

JUST as it is true that God's Word is a lamp to our feet in matters of belief and personal conduct, so, too, it provides organizational instructions. It makes clear to us Jehovah's way of doing

things and shows us how we personally can have a share in the carrying out of his purposes.

Therefore, the Holy Bible constitutes the basic organization instructions of Jehovah's Christian witnesses. It contains Jehovah's righteous laws, commandments and judicial decisions. It sets forth principles that must guide our thinking and our actions if we are to be well pleasing to God. What it says applies in every part of the earth and to all persons, without partiality.—Mic. 4:2; Acts 10: 34, 35.

The inspired Word of God informs us that Jehovah has subjected all things to Jesus Christ and has made him the head of the Christian congregation. (Eph. 1:22, 23) At the time of Pentecost, 33 C.E., the glorified Jesus poured out God's holy spirit on his faithful disciples gathered in Jerusalem, in this way designating them, as a class, as his "faithful and discreet slave." (Matt. 24:45) As Jesus had told them in advance, when this happened they were to be witnesses of him, first in Jerusalem and Judea and Samaria, and then to the most distant part of the earth. (Acts 1:8) As new ones were gathered into association with them, those already in the Christian congregation were to supply them with the needed spiritual food. All contributed in various ways to the spiritual upbuilding of the individual members of the congregation.—Eph. 4:16.

Today the remaining ones of Christ's spirit-anointed body members on earth constitute the "faithful and discreet slave," and it is this class, as foretold at Matthew 24:47, that the Lord Jesus has appointed "over *all* his belongings" here on earth. So it is vital to work in close association with this "slave" class and respond in a positive way to the counsel that you receive through it. This is in harmony with what is stated at Revelation 7:9-17. There it is made clear that, in addition

to the 144,000 spiritual Israelites who would be "slaves of our God," a "great crowd" of others would stand approved before God and Christ. Their respect for Jehovah's organizational arrangement is made clear, because it is pointed out that they serve God "in his temple," that is, in association on earth with the remnant of Christ's body members, who make up a temple of "living stones," "a holy temple for Jehovah . . . a place for God to inhabit by spirit." (1 Pet. 2:5; Eph. 2:21, 22) And in his illustration of the sheep and the goats, Jesus says that people of the nations are to undergo judicial examination on the basis of their treatment of his "brothers," his spirit-anointed fellow heirs of the heavenly kingdom. It is those who loyally uphold them even when they are being persecuted and who refresh them by wholehearted participation with them as dedicated Christians in God's service who will be approved by Jesus Christ and rewarded with eternal life. —Matt. 25:31-46; Heb. 2:10, 11.

From among the members of Christ's spirit-anointed body members certain ones serve as a visible governing body. In the first century of our Common Era that governing body was made up of the apostles and certain other mature brothers in the Jerusalem congregation. (Acts 15:2, 6, 23) When they were called on to make decisions affecting the lives and activity of God's people, they considered carefully what the Scriptures said about the matter, looked to God for the direction of his spirit, and then gave appropriate counsel. Response to their oversight strengthened the faith of the congregations and resulted in continued increase, with God's blessing.—Acts 16:4, 5; 1 Cor. 3:6, 7.

In order to carry out the preaching work most effectively under modern-day conditions, the "faithful and discreet slave" has organized a legal corporation, the Watch Tower Bible and Tract

Society of Pennsylvania. This Society, made up of mature Christians, is nonprofit and is completely devoted to advancing the interests of true worship in the earth. It has been used by the anointed followers of Jesus Christ for many years in dispensing knowledge to the household of faith and directing the preaching work, and Jehovah's blessing on that arrangement is very manifest. The visible governing body is closely identified with the board of directors of this Society. As was true among early Christians, response to the oversight of the governing body results in unity and increase.

To facilitate the carrying out of Jesus' instructions to preach "this good news of the kingdom" in all the inhabited earth, the Watch Tower Bible and Tract Society also has branch offices in various countries. All of these are subject to the visible governing body, but each branch devotes its attention to its own territory. Knowing the conditions that exist there, the branch office is in position to apply instructions in the most beneficial way and to handle local matters promptly.

It is no less true in our day than it was in the first century of our Common Era that close contact with Jehovah's visible organization is important. Those who got baptized as Christians at the time of Pentecost, 33 C.E., continued in close association with the apostles to receive instruction. (Acts 2:41, 42) When persecution resulted in a scattering of the disciples, they still kept in touch with the governing body in Jerusalem. (Acts 8:1, 14-17) Later, when Saul of Tarsus was converted, the Lord saw to it that he was brought into contact with representatives of the Christian congregation for instruction. (Acts 9:1-22) And as this zealous apostle went about the preaching work, he built up the appreciation of others for Jehovah's visible organization. How? By referring the important circumcision issue to the governing

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FEB 10 1986

Time 11:40 O'Clock A M
EVA LINDSEY
District Clerk, Fannin Co., Texas
By Tommie Ellis Deputy

AFFIDAVIT OF DON ADAMS

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Don Adams, after being duly sworn, depose and say:

1. I am over 21 years of age and reside at 124 Columbia Heights, Brooklyn, New York 11201. I have never been convicted of a felony or a crime of moral turpitude and I am competent to testify.

2. I am the Assistant Secretary-Treasurer of the Watchtower Bible and Tract Society of New York, Inc., and, as such, I am familiar with the books, records, publications and operating procedures of the Watchtower Bible and Tract Society of New York, Inc. I have personal knowledge of the facts set out herein and I am a custodian of the official records and publications described herein.

3. The Watchtower Bible and Tract Society of New York, Inc. is the parent organization of all congregations of Jehovah's Witnesses in the United States, including the Bonham Congregation of Jehovah's Witnesses located in Bonham, Texas.

4. It is the teaching and practice of Jehovah's Witnesses to follow the example of first century Christians. A Governing Body, at present comprised of thirteen men, direct all teaching, preaching, disciple-making and congregational activ-

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EXHIBIT 22

ities of Jehovah's Witnesses throughout the world. (See the basic organization manual of Jehovah's Witnesses, Organized to Accomplish Our Ministry, pages 10 and 25, and The Watchtower, the official semimonthly journal of Jehovah's Witnesses, "The Christian Congregation and Its Operation," October 1, 1977, page 598.)

5. Regarding the position of the Governing Body, Organized to Accomplish Our Ministry states at page 28:

> All in the organization recognize God's way of theocratic control. The congregations acknowledge and conform to the guidance of the Governing Body as it outlines organizational arrangements for the benefit of all.

6. To implement their decisions, the Governing Body uses a hierarchial organization together with corporate entities, when appropriate, to accomplish its worldwide work of teaching and declaring the good news of God's established Kingdom. The principal corporation used by the Governing Body is the Watch Tower Bible and Tract Society of Pennsylvania. (See Organized to Accomplish Our Ministry, page 26.)

7. Under the Watch Tower Bible and Tract Society of Pennsylvania, the Governing Body directs 95 branches through Branch Committees that report their progress to the Governing Body and implement the directives of the Governing Body in a uniform manner. (See Organized to Accomplish Our Ministry, pages 26 and 27.)

8. The Watchtower Bible and Tract Society of New

York, Inc. is a branch used to administer to the needs of Jehovah's Witnesses in the United States. (See Organized to Accomplish Our Ministry, pages 26 and 27.)

9. The United States Branch is part of a zone, which is supervised by a Zone Overseer. Organized to Accomplish Our Ministry states at page 53:

> Periodically, arrangements are made by the Governing Body to have qualified brothers serve each of the branches throughout the earth.

These visits are comprehensive and cover every aspect of the branch's activities. A primary objective is to assure that each branch is working in harmony with the directives of the Governing Body.

10. Each zone is made up of districts. Each district is supervised by a District Overseer. Organized to Accomplish Our Ministry states at page 51:

> The district overseer is a traveling elder who is also appointed by the Governing Body and assigned by the branch office to serve a number of circuits that comprise a district.

At regular intervals, the District Overseer reports to the branch on the progress and spiritual health of the circuits which make up the district to which he is assigned. Like the Zone Overseer, he is charged with the responsibility to assure that all of the activities in the district conform to the directives of the Governing Body. (See Organized to Accomplish Our Ministry, pages 51 and 52.)

> [I]t is Jehovah's arrangement and he will hold the overseers responsible for their actions. They are representing him and his theocratic rule. He will remove from office [through the actions of the Governing Body] those overseers who fail to manifest the fruitage of the spirit and whose pattern of life falls short of the Scriptural requirements.

(Also See Organized to Accomplish Our Ministry, pages 41-53.)

14. The responsibility of all of these positions is to assure the unity and oneness of the congregations throughout the world with the direction of the Governing Body. (See Organized to Accomplish Our Ministry, page 54.)

15. Each position is filled by appointment from the Governing Body and each appointed representative is required to cooperate with the Governing Body. (See Organized to Accomplish Our Ministry, page 41 and The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, page 598.)

16. Appointed representatives within the congregations fall into two catagories, elders or overseers and ministerial servants. (See Organized to Accomplish Our Ministry, pages 28 to 40 and The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, pages 599 to 601.)

17. It is the responsibility of the body of elders to see that the congregation is managed according to the directives of the Governing Body. In harmony with these directives, each body of elders has specific responsibilities to be filled by qualifying elders. Each congregation has the following positions to be filled: the presiding overseer, secretary, service

overseer, Watchtower Study conductor and Theocratic Ministry School overseer. Organized to Accomplish Our Ministry states at page 42:

> The presiding overseer serves as chairman at the meetings of the body of elders. Communications and important records of the congregation are handled by the secretary who keeps the elders informed about important communications. Arrangements for field activity and other service-related matters come under the direction of the service overseer.

18. There are five scheduled meetings of worship which each member of the congregation attends. While these meetings are conducted by the local body of elders in each congregation, the material covered in the meetings is prescribed by the Governing Body in order to assure that all of the congregations are receiving the same information and direction. (See The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, pages 601 to 603.)

19. One area in which the body of elders would conduct matters for the benefit of the congregation and subject to the Governing Body would be in the area of buying or selling real estate to be used by the local congregation as a place of worship know as the Kingdom Hall.

20. By "Memorandum on Kingdom Halls" from Hayden C. Covington, General Counsel for Watchtower Society and Jehovah's Witnesses, dated September 1960, bodies of elders in the United States Branch received instructions regarding ownership of Kingdom Halls. Under the subheading, "Relationship Between

Congregation and Titleholders," the memorandum states in part:

> When either a corporation or trustee arrangement is made and title to property is vested in the corporation or trustees, the titleholders have the same relationship to the congregation as does any other instrument, equipment or property necessary to carry out the work of the congregation, which is preaching the good news in the assigned territory and holding meetings. All such instruments or tools are used to serve the congregation in harmony with the theocratic government.
>
> The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed that can function separately and apart from the congregation and be used to guide and direct its policies. The titleholders (trustees or corporation) are merely special servants of the congregation in whom is vested legal title to the Kingdom Hall. Titleholders as such do not act as a part of the congregation committee to operate the Kingdom Hall or run the business of the congregation. They have absolutely nothing to do with the use to be made of the property and cannot determine who is going to live on the property or what kind of work is to be done in it.
>
> The operation of the Kingdom Hall, making of repairs and improvements, payment of expenses and obligations and all other business in connection with owning and maintaining the property are all under the direction of the theocratic organization through the elders and ministerial servants appointed by the Society.

21. By memorandum entitled "Information Regarding Ownership of Kingdom Halls" from the Office of the Secretary and Treasurer of the Watch Tower Bible and Tract Society of Pennsylvania, dated April 1, 1982, similar language defines the relationship between congregation and titleholders:

> The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed that can function separately and apart from the congregation and be used to guide and direct its policies. The titleholders (trustees or corporation) are merely special servants

> of the congregation in whom is vested legal title to the Kingdom Hall. The titleholders as such do not act as a part of the committee to operate the Kingdom Hall or run the business of the congregation. The titleholders, as such, have absolutely nothing to do with the use to be made of the property. They cannot determine who is going to live on the property or what kind of work is to be done in it.
>
> The operation of the hall, making repairs and improvements, payment of expenses and obligations and all other business in connection with owning and maintaining the property are all under the direction of the theocratic organization through the elders and ministerial servants appointed by the Society.

22. The trustees holding title for any Kingdom Hall resemble the "Trustees" which held title to the church property which was the subject of the controversy in a landmark United States Supreme Court case, Watson v. Jones, 80 U.S. 679 at 681:

> Connected with each local church, and apparently without any functions in essence ecclesiastically, are what are called the "Trustees;" three persons usually, in whom is vested for form's sake, the legal title to the church edifice and other property; the equitable power of management of the property being with the Session. These Trustees are usually elected biennially; they are subject to the Session, and may be removed by the congregation.

23. In 1964 when the Bonham Congregation secured a mortgage through the Watchtower Bible and Tract Society, it was determined by vote from the congregation that it would be willing to contribute to cover the expenses of a mortgage and contemplated construction expenses. All matters were handled between the body of elders and Watchtower Bible and Tract Society of New York, Inc. acting in harmony with the directives of the Governing Body as expressed in the above-mentioned correspondence and other publications of the Watchtower Bible and Tract Society

of New York, Inc.

24. By notice dated June 4, 1985, the following duly appointed elders of the Bonham Congregation of Jehovah's Witnesses were deleted from their appointed positions and are no longer elders of Jehovah's Witnesses: (1) Wendel Baker; (2) Trymer L. Berry; (3) James E. Coleman; (4) Ralph E. Deal; and (5) Tony M. Jones.

25. There are currently four duly appointed elders in the Bonham Congregation of Jehovah's Witnesses who are recognized by the Governing Body of Jehovah's Witnesses. They are (1) Luther Brogdon; (2) Richard L. Scofield; (3) Ronald H. Williams; and (4) Bennie Bolin. Their dates of appointment were (1) Luther Brogdon—July 4, 1985; (2) Richard L. Scofield—June 4, 1985; (3) Ronald H. Williams—November 28, 1985; and (4) Bennie Bolin—November 28, 1985.

26. From the dates of their appointment, the above-mentioned duly appointed elders (Luther Brogdon, Richard L. Scofield, Ronald H. Williams, and Bennie Bolin) have had the duty and responsibility to insure that the Kingdom Hall property located at 1105 Pecan Street, Bonham, Texas, is properly cared for and secured on behalf of the Bonham Congregation of Jehovah's Witnesses.

27. Each Kingdom Hall owned by Jehovah's Witnesses, including the Bonham Kingdom Hall, is dedicated solely to the worship and service of Almighty God Jehovah by means of a solem

ceremony conducted in harmony with the Holy Scriptures and by virtue of such dedication, may not be used for any secular or mundane purpose or for religious services which are in conflict with the Holy Scriptures and the theocratic organization of Jehovah's Witnesses which is directed by the Governing Body and of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc.

28. Only the four above-mentioned appointed elders act on behalf of the Governing Body of Jehovah's Witnesses under authority customarily delegated to congregational elders. They and the Bonham Congregation of Jehovah's Witnesses, are entitled to the uninterrupted use and enjoyment of the Bonham Congregation Kingdom Hall located at 1105 Pecan Street, Bonham, Texas.

Respectfully submitted,

Don Adams

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

On the 11th day of February, 1986, before me personally came Don Adams, a person known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Roger T. Biles

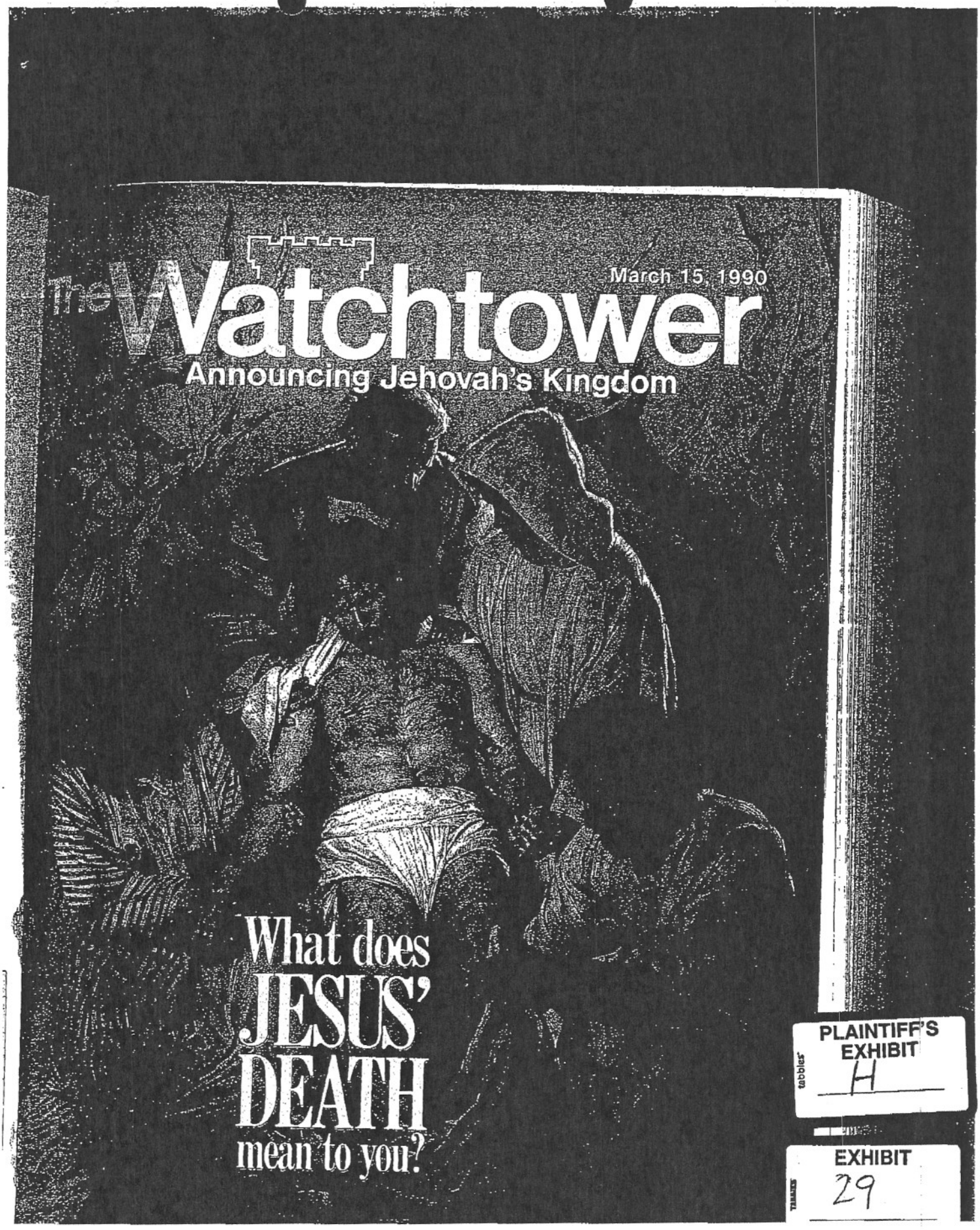
Roger T. Biles
Notary Public, State of New York
No. 24-01BI4761180
Qualified in Kings County
Comm. Expires March 30, 1986



I hereby certify that the aforesaid is a true and correct copy on file or of record in the 336th Judicial District Court, Fannin Co., Texas, signed and sealed this 18th day of Feb., 2004 A.D.

Rochelle Turner
Clerk, District Courts,
Fannin County, Texas

By _____ Deputy



PLAINTIFF'S EXHIBIT H

EXHIBIT 29

March 15, 1990
Vol. 111, No. 6

The Watchtower®

Announcing Jehovah's Kingdom

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THE PURPOSE OF *THE WATCHTOWER* is to exalt Jehovah God as the Sovereign of the universe. It keeps watch on world events as they fulfill Bible prophecy. It comforts all peoples with the good news that God's Kingdom will soon destroy those who oppress their fellowmen and that it will turn the earth into a paradise. It encourages faith in the now-reigning King, Jesus Christ, whose shed blood opens the way for mankind to gain eternal life. *The Watchtower*, published by Jehovah's Witnesses continuously since 1879, is nonpolitical. It adheres to the Bible as its authority.

WATCHTOWER STUDIES FOR WEEKS OF

April 23: The Faithful Slave and Its Governing Body. Page 10. Songs to Be Used: 158, 42.

April 30: Cooperating With the Governing Body Today. Page 15. Songs to Be Used: 8, 223.

The Bible translation used is the *New World Translation of the Holy Scriptures*, unless otherwise indicated.

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Printed in U.S.

As representatives of the Governing Body for the country or countries under the supervision of their branch, these brothers must be faithful, loyal men. This reminds us of the capable, God-fearing, trustworthy men who helped Moses judge the people in ancient Israel. (Exodus 18: 17-26) Members of a Branch Committee implement instructions received by means of the Society's books and magazines and *Our Kingdom Ministry,* as well as in general letters and special letters dealing with local problems. Branch Committees keep the Governing Body up-to-date on the progress of the work in each land and on problems that may arise. Such reports from all over the world help the Governing Body to decide what subjects should be considered in the Society's publications.

[21] Under the direction of the holy spirit, Branch Committees recommend mature, spiritual men to serve as circuit and district overseers. After being appointed directly by the Governing Body, they serve as traveling overseers. These brothers visit circuits and congregations in order to build them up spiritually and help them apply instructions received from the Governing Body. (Compare Acts 16:4; Romans 1:11, 12.) Traveling overseers submit reports to the branch office. With the help of the holy spirit and the inspired Scriptures, they share with local elders in recommending qualified brothers for appointment as ministerial servants and elders by the Governing Body or by its representatives.—Philippians 1:1; Titus 1:5; compare 1 Timothy 3:1-13; 4:14.

[22] In turn, those making up bodies of elders 'pay attention to themselves and to all the flock, among which the holy spirit has appointed them overseers.' (Acts 20: 28) These overseers faithfully seek to apply instructions received from Jehovah God and Jesus Christ by means of the faithful and discreet slave and its Governing Body. Jehovah is blessing this theocratic arrangement, for 'the congregations continue to be made firm in the faith and to increase in number from day to day.'—Acts 16:5.

[23] How fine it is that through the Governing Body, Jehovah God and the Master, Jesus Christ, are manifesting support of God's people! (Psalm 94:14) As part of Jehovah's organization, we individually benefit from such support. (Psalm 145:14) This should strengthen our resolve to cooperate with God's arrangements. Indeed, may we always be found cooperating with the Governing Body of Jehovah's Witnesses as we move forward to the time when "the earth will certainly be filled with the knowledge of Jehovah as the waters are covering the very sea."—Isaiah 11:9.

21. How are traveling overseers appointed, and what do their duties include?
22. (a) How do congregation elders cooperate with the Governing Body? (b) What proves that Jehovah is blessing this theocratic arrangement?
23. Regarding the Governing Body, we should be resolved to do what?

Main Points to Remember

- What increased responsibilities did the steward class receive in 1919?
- For many years, with what was the visible Governing Body identified?
- What progressive refinements were made in the appointment of the members of the Governing Body?
- What are some of Christ's earthly belongings that he has committed to the slave class and its Governing Body?
- How can we cooperate with the Governing Body?

TELEPHONE (212) 625-1240

WATCH TOWER
BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

CABLE WATCHTOWER

124 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

September 20, 1977

TO ALL SPECIAL PIONEERS, MISSIONARIES, CIRCUIT AND DISTRICT OVERSEERS AND KINGDOM MINISTRY SCHOOL TRAVELING OVERSEERS

Dear Fellow Publishers:

VACATION ARRANGEMENTS

As you have pursued your work in full-time service and the years have passed by, many of you have undoubtedly found that you need a little extra time for personal matters. Some of you, feeling the burden of increasing years because of your age, would benefit from a little additional vacation time.

A practical way to deal with this matter is to take your years of service and age into consideration. Therefore, the following will be the arrangement for vacation time effective September 1, 1977:

All those who enter the special pioneer, missionary, circuit, district or Kingdom Ministry School work are entitled to two weeks vacation each year for the first two years of their full-time service. (A week here means any seven consecutive calendar days.) Following those first two years you will receive extra days of vacation which will be available to you after August 31 of each service year (except for missionaries who take leave of absence time). For example, those of you who sometime during the service year complete two years in full-time service, including service in regular, special, missionary, circuit, district and Kingdom Ministry School work or in Bethel service, will qualify for one extra day of vacation on August 31 of that service year. Those who pass the four-year mark sometime during the service year qualify for two extra days of vacation on August 31 of that service year. (A service year runs from September 1 through August 31 of the next calendar year.) This means that you will be able to add two days to your regular two weeks' vacation. The chart below sets out the information:

After 2 years	1 extra day
After 4 years	2 extra days
After 6 years	3 extra days
After 8 years	4 extra days
After 10 years	5 extra days
After 12 years	7 extra days
After 14 years	8 extra days
After 16 years	9 extra days
After 18 years	10 extra days
After 20 years	11 extra days
After 22 years	12 extra days
After 24 years	14 extra days

There will be no additional accumulation of time after 24 years. This means that the maximum of vacation time would be four weeks.

In cases where an individual has been in and out of full-time service activities as a regular pioneer, special pioneer, missionary, circuit or district overseer or Bethel member, he will count as his years of service the total of complete service years served. In other words, if one served from July 1, 1975, to October 1, 1976, left the service for some reason and then came back into the full-time work, one complete service year is included in that time period, namely, September 1, 1975, to August 31, 1976. So that would be counted as one year to be added to one's current uninterrupted full-time service. Auxiliary pioneer activity does not count. If one served from July 1, 1975, to April 1, 1976, that would not be a complete service year and that time would not be counted at all.

AGE AND ADDITIONAL VACATION DAYS. When one reaches the age of forty-five prior to completing twelve full service years of service, he will be granted an extra seven consecutive calendar days of vacation and will continue to increase his vacation time progressively. This will become effective after the end of the service year during which he or she becomes forty-five years of age.

When one reaches the age of sixty, regardless of how long he or she has been in the full-time service, he or she will be allowed fourteen extra vacation days per service year, a total of four weeks of vacation. This will become effective after the end of the service year during which he or she becomes sixty years of age.

FIRST INCOMPLETE SERVICE YEAR IN SPECIAL PIONEER, MISSIONARY, CIRCUIT, DISTRICT OR KINGDOM MINISTRY SCHOOL WORK. When one first enters special pioneer, missionary, circuit, district or Kingdom Ministry School service and has not previously been in full-time service which would qualify him for vacation, then he will receive a credit of one vacation day for each full calendar month that he or she has worked. Partial months which one has worked would not count for vacation time. For example, if someone started special pioneer work January 1, 1977, then by the end of August 31, 1977, he would have eight days of vacation time available to use.

SCHEDULING MISSIONARY AND SPECIAL PIONEER VACATIONS. It is up to the missionaries and special pioneers to schedule their vacation time as they wish during the service year. Many find it advantageous to take their vacation time in connection with an assembly or toward the end of the service year. However, it is up to each one to schedule his vacation as he wishes according to the time available during the service year.

Missionaries and special pioneers who take two weeks of vacation in one month are expected to report at least half the normal requirement of hours of field service. If one is eligible for additional days of vacation time, then when such days are used, whether in connection with the two weeks' vacation or otherwise, he will be allowed to deduct five hours of field service from his total field service time for the month for each vacation day used and still receive his allowance. Of course, missionaries and special pioneers who are eligible for four weeks of vacation and who take all of this time in one month will want to report some field service time so as to continue regular in field service. For a month when one takes some vacation time he should mention the dates of his vacation and the number of days used on the monthly report form under "remarks concerning report" or at the bottom of the form.

Missionaries and special pioneers will receive a number of days off for the yearly district assembly (or international assembly) in addition to their regular vacation. Five hours are allowed for each district or international assembly day. Thus, if attending a four-day district assembly, one would have to report only one hundred twenty hours to receive the allowance for that month. This time allowance for attending a district or international assembly is granted in connection with only *one* assembly a year. The time allowance does not apply to circuit assemblies. For the month when you attend a district or international assembly, please state this on the report form for the month under "remarks concerning report."

From time to time there may be some personal matters that you who are special pioneers or missionaries may wish to attend to other than when you are on your vacation. In such a case, you may leave your assignment for one or two days without taking vacation time. Of course, you would still need to meet the normal hour requirement. If more than two consecutive days are involved, then vacation time would need to be used. It is not the intention to add such days to regular vacation time, but they may be taken at times other than when one is on vacation.

EMERGENCIES. If there are extenuating circumstances or personal problems which make it necessary for one in the full-time service to be away from his assignment for more than the normal vacation time, including extra accumulated days under this new arrangement, it would be appropriate for you to correspond with the branch office of the Society for your country and explain the problem. If it is just a matter of a few more weeks that you would be away, or if you have had a serious surgical operation and need a period of recovery, or a serious automobile accident has occurred, or some other problem, it would be good to set out in the letter to the branch what the situation is and how much extra time it appears will be needed. In many cases it may be possible to work out some arrangement so that you will be able to continue in full-time service and still have some vacation time available to use later. On the other hand, if you would have to be away for many months, then it would be practical to terminate full-time service and make application again when the problem has been cleared up. Certainly it will not hurt to bring the problem to the attention of the branch office and in some instances arrangements might be made to allow you to continue on the full-time list until you are able to resume your assigned work. Each individual case will be considered separately according to the circumstances that exist at the time that an emergency occurs.

Missionaries on sick leave or extended leaves over and beyond their regular leave will not be given allowances or credits on the personal expense account for the extra months or parts thereof when they are out of the country. The same would apply to special pioneers who are given permission to be away from their assignment for extended periods of time to care for emergencies and family problems, etc.

GILEAD GRADUATES IN FOREIGN SERVICE. In the case of missionaries and Gilead graduates who are working in countries other than the countries they were serving in when they came to Gilead, such graduates qualify for leaves of absence unless they are serving as members of Bethel families in Canada or the continental United States, or are serving in Europe at a place that is less than 2,000 miles from their home. Those who

PLAINTIFF'S EXHIBIT tabbies I

EXHIBIT TABBIES 53

WTPA 0082

are working in their own countries do not qualify for leaves of absence. The vacation arrangements that are set out in this letter will apply to those who do not use leave of absence time. Those who take leave of absence time will have only the two weeks of vacation and then will accumulate their leave of absence time and use it as they see fit after they have earned it. There are those who have been many years in the missionary service and have already chosen to take the four-week vacation arrangement rather than be on the leave of absence arrangement and so the vacation arrangements will apply to them. Of course, those who are in Bethel service and who do not take leaves of absence will take their vacations according to the Bethel vacation arrangement. However, in the case of Gilead graduates in foreign service who are working in a Bethel home as members of the Bethel family and who wish to be on the leave of absence arrangement each year, such Gilead graduates would be entitled to twelve working days off for their vacation each service year in addition to the leave of absence time they have accumulated.

CIRCUIT AND DISTRICT OVERSEERS. Some who are in circuit or district work may wonder how they will work out this arrangement where a portion of a week may be involved. Where there are four days remaining in a week, a congregation could be scheduled for an abbreviated visit. Where less time is available, you may visit congregations that need some assistance or where there are problems, without considering it to be a regular visit, due to the shortness of time, unless arrangements are made to spend more than a week with the congregation. Circuit overseers may choose to visit a group of special pioneers or an isolated group in their circuit for the remainder of the week after they have taken their accumulated vacation time. If a congregation is not going to be served, it would be appropriate for those of you who are in the circuit work to notify the office well in advance as to what you feel should be done on those days for the advancement of the Kingdom work. If the branch office finds that there is a greater need in a different area than suggested by you, then the branch office will make some other suggestion. District overseers who will have extra vacation days for a part of a week should let the Society know, so that they may be assigned something to do for the balance of the week. They may be assigned by the office to serve a congregation for several days or to serve a circuit assembly on the weekend. Circuit and district overseers should report the number of vacation days used and the dates covered on the Monthly Report form (S-301).

Many circuit and district overseers find it convenient to take all or part of their vacation after completing post-assembly work following the summer district assemblies. However, it is not necessary that they take vacation time at this period. If they wish to return immediately to their usual schedule of serving congregations or assemblies, they may do so and take their vacation at some other time. It is helpful when circuit and district overseers take a minimum of one week (seven consecutive days) of vacation time when scheduling their vacations.

It would be very much appreciated by the Society's office if district overseers could advise the office three months or more in advance about their vacation plans so the office can properly schedule circuit assemblies for them.

SHARING VACATION TIME. Married persons may not have been in the service the same length of time. For example, one special pioneer or circuit overseer may have more vacation time due than his mate. So a married person is permitted to share his vacation time with his mate if he wishes to do so. Thus, if the man has three weeks' vacation due him and his wife only two weeks, he may give his wife half of the third week and notification of this would be made to the Society's office. Additional days now allowed under the new vacation arrangement also may be shared in this way.

SAVING VACATION TIME. If someone wishes to carry over vacation time from one service year to the next and then use the available time to take a longer vacation, he may do so. Sometimes brothers have long trips they may want to take and when spending the funds to travel that distance they would like to have a longer vacation period. So one may save the accumulated time to use later.

It is hoped that the granting of some extra vacation time to those who have spent more years in the service and giving the time in a progressive way will help those who are in such service to continue in that work and to be able to take care of any personal matters that need attention during the year.

May Jehovah's blessing continue with you in the service. Be assured of our Christian love and best wishes.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 0083

No. 91,048-C

AMY B. Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	POTTER COUNTY, TEXAS
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLEY Defendants.	§	251st JUDICIAL DISTRICT

NOTICE OF TAKING DEPOSITION DUCES TECUM

TO: ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD

WITNESS: Person Most Knowledgeable regarding:

(1) The affidavit of Don Adams (attached hereto as Exhibit A);

(2) Organizational and corporate structure of the Jehovah's Witnesses organization including but not limited to the interrelationship between and amongst the Watchtower Defendants;

(3) The make up and function of the Governing Body from 1980 to the present and its interrelationship with the Watchtower Defendants;

(4) Relationship between the Watchtower Defendants and the US Branch, the

PLAINTIFF'S EXHIBIT J

Texas Districts, the Texas Circuits and the Texas Congregations;

(5) The Kingdom Hall Assistance Arrangement (KHAA) and its operation from 1970 to the present;

(6) The Risk Management Office and its operation from 1980 to the present;

(7) Kingdom Hall financing in Texas from 1980 to the present;

(8) Financing, leasing and/or ownership of property/real estate in Texas for use by Jehovah's Witnesses (assemblies or congregation functions) from 1980 to the present (this category to include but not be limited to Kingdom Halls and Assembly Buildings); and

(9) The Governing Body and/or the Watchtower Defendants' participation in child sexual abuse matters reported by, occurring in or investigated by Texas Congregations from 1980 to the present.

PLEASE TAKE NOTICE that beginning at _____ o'clock A.M., on _____, _____, and continuing thereafter from day to day until completed, Plaintiff will take the oral deposition of the Person With Most Knowledge, pursuant to the TEXAS RULES OF CIVIL PROCEDURE, at the Marriott Hotel, 333 Adams Street, Brooklyn, New York, 11201, before a Stenographer and Videographer. You are invited to attend and cross-examine the witness.

Pursuant to Texas Rule of Civil Procedure 201(3) Plaintiff requests through this Notice that the witness(es) appear, give testimony and produce at the time of the taking

of his/her deposition the following items:

(1) The corporate book for each of the incorporated Watchtower Defendants (which should include lists of officers, directors, organizational meeting minutes, resolutions and changes in organizational function and structure);

(2) Governmental filings (state and federal) by each of the incorporated Watchtower Defendants from 1980 to the present;

(3) Documents describing the organizational structure and reporting relationships within the Jehovah's Witnesses organization and the interrelationship between the Watchtower Defendants, the Governing Body and the Texas Districts, Circuits and Congregations;

(4) Documents related to the Kingdom Hall Assistance Arrangement (KHAA) from 1980 to the present, including but not limited to instructions (present and prior), invoices (or "letters suggesting a contribution"), forms used in the operation of the KHAA, and claims paid in Texas from 1980 to the present;

(5) Insurance policies purchased by Watch Tower Pennsylvania that provide coverage for any Texas Circuit, Congregation, Elder or Ministerial Servant from 1980 to the present;

(6) Documents related to financing Kingdom Halls and other buildings used

by or for the Jehovah's Witnesses organization in Texas from 1980 to the present;

(7) Documents provided by any of the Watchtower Defendants to any Texas District Overseer, Circuit Overseer, Elder or Congregation regarding child sexual abuse reports or accident/injury claims from 1980 to the present;

(8) Documents related to monies received by Watch Tower Pennsylvania or the Watchtower Society from Texas for any reason from 1980 to the present (including but not limited to donations, payments, premiums, and rental/lease income, magazines and literature placement); and

(9) Documents sent or prepared by Watch Tower Pennsylvania or Watchtower New York that provide instruction for District Overseers, Circuit Overseers, Elders and other congregation leaders in Texas from 1980 to the present.

Respectfully submitted,

By: _____

HARTLEY HAMPTON
State Bar No. 08874400

FIBICH, HAMPTON, LEEBRON & GARTH
Hartley Hampton, Esq.
Mike Leebron, Esq.
Diane Feiler McGehee, Esq.
1401 McKinney, Suite 1800
Five Houston Center

NO. 91,048-C

AMY B.,	§	**IN THE 251ST DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, DUMAS CONGREGATION OF JEHOVAH'S WITNESSES, AMARILLO-SOUTHWEST CONGREGATION OF JEHOVAH'S WITNESSES and LARRY KELLY,	§	**IN AND FOR**
	§	
Defendants.	§	**POTTER COUNTY, TEXAS**

ORDER OF DISMISSAL

Before the Court is the Plaintiff's Motion to Dismiss with Prejudice. It appears to the Court that all matters in controversy have been settled between the parties and there is no further need for the prosecution of the case;

IT IS ORDERED, ADJUDGED and DECREED that all claims and causes of action asserted by the Plaintiff against all parties in the above-styled and numbered cause are dismissed with prejudice. Court costs are taxed against the parties incurring same.

SIGNED this 14th day of February, 2007.

Ana Estevez
JUDGE PRESIDING

FILED
CAROLINE WOODBURN
DISTRICT CLERK

2007 FEB 15 P 12:50

02

POTTER COUNTY, TEXAS

BY BN DEPUTY

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